



# **REPORT ON USE OF FORCE: Legal Analysis Surrounding the Death of Kenneth Simeus Jr. on November 20, 2019**

## **I. INTRODUCTION**

On November 20, 2019, at about 7:13 pm, Henderson Police Department (“HPD”) patrol officers were dispatched to the Pizza Hut located at 1280 W. Warm Springs Road in response to a panic alarm. While en route, officers were informed over dispatch that an employee at the Pizza Hut was shot in the chest. A subsequent 911 caller stated that an employee from Pizza Hut just told them that the Pizza Hut had been robbed and there was an active shooter in the area. The description given of the shooter was that of a Black male, approximately 6 feet tall, thin build, and wearing all black clothing.

Officer Cody Watts and Officer Robert Hennebeul assisted in the effort to locate the suspect, later identified as Kenneth Simeus Jr. (“Decedent”). The officers began canvassing an adjacent parking lot located at 421 Astaire Drive. As Officer Hennebeul and Officer Watts were canvassing the area on foot, they saw Decedent at the corner of Marks Street and Sandhurst Road walking eastbound, crossing the street. The officers instructed Decedent to get on the ground, at which point Decedent started shooting at Officer Watts and Officer Hennebeul. Officer Watts and Officer Hennebeul both returned fire at Decedent. During a break in the volley of shots, Decedent fell to the ground. Decedent was later transported to Sunrise Hospital where he was pronounced dead. An autopsy of Decedent revealed that Decedent was struck in his upper right side by an officer’s bullet, but the wound was survivable. Instead, the cause of death for Decedent was a self-inflicted gunshot wound to the right temple with the manner of death being suicide.

The Clark County District Attorney’s Office has completed its review of the November 20, 2019, death of Kenneth Simeus Jr. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Watts and Officer Hennebeul were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Watts and Officer Hennebeul. 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 January 26, 2021.

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

## II. INCIDENT DETAIL

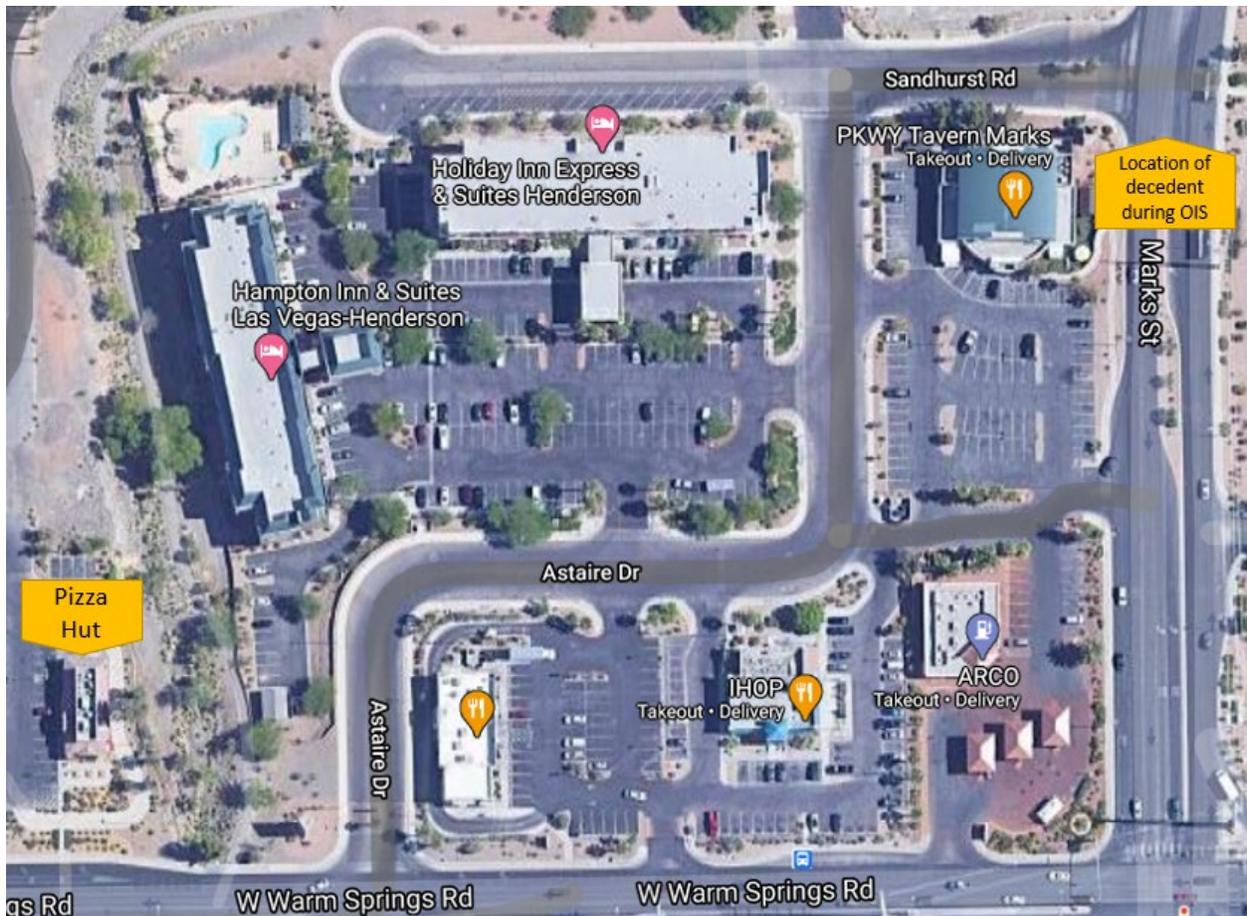
On November 20, 2019, at approximately 7:13 p.m., HPD received a 911 call from an employee of NextGen, an alarm company, reporting that the panic alarm in the of the Pizza Hut located at 1280 W. Warm Springs had been activated. Approximately three minutes later, at 7:16 p.m., J.M. called 911 stating he had been shot at the Pizza Hut and that he was dying (J.M. would ultimately survive a gunshot wound to the chest). At 7:18 p.m., HPD received a third call, this time from a Taco Bell employee. The Taco Bell employee stated that an employee from the Pizza Hut ran into Taco Bell to tell them that a robbery just occurred in the Pizza Hut, and there was an active shooter on the loose. Officers responded to the Pizza Hut where they found victim J.M. on the ground in the walk-in freezer of the Pizza Hut suffering a gunshot wound to the chest.



(Victim J.M. as seen at the Pizza Hut on Officer Adam Luszczuk's Body Worn Camera)

During the robbery and shooting at the Pizza Hut, Officer Watts and Officer Hennebeul were at Sunset Station on an unrelated call. While on the unrelated call, both officers heard over Police Radio that shots were fired at a Pizza Hut and that a victim had been shot. As the Pizza Hut was near the officers' location, they decided to get in their respective marked patrol vehicles and drive to the Pizza Hut.

Upon arriving at the Pizza Hut, Officer Watts and Officer Hennebeul saw that multiple HPD officers already had arrived at the Pizza Hut, and those officers were assisting the victims inside. While there, Police Dispatch relayed that the shooter was a Black male, approximately 6 feet tall, thin build, and wearing all black clothing. Police Dispatch further reported that the shooter may have fled eastbound. Officer Hennebeul and Officer Watts started walking east in an attempt to locate the suspect.



As Officer Watts and Officer Hennebeul began to search for the suspect, Officer Watts saw a person in the wash just east of the Pizza Hut. Officer Watts confronted the person, but he quickly realized this person was not the suspect who robbed the Pizza Hut. As Officer Watts and Officer Hennebeul continued looking for the suspect, Police Radio stated that the suspect, later

identified as Decedent, was seen running toward the Hampton Inn Hotel which was northeast of Officer Watts' and Officer Hennebeul's location. Officer Watts and Officer Hennebeul walked toward the Hampton Inn Hotel and came upon an open desert lot on the northwest corner of Marks Street and Sandhurst Road.



(Decedent seen on PKWY Tavern surveillance video just prior to the Office Involved Shooting)

At that time, another update was given over Police Radio that the suspect was crossing Marks Street toward Lowes. As Officer Hennebeul and Officer Watts got closer to Marks Street, Officer Hennebeul observed Decedent, a Black male wearing all black clothing and matching the description of the robbery suspect, walking across Marks Street. Officer Watts and Officer Hennebeul conferred and concluded that Decedent appeared to be the robbery suspect.

At about 7:26 p.m., Officer Hennebeul gave commands to the suspect to get on the ground. Officer Watts also commanded Decedent to get on the ground. As the officers were issuing their commands, Officer Watts saw a firearm in Decedent's hand. Both Officer Watts and Officer Hennebeul then saw several muzzle flashes coming from Decedent and heard several gunshots. In response to being fired upon by Decedent, Officer Hennebeul and Officer Watts returned fire with their respective HPD issued firearms.

After the volley of shots, it appeared to the officers that Decedent took a few steps and then fell to the ground. Officer Watts and Hennebeul kept their distance as they were not sure whether Decedent had been wounded, or if he was still capable of firing at them. Officers Luszczuk and Hanley approached Decedent, secured him, and called for medical assistance for Decedent. While securing Decedent, officers found two firearms on the ground next to the Decedent:

A GLOCK 19 GEN4 9mm handgun with an extended magazine and a GLOCK 26 9mm handgun, along with several cartridge cases.



(Item 6:Glock 19 Gen 4 semiautomatic handgun)



(Item 7: Glock 19 Gen 4 semiautomatic handgun)

Decedent was transported to Sunrise Hospital where he ultimately was pronounced dead. An autopsy revealed that Decedent had two gunshot wounds: One to the right lateral aspect of his chest from an indeterminate distance, and a contact gunshot wound to the right temple. Because the gunshot wound to the side of the chest was survivable, the cause of death was the self-inflicted gunshot wound to the head, and the manner of death was determined to be a suicide.

### **III. DECEDENT**

Decedent Kenneth Simeus Jr. was a 6' 4" 18-year-old male who lived in Las Vegas, Nevada. At the time of his death, Decedent was on juvenile parole. The following list comprises criminal events relevant to the Officer Involved Shooting ("OIS") on November 20, 2019.

1. On November 20, 2019, at about 7:10 p.m., Decedent entered the Pizza Hut located at 1280 W. Warm Springs holding two firearms. Decedent directed the three employees present to the walk-in freezer in the back of the Pizza Hut. Decedent demanded that the three employees empty their pockets and place their belongings in a plastic bag. Shortly thereafter, the delivery driver for Pizza Hut, J.M., entered the store. Decedent told J.M. to go into the walk-in freezer. When Decedent started to take the manager of the store out of the freezer so that she could open the cash register and the safe, J.M. said something to Decedent. Decedent responded by shooting J.M. in the chest. Decedent then proceeded to take the manager to the front of the store so that she could open the cash register. Despite being shot, J.M. was able to call 911 and report that the Pizza Hut was being robbed and he had been shot in the chest. Ultimately, another employee ran out of the Pizza Hut to a nearby Taco Bell and told the employees to call 911 because the Pizza Hut was being robbed and there was an active shooter.
2. On November 20, 2019, at approximately 6:07 p.m., Henderson Police Dispatch received a 911 call from J.H. advising that he had been robbed at the Carl's Jr. located at 785 S. Boulder Highway. When interviewed by officers, employees described the suspect as a tall, thin, Black male who was between 18-20 years old. Employees stated that the suspect had two handguns and that he fired one round. A cartridge case was recovered

from the Carl's Jr. Later, the Las Vegas Metropolitan Police Department ("LVMPD") Forensic Lab determined that this cartridge case was discharged by the Glock 19 used by Decedent on November 20, 2019, which was recovered near Decedent's body.

3. On November 18, 2019, employees of a Pizza Hut located at 714 S. Boulder Highway was robbed by a 6' tall Black male with a thin build carrying two firearms. Just as in the Pizza Hut robbery precipitating the November 20, 2019 Officer Involved Shooting, the suspect here ordered all the employees into the freezer, took the employees possessions, and then individually took employees to their cash registers to open them for him. After ordering the employees back into the freezer, the suspect fired one round from one of his handguns in the air. A cartridge case was recovered from the Pizza Hut. Later, the LVMPD Forensic Lab determined that this cartridge case was discharged by the Glock 19 used by Decedent on November 20, 2019 and recovered near Decedent's body.
4. On November 4, 2019, B.D. called 911 to report that her home was burglarized while she was away for the day. Henderson Patrol officers arrived, entered the home, and observed that all the drawers in the bedrooms were open and emptied onto the bed. Three firearms were reported stolen including a Glock 26 (S/N EEM887). This stolen firearm was one of the two firearms found near Decedent on November 20, 2019.
5. On October 31, 2019, D.T. reported to LVMPD that the window to his truck was broken and his Glock 19 Gen 4 (S/N SFE939) had been stolen from his truck that was parked in his driveway. The stolen firearm was one of the two firearms found near Decedent on November 20, 2019. The LVMPD Forensic Lab also concluded that this was the same firearm used to shoot at officers on November 20, 2019, the same firearm used in the Pizza Hut Robbery on November 20, 2019, the same firearm used in the Carl's Jr. Robbery on November 20, 2019, and the same firearm used in the Pizza Hut robbery on November 18, 2019.

After the Officer Involved Shooting, a call was captured by the Clark County Detention Center jail call system between the Decedent's mother, L.M., and Decedent's brother, T.S., who was incarcerated on an unrelated matter. On the call, L.M. relayed a conversation she had with Decedent prior to his death, wherein L.M. told Decedent that, if Decedent was committing robberies, L.M. would report Decedent to his Parole Officer. L.M. relayed to T.S. that Decedent told her they would have to kill him before he went back to jail. L.M. told T.M. that when Decedent said they would have to kill him before he went back to jail, she believed he meant it.

## **IV. INVESTIGATION**

### **A. SUMMARY OF INTERVIEWS WITH INVOLVED OFFICERS**

#### **Officer Cody Watts**

On November 20, 2019, prior to the shooting, Officer Watts was dispatched to an unrelated petit larceny call from Dick's Sporting Goods. Officer Watts stated that upon his arrival to Dick's Sporting Goods, he heard an update given over Police Radio that the suspects were fleeing from the scene. Officer Watts stated that one of the suspects was taken into custody quickly and the other suspect ran across Sunset Road toward Sunset Station. Officer Watts drove to the rear of Sunset Station to try and block the suspect's escape. When Officer Watts arrived on the southside of Sunset Station, Officer Hennebeul was there, and they both went into Sunset Station to try and locate the suspect.

While inside Sunset Station, Officer Watts heard over dispatch that shots were fired at a Pizza Hut nearby. Officer Watts and Officer Hennebeul got into their respective patrol vehicles and drove a short distance to the Pizza Hut. When Officer Watts and Officer Hennebeul got out of their vehicles, Officer Watts saw Officer Matthew Doleshal and Officer Charles Tween on the outside of Pizza Hut. Officer Watts learned that officers were inside the Pizza Hut assisting a gunshot wound victim, and the suspect had reportedly fled eastbound from Pizza Hut. The description Officer Watts remembered was that of a Black male wearing all black clothing.

Officer Watts and Officer Hennebeul began to search for the suspect by walking northeast when Officer Watts saw a person in the wash near the Pizza Hut. Officer Watts confronted the subject, but he quickly realized this person was not the suspect. Officer Watts and Officer Hennebeul then continued to search for the suspect.

During the search, multiple updates were given over Police Radio. One of the updates stated that the suspect was seen running towards the Hampton Inn Hotel. Officer Hennebeul and Officer Watts started walking towards the Hampton Inn Hotel and came upon an open desert lot on the corner of Marks Street and Sandhurst Road. As they walked through the open desert lot, Officer Watts observed three people standing on the corner of Marks Street and Sandhurst Road. At this time, another update was given over Police Radio that the suspect was crossing Marks Street towards Lowes. Officer Watts stated that, as he was about to yell out to the three people and ask if they had seen anyone matching the suspect's description, he saw another male matching the suspect's description walking into view near the same corner of Marks Street.

Officer Watts then told Officer Hennebeul that he believed this was the suspect. Officer Watts started to yell at Decedent, when he saw a handgun in Decedent's hand followed by a muzzle flash. Officer Watts believed that Decedent was firing rounds at him and Officer Hennebeul. Officer Watts believed Decedent was trying to kill him and Officer Hennebeul, so he discharged his rifle at Decedent. Officer Watts described a feeling of fear when Decedent fired rounds at himself and Officer Hennebeul.

Officer Watts recounted that he was not sure if Decedent was hit, but after Decedent fired rounds at Officer Watts and Officer Hennebeul, Decedent continued to walk through Marks Street. Officer Watts thought that Decedent was trying to gain a position of advantage on Officer Watts and Officer Hennebeul. Officer Watts saw Decedent walking a few more steps, and then saw Decedent fall to the ground. Officer Watts and Officer Hennebeul walked closer to Decedent, but stayed a safe distance away, because he was not sure what state Decedent was in and did not want Decedent to shoot at them again. Officer Watts maintained his position away from Decedent until other officers arrived to assist.

### **Officer Robert Hennebeul**

On November 20, 2019, prior to the shooting, Officer Hennebeul was assisting on another call involving a theft from Dick's Sporting Goods. Officer Hennebeul was on the south side of Sunset Station because it was believed that the suspects from the theft had run across Sunset Road and into Sunset Station. Officer Hennebeul stated that he was on the perimeter with Officer Cody Watts. While on the perimeter, another Officer advised over the radio that shots had been fired in the nearby Pizza Hut and someone had been shot. Officer Hennebeul was familiar with the area and knew that the Pizza Hut that was referenced was just behind Sunset Station.

Officer Hennebeul and Officer Watts got into their separate patrol vehicles, drove to the Pizza Hut, and parked their patrol vehicles near the rear of the Pizza Hut. Officer Hennebeul and Officer Watts got out of their patrol vehicles and walked up to the Pizza Hut, but they observed that multiple officers had already arrived and were assisting the victims inside the Pizza Hut. Officer Hennebeul began to look around the area when a K-9 Officer (Officer Doleshal) advised Officer Hennebeul that he believed he heard gun shots to the east of their location. Officer Hennebeul started to search the area and walked into a ditch area with Officer Watts.

While searching the area, an update was given over the radio that the suspect was seen walking towards the Hampton Inn hotel, so Officer Hennebeul and Officer Watts started to search in that direction. As they walked towards the Hampton Inn Hotel, another update was given over the radio that the suspect was walking towards Lowes, which was further east of their location and across Marks Street. A description was also given over the radio that the suspect was a Black male adult wearing all dark clothing. Officer Hennebeul and Officer Watts continued searching and walking east through a dirt area towards the Lowes Store.

As Officer Hennebeul and Officer Watts got closer to Marks Street, Officer Hennebeul observed Decedent wearing all black clothing and matching the description of the suspect who robbed the Pizza Hut and shot an employee, walking across Marks Street. Officer Hennebeul also observed people on the corner of the street near the PKWY Tavern and Decedent. Officer Hennebeul yelled at Decedent to get on the ground. Officer Hennebeul then observed muzzle flashes from Decedent and heard gunshots. Officer Hennebeul believed Decedent was trying to kill him and Officer Watts. Officer Hennebeul returned fire and shot multiple rounds at Decedent.

As Decedent continued to move across Marks Street, Officer Hennebeul began to discharge his firearm for a second time at Decedent. Officer Hennebeul stopped firing his handgun to assess the situation, and he observed Decedent lying in the middle of Marks Street. Officer Hennebeul and Officer Watts started walking towards Decedent, and Officer Hennebeul advised over the radio that shots had been fired and Decedent was down. Officer Hennebeul observed that Decedent was lying on the street. At that time, additional officers approached Decedent from the east side of Marks Street and placed Decedent in custody.

## **B. SUMMRARY OF INTERVIEWS WITH CIVILIAN WITNESSES**

### **S.R.**

S.R. was walking south on Marks when he ran into two individuals, later determined to be P.A. and D.P., at Marks Street and Sandhurst Road. The three of them continued to walk south when S.R. observed what he believed to be a male running toward him from a westward direction/diagonal across Marks Street. Prior to that, a few officers had asked him if he had seen anybody running, and he informed them he had not.

The male ran past S.R., getting as close as 5 feet from S.R. Within seconds after the male passed S.R., S.R. heard officers behind him say something toward the male along the lines of stand down. S.R. was not sure the exact words the officers used, but he knew they were yelling directions to do something.

S.R. then heard what he believed to be gunshots. S.R., who claimed to be familiar with firearms, heard at least five gunshots that all sounded the same in succession. Upon hearing the gunshots, S.R. hid underneath a sign in the immediate area with P.A. and D.P. S.R. did not see or hear anything else after that, saying he went "blank" at that point.

S.R. described the person he saw running as a male that stood approximately 5'11" tall and weighed approximately 160 to 170 pounds, but he could not recall what the male wore or what the male's face looked like. S.R. was asked if he could tell if the male wore light clothing or dark clothing, and S.R. advised dark clothing. S.R. could not tell if the male had anything in his hands.

### **P.A.**

P.A. was staying in the Comfort Inn with his wife, D.P., just north of the Officer Involved Shooting. P.A. stated he and his wife left the motel and proceeded to walk south on the west side of the sidewalk on Marks Street toward the PKWY Tavern to get something to eat. As they were walking toward the PKWY Tavern, they observed police vehicles, which he believed to be patrol vehicles, with their lights on.

While they were standing on the northwest corner of Marks Street and Sandhurst Road, right before crossing Sandhurst, he noticed another male, S.R., walk up to them. P.A. then observed

a Black male come running by them. P.A. believed the male came from the landscape area located on the east side of the PKWY Tavern. P.A. did not recall seeing anything in the male's hands. Once the male was past them, P.A. did not hear anybody say anything. The male then started to shoot, and he believed the male was shooting toward the west. P.A. and his wife hid behind a sign while police vehicles started to close in from every direction. They heard somebody advise there might be another person, so they moved to another spot and hid behind some bushes.

P.A. heard what he believed to be approximately eight to ten gunshots in succession, and all of them sounded the same. P.A. also saw five or six muzzle flashes coming out of the male's firearm. P.A. described the male as being approximately 6'2" to 6'3" tall and weighing approximately 180 pounds with dark clothing.

### **D.P.**

D.P. stated she and her husband, P.A., were staying at the Comfort Inn to the north of the Officer Involved Shooting. D.P. and her husband were walking south on Marks Street to get something to eat at the PKWY Tavern. While they were walking, they observed police vehicles with their lights activated coming down the street.

Once the patrol vehicles passed, D.P, her husband, P.A., and a third person, S.R., began to cross the street. When they came to the median that separated east and westbound lanes of Sandhurst Road, she saw a tall, thin, Black male running out into the southbound lanes of Marks Street. The male hit a vehicle with his hand that was traveling southbound on Marks Street while telling it to stop. D.P. believed the male hit the car in an attempt to get the vehicle to stop so he could get in, but the vehicle left without stopping for the male.

At that point, D.P. was at the corner of Marks Street and Sandhurst Road (southwest corner) when the male took off running behind them. She then heard the male yell something but did not understand what the male was yelling. D.P. then heard gunshots. That's when she and her husband hid behind a sign.

D.P. believed she heard approximately seven or eight gunshots in succession, but she did not count them all. She then stated there was a pause between some of the gunshots. D.P. did not see any gunshots, but she heard approximately four shots right away, a bit of a pause, and then she heard another three or four shots.

D.P. described the male as being approximately 5'11" tall and weighing approximately 160 pounds. She noticed the male had something tied around his waist, possibly a jacket, and she believed the male had something white on him. D.P. said she did not think the fleeing male had anything in his hands, but she did say she was looking more at his head than his upper body as he was running toward them.

## **C. BODY WORN CAMERA**

### **Officer Cody Watts**

Officer Cody Watts Body Worn Camera (“BWC”) starts at 7:19 pm on November 20, 2019. The Body Worn Camera shows Officer Watts driving near Sunset Station and continuing to drive for approximately one minute. Officer Watts parks his vehicle and retrieves his Patrol rifle. At this time, the audio starts, and an officer is heard giving an update over the radio that shots were fired inside the Pizza Hut. Henderson Police Dispatch is heard repeating the information that shots were fired inside the Pizza Hut. Officer Watts begins to run towards the location and starts to search for the suspect involved.

The Body Worn Camera then shows Officer Watts joining with Officer Hennebeul as they both begin to search for the suspect in the area. Officer Watts and Officer Hennebeul search what looks like a desert area and continue their way toward the Hampton Inn Hotel located at 421 Astaire Drive. Additional updates are heard over Police Radio that witnesses observed a suspect with a gun walking towards the Hampton Inn Hotel and attempting to cross Marks Street toward Lowes. Officer Watts and Officer Hennebeul continue to walk towards Marks Street through a desert area in front of Comfort Inn located at 475 Marks Street. Notably, due to the time of day and lack of light source, the interaction between Decedent and officers can be heard but not seen.

At 7:26 p.m., Officer Watts is heard on Body Worn Camera asking, “Is that the guy?” Officer Watts starts to run toward the corner of Marks Street and Sandhurst Road and then, after a few seconds pass, Officer Watts starts to give commands to get down. Immediately after Officer Watts gives the commands, “Get down, get down,” multiple gunshots are heard. Officer Watts continues to advance toward Marks Street and gives commands, “Don’t move, put your hands out, put your hand out, show us your hands.”

Multiple officers arrive in the area while Officer Watts stays a short distance away from Decedent, who is lying in the middle of Marks Street. As Officer Watts maintains his distance, additional officers approach Decedent lying in the street and place him in handcuffs.

### **Officer Adam Luszczuk**

Officer Adam Luszczuk’s BWC starts while he is on a prior call for service. While on that call, a radio broadcast is heard over Henderson Police Radio advising that a person had been shot at the Pizza Hut on Warm Springs Road. Officer Luszczuk walks to his Patrol vehicle and starts to drive toward the Pizza Hut. Officer Luszczuk advises over Henderson Police Radio to send him the call. While driving to the Pizza Hut, multiple updates were given over Henderson Police Radio to include a description of the suspect.

On the Body Worn Camera, it is apparent that when Officer Luszczuk arrives at the Pizza Hut, multiple Henderson Patrol Officers are already at the scene. Officer Luszczuk checks the area

around Pizza Hut and then enters the Pizza Hut. Officer Luszczyk goes the inside of the Pizza Hut and then enters the walk-in freezer where the gunshot wound victim, J.M., is on the ground. Officer Luszczyk assists other officers with J.M., and then advises he is going to go to his vehicle to get his trauma kit. While Officer Luszczyk runs to his vehicle, he learns another officer is getting a trauma kit. Officer Luszczyk then gets into his patrol vehicle and begins to search for Decedent.

Officer Luszczyk drives to the Lowes that is across Marks Street just east of Pizza Hut. He makes contact with Lowes' employees standing outside the Lowes and asks if they have seen a Black male wearing a red shirt and carrying a bag. They respond that they have not seen a person fitting that description, and then Officer Luszczyk tells the Lowes' employees to lock the doors and stay inside. Officer Luszczyk walks along the front of Lowes and sees Officer Hanley. Officer Luszczyk yells out to Officer Hanley that they should check the inside of Lowes. As Officer Luszczyk starts walking toward Officer Hanley, multiple gunshots are heard and Officer Luszczyk and Officer Hanley start running across the Lowes' parking lot toward Marks Street.



(BWC depicting a firearm next to Decedent)

As Officer Luszczyk approaches Marks Street, Officer Luszczyk begins yelling commands for Decedent to show his hands. Officer Luszczyk walks up to Decedent, who is lying down in the middle of the street and not responding to commands. Officer Luszczyk approaches Decedent and places him in handcuffs with the assistance of Officer Hanley. It becomes apparent that Decedent is injured and officers call for medical personnel. A short time later, Henderson Fire Paramedics arrive and appear to provide medical aid to Decedent.

## Officer Steven Hanley

Officer Steven Hanley's BWC starts as he is driving near Sunset Station Casino. As Officer Hanley is driving around the area of Sunset Station Casino, multiple updates are heard over Henderson Police Radio including a description of the suspect and that he was seen running eastbound toward Lowes. Officer Hanley drives into the Lowes parking lot and begins to ask someone if they have seen Decedent running around. Officer Hanley drives toward the front of Lowes and then exits his vehicle and contacts Officer Luszczuk in front of Lowes. Officer Hanley walks around the front of Lowes and asks another customer if they have seen Decedent, to which the customer indicates they have not seen anyone matching the description of Decedent. Next, Officer Hanley walks back toward the front of the Lowes towards Officer Luszczuk, and tells Officer Luszczuk they should check inside. At that time, multiple gunshots can be heard on the Body Worn Camera. Officer Hanley and Officer Luszczuk then begin to run through the Lowes' parking lot and toward Marks Street.



(BWC depicting a firearm adjacent to Decedent as Officer Hanley searches Decedent)

When Officer Hanley approaches Marks Street, he begins to yell the location of Decedent. Officer Hanley then yells out commands to Decedent, and Officer Luszczuk can be seen walking up to Decedent just slightly in front of Officer Hanley. Officer Luszczuk places Decedent in handcuffs, and Officer Hanley assists Officer Luszczuk. Officer Hanley puts on rubber gloves and starts to search Decedent.

While Officer Hanley is searching Decedent, a handgun with an extended clip can be seen in the roadway adjacent to Decedent. At this time, Henderson Fire Paramedics arrive and begin to provide medical aid to Decedent.

## **Officer Robert Hennebeul**

Officer Hennebeul's Body Worn Camera was not activated.

### **D. SUMMARY OF INTERVIEWS WITH VICTIMS AT THE PIZZA HUT**

#### **J.C.**

J.C., an employee of Pizza Hut, was working in the back of the restaurant when he heard another employee call his name. When J.C. turned to look, he saw his co-workers, J.B. and J.P., approaching him, followed closely by a tall Black male later determined to be Decedent. J.C. described Decedent as a Black male, approximately 6'0 tall and thin. He further remembered Decedent wearing a black hoodie and black pants. Decedent was holding two black handguns that appeared to be Glocks.

When Decedent reached J.C., Decedent told J.C. to empty his pockets. J.C. removed his phone from his pocket and gave it to Decedent. Decedent then forced all three employees into the walk-in freezer in the back of the Pizza Hut.

After walking the three employees to the freezer, Decedent then instructed J.B. to go to the front of the business to open the cash registers. At this time, J.M., the delivery driver for Pizza Hut, returned to the store from delivering pizzas. Decedent told J.M. to go into the freezer and J.M. complied. Decedent again told J.B. to come with Decedent to the front of the store. J.M. questioned why Decedent was taking J.B., and then Decedent shot J.B. in the chest. After shooting J.M., Decedent took J.B. to the front of the store.

J.C., J.P. and J.M., who was suffering from a gunshot wound to the chest, remained in the freezer. J.M. still had his phone on him and was able to call 911. J.C. and J.M. remained in the freezer until police arrived.

#### **J.B.**

J.B. was working with J.C. and J.P. at the Pizza Hut. As J.B. was in the back of the restaurant cutting pizzas J.B. heard J.P. say, "stay calm." J.B. turned to see what J.P. was talking about and then saw Decedent wearing all black and carrying two handguns.

Decedent told the three employees to go into the freezer and put their phones and money into a bag. J.B. attempted to call 911 discretely, but Decedent saw her with her phone and threw it on the floor, shattering her phone.

When all three employees were in the walk-in freezer, Decedent asked who was in charge of the money. J.B. said she was. The suspect took her to the front registers and told her to open them. J.B. couldn't open all of the registers because one of them required J.P.'s password.

Decedent brought J.B. back to the freezer and that's when J.M., the delivery driver for the Pizza Hut, came in through the delivery door. Decedent again put all the employees into the walk-in freezer and told J.M. to empty his pockets.

Decedent then demanded that J.B. walk out of the freezer to open the safe. J.M. tried to prevent J.B. from leaving the freezer and said to the suspect, "What are you going to do - shoot me?" At that point, Decedent shot J.M. and he fell backwards.

J.B. went to the safe, but it was still on the timer and could not be opened. Decedent then went back to the walk-in freezer. When Decedent opened the freezer, he found J.M. on his cellular phone. Decedent proceeded to take the phone from J.M., put it on the ground, and shoot the phone with one of the handguns.

Decedent then took J.B. and J.P. to the front registers. While J.P. was near the front register, he ran out the door. When Decedent realized that J.P. had left the Pizza Hut, Decedent asked how long it would take for the safe to open. J.B. responded that the timer would only allow her to open the safe after three more minutes. Decedent then fled the store.

### **J.P.**

J.P. was working in the front area of the Pizza Hut, sweeping the floor, when he heard the door open. J.P. looked at the door and saw Decedent standing there with a handgun in each of his hands. Decedent put his hand up in front of his lips to signal J.P. to keep quiet.

J.P. recalled that Decedent was dressed in all black, wearing a black hoodie and a mask over his face. Decedent asked how many people were in the back, and J.P. told Decedent he was not sure.

Decedent put a gun to J.P.'s back and directed him to the back area of the business. J.P. told J.B. and J.C. - his co-workers - to stay calm. Decedent directed all three of them to the freezer and had them all put their property into a plastic bag. Decedent then asked who the manager was. J.B. said she was the manager.

Decedent left J.P. and J.C. in the freezer and took J.B. with him. A few minutes later, Decedent returned and that was when J.M. came back to the store from delivering pizzas. Decedent and J.M. were arguing, and then J.P. heard a gunshot and saw that J.M. fell to the ground inside the freezer. Decedent then shut the door to the freezer while J.M., J.C. and J.P. were all inside.

After Decedent closed the freezer door, J.M. took out his phone and called someone saying he had been shot. A few minutes later, Decedent returned to the freezer, opened the door, and asked for J.P. J.P. left with Decedent who took him to the front registers. Decedent then went back to the freezer, and J.P. heard Decedent asking who was on the phone. J.P. heard another gunshot and, at that point, J.P. ran out of the Pizza Hut. J.P. ran into the nearby Taco Bell and explained the Pizza Hut was being robbed. J.P. then ran toward Sunset Station where he saw a couple of motorcycle officers and waived them down.

## J.M.

J.M. was interviewed after he had surgery to treat the gunshot wound to his chest. J.M. remembered coming back to Pizza Hut and not seeing any vehicles in front of Pizza Hut. J.M. recalled thinking that this was odd. J.M. called out to another employee and continued to walk to the back of Pizza Hut. As J.M. came around the corner, he observed Decedent, a Black male wearing all black, holding two guns. J.M. further stated that one of guns Decedent was holding had an extended magazine. Decedent ordered J.M. to the floor and then demanded J.M.'s money.

J.M. stated that when he walked into the freezer, Decedent told his female co-worker to go with Decedent, and that J.M. asked, "What?" Immediately afterward, Decedent shot J.M.

J.M. stated that, after he was shot, Decedent took the co-worker out of the freezer. While Decedent was outside the freezer, J.M. called 911 and then called his girlfriend. While J.M. was on the phone with his girlfriend, Decedent returned to the freezer and asked J.M. who he was talking to. J.M. replied he was talking to his wife. J.M. does not remember what happened between then and when police arrived.

## E. THIRD PARTY VIDEO EVIDENCE

### PKWY Tavern, 445 Marks St.

Video from the PKWY Tavern taken just before the Officer Involved Shooting shows Decedent walking eastward in front of the PKWY Tavern front door. Decedent was wearing a black hooded sweatshirt, black pants, and was holding a handgun in his right hand behind his body. Decedent was holding a cell phone in his left hand. Another camera showed Decedent running toward Marks Street out of view of the camera.



(Decedent walking past PKWY Tavern)

## F. OFFICER COUNTDOWN

### Officer Cody Watts

Officer Watts deployed his department issued Colt M4 Patrol rifle. The countdown of Officer Watts' rifle's inserted magazine confirmed that Officer Watts fired a total of 4 rounds from his rifle. The magazine had 23 remaining bullets (out of a capacity of 28 total rounds). The gun also had one chambered bullet for a total of 24 remaining bullets out of 28.



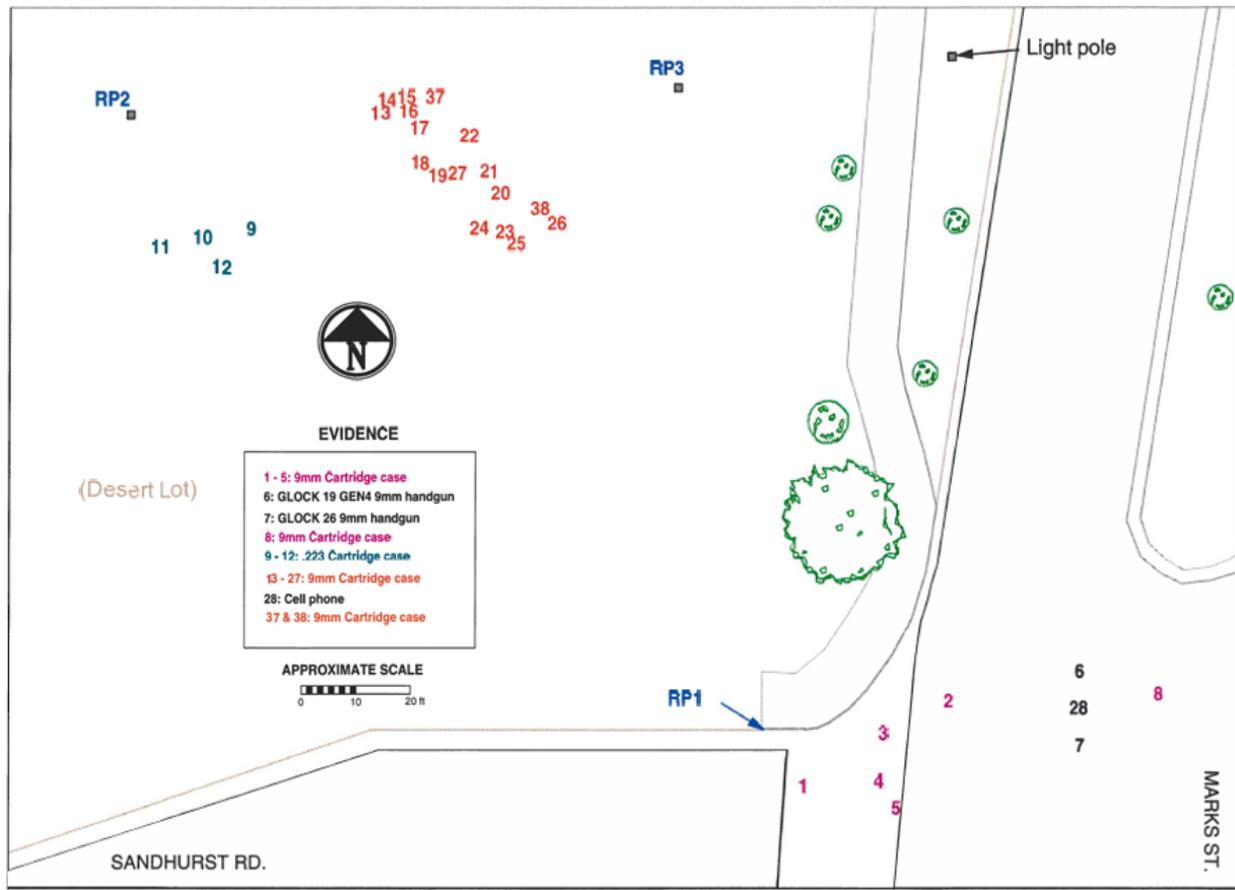
## Officer Robert Hennebeul

Officer Hennebeul stated he carried 17 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (17 + 1 = 18 Total). Investigators confirmed Officer Hennebeul fired a total of 17 rounds from his Glock 17. The gun's inserted magazine had 0 (zero) remaining bullets (out of a capacity of 17 total rounds). The gun also had one chambered bullet for a total of 1 remaining bullet out of 18.



## G. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

### Scene



(Diagram Depicting the Scene of the Officer Involved Shooting)

Apparent blood was pooled in the #1 southbound travel lane of Marks Street, in the northwest quadrant of the intersection. A Glock 19 Gen 4 semiautomatic handgun with a 31-RD extended magazine [Item 6] was located on the ground north of the apparent blood. A Glock 26 semiautomatic handgun (SN: EEM887) with a 15-RD magazine [Item 7] was located on the ground south of the apparent blood. A total of six expended 9mm cartridge cases were also located on the ground in the northwest quadrant of the intersection; five cartridge cases [Items 1-5] were west of the apparent blood and one cartridge case [Item 8] was east of the apparent blood, south of the center median. An Apple iPhone with a pink case [Item 28] was located face-down in the pool of apparent blood. A total of (19) expended cartridge cases were located in the vacant desert lot situated on the northwest corner of the intersection: Four .223 caliber cartridge cases [Marked 9-12] and fifteen 9mm cartridge cases [Marked 13-27].

### **Evidence Recovered**

The following items were recovered from the scene of the Officer Involved Shooting:

- Glock 19 Gen 4 semiautomatic handgun (SN: SFE939) with a 31 round extended magazine [Item 6] located in the intersection of Sandhurst Road and Marks Street.
- Glock 26 semiautomatic handgun (SN: EEM887) with a 15 round magazine [Item 7] located in the intersection of Sandhurst Road and Marks Street.
- Four "HORNADY" 9mm Luger cartridge cases [Items 1, 4, 5, and 8] located in the intersection of Sandhurst Road and Marks Street.
- One "PPU" 9mm Luger cartridge case [Item 2] located in the intersection of Sandhurst Road and Marks Street.
- One "WIN" 9mm Luger cartridge case [Item 3] located in the intersection of Sandhurst Road and Marks Street.
- Four "SPEER 14" 223 REM cartridge cases [Items 9-12] located in the northwest corner of Sandhurst Road and Marks Street in a dirt lot.
- Seventeen "SPEER" 9m Luger cartridge cases [Items 13-27; 37-38] located in the northwest corner of Sandhurst Road and Marks Street in a dirt lot.

## **H. FORENSICS REQUESTS / RESULTS**

### **Cartridge Cases**

Cartridge cases from the scene of the Officer Involved Shooting and the other relevant scenes were examined and microscopically compared to test-fired cartridge cases from Decedent's firearms as well as from each of the shooting officers' firearms.

### **1. Decedent**

Forensic examination determined that the six cartridge cases found in the intersection in of Sandhurst Road and Marks Street were shot by the Glock 19 Gen 4 semiautomatic handgun (SN: SFE939). Forensic examination also showed that the two cartridge cases found in the Pizza Hut located at 1280 W. Warm Springs were also shot by the same Glock 19 found near Decedent. Forensic examination further showed that the cartridge case used in the robbery of Carl's Jr. located at 785 S. Boulder Highway was shot by the same firearm found near Decedent. Finally, forensic examination of the cartridge case recovered from the November 18, 2019 robbery at the Pizza Hut located at 714 S. Boulder Highway also matched the firearm.

### **2. Officer Watts**

Forensic examination showed that the four "SPEER 14" .223 REM cartridge cases recovered from the dirt lot in the northwest corner of Sandhurst Road and Marks Street were fired from Officer Watts' Colt M4 Patrol rifle.

### **3. Officer Hennebeul**

Forensic examination showed that the seventeen "SPEER" 9m Luger cartridge cases recovered from the dirt lot in the northwest corner of Sandhurst Road and Marks Street were fired from Officer Hennebeul's Glock 17.

## **I. AUTOPSY**

On November 21, 2019, an autopsy was performed on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner by Doctor Lisa Gavin. During the autopsy, Dr. Gavin found two gunshot wounds. One of the gunshot wounds was to the right lateral aspect of Decedent's chest. Dr. Gavin determined that this gunshot wound did not penetrate the chest cavity and was survivable. The other gunshot wound was a self-inflicted contact gunshot wound to the right side of Decedent's head. Dr. Gavin found a muzzle imprint, radiating lacerations, and soot visible within the underlying soft tissue confirming that this was a contact gunshot wound. Dr. Gavin determined that the self-inflicted gunshot wound to the head was the cause of death and the manner of death was suicide

## **V. 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 "*may have contributed*" to the

cause of death of a person.<sup>1</sup> Clark County Ordinance §2.14.010. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

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

## **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 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>2</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).

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

The killing of [a] person in 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 or cause great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury.

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<sup>1</sup> Here, while the autopsy of Decedent revealed that Decedent died due to a self-inflicted gunshot wound to the head, it is at least arguable that the involved officers “may have contributed” to Decedent’s death and, therefore, falls within the mandate of Clark County Ordinance 2.14 to hold a Police Fatality Public Factfinding Review.

<sup>2</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.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in 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. 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 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 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 of self-defense exists, the State must prove beyond a reasonable doubt that Decedent did not act in self-defense. *Id.* at 1051-52.

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

The known facts and circumstances surrounding this incident indicate that Decedent posed an apparent imminent danger to both Officer Cody Watts and Officer Richard Hennebeul. Minutes before encountering Decedent, Officer Watts and Officer Hennebeul learned a robbery had just occurred and, during the robbery, the suspect shot one of the victims. When Officers Watts and Hennebeul located Decedent, who matched the description of the suspect provided to officers, they instructed Decedent to get on the ground. Rather than comply with lawful instructions, Decedent began shooting at Officers Watts and Hennebeul. When Officers Watts and Hennebeul returned fire, they both had a reasonable belief and an honest fear that they were in imminent danger of death or great bodily harm. Therefore, although Decedent took his own life, the deadly force used by Officer Watts and Officer Hennebeul was justified under both the self-defense and defense-of-others doctrines.

## **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, at the time both officers fired their weapons, the facts demonstrate they had probable cause to believe that Decedent posed a threat of serious physical harm to Officer Watts and Officer Hennebeul, as well as any civilians within the immediate area. Officer Watts and Officer Hennebeul were informed that shortly before this encounter, Decedent committed a robbery and, in the course of that robbery, Decedent shot one of the victims in the chest. When Officer Watts and Officer Hennebeul located Decedent and instructed him to get on the ground, Decedent began shooting at officers. Thus, when Officer Watts and Officer Hennebeul fired their weapons, the facts demonstrate they had probable cause to believe that Decedent posed a threat of serious physical harm to Officer Watts and Officer Hennebeul. The circumstances indicate that Officer Watts and Officer Hennebeul had a reasonable belief that Decedent was a threat to both officers’ safety. Although Decedent took his own life, the deadly force used by Watts and Officer Hennebeul was legally justified and appropriate “in the discharge of a legal duty.”

## **VI. 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 Henderson Police Department Officer Cody Watts and Officer Richard Hennebeul 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.