



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Steven Price on May 6, 2017

Introduction

The Clark County District Attorney's Office has completed its review of the May 6, 2017, death of Steven Price (hereinafter "Decedent"). Decedent was shot by Las Vegas Metropolitan Police Department ("LVMPD") Officer Matthew Terry after Decedent exited his residence with a pick-axe and a hatchet, refused to drop the weapons, and threw the hatchet toward Officer Terry and the pick-axe in the direction of a fellow officer.

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 LVMPD Officer Matthew Terry 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 Terry. 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 November 30, 2017.

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 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.

Overview

On May 6, 2017, LVMPD dispatch received a 911 call from a security guard who reported that a male - - later identified as Decedent Steven Price - - was swinging a “shovel” and attempting to hit him with it (investigation later revealed the shovel was actually a full-sized pick-axe). The security guard had used pepper spray on the man. Decedent chased the security guard to the front entrance of the housing complex and then returned to his residence, located at 5202 Shreve Avenue.

Riding in separate vehicles, LVMPD Officers Matthew Terry and Stephen Hayner arrived and made contact with the security guard outside the complex. Both officers drove into the housing complex and parked near Decedent’s house. As they exited their vehicles, officers heard Decedent screaming at them from the second story of his home. Officers also heard loud music coming from Decedent’s vehicle in the driveway, which was running and had both doors open.

As Decedent leaned out his second story window, Officer Terry attempted to make contact with him. Decedent yelled at the officers, came downstairs, and exited his residence with a pick-axe in his left hand and a small hatchet in his right hand.

Officers instructed Decedent to put down the weapons. He refused. Officer Hayner, in an attempt to subdue Decedent with non-fatal force, discharged two rounds from his low-lethal shotgun; both struck Decedent, but were ineffective. Decedent threw the hatchet toward Officer Terry. Officer Terry fired his weapon at Decedent, striking him several times.

As Decedent was struck, he hurled the pick-axe in the direction of Officer Hayner. Thereafter, Decedent fell to the ground and was taken into custody. Officers started CPR and requested medical assistance.

Paramedics responded and attempted to revive Decedent. Ultimately, Decedent died at the scene.

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I. BODY WORN CAMERAS

Officers Terry and Hayner both wore body cameras which recorded the interaction with Decedent. Other officers at the scene wore cameras, but they were not witnesses to the shooting.



Figure 1—Still photograph from body worn camera depicts Decedent positioned in second story window of residence.



Figure 2—Still photograph from body worn camera depicts Decedent throwing pick-axe.



Figure 3—Still photograph from body worn camera depicts Decedent throwing pick-axe in direction of Officer Terry.

II. THIRD PARTY VIDEO

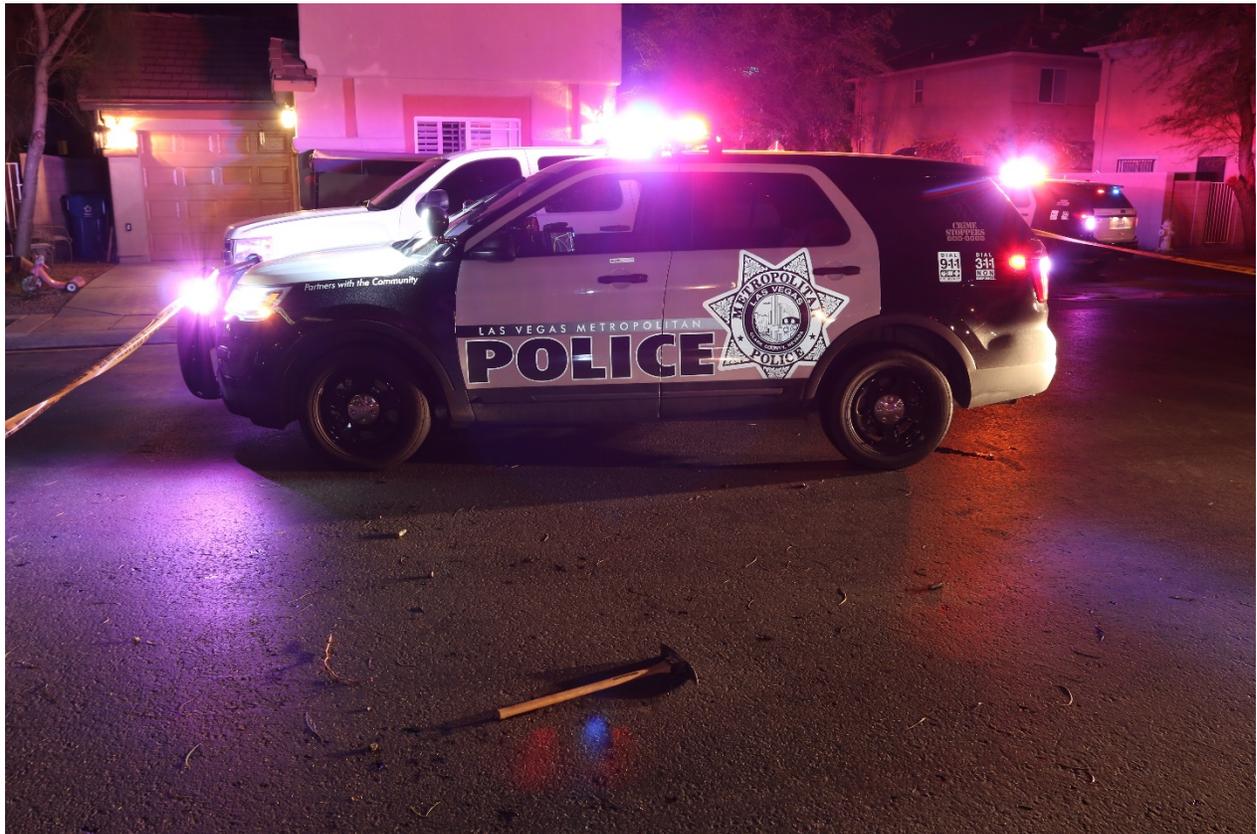
Security cameras at the housing complex recorded Decedent chasing the security guard with a pick-axe and the arrival of Metro officers. The cameras were not positioned in an area which captured the officer involved shooting.

III. SCENE WALK-THROUGHS

Officer Terry provided a walkthrough of the scene to investigators. He explained that he made contact with the security guard upon arrival and then drove to Decedent's residence and parked nearby. Officer Terry observed Decedent through a second story window. Decedent yelled at Officer Terry. Once Decedent came downstairs and exited the residence, Officer Terry could see he was holding a "shovel" in his hand. Officer Terry moved to form a tactical position with arriving Officer Hayner.

Officer Hayner fired his low-lethal shotgun twice at Decedent. Decedent turned toward Officer Terry and made a throwing motion. Officer Terry was in fear for his life and the life of Officer Hayner so he discharged his firearm at Decedent. He stated he did not know how many times he fired.

Officer Hayner also provided a walkthrough. He explained that shortly after arrival, he deployed his low-lethal shotgun and stood between two patrol cars. He saw Decedent in a window and watched as he came outside, holding weapons. Officer Hayner fired his low-lethal shotgun at Decedent. Officer Hayner did not see Decedent throw any weapons.



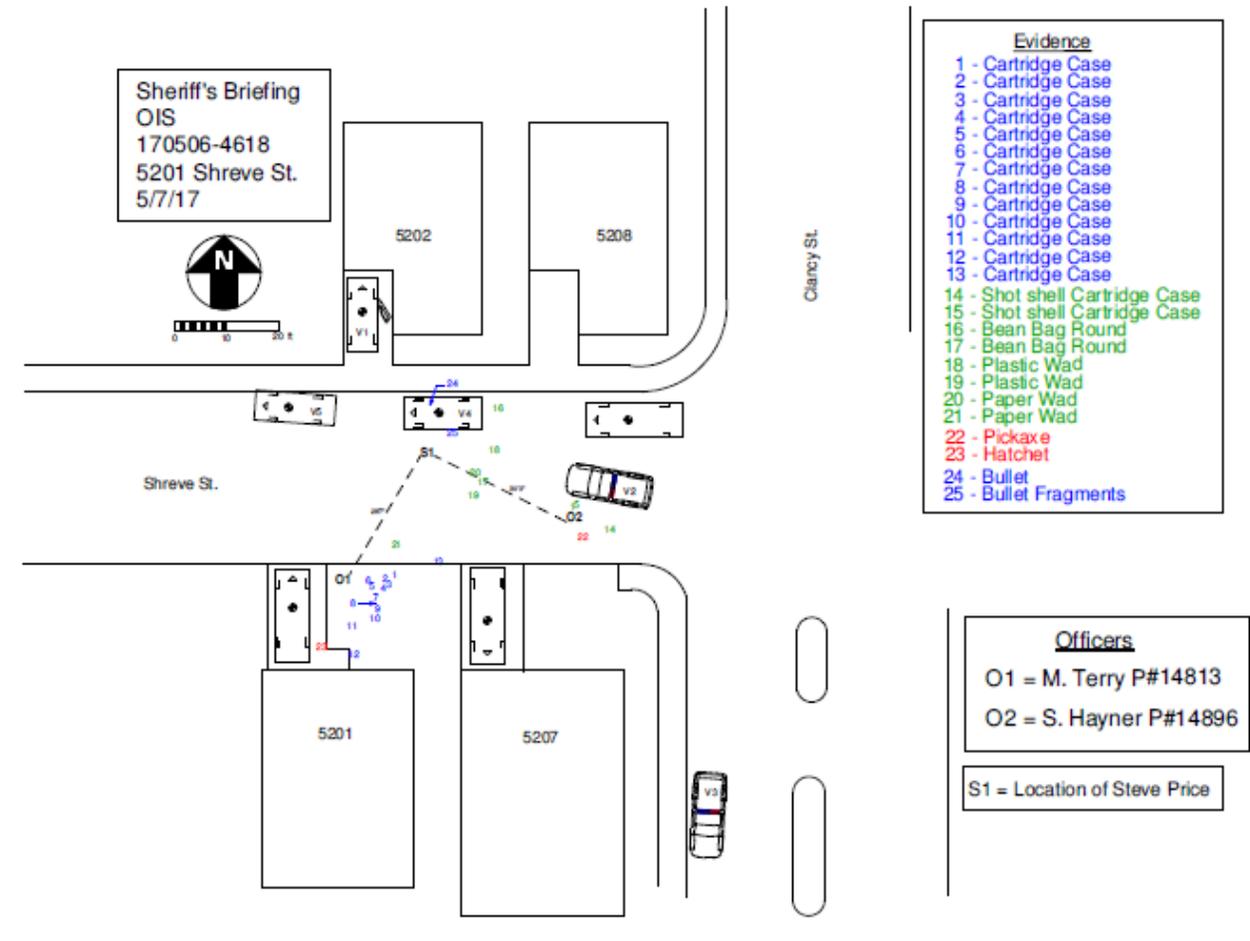
IV. DESCRIPTION OF THE SCENE AND DECEDENT

The scene was a residential street within a gated community.

Investigators located the 13 cartridge cases fired from Officer Terry's weapon. They also found the shotgun cartridge cases as well as the beanbag projectiles fired by Officer Hayner.

In addition, officers found a hatchet and a pick-axe.

The Decedent was in a Medic West ambulance when other investigators arrived.



V. INTERVIEWS

Witness # 1:

Witness #1 was a resident of the residential community. He heard Decedent yelling outside and reported it to Security Guard. Witness #1 later observed Decedent exit his residence with a shovel type object and attempt to hit Security Guard with it. Once officers arrived, Witness #1 heard officers giving Decedent commands to put something down. Then, he heard several gunshots.

Witness #2

Witness #2 is married to Witness #1. Witness #2 also heard Decedent yelling profanities. Witness #2 reported the incident via 311. A few minutes later, Witness #1 told Witness #2 he needed to help Security Guard because Decedent was going to hit him with a shovel. Witness #2 called 911 and moved her children to a safer bedroom. As Witness #2 did this, she heard several gunshots.

Witness #3

Witness #3 was walking her dogs when she observed Decedent arguing with Security Guard. Witness #3 saw Decedent had some kind of object in his hand and with which he chased Security Guard. She heard Security Guard call police and returned to her residence.

Once inside, she saw two police vehicles arrive and heard the officers shout at Decedent to “drop the weapon” at least twice. She saw one of the officers had his weapon drawn. She said Decedent walked toward the officer and lunged at the officer with a weapon in his hand. The officers commanded Decedent to stop at least two more times. Initially, Witness #3 heard one shot fired, saw Decedent continue toward the officer, and then heard several more shots.

Witness #4

Witness #4 arrived home and saw Decedent in front of his house. She believed he was intoxicated. Loud music was coming from Decedent’s vehicle. A short time later, Witness #4 saw police arrive and Decedent in an upstairs bedroom of his residence. Decedent left his residence, holding an unknown object. Witness #4 heard officers yelling at Decedent, but she could not discern what they were saying. She described Decedent as “going crazy.” Later, she heard gunshots.

Witness #5

Witness #5 is the sister of Witness #4. Witness #5 arrived home with Witness #4 and saw Decedent outside his residence and heard loud music coming from his car.

Later, she saw officers arrive. Decedent was yelling at the officers from his upstairs bedroom window. Witness #5 believed Decedent yelled, “Don’t shoot me!” Witness #5 retreated into her house and heard several gunshots minutes later.

She saw Decedent fall to the ground and the officers immediately perform CPR on him.

Officer Stephen Hayner

Officer Hayner stated to investigators that he was working in uniform and on patrol when a call came in about a male swinging a shovel at a security guard.

Officer Hayner and Officer Terry arrived. As they exited their vehicles, Decedent yelled from the second story window. He knocked the screen from the window out of the frame. Officer Hayner retrieved his low-lethal shotgun as Officer Terry attempted to talk to Decedent.

Decedent exited the residence and moved toward Officer Terry. Decedent had a hatchet in one hand and a pick-axe in the other. Decedent screamed as he moved toward Officer Hayner. Officers issued verbal commands to drop his weapons, which Decedent ignored. Decedent continued to advance in the direction of the officers. Officer Hayner fired a low-lethal round, appearing to hit Decedent in the chest. Decedent paused, turned, and moved toward Officer Terry.

As Decedent moved toward Officer Terry, Officer Hayner fired another low-lethal round, striking Decedent in the back. Officer Hayner heard gunshots and saw Officer Terry firing his gun at Decedent. Officer Hayner broadcast "shots fired!" over the radio and other units arrived.



Figure 4-Photograph depicting position of Officer Terry (cone closest to front of van in rock area) and location of axe, which is indicated by cone near blue and white chair in front of garage.

Officer Andrew Frechette

Officer Frechette responded to the original call about a male with a shovel. As he arrived at the location, he heard the “shots fired!” notification on the radio.

As he got within the scene, he saw Officer Terry and Decedent. Officer Frechette approached Decedent and placed him into handcuffs. He performed CPR on Decedent until paramedics arrived.

Other officers arrived after shots had been fired.

VI. FORENSICS REQUESTS/RESULTS:

Firearm Examination

A firearms examination revealed that all recovered 9mm casings were fired by Officer Terry’s weapon.

VII. OFFICER WEAPON COUNTDOWNS

Based on the weapons countdown, investigators determined that Officer Terry discharged his firearm 13 times during the incident.

Investigators also determined that Officer Hayner discharged his low-lethal shotgun two times during this incident.

VIII. AUTOPSY

Dr. Alane Olson performed the autopsy on Decedent. Dr. Olson concluded that the cause of death was multiple gunshot wounds. Toxicology indicated the presence of alcohol and marijuana in his blood.

LEGAL ANALYSIS

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

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

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

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.

[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.

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 Decedent did not act in [defense of another]. *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.

In this case, Decedent posed an imminent danger to Officers Terry and Hayner and civilians in the area. Decedent was behaving erratically and had weapons in his possession that he refused to put down after repeated commands from officers. Low-lethal strikes upon Decedent were unsuccessful. Decedent did not retreat nor did he drop his weapons. Just prior to the shooting, Decedent moved toward the officers and threw the pick-axe at Officer Terry, presenting an imminent threat.

Thus, Officer Terry was confronted by the appearance of imminent danger which created in his mind an honest belief and fear that he, or others, were about to be killed or suffer great bodily injury. Accordingly, Officer Terry was justified in acting upon those appearances, fears and actual beliefs.

II. JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

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

In this case, the facts demonstrate that Officer Terry had probable cause to believe that Decedent posed a threat of serious physical harm to himself and all the people in the area. This probable cause was based on the fact that Decedent had already charged at the residential security guard, armed with the pick-axe. In addition, Decedent failed to comply with officers’ commands to discard the weapons he was holding. Beyond that, Decedent threw the pick-axe in the direction of Officer Terry, presenting a physical threat.

The circumstances indicate that Officer Terry had a reasonable belief that Decedent was a threat to his safety as well as the other people in the area. In light of this evidence, the

actions of the officer were legally justified and appropriate “in the discharge of a legal duty.”

CONCLUSION

Based upon the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Las Vegas Metropolitan Police Department Officer Terry 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.