

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of James Smyth on November 6, 2015

INTRODUCTION

On November 6, 2015, at approximately 4:31 p.m., Officer Rodolfo Gil traveled south on Spencer Street in his marked patrol unit. Officer Gil saw a silver Hyundai Santa Fe driven by James Smyth (hereinafter referred to as “Decedent”). Decedent drove to the right of Officer Gil and in the same direction. Officer Gil passed Decedent when Decedent swerved into Officer Gil’s lane. Officer Gil swerved left into the center turn lane to avoid a collision. Decedent’s vehicle struck Officer Gil’s police car on the passenger side. Officer Gil believed the contact was accidental and pulled over towards the side of the road. Decedent, who was now behind Officer Gil, accelerated and rammed Officer Gil’s vehicle, striking the rear driver’s side. Decedent then passed Officer Gil southbound on Spencer Street. Officer Gil activated his emergency lights in an attempt to stop Decedent. Decedent ignored Officer Gil and continued south.

At Spencer and Wigwam Avenues, Decedent failed to stop at the stop sign. Decedent accelerated as he turned westbound onto Wigwam Avenue. Officer Gil deactivated his emergency lights and followed Decedent. As Decedent approached Wigwam Avenue and Maryland Parkway, Officer Gil activated his emergency lights and siren in an attempt to warn vehicles in the event Decedent failed to stop. Decedent failed to stop and drove westbound. Decedent turned north into the south parking lot of Desert Bloom Park.

At the same time, Officers Raymond Cruzan and Eric Schnaidt, from the Clark County School District Police Department (“CCSDPD”), were conducting an investigation at Desert Bloom Park. Officer Schnaidt’s marked patrol vehicle was parked near the east side of the parking lot. Officers Cruzan and Schnaidt stood at the rear of the vehicle and completed paperwork with regard to their investigation.

Witness #1 and Witness #2 had been detained as part of an unrelated CCSDPD investigation. They stood at the front of Officer Schnaidt’s vehicle as Decedent turned into the parking lot and accelerated toward Officers Cruzan and Schnaidt. The CCSDPD officers moved out of the path of Decedent’s vehicle. Witness #1 and Witness #2 moved away from the front of the patrol vehicle for fear of being struck by the CCSDPD patrol car or Decedent’s vehicle. After he accelerated, Decedent struck the CCSDPD patrol vehicle. Officers Cruzan and Schnaidt fired their duty weapons at Decedent, striking him multiple times. Officer Gil followed Decedent’s vehicle into the parking lot and witnessed Decedent’s car strike the patrol vehicle and Officers Schnaidt and Cruzan fire their weapons. Officers Cruzan, Schnaidt, and Gil approached Decedent’s vehicle and confirmed he was deceased.

The officers broadcast over their respective radio channels that there had been an officer-involved shooting. Multiple officers responded to the scene to secure it and identify any witnesses. Notifications were made through Dispatch in reference to the officer-involved shooting and Force Investigation Team (“FIT”) detectives responded.

The Clark County District Attorney’s Office has completed its review of the November 6, 2015, death of Decedent. 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 Officers Cruzan and Schnaidt were not criminal in nature

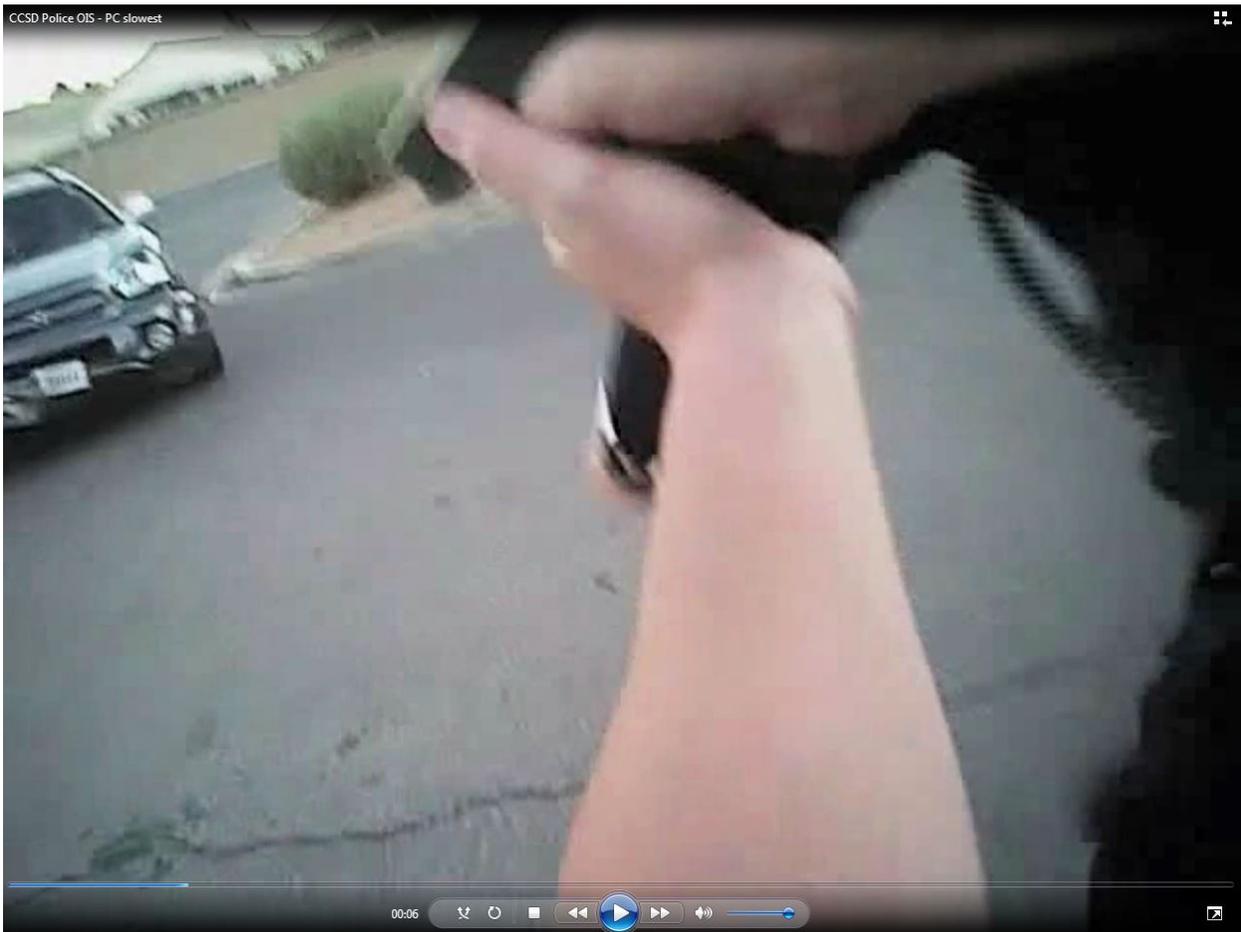
This report explains why criminal charges will not be forthcoming against Officers Cruzan and Schnaidt. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on November 4, 2016.

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

I. BODY WORN CAMERAS

Officers Cruzan and Schnaidt

LVMPD FIT Sergeant MacDonald initially took custody of and secured Officers Cruzan and Schnaidt's body worn cameras. However, because CCSDPD had their own software for downloading their footage, Lieutenant Blackeye downloaded the footage. FIT Detective Patton met with CCSDPD and took custody of all six (6) videos. Officers Hutcherson and Summers arrived after the incident. The officers downloaded their videos into storage.



OFFICER SCHNAIDT'S BODY CAMERA

II. SCENE WALK THROUGHS

Officer Gil

On November 6, 2015, at approximately 7:29 p.m., Officer Gil provided a walk-through of the scene. He drove southbound on Spencer Street from Windmill Lane and saw a silver Hyundai Santa Fe. Officer Gil passed the Santa Fe before the Santa Fe struck his vehicle. He slowed down and thought Decedent would pull over for the accident. Decedent accelerated and rammed the back of Officer Gil's vehicle.

Officer Gil activated his lights and siren before he advised Dispatch he had been involved in an accident. Decedent continued to drive south on Spencer Street. Officer Gil turned off his lights and siren and followed Decedent. He advised Dispatch that Decedent had not stopped, and then he continued to follow Decedent and did not initiate a pursuit. Decedent drove through the 4-way stop at Spencer Street and Wigwam Avenue and turned west onto Wigwam Avenue. Officer Gil turned on his lights and siren in an attempt to warn other drivers of Decedent's erratic driving.

Decedent applied his brakes and turned north into the south parking lot of Desert Bloom Park. Decedent accelerated towards Officers Cruzan and Schnaidt. At the time, Officers Cruzan and Schnaidt stood next to their marked CCSDPD vehicle. Decedent's vehicle struck the side of the CCSDPD vehicle. Officer Gil turned into the parking lot and observed Officers Cruzan and Schnaidt fire their weapons at Decedent.

Officer Cruzan

On November 5, 2015, at approximately 7:55 p.m., Officer Cruzan provided a walk-through of the scene. At approximately 4:30 p.m., Officer Cruzan was writing a juvenile citation for battery, while Officer Schnaidt called the juvenile's parents. Officer Cruzan stood at the rear of the CCSDPD vehicle. Officer Schnaidt stood east of him a short distance away. Witness #1 and Witness #2 stood in front of the patrol vehicle.

Officer Cruzan heard a police siren coming from the southeast, located near Wigwam Avenue and Maryland Parkway. He then saw a gray SUV followed by a Las Vegas Metropolitan Police Department vehicle. It looked to Officer Cruzan like the driver of the vehicle was attempting to evade the officer. The gray SUV drove west on Wigwam Avenue and turned north into the parking lot where the officers and juveniles stood. Officer Cruzan heard the engine rev and the SUV accelerated toward him and Officer Schnaidt.

Officer Cruzan drew his firearm and fired several times at Decedent. Officer Cruzan side-stepped to his right to avoid being struck by the gray SUV. Officer Cruzan fired three (3) to five (5) times from approximately two (2) feet away. The gray SUV collided with the

CCSDPD vehicle and the engine continued to rev. Officer Gil broke out the SUV passenger window with his baton and Officer Cruzan saw Decedent was no longer a threat.

Officer Schnaidt

On November 5, 2015, at approximately 8:10 p.m., Officer Schnaidt provided a walk-through of the scene. On November 6, 2015, at approximately 4:30 p.m., Officer Schnaidt assisted Officer Cruzan in issuing a citation to a juvenile for misdemeanor battery. Officer Schnaidt stood near the rear of the CCSDPD vehicle. Officer Cruzan used the trunk of the vehicle to write the citation. Witness #1 and Witness #2 stood at the front of the vehicle. Officer Schnaidt heard a police siren southeast of his location near the intersection of Maryland Parkway and Wigwam Avenue. Officer Schnaidt saw an LVMPD vehicle attempt to stop a silver vehicle. The silver vehicle did not stop for the LVMPD officer.

The silver vehicle turned into the parking lot where Officer Schnaidt and the others stood. Officer Schnaidt thought the vehicle had pulled over, but instead he heard the engine rev. The silver vehicle accelerated and drove directly toward Officers Schnaidt and Cruzan's location. Officer Schnaidt drew his firearm and fired several times at the oncoming vehicle. Officer Schnaidt moved out of the path of the vehicle to avoid being struck.

Officer Schnaidt fired eight (8) to ten (10) more times at the silver vehicle when it collided with the CCSDPD vehicle. Officer Gil came to his location and broke out the front passenger window of Decedent's vehicle with his baton. Decedent had no weapons. Officers requested that paramedics respond to the scene.



DECEDENT'S VEHICLE AND CCSDPD VEHICLE

III. PUBLIC SAFETY STATEMENT

Sergeant Krumme

(a) Officer Cruzan

On November 6, 2016, at approximately 8:35 p.m., Detective Craig Jex interviewed Sergeant Krumme in reference to the Public Safety Statement he obtained from Officer Cruzan. Below are the questions asked by Sergeant Krumme, with the answers provided by Officer Cruzan in italics.

- 1) Did you discharge your firearm?
Yes.
 - a) If so, in what direction?
Southeastern direction, towards the car that was coming at me.
 - b) Approximately where were you located when you fired?
Standing by the trunk of the School Police marked Crown Victoria.
 - c) How many shots do you think you fired?

I initially fired two (2) to three (3) at the car when it was coming in and then I fired one (1). I believe I fired one (1) additional one into the door of the suspect vehicle.

2) Is anyone injured?

He got shot; the guy that was driving the car.

a) If so, where are they located?

[Not asked by Sergeant Krumme]

3) Are there any outstanding suspects?

Not that I know of.

a) If so, what is their description?

[Not asked by Sergeant Krumme]

b) What direction and mode of travel?

[Not asked by Sergeant Krumme]

c) How long have they been gone?

[Not asked by Sergeant Krumme]

d) What crime(s) have they committed?

[Not asked by Sergeant Krumme]

e) What type of weapon do they have?

[Not asked by Sergeant Krumme]

4) Is it possible the suspect fired rounds at you?

I don't believe so.

a) If so, what direction were the rounds fired from?

[Not asked by Sergeant Krumme]

b) How many shots do you think the suspect fired?

[Not asked by Sergeant Krumme]

c) Approximately where was the suspect located when they fired?

[Not asked by Sergeant Krumme]

5) Do you know if any other officers discharged their firearms?

Yes.

a) If so, who are they?

My partner on the call additionally fired.

b) Approximately where was the officer located when they fired?

[Question asked by Sergeant Krumme, but not answered by Officer Cruzan]

6) Are there any weapons or evidence that needs to be secured/protected?

Not that I am aware of.

a) If so, where are they located?

[Not asked by Sergeant Krumme]

7) Are you aware of witnesses?

Yes.

a) If so, what is their location?

Sitting on the park bench located on the sidewalk.

(b) Officer Schnaidt

On November 6, 2015, at approximately 8:41 p.m., Detective Jex interviewed Sergeant Krumme in reference to the Public Safety Statement he obtained from Officer Schnaidt. Below are the questions asked by Sergeant Krumme and the answers provided by Officer Schnaidt in italics.

1) Did you discharge your firearm?

Yes.

a) If so, in what direction?

North to south.

b) Approximately where were you located when you fired?

Standing next to the back rear passenger quarter panel of the Clark County School District Crown Victoria.

c) How many shots do you think you fired?

Eight (8) to ten (10).

2) Is anyone injured?

No officers were injured. However, the suspect was injured.

a) If so, where are they located?

[Not asked by Sergeant Krumme]

3) Are there any outstanding suspects?

No.

a) If so, what is their description?

[Not asked by Sergeant Krumme]

b) What direction and mode of travel?

[Not asked by Sergeant Krumme]

c) How long have they been gone?

[Not asked by Sergeant Krumme]

d) What crime(s) have they committed?

[Not asked by Sergeant Krumme]

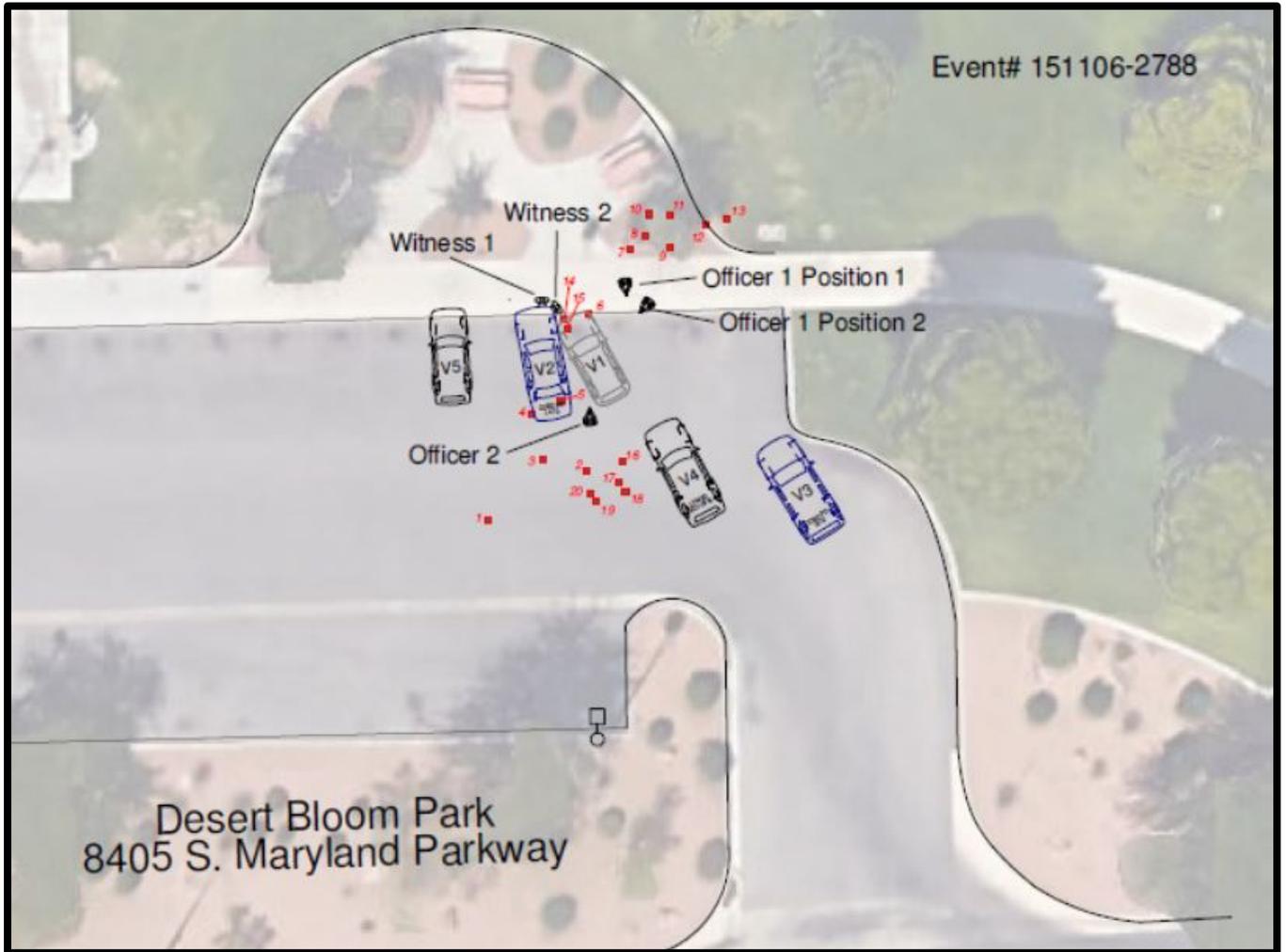
e) What type of weapon do they have?

[Not asked by Sergeant Krumme]

- 4) Is it possible the suspect fired rounds at you?
No.
- a) If so, what direction were the rounds fired from?
[Not asked by Sergeant Krumme]
 - b) How many shots do you think the suspect fired?
[Not asked by Sergeant Krumme]
 - c) Approximately where was the suspect located when they fired?
[Not asked by Sergeant Krumme]
- 5) Do you know if any other officers discharged their firearms?
Yes.
- a) If so, who are they?
Officer Cruzan.
 - b) Approximately where was the officer located when they fired?
[Not asked by Sergeant Krumme]
- 6) Are there any weapons or evidence that needs to be secured/protected?
No.
- b) If so, where are they located?
[Not asked by Sergeant Krumme]
- 7) Are you aware of witnesses?
Yes, LVMPD Officer Gil, a thirteen-year-old female, L.F., and a second thirteen-year-old female.
- b) If so, what is their location?
Sitting on a park bench on the sidewalk in front of the suspect vehicle.

IV. Description of the Crime Scene

Below is a depiction of the south parking lot of Desert Bloom Park, located at 8405 South Maryland Parkway.



CRIME SCENE DIAGRAM

SCENE INFORMATION:

Desert Bloom Park is located at the northwest corner of South Maryland Parkway and East Wigwam Avenue. There are baseball fields and a parking lot located at the north end of the park, a playground and volleyball courts south of the baseball fields, a grassy area south of the playground and volleyball courts, basketball courts in the southwest corner, a parking lot at the south end of East Wigwam Avenue, and a semicircular picnic table area just north of the parking lot.

The scene was located in the south parking lot and the landscaped area (with trees and shrubs) east of the picnic tables and north of the parking lot. There are parking spaces along the north and south ends of the parking lot with a southeast entrance/exit and a southwest entrance/exit, both off of East Wigwam Avenue.

Vehicle 1, the Hyundai Santa Fe, was located parked diagonally facing northwest across two parking spaces against the sidewalk that bordered the north side of the parking lot. The driver side front and rear doors were open and there was a set of keys on the roof. The driver side front corner of Vehicle 1 was in contact with the passenger side front side of Vehicle 2 [CCSDPD Vehicle #1470]. There was damage to the front end (including the bumper, hood, headlights, and driver and passenger side front quarter panels) and the driver side rear door. There were numerous bullet strikes to the vehicle including the hood, driver and passenger side front doors and windows, passenger side mirror, and driver side rear window.

Vehicle 2 was located parked facing north/slightly northwest across two (2) parking spaces immediately west of Vehicle 1. There were clipboards, miscellaneous paperwork, and a cell phone on top of the closed trunk. There was vehicle impact damage along the passenger side of the vehicle to the front and rear doors.

Vehicle 3 [CCSDPD Vehicle #1912] was located parked facing northwest in the parking lot between the southeast entrance/exit and the parking spaces along the north end, southwest of vehicles 1, 2, and 4. There was no damage observed to the vehicle.

Vehicle 4 [LVMPD Vehicle #SC10515] was located parked facing northwest in the parking lot, southeast of Vehicle 1 and slightly west of Vehicle 3. This vehicle was still running with the doors locked. There was vehicle impact damage to the driver side of the rear bumper and cargo door and to the passenger side rear quarter panel.

- Thirteen cartridge cases, all bearing the headstamp “WINCHESTER 40 S&W” were located on scene.
- Four (4) cartridge cases were located on the ground of the parking [lot] south of and southwest of Vehicle 2.
- One (1) cartridge case was located under the passenger side rear corner of Vehicle 2.

- One (1) cartridge case was located on the ground of the parking lot under the passenger side front corner of Vehicle 1.
- Seven (7) cartridge cases were located in the landscaping area north of the parking lot and south east of the picnic tables.
- A bullet and a bullet fragment were located under the driver side front corner of Vehicle 1.
- There were four (4) silver colored paint chips and a broken piece of a clear plastic lens on the ground of the parking lot south of Vehicle 1 and west of Vehicle 4.
- There were several broken pieces of red reflector on the passenger side corner of the front bumper to vehicle 1 and on the ground below. The red reflector on the driver side of the rear bumper to Vehicle 4 was broken.

V. SEARCH WARRANTS

A telephonic search warrant was obtained by Sergeant MacDonald from Judge Deborah Lippis for the 2006 Hyundai Santa Fe, VIN KM8SC13D66U107698, Nevada license plate VM4944.

On November 7, 2015, Crime Scene Analyst Thi photographed the vehicle while all seals were still intact. After photographing the seals, Crime Scene Analyst Thi cut the seals and continued the service of the search warrant. The following items were photographed and impounded as part of the search warrant:

- 1) Three (3) bullets
- 2) Three (3) bullet fragments
- 3) One (1) black and tan Mossberg 930 12 gauge semiautomatic shotgun (serial# - AF192862)
- 4) Five (5) Critical Defense 12 gauge 00 buck cartridges
- 5) Two (2) boxes of twenty-five (25) count Estate 12 gauge, 8 shot cartridges
- 6) A Canon PowerShot 5x260 HS camera
- 7) One (1) paint sample from the exterior
- 8) One (1) Nevada DMV registration for the vehicle bearing the names Migdalia and James Smyth
- 9) One (1) Nevada Evidence of Insurance card for the vehicle

VI. Interviews

Officer Rodolfo Gil

On November 6, 2015, at approximately 7:49 p.m., Detective Ryan Jaeger conducted an audio recorded interview with Officer Gil in an unmarked LVMPD vehicle parked near the intersection of Wigwam Avenue and South Maryland Parkway. The following is a summary of the interview.

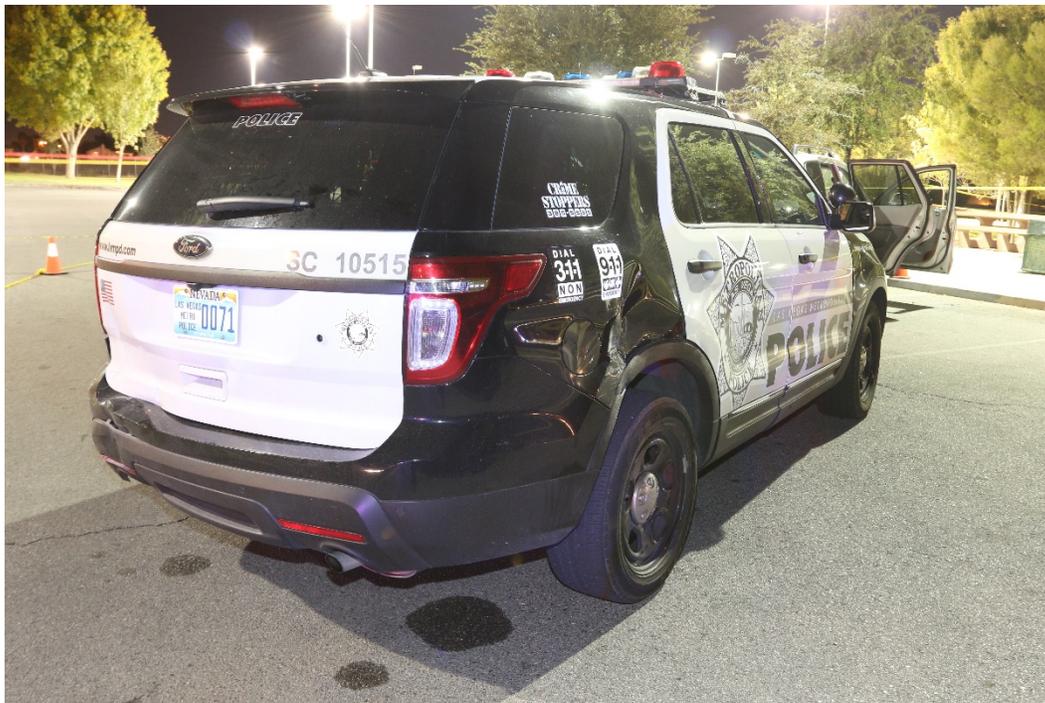
On November 6, 2015, Officer Gil operated a marked patrol unit. He traveled south on Spencer Street from Windmill Lane when he saw a silver colored Hyundai. The Hyundai traveled south in the right travel lane ahead of him. As Officer Gil passed, the Hyundai swerved into Officer Gil's lane and struck the rear passenger side of his patrol vehicle. Officer Gil slowed down and expected Decedent to pass. Decedent did not pass but struck the patrol vehicle again, hitting the rear of the vehicle. At that point, Officer Gil activated his emergency lights and siren to signal Decedent to pull over. Decedent did not stop and continued to drive south on Spencer Street.

Officer Gil thought Decedent was intoxicated and feared a high speed vehicle pursuit would ensue through heavy traffic. To avoid a pursuit in heavy traffic, Officer Gil turned off his emergency lights and siren and allowed Decedent to drive ahead, creating distance between the two vehicles. Decedent failed to stop at the stop sign at the intersection of Spencer Street and Wigwam Avenue. Decedent turned west onto Wigwam Avenue and drove towards South Maryland Parkway. As Decedent approached South Maryland Parkway, Officer Gil activated his lights and siren again in an attempt to get Decedent to stop, and also to warn drivers who travelled north and south on South Maryland Parkway.

Decedent crossed South Maryland Parkway and briefly accelerated westbound before hitting his brakes and turning north into the south parking lot of Desert Bloom Park. Officer Gil thought Decedent pulled over to stop his vehicle. As Decedent made his turn into the park, he accelerated into the parking lot. Officer Gil feared Decedent was going to drive onto a basketball court full of children playing basketball. Decedent accelerated and directed his vehicle towards two (2) uniformed CCSDPD officers who stood next to a marked CCSDPD vehicle. The officers quickly moved out of the way to avoid being struck by Decedent's vehicle. As the officers moved out of the way, they shot into Decedent's vehicle.

Decedent's vehicle struck the CCSDPD vehicle. Officer Gil pulled into the parking lot behind Decedent and stopped a short distance away. Officer Gil exited his patrol vehicle and approached Decedent's vehicle on the passenger side. Officer Gil was not able to see inside of Decedent's vehicle because the front passenger side window was shattered. Officer Gil used his expandable straight baton to break out the passenger side window in an effort to see into the vehicle. Officer Gil saw Decedent had been struck by gunfire and was incapacitated.

Officer Gil broadcasted “shots fired” over the radio and requested medical attention for Decedent.



OFFICER GIL'S VEHICLE DAMAGE

Officer Eric Schnaidt

On November 8, 2015, FIT Detectives Pazos and Jaeger conducted an audio recorded interview with Officer Schnaidt. The following is a summary of the interview.

On November 6, 2015, Officer Schnaidt was dispatched to Schofield Middle School reference a fight. The victim was located at Desert Bloom Park and Officer Schnaidt assisted Officer Cruzan, who was there to obtain a statement. While he spoke with the victim, a truancy officer located the suspect and brought her to Officer Schnaidt's location in the south parking lot of Desert Bloom Park.

After he obtained the victim's statement, the victim left the area. Officer Schnaidt spoke with Witness #1 and Witness #2 at the passenger side of the police vehicle. Officer Cruzan wrote out the citation on the trunk of the vehicle. He saw an LVMPD SUV follow a vehicle on Wigwam Avenue and Maryland Parkway. He then heard the LVMPD SUV chirp his siren and activate his emergency lights at Wigwam Avenue and Maryland Parkway. Officer Schnaidt saw Decedent drive westbound. Office Schnaidt did not believe the vehicle was

going to stop. Decedent made a right turn into the parking lot where Officers Schnaidt and Cruzan were conducting their investigation.

Officer Schnaidt believed Decedent pulled into the parking lot to stop for the LVMPD vehicle. However, as Decedent turned into the parking lot, Officer Schnaidt heard Decedent's engine rev and the vehicle accelerated towards Officers Cruzan and Schnaidt.

As Decedent accelerated towards their location, Officer Schnaidt fired at Decedent. Officer Schnaidt believed he fired two (2) times. Officer Schnaidt spun out to the side to avoid being struck by Decedent. Officer Schnaidt did not know if Decedent had struck Officer Cruzan, Witness #1 or Witness #2. Decedent rammed the passenger side of the patrol vehicle. Officer Schnaidt was fearful that Decedent had attempted to run him over. At the time of the incident, Officer Schnaidt was fearful that Decedent had run over Officer Cruzan, Witness #1 and/or Witness #2.

After he spun out of the way of Decedent's vehicle, Officer Schnaidt positioned himself on the sidewalk east of Decedent's vehicle facing the passenger side. Officer Schnaidt heard Decedent's engine continue to rev after it collided with the patrol vehicle. Officer Schnaidt knew there were other parties in the park, including children. He felt everyone was potentially in danger. Officer Schnaidt believed he was being ambushed and was still in danger. He believed that Decedent may start firing at him from inside his vehicle after he failed to run him over. Officer Schnaidt did not know if Officer Cruzan, Witness #1 or Witness #2 were pinned underneath Decedent's vehicle. Officer Schnaidt fired again at Decedent.

The officer in the LVMPD SUV arrived and approached the passenger side of Decedent's vehicle on foot. He utilized his expandable baton to break out the passenger side window. Once the window was broken out, Officer Schnaidt saw Decedent was not holding a weapon. Officer Schnaidt broadcasted "444," the police code for "officer needs help – emergency," and Officer Cruzan broadcasted, "Shots fired, suspect hit." Paramedics and a supervisor were requested over the radio.

Officer Raymond Cruzan

On November 8, 2015, at approximately 1:22 p.m., FIT Detectives Pazos and Jaeger conducted an audio recorded interview with Officer Cruzan. The following is a summary of the interview.

On November 6, 2015, Officer Cruzan was dispatched to Desert Bloom Park regarding a fight. Officer Cruzan arrived after other officers and made contact with the victim in the parking lot on the south side of the park. After a short time, a CCSDPD attendance officer brought the suspect and a witness to Desert Bloom Park.

Officer Cruzan completed his investigation and began to write a citation. Officer Schnaidt remained with Officer Cruzan to assist him. Officer Cruzan stood near the trunk of the patrol vehicle as he wrote the citation and Officer Schnaidt was standing to his right. Witness #1 and Witness #2 were standing near the front of the patrol vehicle.

While he wrote the citation, Officer Cruzan heard a siren chirp from the intersection of Wigwam Avenue and Maryland Parkway. He saw an LVMPD patrol vehicle attempt to pull over a vehicle. Decedent did not stop for the LVMPD vehicle and travelled westbound through the intersection. Decedent turned into the parking lot where Officer Cruzan and the others were located. Officer Cruzan heard the vehicle's engine rev as it accelerated directly towards him.

Officer Cruzan was immediately afraid the vehicle was going to strike him, Officer Schnaidt, Witness #1 and Witness #2. Officer Cruzan also knew the park was occupied by numerous people, including children. Officer Cruzan moved away from the path of Decedent's car as it hit the CCSDPD vehicle.

Officer Cruzan drew his firearm and fired three (3) times at Decedent inside the vehicle. He believed he would have been killed by Decedent had he not moved out of the way. He lost sight of Officer Schnaidt, Witness #1 and Witness #2. Officer Cruzan estimated Decedent's vehicle passed within two (2) feet of him and it appeared that Decedent was going to drive into the park.

Officer Cruzan fired one (1) additional time at Decedent through the driver's side window. Decedent's vehicle crashed into the rear passenger side of the CCSDPD vehicle. Officer Cruzan did not know if the vehicle had struck Officer Schnaidt, Witness #1 or Witness #2. Officer Cruzan backed away from Decedent's vehicle and saw the LVMPD vehicle that had been following Decedent's SUV. The officer in the LVMPD vehicle exited his vehicle and said, "That guy almost ran you over!" Officer Cruzan moved to the front of the vehicles and saw the witnesses were unharmed but crying. Officer Cruzan saw Officer Schnaidt standing east of Decedent's vehicle. Officer Cruzan heard the LVMPD officer break out a window on the passenger side and someone repeatedly saying, "Let me see your hands!" Officer Cruzan looked into the vehicle and Decedent was not moving.

Witness #1

On November 6, 2015, at approximately 7:54 p.m., Detective Brian Kowalski conducted an audio recorded interview with Witness #1. The following is a summary of the interview.

Witness #1 was detained by Officers Cruzan and Schnaidt at Desert Bloom Park, 8405 South Maryland Parkway. Witness #1's friend, Witness #2, had also been detained. Witness #1 and Witness #2 stood in front of Officer Schnaidt's patrol vehicle. As they filled out a witness statement, they saw Decedent's vehicle driving west on East Wigwam Avenue. Officers Cruzan and Schnaidt stood on the passenger side of Officer Schnaidt's vehicle. Decedent

traveled at a high rate of speed and was followed by an LVMPD patrol vehicle with its lights and siren activated. It did not appear Decedent was going to stop for the officer.

Officers Cruzan and Schnaidt drew their firearms and Witness #1 backed away from the front of the vehicle. Decedent turned north into the parking lot and accelerated towards the officers. Witness #1 heard the officers yell at the vehicle driver and saw Officer Cruzan fire one (1) shot before Witness #1 ducked down and covered her face. Witness #1 heard at least six (6) gunshots and believed each officer fired at least three (3) times. Witness #1 was pulled to the side behind a parked vehicle by Witness #4. Witness #1 saw Decedent raise his head after the shots were fired and then heard someone say Decedent was dead. One of the officers broke out one of the vehicle's windows with a baton.

Witness #2

On November 6, 2015, at approximately 7:54 p.m., FIT Detective Marc Colon conducted an audio recorded interview with Witness #2. The following is a summary of the interview.

Witness#1 and Witness #2 stood in front of a CCSDPD vehicle while being interviewed by CCSDPD Officers Cruzan and Schnaidt. Witness #2 saw an LVMPD vehicle with its lights and siren activated as it followed a silver colored SUV. The vehicles traveled west on Wigwam Avenue as they approached the park. The silver colored SUV turned north into the parking lot where Witness #1 and Witness #2 stood with the officers. The silver colored SUV drove directly towards the CCSDPD vehicle at a high rate of speed. Witness #2 grabbed Witness #1 and moved behind a bush next to a nearby picnic table to get out of the way.

The SUV crashed into the CCSDPD vehicle and Witness #2 believed three (3) to four (4) CCSDPD officers fired their firearms at the silver colored SUV. The LVMPD officer who had been following the silver colored SUV exited his vehicle, broke out the SUV's front passenger window, and yelled at the driver to show his hands. Witness #2 and Witness #1 remained behind the bushes until officers told them it was safe.

Witness #3

On November 6, 2015, at approximately 10:32 p.m., FIT Detectives Jex and Kowalski conducted an audio recorded interview with Witness #3. The following is a summary of the interview.

Witness #3 had been married to Decedent for twenty-seven (27) years before they divorced in February 2015. Decedent had worked as a New York City Corrections Officer for twenty-three (23) years before they moved to Las Vegas. Witness #3 was able to find work, but Decedent did not. Decedent volunteered at the Red Cross and received several awards. Decedent was diagnosed with colon cancer in 2013. After several surgeries and treatment, the cancer was in remission.

Witness #3 noticed a change in Decedent's behavior in late 2014. Starting around Thanksgiving 2014, Decedent began to exhibit more aggressive verbal behavior. Witness #3 found evidence Decedent had used marijuana. Witness #3 noticed large sums of money missing from their bank account and believed Decedent used it to buy harder drugs. Witness #3 believed Decedent was using heroin or spice due to the change in his demeanor.

In January 2015, Witness #3 learned that in August 2014, Decedent had gone to the Red Cross and acted erratically. Decedent asked to meet with an executive staff member at the Red Cross and was denied. Decedent responded and stated he wanted to shoot the executive member with a pink gun. When Witness #3 learned of the event, she looked for and found a pink Taurus firearm in their residence that she did not know Decedent had purchased. Witness #3 did not feel safe staying with Decedent and made the decision to leave the residence. She filed for divorce in February 2015.

Witness #3 maintained contact with Decedent and mutual friends after their divorce. Witness #3 learned that Decedent threatened a friend. Decedent had put the Taurus pistol to the friend's head and said, "I could kill you right now." The friend defused the situation, left, and had no further contact with Decedent. Witness #3 learned Decedent began shaving his head and eyebrows and told people he had cancer, his wife had left him, and he had no money. Decedent sent vague, threatening texts to former co-workers, Witness #3, her daughter, and Witness #3's co-workers and supervisors.

On November 7, 2015, at approximately 7:30 a.m., FIT Detectives Kowalski and Jex met Witness #3 at Decedent's residence. Witness #3 entered the residence first and secured a large dog in the backyard. Witness #3 then allowed detectives inside the residence.

The residence was found to be tidy and clean. The smell of marijuana was strong. On the dining room table was a small wood pipe with a green leafy substance. On the table was a pink Taurus TCP .380 handgun. The handgun was in a black holster.

In the garage, in a drawer of a workbench, a Glock 27 .40 caliber handgun was found in a black holster. Also in the drawer were several items of narcotics paraphernalia. A Mossberg 715T .22 caliber rifle and a Crossman Optimus air rifle were found in a coat closet in the living room. Upstairs in a bedroom nightstand drawer, two (2) magazines of the Glock 27 were also found along with several boxes of various calibers of ammunition. There were several items of narcotics paraphernalia found throughout the residence.

At the request of Witness #3, the two (2) handguns and two (2) rifles were impounded for safekeeping. At the time of impound, the Taurus handgun had one (1) round in the chamber and seven (7) rounds in the magazine. The Glock had one (1) round in the chamber and seven (7) rounds in the magazine. The two (2) extra magazines for the Glock had eight (8) rounds

each inside. No other items were taken from the residence. Coroner Investigator Brown took digital photographs of the interior of the residence.

Witness #4

On November 6, 2015, at approximately 8:00 p.m., Detective Jex conducted an audio recorded interview of Witness #4. The following is a summary of the interview.

Witness #4 was in the large grassy area with his three-year-old daughter. Witness #4 saw a marked LVMPD patrol vehicle attempt to stop a silver colored Hyundai Santa Fe at the intersection of Maryland Parkway and Wigwam Avenue. The patrol vehicle and sirens were activated. The Santa Fe continued westbound on Wigwam Avenue through the intersection and accelerated away from the police vehicle.

The Santa Fe turned quickly into the parking lot on the south side of Desert Bloom Park. Witness #4 saw a marked CCSDPD patrol vehicle in the parking lot. There were witnesses in front of the patrol vehicle and two (2) CCSDPD officers nearby. The Santa Fe accelerated towards the CCSDPD vehicle and rammed it on the passenger side. Witness #4 believed a shooting might occur so Witness #4 yelled at other people in the park to take cover.

Witness #4 left his daughter with an unidentified female in the park and ran towards the vehicles. As he moved towards them, he heard ten (10) to fifteen (15) gunshots. He did not see the actual shooting. He arrived to the west of the officers and saw the two witnesses on the sidewalk. Witness #4 pulled the females between two (2) vehicles.

Witness #5

On November 7, 2015, at approximately 4:16 p.m., FIT Detective Kowalski conducted an interview of Witness #5. The following is a summary of the interview.

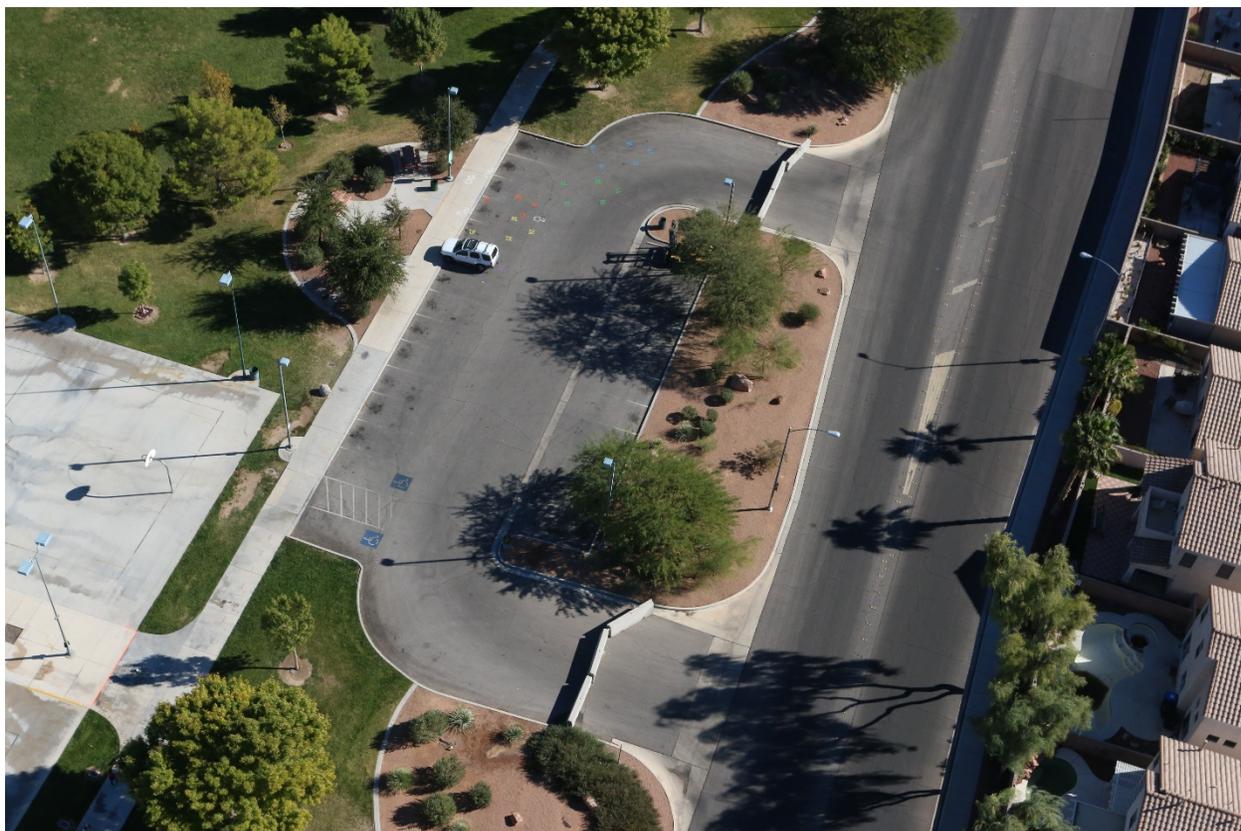
On November 6, 2015, at approximately 4:00 p.m., Witness # 5 went to Desert Bloom Park at 8405 South Maryland Parkway to walk his dog. Witness #5 saw two (2) CCSD police officers detaining two (2) juveniles on the east side of the parking lot. Witness #5 walked over to the northeast corner of the basketball court. A short time later, Witness #5 heard a police siren to the east. Witness #5 saw Decedent's vehicle and a LVMPD patrol vehicle behind it with its lights and sirens activated. They were travelling west on East Wigwam Avenue crossing South Maryland Parkway. Witness #5 saw the Decedent's vehicle travel at a rate of less than 20 miles per hour.

Decedent turned north into the parking lot. Witness #5 did not believe Decedent slowed down or applied his brakes. Witness #5 could not hear if the officers challenged the vehicle or if Decedent accelerated due to the sirens. Witness #5 saw Decedent's vehicle strike the CCSD police vehicle, pushing it forward. Witness #5 estimated he heard nineteen (19) gunshots after

the collision. Witness #5 did not see who fired the shots. The LVMPD vehicle pulled into the parking lot after the gunshots.

Witness #5 contacted the District Attorney's office after he had spoken to police. He stated he knew Decedent for a few years. He also explained that Decedent had recently told people he was afraid the cops would shoot him if he ever got pulled over. Witness #5 also explained Decedent was paranoid and worried about a "zombie apocalypse." Witness #5 believed Decedent pulled into the park because he knew Witness #5 would be there with his dogs, which created a safer environment for Decedent. Witness #5 stated Decedent's car was not going more than 10 miles an hour. It was further stated that police opened fire on the vehicle after it had hit the patrol car and had come to a complete stop.

It should be noted that Witness #5 never told investigators on the scene he knew the Decedent, nor that Decedent went to Desert Bloom Park to see Witness #5.



AERIAL OF DESERT BLOOM PARKING LOT

VII. OFFICER WEAPON COUNTDOWN

On November 6, 2015, Officers Cruzan and Schnaidt had their duty weapons counted down at CCSDPD headquarters.

Officer Cruzan

Prior to countdown, Officer Cruzan stated he carried fifteen (15) cartridges in the magazine loaded in his firearm and one (1) cartridge in the chamber (16 total). At the completion of the countdown, it was determined Officer Cruzan discharged his firearm five (5) times during this incident.

Officer Schnaidt

Prior to countdown, Officer Schnaidt stated he carried fifteen (15) cartridges in the magazine loaded in his firearm and one (1) cartridge in the chamber (16 total). At the completion of the countdown, it was determined Officer Schnaidt discharged his firearm nine (9) times during this incident.

VIII. TIME LINE

The below time line is a reconstruction of events which transpired on Friday, November 6, 2015, in relation to the fatal officer-involved shooting.

Time	Description of Event / Action	Source
15:36:18	CCSDPD Dispatch received a call that a fight was going to occur at Desert Bloom Park.	CCSDPD Computer Aided Dispatch (CAD)
15:51:28	CCSDPD officers located a victim and began to search for the involved parties.	CCSDPD CAD
15:54:10	CCSDPD officers located the suspect of the battery.	CCSDPD CAD
16:10:48	Officer Cruzan took over the role of primary investigator with Officer Schnaidt providing assistance.	CCSDPD CAD
16:31:06	Officer Gil broadcasted he had been struck by Decedent's vehicle and Decedent was not stopping. Officer Gil followed Decedent south on Spencer Street towards Wigwam Avenue.	Radio traffic
16:31:36	Officer Gil broadcasted he was following Decedent with his lights and siren off and that Decedent had sideswiped and rear-ended him.	Radio traffic

Time	Description of Event / Action	Source
16:31:54	Decedent drove through the stop sign at Spencer Street and Wigwam Avenue without stopping and turned west onto Wigwam Avenue.	Radio traffic
16:32:50	Officer Gil broadcasted Decedent tried to ram two (2) Park Police officers and they were firing at Decedent. Officer Gil broadcasted, "Shots fired."	Radio traffic
16:33:42	Officer Gil broadcasted Decedent was hit and requested medical units respond.	Radio traffic
16:35:47	Officer Cruzan broadcasted, "444. Shots fired, one (1) suspect down."	CCSDPD CAD

IX. AUTOPSY

On November 7, 2015, at approximately 8:30 a.m., an autopsy was performed by Doctor Lisa Gavin. Decedent suffered three (3) gunshot wounds: the first to his right arm, the second to his right shoulder and the third was to his head. The first gunshot wound had a trajectory of right to left, front to back. The second gunshot wound had a right to left trajectory and the third gunshot wound had a trajectory of left to right.

Upon the completion of toxicology testing, the following results were found above the reportable limit set by the testing agency:

- 11-Hydroxy Delta-9 THC, an active intermediate metabolite of tetrahydrocannabinol, the active component of marijuana.
- Delta-9 Carboxy THC, the principle psychoactive ingredient of marijuana/hashish.
- Delta-9 THC, a DEA Schedule I hallucinogen, the principle psychoactive ingredient of marijuana/hashish.

After a complete autopsy, Doctor Gavin opined Decedent died as a result of multiple gunshots.

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.

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

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

NRS 200.160(1).

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

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

¹ NRS 200.120(3)(a) defines a crime of violence:

“Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

1. That there is imminent danger that the assailant will either kill [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 the 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 Cruzan, Schnaidt and to the numerous people and children in the park when he drove his silver colored SUV into the CCSDPD vehicle. Officers Cruzan and Schnaidt saw Decedent refuse to stop for Officer Gil. Officers Cruzan and Schnaidt then heard Officer Gil chirp his siren, in order to warn others of Decedent's erratic behavior. Officers Cruzan and Schnaidt heeded that warning and watched as Decedent drove into the parking lot of Desert

Bloom Park. They heard Decedent rev his engine prior to crashing into their vehicle. At the time, not only were they concerned for the lives of Witness #1 and Witness #2 who were in front of their patrol car, but also for the lives of the people in Desert Bloom Park. In the course of this investigation, FIT interviewed approximately twenty four (24) people in regard to the events of November 6, 2015. Many witnesses described the park being filled with adults as well as children. Therefore, Officers Cruzan and Schnaidt acted in reasonable fear of a threat to their lives and the lives of others at the time each fired.

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 Officers Cruzan and Schnaidt were reasonable in their belief that Decedent posed a serious threat to their safety and the safety of those in Desert Bloom Park. Both officers were in discharge of their lawful duty and investigating a crime. While they did so, they heard a chirp from another police vehicle which warned them of Decedent’s erratic behavior. They saw Decedent continue to drive as Officer Gil attempted to pull him over. Officers Cruzan and Schnaidt then watched as Decedent drove into the parking lot of Desert Bloom Park and accelerated toward them and their vehicle. Eventually, Decedent crashed into their vehicle and they fired into Decedent’s car in order to save their lives and the lives of those in the park, many of whom were children.

These circumstances created probable cause in Officers Cruzan and Schnaidt’s minds that Decedent posed a threat of serious physical harm either to them and/or other civilians in the Desert Bloom Park area. The officers overcame the threat by firing their weapons into Decedent’s car.

In light of all the evidence reviewed to date, the actions of Officers Cruzan and Schnaidt were justified and appropriate “in the discharge of a legal duty.”

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 Officers Cruzan and Schnaidt, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Danielle K. Pieper
Chief Deputy District Attorney
Clark County District Attorney's Office