



# **REPORT ON USE OF FORCE:**

## **Legal Analysis Surrounding the Death of Reiner Sommer on October 18, 2021**

### **I. INTRODUCTION**

On October 18, 2021, the Clark County Fire Department, hereinafter known as “CCFD,” responded to the Walgreens located at 6485 South Fort Apache Road. Once there, CCFD requested assistance from the Las Vegas Metropolitan Police Department (hereinafter known as “LVMPD”) with a combative male, later identified as Reiner Sommer (hereinafter known as “Decedent”). When LVMPD arrived, Decedent was on the bathroom floor of the Walgreens.

Sergeants Bagaporo and Blum arrived at the Walgreens first and spoke to CCFD and American Medical Response (hereinafter referred to as “AMR”) personnel. Decedent was identified through hospital release paperwork in his possession. Decedent told CCFD and AMR he was diabetic. Decedent became so agitated he grabbed the toilet and pulled it from the floor. CCFD and AMR also witnessed Decedent drink water from the toilet bowl. Medical requested LVMPD due to Decedent’s size and his agitated state. The sergeants observed Decedent as he yelled, rolled around the floor, and spoke gibberish.

The sergeants waited for more officers to arrive before they tried to take Decedent into custody. Officers Garcia and Ortega arrived, and then Sergeant Blum discussed a plan to take Decedent into custody. Decedent then moved from the toilet to the far side of the bathroom stall and officers went hands on with Decedent. Decedent curled his arms underneath him and refused to give officers his arms. They segmented Decedent and eventually placed him in handcuffs.<sup>1</sup>

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<sup>1</sup> Segmenting is when different officers control different parts of a person’s body.

After placing handcuffs on Decedent, he was rolled into the recovery position.<sup>2</sup> At that time, officers noticed Decedent was unresponsive and they pulled him out of the bathroom. They removed his handcuffs. CCFD, along with AMR, began chest compressions. Decedent was transported to Southern Hills Hospital where he was pronounced deceased.

The LVMPD Force Investigation Team (hereinafter referred to as "FIT") responded to the scene to conduct the investigation.

The Clark County District Attorney's Office has completed its review of the October 18, 2021, death of Reiner Sommer. 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 Sergeants Bagaporo and Blum, as well as Officers Garcia and Ortega were not criminal. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Sergeants Bagaporo and Blum, as well as Officers Garcia and Ortega. 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 21, 2022.

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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

## **II. INCIDENT DETAIL**

On October 18, 2021, at approximately 10:30 a.m., Decedent entered Walgreens. He made his way to the pharmacy to fill his prescriptions. Once there, he spoke to the pharmacist, D.B. Decedent told D.B. he had gone to the hospital for food poisoning. D.B. thought Decedent's statement about food poisoning seemed odd, given his prescriptions. D.B. told Decedent they would fill his prescriptions and Decedent sat down on a chair and waited. As Decedent sat in the pharmacy area, D.B. observed Decedent, who did not look well. Decedent was visibly sweating and moaning. D.B. checked on Decedent who stated he would be fine but needed to rest.

D.B. contacted the store manager, J.B. J.B. asked Decedent if he needed any assistance. Decedent told J.B. he was diabetic, had high blood pressure and was just discharged from the hospital for food poisoning. J.B. offered to call medical, but Decedent refused.

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<sup>2</sup> The recovery position is used when a person is unconscious and is a positioning of the body that allows the airway to remain open. It also prevents vomit or other fluid from blocking their airway.

Decedent stayed in the store for several more hours. J.B. would periodically check on Decedent and each time Decedent refused any medical attention. At some point, Decedent made his way into the bathroom. J.B. went to check on Decedent and found him on the floor near the toilet. Decedent was alert at the time and spoke to J.B.; however, Decedent's medical condition continued to decline. At 1:08 p.m., J.B. called for medical.

CCFD arrived first and contacted Decedent. Decedent told CCFD he was diabetic, so they tested his blood sugar. The results were normal. Decedent became agitated and laid on the floor. At 1:38 p.m., CCFD called for police assistance due to Decedent's size and agitation. CCFD did not want to go hands on with Decedent.

LVMPD officers arrived at the Walgreens at approximately 1:44 p.m. Sergeants Bagaporo and Blum were the first to arrive and assessed the situation. Sergeants Bagaporo and Blum first spoke with medical personal about their brief encounter with Decedent. As Sergeants Bagaporo and Blum entered the bathroom, they saw Decedent through the open gap of the bathroom stall as he lay on the bathroom floor. Decedent yelled incoherently and made loud noises. Sergeant Blum attempted to communicate with Decedent who informed Sergeant Blum he did not want their help.

Sergeant Blum created a plan to take Decedent into custody and allow medical personnel to assist Decedent once additional officers arrived. Once Officer Garcia arrived, he went into the bathroom. Once inside, he saw Decedent move away from the toilet bowl to the opposite end of the bathroom stall. Sergeant Blum directed officers to move in and take Decedent into custody. Decedent had positioned himself at the end of the stall face down with his head in the corner. Decedent's arms were underneath his body. As officers attempted to take him into custody, he refused to take his arms out from underneath him.

Sergeant Blum grabbed Decedent's feet as Officer Garcia kneeled on the small of Decedent's back and hip area for less than two minutes. Sergeant Bagaporo attempted to pull Decedent's hands out from under his body, but Decedent had his arms tucked under his body and chest. He made grunting and growling noises as the officers attempted to pull his arms out. Officer Ortega arrived on the scene and replaced Sergeant Bagaporo inside the stall. The officers were able to remove Decedent's arms from underneath his body and placed him in handcuffs.

The officers then pulled Decedent out from inside the bathroom stall into the main portion of the bathroom where he was rolled onto his side in the recovery position. Officers informed medical personnel that Decedent was unresponsive. Medical personnel asked officers to bring Decedent out into the hallway where they would have more room to work on him. As medical personnel worked on Decedent, Decedent was taken from the hallway into the open portion of the store as medical personnel performed life saving measures.

Decedent was eventually transported to Southern Hills Hospital where he was pronounced deceased.



Close-up ariel view of Walgreens on South Fort Apache

### **INCIDENT UNDER LVMPD EVENT NUMBER 21100072139**

Detectives discovered an incident between Decedent and his daughter on October 17, 2021, the night before this incident. On October 17, 2021, Decedent called police due to a domestic disturbance between himself, his daughter, and her boyfriend. Decedent reported his daughter, T.S., hit him in the face with a soda can, and T.S.'s boyfriend attacked him with a 2x4 board. T.S.'s boyfriend attacked Decedent because Decedent accidentally cut T.S. with a knife. After the altercation, Decedent left the apartment. After he left the apartment, he was attacked by two unknown males.

When LVMPD officer arrived on scene, T.S. already had left. T.S. explained to officers, via telephone, that Decedent attacked her, and she hit him with a soda can in self-defense. She also explained that Decedent was bipolar and on multiple medications. Officers who had responded to the call documented that Decedent was rambling incoherently. They called for medical, and Decedent was transported to Southern Hills Hospital. According to hospital staff, they completed a full body scan of Decedent.

Everything in the scan came back normal except for some minor tissue damage to Decedent's right cheek.

In reviewing the incident at the Walgreens, the BWC video showed Decedent had bruising to his abdomen as well as his face. CCFD confirmed this bruising was visible prior to officers' arrival.

### **DESCRIPTION OF SCENE AND VISIBLE EVIDENCE**

CSA G.T. responded the Walgreen at 6485 South Fort Apache Road on October 8, 2021. Once there, she photographed the scene and collected evidence.



Hallway leading to bathroom in Walgreens



Bathroom stall where Decedent was taken into custody

### **III. INVESTIGATION**

#### **Subject Officers Statements**

Subject officers may provide a recorded or written statement to FIT investigators; however, since the statement is voluntary, subject officers have the right to decline providing a statement to FIT investigators.

#### **Sergeant Gerald Bagaporo**

On October 18, 2021, Sergeant Iacullo contacted Sergeant Bagaporo to see if he would provide a voluntary statement to FIT investigators; Sergeant Bagaporo declined.

#### **Sergeant Jeffrey Blum**

On October 18, 2021, Sergeant Iacullo contacted Sergeant Blum to see if he would provide a voluntary statement to FIT investigators; Sergeant Blum declined.

### **Officer Andrew Garcia**

On October 18, 2021, Sergeant Michelle Iacullo contacted Officer Garcia to see if he would provide a voluntary statement to FIT investigators; Officer Garcia declined.

### **Officer Joseph Ortega**

On October 18, 2021, at approximately 5:10 pm, Detective Trever Alsup conducted an audio recorded interview with Officer Ortega.

On October 18, 2021, Officer Ortega was working as a marked LVMPD patrol unit when he heard Sergeant Blum on the radio. Sergeant Blum requested additional units to his location. Officer Ortega responded to Sergeant Blum's call because he was close to the Walgreens on Fort Apache.

Upon arriving at the Walgreens, Officer Ortega went into the store toward the back, where the bathrooms were located. When Officer Ortega entered the bathroom, he observed the officers segmenting Decedent. Sergeant Bagaporo was positioned near Decedent's left shoulder. Sergeant Blum directed Officer Ortega to relieve him near Decedent's left shoulder.

The officers needed more space to work and pulled Decedent out of the stall area. Once officers pulled Decedent from the stall, they were able to free his arms. Decedent was double cuffed (a technique where two sets of handcuffs are used, one on each hand then hooked in the middle, for larger individuals) then rolled onto his side in the recovery position. Officers informed medical staff that he needed lifesaving techniques and medical asked the officers to pull him out into the hallway, which they did.

### **Medical Personnel Witness Statements**

#### **Engineer-Paramedic T.G.**

On October 18, 2021, at approximately 5:55 pm, Detective Blake Penny conducted an audio recorded interview with T.G.

T.G. worked as a paramedic for CCFD on Rescue 26 when he was dispatched to a medical call at the Walgreens located at 6485 South Fort Apache Road. The call was for a diabetic male who was in the bathroom. When he arrived, he found the patient lying on the bathroom floor, with a water bottle nearby and Emergen-C® vitamin packets around him. Decedent was a large man, around 300 plus pounds and probably about six feet tall. Paramedics attempted to speak with him, but he did not make sense and did not follow commands. A decision was made to test his blood sugar, which returned normal. The group of paramedics waited for AMR to respond in hopes he would cooperate with them and get on their gurney. Decedent was erratic and combative, which caused T.G. to believe Decedent was on drugs.

As CCFD waited for AMR, Decedent began scooping toilet water into his mouth, then knocked the toilet off the floor. Once AMR arrived, CCFD and AMR made the decision to call LVMPD, because of Decedent's escalating behavior. Both AMR and CCFD believed Decedent would be combative.

When LVMPD arrived, officers planned to get Decedent out of the stall, cuff him and place him in the recovery position. T.G. told officers that paramedics discussed giving Decedent Ketamine to sedate him, but that would require someone to hold down Decedent. Paramedics planned to have officers with LVMPD restrain Decedent while paramedics administered the Ketamine.

Once the plan was devised, paramedics saw Decedent rip the toilet completely from the floor. Seeing this, paramedics became concerned. Decedent then turned and went headfirst into the corner of the stall. After he did, officers moved in and attempted to restrain Decedent. Officers told Decedent to give them his arms. Decedent appeared to hold his arms underneath his body. T.G. left the bathroom stall and told an AMR medic that the plan was underway, so they needed to prepare the Ketamine. When T.G. returned to the room, officers had dragged Decedent out of the bathroom. T.G. heard one of the officers as he yelled, "He's not responsive." The officers were "pretty cognitive" of excited delirium. T.G. saw officers on the hips of the Decedent and not kneeling on his chest as they worked to get the arms out from underneath him.

Officers moved Decedent out into the hallway because the bathroom was too small. Once in the hallway, Decedent was placed on his back, and paramedics realized he had coded. They immediately began working on Decedent and he became responsive. T.G. did not know of any other way officers could have handled Decedent or whether the situation could have been prevented.

### **Paramedic M.P.**

On October 18, 2021, at approximately 5:57 p.m., Detective Scott Mendoza conducted an audio recorded interview with M.P.

M.P. worked as a paramedic assigned with CCFD and assigned to station 14. M.P. responded to a possible diabetic problem at the Walgreens at 6485 South Fort Apache Road. Upon arrival, M.P. observed through the locked bathroom stall door, Decedent on the floor. Decedent acted erratic, slapping the floor, slapping his stomach, and kept acting inappropriately. Once the stall door was unlocked, paramedics attempted to get Decedent to sit up and speak to them but he was uncooperative.

Paramedics were able to check Decedent's blood sugar, which returned normal, but Decedent would not comply with questions or any instruction. Decedent also had a box of Emergen-C® vitamin packets with him. He then ripped one packet open and poured it into his mouth dry, then drank water out of the toilet bowl. Once AMR was on scene, CCFD requested LVMPD get control of Decedent.

When LVMPD arrived, officers observed the same behavior of Decedent which CCFD had seen for the past 20 minutes. AMR, CCFD, and LVMPD officers devised a plan. The plan called for LVMPD officers to hold Decedent in place while AMR sedated Decedent to calm him down. Prior to AMR, CCFD, and LVMPD officers executing the plan, M.P. saw Decedent knock the toilet off the base and onto its side.

M.P. turned his back to Decedent when he heard an LVMPD officer say, "He left the toilet." Once he heard that, officers cornered Decedent in the bathroom stall. Decedent laid on his stomach and had locked his hands together underneath him. One of the officers had his shin across Decedent's lower back to try and control the main portion of his body. Officers were able to slide Decedent out of the bathroom and get him into handcuffs. As soon as Decedent was in handcuffs, he became unresponsive. M.P. saw officers as they dragged Decedent completely out of the bathroom and began resuscitation. The male was then transported across the street to Southern Hills Hospital.



Bathroom stall inside Walgreens with Emergen-C packets

## **Officer Witness Statement**

### **Officer P.L.**

On October 18, 2021, at approximately 5:07 p.m., Detective Marc Colon conducted an audio recorded interview with Officer P.L.

Officer P.L. was requested to assist officers at the Walgreens store at 6485 South Fort Apache Road. Decedent was in the Walgreens bathroom and was attempting to destroy it.

Once Officer P.L. arrived, he saw medical personnel from the fire department, AMR, and other LVMPD patrol officers attempting to remove Decedent from the Walgreens bathroom. Decedent was on his side. Part of his body was outside the bathroom, while the other half of his body was inside the bathroom. Decedent lay at the threshold of the bathroom door.

Officer P.L. saw an officer holding Decedent's arm and a firefighter at Decedent's waist area. Officer P.L. grabbed Decedent's pant leg and assisted in pulling Decedent from the bathroom. He also noticed Decedent had two pairs of handcuffs on.

Once Decedent was completely out of the bathroom, Officer P.L. took the handcuffs off and assisted in rolling Decedent onto a sheet. Medical personnel immediately started CPR. Officer P.L. went to his patrol vehicle to retrieve crime scene tape to secure the area.

## **Civilian Witness Statements**

### **D.B.**

On October 18, 2021, at approximately 5:09 p.m., Detective Mendoza conducted an audio recorded interview with D.B..

D.B. was a Pharmacy Technician at the Walgreens located at 6485 South Fort Apache Road when Decedent approached the counter and handed D.B. prescriptions to fill. D.B. had a conversation with Decedent. At first Decedent joked with D.B., but then D.B. saw Decedent's appearance change. Decedent started to sweat, wheeze and he appeared unwell. Decedent told D.B., he had been released from the hospital for food poisoning. D.B. found this odd since none of the prescriptions Decedent came to fill were related to food poisoning. D.B. told Decedent he would call for him when the prescriptions were ready.

Decedent took a seat near the pharmacy. D.B. looked up and observed Decedent slouching and moaning. D.B. contacted J.B., the manager, who came to the pharmacy area and spoke with Decedent. J.B. asked Decedent if he wanted him to call for an ambulance. Decedent responded "no." A female customer who was concerned for

Decedent, purchased a bottle of water for him. The pharmacy hurried to finish his prescriptions so Decedent could leave due to his appearance and behavior.

When Decedent's prescriptions were filled, D.B. looked for Decedent but he was no longer in the pharmacy area. D.B. was told Decedent was in the bathroom. D.B. went to the bathroom and heard Decedent near the sink in the bathroom. D.B. thought he heard Decedent throw up, so he did not enter the bathroom. D.B. went to the manager and informed the manager.

D.B. did not have any other interactions with Decedent and did not see him again until the paramedics brought him out of the restroom.

### **J.B.**

On October 18, 2021, at approximately 5:05 p.m., Detective Penny conducted an audio recorded interview with J.B.

J.B. was the manager of the Walgreens located at 6485 South Fort Apache Road. On October 18, 2021, J.B. was contacted by the pharmacy section for customer assistance. When J.B. got to the pharmacy, he was told by D.B. that Decedent, who was seated in a chair in the pharmacy area, was not feeling well. J.B. contacted Decedent who informed him he was a diabetic who had high blood pressure. Decedent told J.B. he just needed some water and to sit and rest. J.B. asked Decedent if he could contact somebody for him and Decedent stated "no," and further informed J.B. that he just needed a little bit of time to regain his composure. J.B. then went about his business.

As J.B. worked, several customers told him that there was a person not doing well in the back of the store. J.B. responded to the back and checked on Decedent who again stated he just needed time and refused medical attention or an ambulance. Decedent then went into the restroom. J.B. went into the restroom to check on Decedent after he realized Decedent was in the bathroom for a period of 10 to 15 minutes. When J.B. went into the bathroom, he observed Decedent lying on the ground inside of the bathroom stall.

J.B. asked Decedent if he needed an ambulance and was again told "no" by Decedent. J.B. attempted to get Decedent off the ground, but Decedent started "spouting off words and noises and stuff." J.B. was concerned and contacted 911 to have medical respond. J.B. observed medical personnel as they arrived to take care of Decedent. A short time later, J.B. observed police as they arrived at Walgreens.

J.B. was told by the police that he needed to close the business and get the customers out of the store. J.B. then observed paramedics doing compressions on Decedent.

## **BODY WORN CAMERA (BWC)**

Officers activated their BWCs at different times during the incident.

### **Sergeant Blum**

Sergeant Blum was wearing a BWC at the time of the incident and the camera was activated on October 18, 2021, at 1:39 p.m.

Sergeant Blum's camera footage depicted the following:

Sergeant Blum arrived at the Walgreens parking lot at 1:45 p.m. He exited his vehicle as another marked LVMPD Supervisor, Sergeant Bagaporo, also arrived. At 1:46 p.m., Sergeant Blum was directed to the pharmacy area. At 1:47 p.m., Sergeant Blum went to the bathroom area and spoke with medical personnel about their interactions with Decedent.

At 1:51 p.m., Sergeant Blum briefed medical staff as well as LVMPD officers of a plan to try and have Decedent exit the business and be trespassed or Legal 2000 him. Legal 2000 is when a person is a danger to himself or others, they are taken to the hospital for a medical hold. As Sergeant Blum spoke to the group, Decedent is heard yelling and making incoherent sounds. Sergeant Blum then entered the bathroom stall and saw Decedent as he drank water from the toilet bowl. Decedent then laid on the floor near the toilet and continued to yell.

At 1:52 p.m., Sergeant Blum attempted to speak with Decedent and approached the open stall door. Decedent laid on the floor with his upper body and head near the toilet. The toilet appeared to have been removed from the floor and was pushed to the far corner of the stall. Sergeant Blum asked, "Can we help you?" to which Decedent yelled "No!" Decedent then rolled onto his knees and appeared to throw up into the toilet. Sergeant Blum requested additional units due to Decedent's size. Sergeant Blum then devised a custody plan with those who were present.

Decedent continued incoherently screaming as he leaned over the toilet bowl which had been ripped from the base. Decedent had his head in the toilet as he threw a toilet brush backward. The toilet brush struck Sergeant Blum. Sergeant Blum asked Decedent to come out of the stall and speak with them and was told no.



Sergeant Blum BWC

At 1:56 p.m., Decedent told officers, “I’m gonna beat the fucking piss out of (unintelligible).” Decedent then moved from the toilet area in the bathroom stall to the other side of the stall. Sergeant Blum gave directions to the officers to move in and take Decedent into custody. Decedent was face down and Sergeant Blum moved to his legs to control them as another uniformed officer placed his right leg across the male’s buttocks and attempted to get him in handcuffs. Sergeant Blum requested a “Code Red” on the radio channel.

At 1:59 p.m., medical personnel were seen on BWC as they moved into the stall, waiting for officers to handcuff Decedent. Sergeant Blum gave direction to an officer to maintain his position across the lower back of the male. Sergeant Blum advised over the radio Decedent was still resisting and they could not get him into custody.

At 2:00 p.m., AMR and LVMPD grabbed Decedent by the legs and swung them toward the opening of the stall. They then slid Decedent out of the stall so medical personnel

could work on Decedent. As they slid Decedent out of the stall his arms came out from under his body and officers were able to place him in handcuffs. Officers rolled Decedent onto his side and placed him in the recovery position. Sergeant Blum attempted to talk to Decedent with no response.

At 2:01 p.m., medical personnel requested officers pull Decedent out of the bathroom and into the hallway. As they pulled him into the hallway, Sergeant Blum instructed the officers to remove the handcuffs from Decedent as he was turning purple. Within seconds of Decedent being removed from the bathroom, medical personnel began life saving measures.

At 2:09 p.m., Decedent was placed on the gurney by medical personnel and an AMR ambulance transported him to Southern Hills Hospital. Sergeant Blum's BWC continued to record as the scene was secured and additional resources responded. At 2:15 p.m., Sergeant Blum's BWC was deactivated.

### **Sergeant Bagaporo**

Sergeant Bagaporo was wearing a BWC and the camera was activated on October 18, 2021, at 1:39 p.m.

At 1:45 p.m., Sergeant Bagaporo arrived at the Walgreens and followed Sergeant Blum inside. Once inside, Sergeant Bagaporo arrived at the hallway which led to the restrooms. Medical personnel were in the hallway and briefed Sergeant Bagaporo on Decedent who was in the restroom. At 1:48 p.m., medical personnel informed Sergeant Bagaporo they were able to obtain hospital paperwork for Decedent which he had on him but no photo identification. Medical personnel then exited the restroom as Sergeant Bagaporo stayed in the doorway. Decedent continued to make loud noises and banged on the walls of the bathroom stall. At 1:51 p.m., Sergeant Blum entered the restroom with an officer and discussed a plan to take Decedent into custody and get him medical help.

At 1:54 p.m., a toilet brush flew from inside the stall and hit Sergeant Blum who was standing next to the open door of the stall. At 1:55 .pm., Sergeant Bagaporo kneeled on the ground, and it appeared on BWC he may have been trying to observe Decedent from underneath the stall. At 1:56 p.m., Sergeant Blum had a conversation with medical personnel about administering medication to Decedent.

At 1:57 p.m., Decedent crawled on his knees and moved away from the toilet to the opposite side of the stall and faced the corner. Decedent was asked if he was okay, and he stated yes. Sergeant Blum then directed the officers to move into the stall to take Decedent into custody. Sergeant Bagaporo moved into the stall behind a uniformed officer. Decedent laid face down on the ground with his head in the corner and his feet toward the toilet. Sergeant Blum grabbed Decedent's feet as the officer kneeled on the small of the male's back and attempted to grab his hands. Sergeant Bagaporo helped and attempted to pull Decedent's hands out from under his body. Decedent had his arms

tucked under his body and chest and made grunting and growling noises as the officers attempted to pull his arms out.

Decedent seemed to be biting on the toilet brush bowl as he grunted, and the officers continued to tell him to let them move his arms. Decedent stated he could not breathe, and the officers told him to give them his arms.



Sergeant Bagaporo's BWC

At 2:00 p.m., Sergeant Bagaporo exited the bathroom stall and was replaced by a uniformed officer. Medical personnel could be seen on BWC inside the stall as they grabbed the male by the legs and pulled him out of the bathroom stall. A voice can be heard telling the group to slow down and Decedent was giving up. A voice was heard which told the officers to unhandcuff Decedent so medical could work on the him because he was turning purple. Decedent was moved into the hallway as medical began working on him. A female voice could be heard asking if Decedent was breathing and the officers replied "no."

At 2:01 p.m., medical personnel rolled the male onto a sheet then pulled him from the hallway into the open area of the business. Once in the open area, medical personnel began life saving measures on Decedent. At 2:09 p.m., Decedent was placed on the gurney and taken to the ambulance outside. Decedent was placed in the back of the AMR ambulance and transported to the hospital. Sergeant Bagaporo's BWC continued

to record as the scene was secured and additional resources responded. At 2:22 p.m., Sergeant Bagaporo's BWC was deactivated.

### **Officer Garcia**

Officer Garcia was wearing a BWC and the camera was activated on October 18, 2021, at 1:40 p.m.

At 1:49 p.m., Officer Garcia arrived at the Walgreens. Officer Garcia entered the Walgreens and contacted Sergeant Blum who was speaking with a Walgreens employee. Sergeant Blum explained a plan to the officers and medical personnel. Screaming and loud noises could be heard from the bathroom past Sergeant Blum's location. At 1:51 p.m., Officer Garcia entered the restroom behind Sergeant Blum.

At 1:52 p.m., Officer Garcia leaned into the open door of the stall and saw Decedent. Decedent had his head near the open toilet bowl. Sergeant Blum asked Decedent if officers could help and Decedent appeared agitated and stated, "No!" Decedent then leaned over the top of the toilet bowl, which did not appear to be secured to the ground and made noises consistent with throwing up. At 1:53 p.m., Sergeant Blum requested additional units to respond over the radio. A toilet bowl brush was thrown at Sergeant Blum from inside the bathroom stall. Sergeant Blum asked Decedent to come out of the stall and speak with them and was told "nope" by Decedent.

At 1:55 p.m., Sergeant Blum informed Officer Garcia that Decedent had removed the toilet bowl from the ground and advised them to be careful. Decedent continued to yell incoherent phrases. At 1:57 p.m., while on his knees, Decedent moved away from the toilet and held what appeared to be the toilet bowl brush bowl in his left hand. He was on his knees as he faced the corner of the stall. As Decedent leaned forward and appeared to lay on his belly, Sergeant Blum gave instructions for the officers to move in the stall. Officer Garcia's BWC only observed the corner of the wall, but he appeared to be on top of Decedent. Sergeant Blum told Officer Garcia to keep his weight on the lower back of Decedent. Verbal instructions could be heard as the officers told Decedent to give them his arms.

At 2:00 p.m., another officer came into BWC view in front of Officer Garcia. The officers and medical personnel grabbed Decedent by the legs and waist and pulled him out of the stall. The officers were instructed to roll Decedent onto his side, as medical personnel requested Decedent be pulled out of the bathroom. Decedent was removed from the restroom and the handcuffs were removed. Medical personnel then moved Decedent down the hallway and into the Walgreens store and performed life saving measures. At 2:09 p.m., Decedent was placed on the gurney and taken to the ambulance outside. Officer Garcia's BWC continued to record as the scene was secured and additional resources responded. At 2:21 p.m., Officer Garcia's BWC was deactivated.

## **AUTOPSY**

On October 19, 2021, at approximately 9:50 a.m., Doctor Ben Murie performed an autopsy on the body of Decedent.

Doctor Murie noted several injuries to Decedent. He noted abrasions to Decedent's nose, lips, and left ear. He also noted abrasions to Decedent's right wrist, right hand, right arm, right forearm, right elbow, right thumb, right middle finger, and right palm. He noted multiple contusions on the Decedent's chest, upper right buttock, middle back, right flank, and left side abdomen, as well as contusions on Decedent's left arm, left forearm, left hand, right knee, and left knee.

The toxicology results showed Decedent had amphetamine, methamphetamine, norbuprenorphine and delta 9 carboxy THC in his system.

On March 2, 2022, after a thorough review of facts and circumstances and a complete autopsy, Doctor Murie opined Decedent died as a result of toxic effects of methamphetamine in the setting of police restraint. The manner of death was homicide.

## **IV. LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties that may have contributed to the cause of death of a person. Clark County Ordinance §2.14.010. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

NRS Chapter 200 defines crimes against the person. NRS 200.010 defines murder as the unlawful killing of a human being with malice aforethought, either express or implied.

NRS 200.020 defines malice as the deliberate intention to take away the life of another, as in the case of express malice, or when the circumstances of the killing show an abandoned and malignant heart, as in the case of implied malice.

In the instant case, there is no evidence of any intent to kill on the part of Sergeants Bagaporo and Blum or Officers Garcia and Ortega. In fact, the evidence indicates the opposite. All involved officers and medical personnel were trying to save the decedent's life at the time he died.

With regard to implied malice, the Nevada Supreme Court has suggested that the theory requires the defendant knew that the victim was in serious or mortal danger. See Labastida v. State, 115 Nev. 298, 307-8, 986 P.2d 443, 449 (1999) ("[t]here is insufficient evidence that she ever knew that her child was in serious or mortal danger prior to the time she telephoned for an ambulance" and thus "there is insufficient evidence to support

a reasonable inference that Labastida had the criminal intent required for a conviction of murder"). Applying that knowledge standard to the instant case, there is similarly no evidence that Sergeants Bagaporo and Blum and Officers Garcia and Ortega knew the decedent was in serious or mortal danger when they made the decision to place Decedent in custody. In fact, as they attempted to take the Decedent into custody, he continued to bite on the bowl from the toilet bowl brush. It wasn't until they laid the decedent in the recovery position that the officers observed the decedent had stopped breathing, at which time medical personnel immediately began administering CPR in an attempt to resuscitate him. Accordingly, there is no evidence of malice, either express or implied.

NRS 200.040 defines manslaughter as the unlawful killing of a human being without malice, either express or implied, and without any deliberation. In Nevada, manslaughter is a willful killing. What reduces the killing from murder to manslaughter is explained in NRS 200.050, which explains that for manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing "sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing." The factual situation in the instant case does not fit the crime of voluntary manslaughter.

NRS 200.070 defines involuntary manslaughter as the killing of a human being without any intent to do so in the commission of an unlawful act or "a lawful act which probably might produce such a consequence in an unlawful manner." Here, Sergeants Bagaporo and Blum and Officers Garcia and Ortega were not committing an unlawful act.

Accordingly, the analysis here turns to involuntary manslaughter committed by way of a lawful act, that being whether Sergeants Bagaporo and Blum and Officers Garcia and Ortega were committing a lawful act which probably might produce the killing of a human being in an unlawful manner. In regard to this theory of involuntary manslaughter, the Nevada Supreme Court has found that "in order to impose criminal liability for a homicide caused by negligence, there must be a higher decree [*sic*] of negligence than is required to establish negligent default on a mere civil issue." See Bielling v. Sheriff, Clark Cty., 89 Nev. 112, 113, 508 P.2d 546, 546 (1973) (citing People v. Penny, 44 Cal. 2d 861, 878, 285 P.2d 926, 937 (1955)) (internal quotations omitted). The mere civil negligence standard the Nevada Supreme Court referred to is established when a person owed a duty of care to another, breached that duty, and that breach was the legal cause of the other's injury which resulted in damages. See, e.g., Scialabba v. Brandise Const. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996). That civil standard of negligence appears to be consistent with the definition of "negligence" contained in NRS 193.018, which defines negligence as to "import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent person usually exercises in his or her own business." Nevada courts have not specifically defined criminal negligence as applied to the crime of involuntary manslaughter committed by way of a lawful act. Cf. Boyes v. State, No. 76856-COA, 2019 WL 4511616, at \*4 (Nev. App. Sept. 18, 2019)

(noting that appellant offered no support for proposition that “willful or wanton conduct, is equivalent to criminal negligence”). However, the crime of involuntary manslaughter committed by way of a lawful act is codified similarly in the State of Georgia as it is in Nevada. Georgia law, while not controlling, is illustrative. Courts in Georgia have determined that, to constitute involuntary manslaughter, the lawful act resulting in death must be performed with gross carelessness implying an indifference to consequences or be of such a nature to show a reckless disregard for the safety of others, as distinguished from lack of ordinary care. See Collins v. State, 66 Ga. App. 325, 18 S.E.2d 24, 24 (1941); see also Geele v. State, 203 Ga. 369, 369, 47 S.E.2d 283, 283 (1948).

The evidence in the instant case indicates that the officers showed care and concern for the wellbeing of the decedent, who was suffering from the apparent and extreme effects of a lethal dose of methamphetamine. Thus, the officers did not act in a manner that was even negligent, let alone, grossly negligent or reckless and likely to produce the killing of the decedent. Therefore, the evidence does not support charging any of the subject officers with the crime of involuntary manslaughter.

Because the conduct of Sergeants Bagaporo and Blum and Officers Garcia and Ortega was legal, their conduct does not fall within the state criminal statutes and, therefore, does not support the District Attorney’s Office charging them with a crime.

### **CONCLUSION**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Sergeants Bagaporo, Blum and Officers Garcia and Ortega were not criminal. 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 against Sergeants Bagaporo, Blum and Officers Garcia and Ortega.