

REPORT ON USE OF FORCE Legal Analysis Surrounding the Death of Christopher Earl Smith Jr. on October 10, 2022

INTRODUCTION

On October 10, 2022, Christopher Earl Smith Jr. (hereinafter “Decedent”) was brandishing a stolen handgun at citizens in the area of Martin Luther King Boulevard and Carey Avenue while wearing a Halloween mask. Officers with the North Las Vegas Police Department (NLVPD) responded to the scene driving a clearly identifiable patrol vehicle with emergency lights activated. Officers Malear and Gonzalez were the first to arrive. Officer Malear gave Decedent verbal commands to put his hands in the air and identify himself.

As Officer Malear approached Decedent, Decedent brandished the handgun from his pocket in close proximity to Officer Malear. There were five bystanders in the area. Officer Malear drew his service pistol and discharged his weapon eight times at Decedent. Decedent sustained five gunshot wounds as a result. Though resuscitative efforts were attempted, Decedent succumbed to his injuries on the scene.

This report explains why criminal charges will not be forthcoming against Officer Malear. 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 16, 2023.

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.

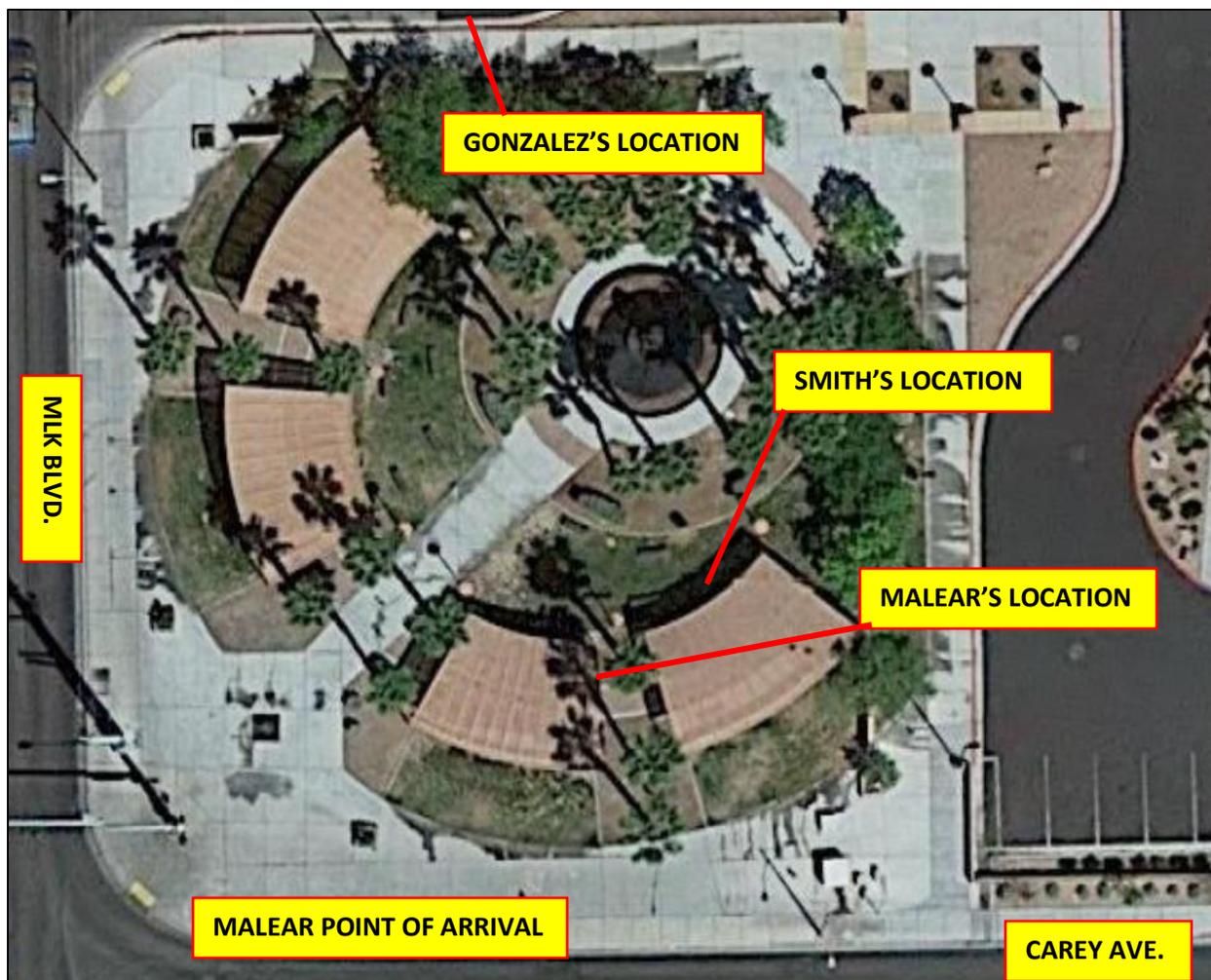
I. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scene was located at the Martin Luther King, Jr. Memorial and Statue at the intersection of Martin Luther King Boulevard and Carey Avenue near the North Las Vegas Justice Center. Surrounding the immediate area of the incident were a collection of park benches, floral arrangements, and a parking lot to the North and East.



The statue is located within a small arrangement of awnings and park benches. Officer Malear entered the scene on the North side of Carey Avenue, just East of Martin Luther King Boulevard.

Bullet impacts were documented to the brick façade and a planter box in front of the Northern building, the North Las Vegas Senior Center (Justice Center Complex building behind Decedent at the time of the event). These impacts were consistent with the paths that Crime Scene Analysts determined were accurate with Officer Malear's discharged projectiles.



Officer Gonzalez was at the intersection of MLK Boulevard and Carey Ave. Upon seeing Malear contact Decedent, Gonzalez made a U-Turn on MLK and entered the Northern Parking lot of the Justice Center in his Patrol Car.

The decedent was lying on his back near the benches on the Eastern side of the small park with what appeared to be multiple gunshot wounds on his torso and arm, he had been handcuffed and had apparent blood on his torso which had spread to the floor beneath him.

CSAs recovered a Ruger 9mm, semi-automatic handgun near the aforementioned brick façade and planter-box, consistent with an object that Decedent can be seen withdrawing from his pocket immediately preceding the incident.



II. INVESTIGATION

Law Enforcement Victims/Witnesses

Officer Malear

On October 12, 2022, at approximately 0932 hours, Detectives Forsberg and Wilds conducted an audio recorded interview with Officer Anthony Malear at the NLVPD Detective Bureau. Also present for the interview was Las Vegas Police Protective Association representative Jeff Allen.

On October 10, 2022, Officer Malear, at the time a nearly 5-year patrol officer with North Las Vegas Police Department, was riding alone, conducting enforcement. Officer Malear was in full patrol uniform at the time.

On that night, Officer Malear was asked to respond to a call for service regarding a man with a firearm in the area of Carey Avenue and Martin Luther King Boulevard. Though the

911 caller had not been able to describe the area, a rapid SOS ping showed the caller's phone in the area of Carey and Lexington.

Officers Malear and Matthews responded and investigated the scene at Martin Luther King and Carey Avenue. Some individuals at the MLK statue denied having seen anything regarding a man with a firearm, so Malear and Matthews left the scene.

Within five minutes of clearing the scene, as Officer Malear had just turned right onto East Cheyenne from North Martin Luther King Boulevard, a second call for service came in. The original caller said that the man with the firearm was still in the area of Carey and Martin Luther King Boulevard, and that he was pointing it at people in the area as well as walking in the middle of the street. The caller specifically stated the firearm had been pointed at him.

As Officer Malear approached the area for a second time, a second caller reported that the man with the firearm was a black male adult, wearing a 'Michael Myers' Halloween mask, a white shirt, green socks, and green shoes. This second caller again confirmed that Decedent had pointed his firearm at several other individuals.

Officer Gonzalez arrived Southbound on Martin Luther King approaching Carey Avenue, while Officer Malear approached westbound on Carey Avenue approaching Martin Luther King Boulevard. Officer Gonzalez informed Malear that he could see Decedent walking southbound on Martin Luther King and further described Decedent as "about 5'6", medium build black male, white shirt, green socks with a Michael Myers mask."

Officer Malear parked on Carey Avenue, just East of Martin Luther King Boulevard and saw Decedent, still wearing the Mike Myers mask, approaching southbound towards his patrol car. At this point, Malear exited his car, withdrew his weapon, and began giving commands to Decedent.

The first commands given were, "Police, stop, put your hands in the air." Decedent did not respond to the commands and began walking eastbound towards the Martin Luther King statue in the center of the small park.

Decedent continued to walk eastbound into the park area as Officer Malear followed parallel to him approximately ten feet away. At one point, Malear described seeing Decedent reach into his right pocket and begin withdrawing a firearm. Upon seeing this, Officer Malear discharged his firearm in Decedent's direction.

Decedent fell to the ground and the firearm landed a few feet east of Decedent's location. Officer Gonzalez pulled up on the north side of the park area and the two handcuffed Decedent before beginning to attempt to render aid to the Decedent. Officer Malear had not noticed whether Officer Gonzalez was present or not at the time of the incident.



Pictured above: (Left) Officer Malear begins ordering Decedent to stop and put his hands in the air, (Right) Officer Malear orders Decedent to stop reaching as Decedent reaches into his right pocket.

Lay Victims/Witnesses

Witness #1 & 2

On October 10, 2022, at approximately 2205 hours, Detectives Wells and Forsberg conducted an audio-recorded interview with Witness #1 and #2, both family members of the Decedent.

Witness #1 had received a call from a nearby storeowner that Witness #1's brother had been shot and came to the scene with Witness #2 not long after. Witness #1 described that Decedent would walk from his home to the Martin Luther King statue frequently as Decedent had friends that would sit at the Martin Luther King statue.

Witness #1 described that Decedent and another person had gotten into an argument at some point during the day with another friend of his, but that Decedent had not pulled out a gun at that point. Witness #1 confirmed that she knew Decedent to own a black gun for self-defense purposes.

Witness #1 also explained that Decedent had a tendency to abuse alcohol and had been drinking earlier that day, explaining that he was going to a Halloween party with the mask.

Witness #3

On October 11, 2022, Detective Cherrier conducted a recorded phone interview with Witness #3 who had identified himself by an alias. Witness #3 explained that he frequents the park in front of the North Las Vegas Justice Court after work and tends to drink a beer or two with friends.

Witness #3 described how Decedent had approached on the afternoon of October 10, 2022, in a Halloween mask. Witness #3 stated that Decedent was known to be a drug user and a heavy drinker. Decedent asked Witness #3 for a ride home, while holding the gun in his pocket. Witness #3 felt uncomfortable and decided to leave.

Decedent followed Witness #3 to his car. When Witness #3 entered his car, Decedent again demanded a ride, standing in the doorway so that Witness #3 could not fully shut the driver's side door. Decedent demanded a ride repeatedly, to which Witness #3 refused. Eventually Decedent told Witness #3 that if he did not give him a ride, or his wallet, phone, and keys, Decedent would shoot Witness #3.

Decedent then stole Witness #3's hat before walking away. Once Decedent was far enough away, Witness #3 contacted 911 and drove to a convenience store on Carey Avenue. Once there, he exited again and saw Decedent, still holding the gun and using it to threaten people in the parking lot. Witness #3 then made a second 911 call. During that call, Decedent walked across the street from the convenience store to the park.

Witness #4

On October 10, 2022, Officer Saip conducted an interview with Witness #4, this interview was recorded on Officer Saip's BWC. Witness #4 had approached patrol officers after the incident and requested that someone retrieve his phone from the outlet that he had been using to charge it. This outlet was attached to a planter box in the vicinity of the shooting.

Though Witness #4 was present for the incident, Witness #4 denied having seen or heard anything related to the shooting. Detectives were unable to follow up with Witness #4 as Witness #4 had left the scene prior to the Detectives' arrival.

Detective Cherrier, after reviewing Officer Saip's BWC footage, could see that Witness #4 had a shopping cart full of personal items and appeared to be transient. Subsequent attempts to find personal identifying information were unsuccessful.

III. VIDEO EVIDENCE

OFFICER BODY WORN CAMERAS

The Axon Flex body-worn camera (BWC) time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero degrees longitude and passes through Greenwich, England.

Officers activated their BWCs at different times during the incident. There is a roughly 3–5-minute negative difference between the event time and displayed Zulu Time. Axon BWCs also have a “time drift” where the camera's internal clock drifts from actual time based on when the cameras are synced when the camera is docked. Each BWC can display a different time based on a time drift.

The following are summaries of BWC footage from the subject and witness officers who were on scene at the time of the OIS.

Officer Malear

Officer Malear was wearing a BWC at the time of the incident and the camera was activated. The camera was collected by Lieutenant Lawrence and secured. The video footage captured was later viewed by detectives on the day of the incident.

Officer Malear responded to the intersection of Martin Luther King Boulevard and Carey Avenue. Officer Malear exited his vehicle, identified himself as a police officer, and told Decedent to stop three times as the Decedent walked parallel, away from him.

As Decedent began to move away from Officer Malear at a faster pace, Officer Malear drew his service weapon and told Decedent to stop reaching. As Decedent began to enter an area crowded with bystanders, Officer Malear once again instructed Decedent not to reach before Decedent began to run and withdraw something from his right pocket.

Officer Malear then discharged eight rounds from his service weapon, and Decedent fell to the ground. The firearm that Decedent had been withdrawing from his right pocket

was thrown a few feet away. Officer Malear once again commanded Decedent not to reach while Decedent was on the ground.

Officer Gonzalez entered the scene and aided Officer Malear in handcuffing the Decedent before the two attempted to render emergency aid. Officers Gonzalez and Malear placed a tourniquet on Decedent's right forearm and to stem the blood from flowing on Decedent's stomach.

After several minutes, other officers began to arrive and secure witnesses at the scene. Officer Malear performed CPR on Decedent. After several minutes more, EMT's arrived, and Lieutenant Lawrence began to take Officer Malear's statement of the incident. After a long view of the scene and Officers arriving, Officer Malear is instructed to turn his BWC off to preserve it for inspection.

Officer Gonzalez

Officer Gonzalez was wearing a BWC at the time of the incident and the camera was activated. The camera was collected by detectives at the scene and secured. The video footage captured was later viewed by detectives on October 10, 2022.

Officer Gonzalez responded to the intersection of Martin Luther King Boulevard and Carey Avenue. After receiving a call over the radio indicating that shots had been fired, Officer Gonzalez arrived to assist Officer Malear in handcuffing Decedent. Officer Gonzalez secured Decedent's hands and retrieved a trauma kit from his patrol vehicle.

After several minutes of rendering aid to Decedent, EMT's arrived and took over Decedent's treatment. Officer Gonzalez was then relieved by Lieutenant Lawrence.

Officer Saip

Officer Saip was wearing a BWC while investigating the area after the incident had occurred and the camera was activated. The camera was collected by detectives at the scene and secured. The video footage captured was later viewed by detectives on October 10, 2022.

Officer Saip responded to the North Las Vegas Justice Court after being alerted to the incident. After several minutes of securing the scene, Officer Saip approached Witness #4 at the bus stop on Martin Luther King Boulevard. Officer Saip asked Witness #4 to describe where his cellphone was located in relation to the Martin Luther King statue. Witness #4

described where he had been sitting at the time of the incident but denied having seen anything and again requested that his cellphone be returned to him.

Officer Saip remained at the scene and after nearly an hour, Officer Saip entered the North Las Vegas Justice Center and deactivated her BWC. This BWC was later obtained after Detectives learned about Witness #4 and reviewed on October 10, 2022.

IV. OFFICER WEAPON COUNTDOWN

On October 10, 2022, at approximately 2017 hours, Officer Malear had his service weapon counted down at 3755 Washburn Avenue to determine the number of rounds he fired during the incident. Officer Malear was photographed by CSI personnel for appearance purposes and their weapons were photographed for identification purposes. Officer Malear was wearing his NLVPD patrol uniform.

At the completion of the countdown, it was determined Officer Malear had twenty (20) cartridges in his service weapon (19 in magazine and 1 in chamber). When compared to evidence at the scene, detectives concluded Officer Malear discharged his service weapon eight times. It became evident to Detectives while viewing BWC and reviewing other evidence at the scene that Officer Malear had completed a "Tactical Reload" immediately after the shooting, accounting for the discrepancy in the countdown. Officer Malear's pistol and magazine used during the OIS, and cartridges were photographed and impounded by CSA Taylor.

V. AUTOPSY

On October 11, 2022, at approximately 0737 hours, under CCOCME case 22-06100, an autopsy was performed on the body of Christopher Earl Smith Jr. at the CCOCME by Doctor Jason Gorniak.

The following wounds/injuries were noted on Decedent:

- 1) Gunshot wounds of the trunk.
 - a. Perforation of right sided ribs.
 - b. Perforation of the right lung
 - c. Perforation of the heart
 - d. Perforation of the right ilium
 - e. Perforation of the large bowel
 - f. Hemopericardium, 150 milliliters
 - g. Hemothoraces
 - i. Right, 625 milliliters

- ii. Left, 50 milliliters
- 2) Perforating gunshot wounds of the right upper and left lower extremities.

Upon the completion of toxicology testing, the following results were noted:

<u>Analyte</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Ethanol	224	mg/dL	002 - Peripheral Blood
Blood Alcohol Concentration (BAC)	0.224	g/100 mL	002 - Peripheral Blood
11-Hydroxy Delta-9 THC	42	ng/mL	002 - Peripheral Blood
Delta-9 Carboxy THC	98	ng/mL	002 - Peripheral Blood
Delta-9 THC	16	ng/mL	002 - Peripheral Blood

After a thorough review of facts and circumstances and a complete autopsy, Doctor Gorniak opined Decedent died as a result of multiple gunshot wounds. The manner of death was homicide.

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; and NRS §171.1455 – Use of deadly force to effectuate arrest). The shooting of Decedent could be justifiable under one or both 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. Additionally, Officer Mear was authorized to use deadly force to effectuate and arrest. All of these theories will be discussed below.

I. THE USE OF DEADLY FORCE IN DEFENSE OF SELF OR 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 an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent danger to Officer Malear, approximately five innocent bystanders at the scene, and several civilians in the surrounding complexes. Decedent brandished a gun at multiple individuals throughout the day of October 10, 2022, and when confronted by law enforcement threatened to raise a firearm at them as well, while surrounded by bystanders. When Officer Malear saw Decedent begin to brandish his pistol, he reasonably believed he needed to fire to protect his life as well as the lives of innocent civilians nearby. When Decedent dropped his weapon, Officer Malear stopped firing and instead attempted to render aid.

Thus, Officer Malear 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 Malear 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 Malear had probable cause to believe that Decedent posed a threat of serious physical harm to himself and others. Officer Malear arrived on scene with information that Decedent had threatened multiple citizens in the minutes preceding his arrival. This probable cause became evident after Decedent began to pull his pistol upon Officer Malear and refused commands to stop and put his hands in the air. Thus, Officer Malear had a reasonable belief that Decedent was a threat to his life or others around him.

In light of this evidence, the actions of the officers were legally justified and appropriate “in the discharge of a legal duty.”

III. USE OF DEADLY FORCE TO EFFECTUATE ARREST

Pursuant to NRS 171.1455, a peace officer may, after giving a warning if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person: has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or poses an imminent threat of serious bodily harm or death to the peace officer or to others.

As previously discussed, even before confronting Decedent, Officer Malear had probable cause to believe that Decedent had already committed felonies involving the threat of serious bodily injury or the use of deadly force. Witness #3 had reported that Decedent had robbed him with a deadly weapon in violation of NRS 200.380 and 193.165. On his second call to 9-1-1, Witness #3 described witnessing Decedent commit more than one felonious assault with a deadly weapon in violation of NRS 193.165. As such, NRS 171.1455 authorized Officer Malear's use of deadly force upon arrival at the scene.

Additionally, NRS 171.1455 also authorizes deadly force where Decedent poses an imminent threat of serious bodily harm or death to the peace officer or to others. This section of NRS 171.1455 is analogous to the requirements of self-defense or defense of others which, as previously discussed, clearly applied.

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 North Las Vegas Police Department Officer Malear 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.