

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Miguel Salas on August 1, 2017

INTRODUCTION

On August 1, 2017, Las Vegas Metropolitan Police Department (hereinafter LVMPD) officers responded to a call from a citizen about stolen property inside of a black pick-up truck located at 4205 West Tompkins. Officers Richard Nelson and Daniel Demarinis arrived on scene together in a marked patrol car. Officer Nelson approached the driver's side of the truck and noted there was a lone occupant sleeping in the driver's seat. The male was subsequently identified as Miguel Salas (hereinafter Decedent). Officer Nelson woke him and began talking to Decedent about what he was doing in the area. Officer Demarinis stood by the front passenger side of the truck. Decedent claimed to work nearby. He then attempted to start his truck, but the engine would not start. Decedent also reached toward the center console of the truck several times despite requests by both Officers Nelson and Demarinis not to do so.

Both officers requested Decedent to step out of the vehicle on several occasions so they could identify him and speak to him about their investigation. Decedent consistently refused to exit his vehicle, and he could not provide a driver's license to them so that he could be identified. Officer Nelson was able to open the driver's side door briefly at one point, but Decedent abruptly closed it. After about five minutes, Officer Nelson called for a back-up unit to come to the area because Decedent was refusing to comply with any of their commands to exit the vehicle and/or stop reaching around the vehicle.

Seconds later, Decedent reached with his right hand and grabbed a .40 caliber Glock

handgun from inside the vehicle, pointed it at Officer Demarinis, and fired at him several times as the officer ran toward the front of the truck. One of the gunshots struck the duty belt worn by Officer Demarinis but did not injure him. After Decedent pulled his weapon, Officer Nelson began moving toward the back of the driver's side of the truck as he removed his handgun and shot at Decedent. Decedent then immediately turned his gun toward the rear of the truck and began firing at Officer Nelson; he was struck with one bullet on the left side of his torso. Officer Nelson returned fire ten times in all and struck Decedent in his forehead causing his death. Officer Nelson's Sergeant, Steve Skenandore, arrived on scene moments later and transported Officer Nelson to University Medical Center for life-saving treatment.

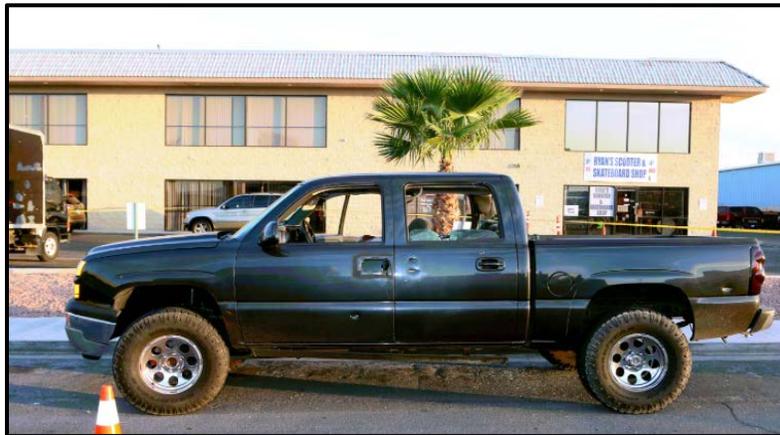
The Clark County District Attorney's Office has completed its review of the events surrounding the death of Decedent. This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Nelson was not criminal. This review was based on all the evidence currently available, including evidence adduced at the Police Fatality Public Fact-Finding Review held on May 25, 2018.

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

I. INCIDENT DETAILS

In the early evening of July 30, 2017, P. L. parked his 2002 Cadillac Escalade outside a Smith's store located near Jones Blvd. and Vegas Drive in Las Vegas. As he walked out of the store back to his car, P. L. noted there was a dark colored Chevy pick-up truck with a male sitting inside of it nearby that drove away from the area. When he entered his vehicle, P.L. noticed the glove box was now opened. P. L. also saw that items in the car had been moved and three cellular phones and a camera were missing. P. L. checked with Smith's employees and learned there were no surveillance cameras in that area of the parking lot. P. L. learned from a witness in the parking lot that, while P. L. was inside of the store, the witness had seen a man near his vehicle. The witness saw the man had a screwdriver in one hand and possibly a gun in the other when he entered into P. L.'s vehicle. P. L. called the Las Vegas Metropolitan Police Department and reported the crime. P. L. was informed that he would need to go to a substation to fill out an incident report.

On August 1, 2017, P. L. activated a “find my I-Phone” application in an effort to locate his stolen property. The application indicated that the stolen I-Phone was located near the 4200 block of West Tompkins in Las Vegas. P. L. drove to that location and noticed a black, 2005 Chevrolet Silverado pick-up truck parked on the south side of Tompkins in front of a series of businesses located at 4205 West Tompkins.



Truck as it was parked in front of 4205 West Tompkins

The truck was occupied by a Hispanic male adult who appeared to be sleeping in the driver’s seat. P. L. noted the vehicle looked like the same truck that had been at the Smith’s and had driven away as he approached his vehicle. At 2:15 p. m., P. L. called 9-1-1 and informed the Las Vegas Metropolitan Police Department that his stolen iPhone was tracking to a Chevrolet truck located on Tompkins. P. L. also informed the dispatcher that a witness who had seen the burglary of P. L.’s vehicle the prior day indicated the male may have had a gun.

A patrol unit was assigned to the call; however, those officers got diverted to a higher priority call. At 3:16 p.m., P. L. called dispatch a second time in an effort to find out when the police would be arriving. P. L. told dispatch that the truck was still at the same scene and the Hispanic male driver was still asleep.

At 3:49 p.m., patrol officers Richard Nelson and Daniel Demarinis were assigned to the call. Officers Nelson (who was driving) and Demarinis (front passenger) arrived together in a marked patrol unit at approximately 4:09 p. m. They parked to the rear of the black Chevrolet pick-up truck. Officer Nelson approached the driver’s side of the truck and noted it was occupied by a Hispanic male adult who was still sleeping. Officer Demarinis called

out the license plate to dispatch as Nevada loaner plate #25626 and then approached the area near the front passenger door.¹

Officer Nelson then woke Decedent by saying, “Hey brother, how’s it going?” He knocked on the driver’s side door because the window was rolled down. Decedent acknowledged he had been sleeping and told the police that he worked “right around the corner” in a mechanic’s shop. As Officer Nelson spoke to him, Decedent attempted to start the truck twice, but it would not start. Nelson asked him why he attempted to start it, and Decedent told him he wanted to see if the truck still had gas in it. Nelson then told him to keep the vehicle turned off and asked Decedent for his identification. Decedent said he had his identification but did not know where it was located. Decedent then turned and reached towards the center console, and Officer Nelson told him it was okay but asked for him not to dig around in the car and look for it. Officer Nelson then asked Decedent to step out of the truck. Nelson attempted to open the driver’s side door, but he could not get it opened. Decedent replied by asking why he had to get out of the truck, and he told the police he was not doing anything wrong.

Decedent then reached with his left hand toward the driver’s seat floorboard and grabbed a shoe and held it in his left hand. Officer Nelson repeated that he wanted the Decedent to step out of the car so they could figure out what was going on. He asked whether Decedent had anything illegal “like drugs or guns” in the car, and Decedent told him, “No.” Officer Nelson continued to ask Decedent to step out of the vehicle and Decedent continued to refuse, asking why he had to leave his vehicle. As he stood on the passenger side of the truck, Officer Demarinis also repeated to Decedent that he needed to exit the vehicle and for him to stop reaching around inside of the vehicle.

At approximately 4:12 p.m., three minutes after the encounter began, Officer Nelson grabbed the left wrist of Decedent as it hung out the driver’s side window. Decedent indicated he was not doing anything wrong. Nelson replied they never accused him of doing anything wrong, they just wanted to identify him outside of the vehicle. Nelson then let go of Decedent’s left wrist. Nelson then responded they did not know what was inside the vehicle, and Decedent once again reached toward the center console area of the truck.

¹ The 2005 Chevrolet Silverado was reported stolen on June 11, 2017, by the registered owner, B. B. The owner parked his truck outside of his apartment and then left Las Vegas for a few days. When he returned, the truck was missing. The Nevada license plate that was affixed to the rear of the truck did not belong to that truck. The plate was stolen off of a different vehicle.

Officer Nelson then opened the driver's side door briefly, but Decedent pulled it shut and asked, "Why you got to do that?"

Officer Demarinis then walked around the front of the truck and stood in front of the driver's side door to the left of Officer Nelson. At that point, Officer Nelson grabbed the left wrist of Decedent a second time as it hung outside the driver's side door and told Decedent to "come outside." Decedent told the officers he was not doing "anything bad." The officers both told him to "relax," and they explained they wanted him outside of the truck so they could identify him. Once again, Decedent reached into the center console area while Officer Demarinis attempted to open the driver's side door but the outside latch was broken. Both officers told Decedent again to stop reaching around inside of the car. The officers repeated to Decedent they wanted him out of the truck because it would be safer, but Decedent continued to object telling them, "I'm not doing nothing." Officer Nelson then asked Decedent if he wanted to be tased, and Decedent said he did not. Decedent then stated that the driver's side door was "not broken" and seemed willing to open the door for the officers; he did not and, instead, sat still for several seconds.

At 4:14 p.m., Officer Nelson called out for a back-up patrol unit over the radio. At this point in time, neither officer had his firearm out of his holster. Decedent suddenly reached for a gun inside of the truck with his right hand, pointed it at Officer Demarinis, and fired it as Demarinis ran to the front of the truck.



Viewpoint from Officer Nelson's body camera of Decedent drawing his weapon

This caused Officer Nelson to back away toward the rear of the driver's side, remove his firearm and begin firing at Decedent. In total, Decedent fired his weapon nine times at Officers Demarinis and Nelson.



Viewpoint from Officer Nelson's body camera of Decedent firing his gun at Officer Demarinis

Decedent immediately turned his gun back toward Officer Nelson and shot at him as Nelson was moving toward the driver's side rear of the truck.



Viewpoint from Officer Nelson's body camera of Decedent aiming his gun at Officer Nelson

Officer Nelson was struck one time in his left chest area just above his protective vest as he retreated behind his patrol vehicle. Officer Nelson shot at Decedent ten times, and one of those shots struck Decedent in his head which ultimately caused his death.

Officer Nelson immediately called out over the radio, "Shots fired, I've been hit!" As Nelson stood behind his vehicle for cover, he conducted a speed reload of his firearm by dropping the magazine in his weapon and replacing it with a spare magazine. Nelson asked to expedite medical to the scene as he coughed and choked. Nelson asked Demarinis over the radio if he had been hit. Demarinis, who by now had run in front of a vehicle parked to the east and in front of Decedent's truck, indicated that he did not think he had been shot. Sergeant Steve Skenandore then arrived in the area and let Officer Nelson into the passenger side of his patrol vehicle. Sgt. Skenandore informed dispatch that he was taking Arville north to Charleston in order to rush Officer Nelson to University Medical Center (hereinafter UMC). As Skenandore rushed Officer Nelson to the hospital, other patrol units assisted by helping to block traffic at various intersections.

Officer Demarinis was still at the scene hiding behind a Mercedes that was parked two vehicles in front of Decedent's truck. An air unit arrived shortly after and called out that the truck was still occupied by a single male and he was "possibly still breathing." Minutes later, another unit in the area provided cover as Officer Demarinis ran to the north side of

the street and further east and away from the Decedent's truck. At that point in time, Officer Demarinis noted that, although he did not have any gunshot wounds, his duty belt had been damaged by gunfire. Other patrol units then called out over a P. A. system for Decedent to show his hands and exit the vehicle; he never moved his position.

S.W.A.T. units arrived in the area and two Bearcat vehicles approached the truck, one from the front and another from the rear. The vehicles blocked in the truck so it could not be driven. Officers noted that Decedent's head was tilted back, and he did not appear to be moving. S. W. A. T. Officer John Susich was tasked with approaching the passenger side of the vehicle and opening the passenger side door. As he did so, he noted the suspect appeared deceased. Decedent had a firearm in his lap with his right hand on it and his finger on the trigger. Officer Susich removed the firearm and placed it onto the ground in a planter area on the passenger side of the truck to the south. Medical personnel arrived shortly thereafter and confirmed Decedent's death while he was still seated in the driver's seat.

CIVILIAN WITNESSES

P. L.

After calling the police for help in obtaining his iPhone from Decedent, P. L. stood by the front of the truck on the passenger side as Officers Nelson and Demarinis spoke to Decedent. He heard them repeatedly ask Decedent to exit the truck, and he heard Decedent repeatedly refuse to follow their commands. He also observed Decedent reaching around inside the truck on several occasions during the encounter. At one point, P. L. was told by the officers to stay away from the truck. P. L. saw the officers attempt to open the driver's side door. Moments later, he saw Decedent reach down, grab a gun and begin firing at the officers out of the driver's side of the truck. P. L. ducked down and observed the two officers run in opposite directions as they returned fire on Decedent. P. L. believed that Decedent was struck by the return fire.

S. N. S.

On the afternoon of August 1, 2017, SN.S. was working as a sales associate at a business located at 4205 West Tompkins, Suite 5. S.N.S. looked out the front window and noted that two LVMPD officers were making contact with a Hispanic male inside of a black pick-up truck. He decided to take out his cell phone and videotape the encounter. S.L.S. could

not hear anything being said because the window to the business was closed, but he did note that one LVMPD officer was standing on the passenger side of the truck while the other officer stood by the driver's side door. At one point, he observed the officer on the passenger side walk around to the driver's side door and stand next to the other officer. They both spoke to the Hispanic male sitting in the driver's seat of the truck. About a minute later, he observed the Hispanic male reach with his right hand toward his left leg inside the truck and grab a black semi-automatic handgun. The male then fired at the officers as they fled, one to the east in front of the truck and the other to the west to the rear of the truck. S.L.S. also saw the officer to the rear of the truck return fire several times toward the driver and the driver's side of the truck. He did not see the Hispanic male move after the gunshots were exchanged.



Photographic still from cell phone video taken by S. N. S. shortly after the gunshots began.

W.S.

W.S. worked as a driver for ODS Transportation, a business located on West Tompkins. On the afternoon of August 1, 2017, as W.S. was pulling out of the driveway to the business, he noticed two LVMPD officers standing on the driver's side of a black pick-up truck talking to the lone occupant. Just before he was ready to pull out onto Tompkins and drive away, he heard the voices of the people at the black truck raised. W.S. turned to look and, as he did, he saw the male inside the truck pull out a black, large frame semi-automatic handgun and aim it at the officers. W.S. did not see either officer have his gun drawn at the time the driver of the truck pulled his gun. W.S. then heard multiple gunshots as one officer ran to the front of the truck and the other ran behind it. At first, W.S. ducked down

in his vehicle to avoid the gunfire. He then exited his vehicle on the passenger side. When he did so, he saw one officer standing behind his patrol vehicle to the west and behind the black truck. He asked the officer if he was okay, and the officer said, "No, I've been hit." At that time, another patrol vehicle pulled up, the injured officer got inside, and the patrol car quickly left the area towards Arville. W.S. did not see the man in the black truck anymore after additional officers entered into the area.

E. G.

On the afternoon of August 1, 2017, E.G. was working as a photographer at a business located at 4205 West Tompkins, Suite 7. As he worked, he noticed the reflection of police lights from a patrol car that was on Tompkins. When he looked outside, he saw two police officers talking with a Hispanic male seated in the driver's seat of a black pick-up truck. One of the officers was standing on the passenger side, and the other stood by the driver's side door. During the conversation, the male inside the truck occasionally reached around inside the truck as if he was looking for some item. When he did so, E.G. noticed the officer on the passenger side of the truck (closest to E. G.'s position) would put his hand onto his gun but not take it out of the holster. The conversation seemed to last for a few minutes, and it appeared the officers were attempting to have the man exit the truck. He was refusing to do so. At one point, E.G. saw the officer on the passenger side move to the driver's side. Shortly thereafter, E.G. noticed another male (who was not a police officer) standing on the south side of the street. E.G. then opened the door to his business and spoke to that man who told him he was the person who called the police. He explained that the man in the truck had broken into his car and stolen items from him the previous day. E. G. then saw the man in the truck pull out a handgun and aim it at the officers. E.G. saw the officer who had been standing to the driver's right side run toward the front of the vehicle as numerous gunshots were fired. After the shots concluded, E.G. saw the driver of the truck appeared to be bleeding from his head, and he thought he was deceased. The officer that ran to the front then hid behind a vehicle that was parked to the east, and he yelled at other citizens and vehicles to stay away from the area. E.G. stayed inside the business until the police came to interview him later that night.

BODY WORN CAMERAS

Patrol Officers Richard Nelson and Daniel Demarinis were both wearing body cameras that were activated prior to their approach to Decedent in the truck. Detective Joe Patton with the LVMPD Force Investigation Team (FIT) took custody of the body worn camera worn by Officer Nelson at UMC and later reviewed it. The camera was activated from

approximately 3:52 p. m., which was after Officer Nelson was assigned to the call but well before the officers' arrival on West Tompkins. FIT Sergeant Jerry MacDonald took possession of the body worn camera worn by Officer Demarinis and secured the video. Officer Demarinis activated his camera shortly before the officers made contact with Decedent. The actions by Decedent are best viewed in the footage captured by Officer Nelson's body-worn camera.

II. EXAMINATION OF THE CRIME SCENE

Tompkins Avenue consists of one eastbound lane and one westbound lane with sidewalks on both sides of the roadway and several small businesses in the area. A black 2005 Chevrolet Silverado was parked facing east on the south side of the curb in front of 4205 West Tompkins. The vehicle's windows on the front driver's side and front passenger side were both rolled down. The windows to the driver's side rear door, the passenger side rear door and the rear window were all shattered and/or damaged. Pieces of broken glass were in the bed of the truck and inside of the vehicle. There was no exterior door handle on the driver's side door. Keys were still in the ignition of the truck.

Decedent was noted to still be seated in the driver's seat when LVMPD crime scene analysts arrived. His right arm was along his right side with his right hand in his lap. His head was tilted back with his face up and there was blood on his shirt, face and head. There appeared to be a gunshot wound to the top portion of his head but no other injuries were observed. Representatives from the coroner's office arrived and then took away his body for a subsequent autopsy.

To the south of the truck near the passenger door, crime scene analysts recovered a Glock 23 .40 caliber semi-automatic handgun that had been moved by Officer Susich from the right hand of Decedent to that position.



Decedent inside of the truck after the shooting and after his weapon had been removed

The gun's serial number was GSV871, and a records check revealed that it had been stolen on July 28, 2017, from the owner who had parked his vehicle at the Red Rock Casino.



Decedent's Glock 23 .40 caliber

The firearm contained a round in the chamber with the head stamp "Win 40 S & W." It also had a magazine inserted into it that had a capacity of fifteen (15) rounds. There were two rounds remaining inside the magazine with the same head stamp.

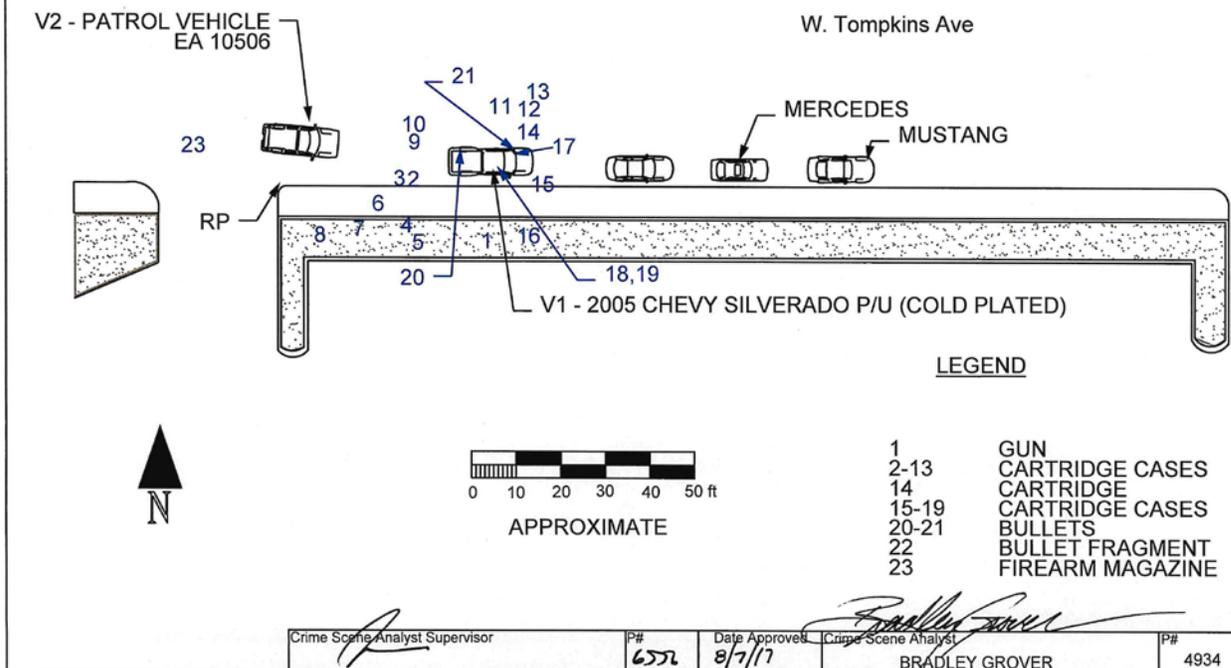
There were numerous cartridge cases found in and around the vehicle. To the north of the front left wheel were three different cases all with the head stamp "Win 40 S & W," as well as an unfired cartridge with the same head stamp. Two cartridge cases also marked "Win 40 S & W" were found to the south of the truck's front passenger side. Another cartridge case with that same head stamp was found inside of the truck between the left portion of the windshield and the front hood of the truck. Three more cartridge cases with the same head stamp were found inside of the truck. One was located on the front driver's floorboard, a second on the front passenger seat and a third on the rear central floorboard. Subsequent forensic testing confirmed that those nine (9) cartridge cases were fired from the Glock .40 caliber semi-automatic that had been removed from Decedent's right hand by SWAT Officer Susich.

Numerous cartridge cases with the head stamp "Speer 40 S & W" were also found in the area of the truck. Two of those cases were in the road behind the truck to the west and five other cases were in the planter area and/or sidewalk to the southwest of the truck. Two more cases were also found in the road behind the truck to the northwest with the same head stamp of "Speer 40 S & W." Subsequent forensic testing confirmed that those cartridge cases were fired from the Sig Sauer .40 caliber semi-automatic handgun carried by Officer Nelson.

To the rear of the truck was a parked patrol unit that was driven by Officer Nelson to the scene. Immediately behind that vehicle was a Sig Sauer magazine laying on the roadway that contained five (5) "Speer 40 S & W" cartridges.

On the north side of Tompkins and to the east of where the truck was parked, crime scene analysts recovered a bullet fragment on the north sidewalk. To the west of that position were two vehicles that were struck by gunfire. A Dodge pick-up parked on the north side of Tompkins to the east of the Decedent's position was struck in its front license plate. A Ford truck parked just to the east of that truck, was struck by a bullet into its windshield and the bullet was recovered from the dashboard.

OFFICER INVOLVED SHOOTING
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 8/1/17
 4205 TOMPKINS AVE
 (DIAGRAM 2 OF 2)

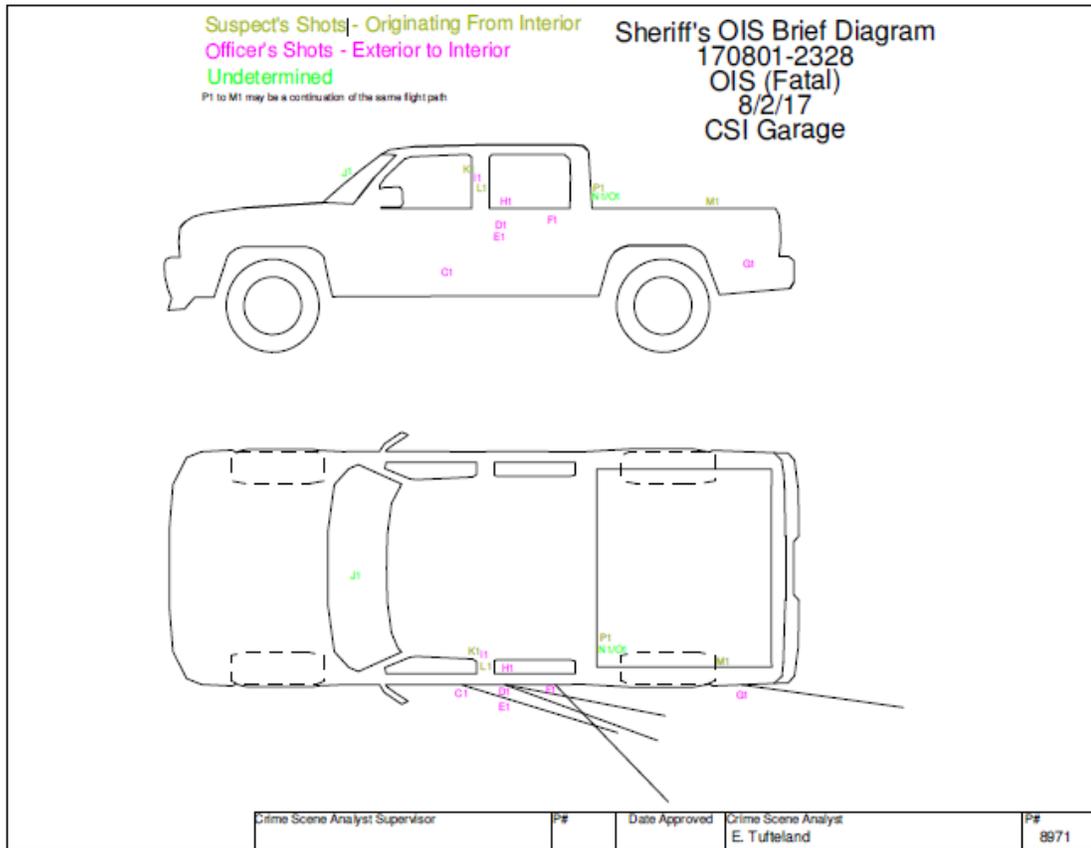


Inside of the truck, crime scene analysts found five different cellular telephones in the front passenger seat area. Subsequent examination of the phones revealed that one of them was a phone that was stolen the day before outside of the Smith's from P.L.' s vehicle. They also found other miscellaneous items including a camera (which was also stolen from P.L. the prior day), a battery charger, various auto accessories, clothing, a radio, and a knife with a sheath.

Police also located another firearm, a Sterling .25 caliber semi-automatic handgun, with serial number 020342. The gun was inside the overhead compartment between the front two seats of the truck. The firearm was loaded with one round in the chamber and seven .25 caliber cartridges in the magazine that was inside the gun. The ammunition was all head stamped "Aguila 25 Auto." Also found inside the center console was a box of ammunition with that same head stamp.

There were numerous bullet holes in the vehicle that were documented as well as eleven (11) different bullet fragments that were recovered from the truck. Crime scene

analysts documented their locations as well as their approximate trajectories for the bullets and ricochets.



III. AUTOPSY

On August 2, 2017, Dr. Leonardo Roquero with the Clark County Coroner's Office conducted an autopsy on Decedent. During the initial external examination of the body, Dr. Roquero noted that Decedent had a gunshot entrance wound to the left frontal region of his head. An internal examination showed that the bullet went through the scalp, left frontal bone, meninges, left frontal lobe, right frontal lobe and ultimately was recovered from subcutaneous tissue of the scalp. Subsequent forensic examination of that bullet showed that it was fired from the Sig Sauer .40 caliber handgun carried by Officer Nelson. At the completion of the autopsy, Dr. Roquero opined Decedent died from a penetrating gunshot wound to his head.

The autopsy also included toxicology tests on Decedent's blood and urine. The results revealed that Decedent was intoxicated due to methamphetamine use at the time of his death. Methamphetamine is a stimulant drug capable of causing hallucination, aggressive

behavior, and irrational reaction. Blood levels above 200 ng/ml have been reported in methamphetamine abusers who have exhibited violent and irrational behavior. Such high doses can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.² Decedent's toxicology report indicated that he had a methamphetamine level of 400 ng/ml and an amphetamine level of 100 ng/ml.

IV. OFFICER WEAPON COUNTDOWNS

Officer Nelson's firearm was a "Sig Sauer P226" .40 caliber with serial number U843056. His firearm was secured at UMC by Sergeant Jessie Roybal. Officer Nelson carried a total of three magazines. The magazine that was originally inside his weapon had a capacity to hold fifteen (15) cartridges. Officer Nelson also kept one cartridge in the chamber while still maintaining fifteen (15) cartridges in his magazine. The two spare magazines both had a capacity to hold twelve (12) cartridges and, when examined at the hospital, both of them contained twelve (12) cartridges. All of the cartridges were head stamped "SPEER 40 S & W." The countdown of Officer Nelson's firearm showed that he fired ten (10) times. Ten (10) cartridges were missing from the magazine recovered at the scene behind his patrol vehicle. No cartridges were missing from the spare magazine he inserted during the speed reload.

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 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

² Information detailed in Decedent's toxicology report authored by NMS Labs dated August 13, 2017.

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.³ NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished NRS 200.160(1).

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

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

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

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

³ 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.

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

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

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

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the decedent did not act in [defense of another]. *Id.* at 1051-52.

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

In this case, Decedent posed an apparent imminent danger to Officers Nelson and Demarinis when he refused to comply with multiple requests to exit his vehicle, to stop moving around inside of the vehicle, and by reaching for unknown items. Despite numerous requests to exit his vehicle, Decedent continued to defy commands to identify himself and exit his vehicle. Decedent then chose to reach inside of the truck, pick up his gun, and fire the weapon towards Officer Demarinis who had turned his back and was running away from the truck. Decedent then turned that same weapon on Officer Nelson, firing multiple times at him causing one bullet to enter into Officer Nelson's torso and exit out of his back. When confronted with an individual who refused multiple commands to comply, picked up a gun and then used it to fire upon an officer running away from Decedent, Officer Nelson had a duty to respond, and a right to utilize deadly force, in the protection of Officer Demarinis as well as himself and other citizens in the area. Therefore, Officer Nelson acted in reasonable fear of a threat to the lives of Officer Demarinis and himself at the time he fired.

Thus, the totality of the evidence, to include body worn camera footage, surveillance footage, and witness statements, illustrate that Officer Nelson was reasonable in believing that Decedent was in the position and had the mindset to cause great bodily harm or death to Officer Demarinis and himself. 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 facts illustrate that Officer Nelson and Demarinis were reasonable in their belief that Decedent posed a danger towards others when he refused to comply with their orders to exit the vehicle and stop reaching around inside of the vehicle for various items. As aforementioned, the officers made contact with Decedent and he refused to comply with multiple commands to identify himself, exit the vehicle and stop reaching around inside of the vehicle. Decedent’s continued refusal to comply with lawful commands being issued to him, and his actions in picking up the gun and then firing at an officer moving away from him, provided legal justification for Officer Nelson to end the threat posed to them by Decedent. These circumstances created probable cause in Officer Nelson’s mind that Decedent posed a threat of serious physical harm, either to him and/or other officers and/or civilians in the area. The officer overcame that threat by firing his weapon into Decedent’s body.

In light of all the evidence reviewed to date, the actions of Officer Nelson in the use of deadly force 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, the State concludes that the actions of the officers 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 Officer Richard Nelson, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

J. Timothy Fattig
Chief Deputy District Attorney

Gun Crimes Unit
Clark County District Attorney's Office