



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Pedro Ramirez on June 20, 2017

INTRODUCTION

In the early morning hours of June 20, 2017, Las Vegas Metropolitan Police Department (LVMPD) officers responded to a domestic disturbance call at the Bella Vida apartments at 1111 S. Cimarron Road in Clark County, Nevada. The 911 caller reported hearing screaming and crying coming from the apartment. Officers arrived at the scene and eventually made contact with an adult female (M.M.) who appeared to be in distress. M.M. gave officers permission to enter apartment and look for the male subject. Officers Schakaford, Prior and Penney searched the apartment for the male who was believed to still be in the residence. Officers located Pedro Ramirez (“Decedent”) hiding in the master bedroom walk-in closet holding a large knife in his right hand. Officers gave Decedent numerous commands to drop the knife which were ignored. Decedent approached the officers with the knife and Tasers were deployed by Officers Prior and Penney. After Tasers were ineffective, Decedent charged toward Officer Prior with the knife in his right hand. Decedent was within a few feet of Officer Prior when Officer Prior shot at Decedent three times. Decedent was struck three times and was later pronounced dead at University Medical Center.

The Clark County District Attorney’s Office has completed its review of the June 20, 2017, death of Decedent Pedro Ramirez. 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 Officer Prior were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Prior. 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 March 9, 2018.

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

INCIDENT DETAIL

At 12:14 AM on June 20, 2017, Las Vegas Metropolitan Police Department officers were dispatched to a possible domestic violence call at the Bella Vida apartments at 1111 S. Cimarron Road, building 5, apartment 226 ("Cimarron Residence"). The 911 caller, A.S., told dispatch that he went to check on a female who texted her coworker, A.R., that she was in a fight with her husband and asked to be picked up at her residence. A.S. heard screaming coming from the residence. Later in the call, he told dispatch that he heard both a female and a juvenile yelling. A.S. broke a window in the residence in an attempt to enter the residence but was unable to open the window. He continued to hear screaming from the apartment. At 12:24 AM, A.S. told dispatch that the lights were off in the apartment and that he no longer heard screaming.

Between 12:24 to 12:26 AM, LVMPD Officers Kevin Schakaford and Kyle Prior, as well as Sergeant Brett Levasseur, arrived at the Cimarron Residence and attempted to make contact with the occupants; no one answered the door or the locked security screen. At 12:31 AM, Officer Christopher Penney arrived at the scene and was told by Sergeant Levasseur to use the public address (PA) system in his vehicle to contact the occupants of the apartment. After several minutes of knocking on the door, attempting to reach the occupants by phone, and using the PA system, an adult female, M.M., answered the door but left the security screen locked. M.M. told officers that everything was fine. Officers told M.M. she needed to open the security screen so they could check on her and make sure she was unharmed. Eventually, M.M. and her 4-year old son exited the apartment. She told officers no one else was in the residence. M.M. gave officers permission to enter her apartment to check if anyone else was in the residence.

Officers Prior, Schakaford and Penney entered the apartment in order to look for a possible male suspect. Sergeant Levasseur stayed in the doorway area to speak with M.M. Officer Penney located Decedent hiding in the master bedroom walk-in closet holding a large butcher knife in his right hand. Officer Penney backed out of the closet and issued several verbal commands to Decedent to drop the knife. Decedent refused the commands

and headed toward the officers. Officers Prior and Penney deployed their Tasers on Decedent but it had little effect on him. Decedent charged toward Officer Prior with the knife in his right hand. Officer Prior fired three shots at Decedent and hit him three times. After Decedent fell to the ground, Officer Penney kicked the knife away from Decedent's reach and attempted to handcuff him. Decedent resisted being taken into custody and told officers, "Just kill me." Officers attempted to render aid to Decedent and had him transported to University Medical Center ("UMC") where he was pronounced deceased at 2:01 AM.

INVESTIGATION

Information from Witnesses

I. Civilian Witnesses

M.M.

On June 20, 2017, M.M. told investigators that she was married to Decedent and lived with him and their juvenile son at the Cimarron Residence. On the night of June 19, 2017, M.M. stated she was watching television and began to argue with Decedent about something "small." The argument escalated and she was concerned that Decedent would get physically violent with her. She sent a text message to her friend, A.R., asking to be picked up in order to avoid further escalation of the argument. Once Decedent found out M.M. was leaving, he got even more upset and told her that he did not want to go to jail, grabbed a large cooking knife from the kitchen and paced around the apartment with it.

During the fight, M.M. said Decedent grabbed her neck from behind and covered her mouth and nose. M.M. said she was suffocating and scared so she bit Decedent's hand. Decedent threw M.M. to the ground. M.M. also stated she scratched Decedent's face during the altercation.

M.M. said she heard the police knocking but Decedent told her not to answer the door. Decedent told her that he was, "Not going back to jail." M.M. told Decedent that she would tell police that everything was okay. When M.M. eventually answered the door, Decedent was in the master bedroom. M.M. told the officers that everything was okay but gave them permission to enter the residence. Officers told her to exit the residence with her child. Less than a minute later, M.M. heard gunshots. M.M. told investigators that she never told officers that Decedent had a knife.

M.M. told investigators that Decedent was arrested one time for domestic violence a couple of years before this incident but there were additional, unreported physical

confrontations during the relationship. M.M. also told investigators that Decedent had not been drinking or using any drugs before the altercation and she was unaware of any mental illness that Decedent may have suffered. Investigators noted that M.M. had apparent injuries to her face



Photograph of M.M. on June 20, 2017 showing apparent injuries to her face

A.R.

On June 20, 2017, A.R. told investigators that she received text messages and several phone calls from her friend M.M. requesting that she come pick her up and that M.M. did not feel safe. However, M.M. would later communicate that everything was fine and that A.R. did not have to pick her up. After a phone call where M.M. whispered on the phone, "Come get me" and, "I need the police," A.R. decided to pick M.M. up from her residence. A.R. had been drinking alcohol so she asked her friend, A.S., to drive her to M.M.'s residence. On the way to the Cimarron Residence, A.R. called M.M. and heard screaming and a child crying. When they arrived at the Cimarron Residence, it was at first quiet but then she heard screaming and a child crying. A.R. thought she heard a physical struggle going on inside the residence. At that point, A.R. decided to call the police.

A.R. flagged down police officers and directed them to the residence. While police were trying to make contact with M.M. and Decedent, M.M. sent a text message to A.R. saying that she was okay and to tell the police officers that everything was okay. A.R. told M.M. via text message that she needed to talk to the officers. She did not see M.M. answer the door but later saw M.M. come down the outside staircase from her residence holding her child.

A.R. heard officers saying something like, "We just need to talk to you" and later "Drop the gun." She then heard four gunshots.

A.S.

A.S. told investigators that his friend, A.R., asked him to pick up a woman to get her away from a domestic violence situation. A.R. directed A.S. to the Cimarron Residence. On the way over, A.S. observed A.R. calling and texting someone. He heard screaming over the phone. When he arrived at the Cimarron Residence, he knocked on the front security screen which was locked. A.S. heard a woman and a child screaming from within the residence. A.S. called 911 and told dispatch that he heard people screaming from within the residence and that no one was responding to the door.

A.S. used a pocket knife to break a window by the front door in an attempt to gain entry into the residence but was unable to open the window. He yelled through the window that the police were on the way. A.S. heard more screaming but it sounded "muffled."

When officers arrived, A.S. was on the stairs near the residence and directed officers to the door where he heard the screams. A.S. observed officers try to make contact with the occupants of the residence with no response. He observed the lights in the residence turn on and off a few times while officers were attempting to make contact.

After some time passed, A.S. observed someone answer the door and saw M.M. exit the residence. He saw officers enter the residence and heard them announce themselves as police when they entered the residence. Shortly thereafter, he heard someone yell, "Drop the knife" twice and then three gunshots. After that he saw M.M. run down the staircase with a child.

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II. Law Enforcement Statements

Sergeant Brett Levasseur

Sergeant Levasseur told investigators that he heard the domestic disturbance call broadcasted over the radio and assigned himself to the incident. Upon arriving at the Cimarron Residence, he made contact with A.R. and A.S. Both witnesses told the sergeant that they heard screaming coming from the residence.

Sergeant Levasseur directed Officers Prior and Schakaford to make contact with the occupants of the Cimarron Residence but no one answered the front door. Officers reported that the lights in the apartment were going on and off. Sergeant Levasseur had Officer Penney attempt to make contact using his vehicle's PA system. The sergeant also tried to call M.M. with the number provided to him by A.R. but the call was unable to connect. A.R. informed Sergeant Levasseur that she received a text from M.M. that everything was okay and that the officers should leave. However, since it was a text message, Sergeant Levasseur feared it could have been Decedent using M.M.'s cellphone. During this time, Sergeant Levasseur noticed a small child looking out the bottom left-hand corner window of the residence.

Eventually, M.M. opened the front door but was still behind the locked security screen. Officer Prior told M.M. to open the security screen so that they could see her and make sure she was okay. M.M. opened the security screen and Sergeant Levasseur observed that she was crying and appeared to be scared. Sergeant Levasseur directed his officers to clear the apartment and asked M.M. where the male was in the apartment. M.M. did not verbally respond but directed her eyes toward the master bedroom area.

Officers Prior, Schakaford and Penney went to clear the Cimarron Residence while Sergeant Levasseur continued to speak with M.M. The sergeant heard officers yell "Drop the knife" and ran into the residence. As he arrived in the master bedroom area, he observed Decedent in the closet doorway holding a large knife. Sergeant Levasseur observed a Taser discharge and at least one probe striking Decedent. Decedent stumbled backwards but straightened back up in a short period of time. Decedent then, "Square[d] up," raised the knife and charged toward officers. Sergeant Levasseur heard three rapid gunshots and saw Decedent fall to the ground. The sergeant called for medical. He had

his officers secure the knife and place Decedent in restraints. Decedent continued to struggle with officers as they tried to put him in restraints and move him toward his side.

Sergeant Levasseur was in full patrol uniform including his badge during the incident.

Officer Christopher Penney

Officer Penney told investigators that he assigned himself to the domestic disturbance call at the Cimarron Residence. When he arrived at the Cimarron Residence, he made contact with Sergeant Levasseur who told him to turn his spotlight onto the residence and address the occupants with his vehicle's PA system. Officer Penney gave two verbal commands via the PA system for the occupants to exit the Cimarron Residence. Officer Penney observed a young juvenile look out the window after he gave the commands.

Once contact was made with the adult female occupant (M.M.), Officer Penney was told to help clear the residence with Officer Prior and Schakaford. When Officer Penney joined the other two officers they were in the process of entering the master bedroom. Officer Prior directed Officer Penney to clear the closet in the master bedroom. Officer Penney announced himself as "Metro Police" as he entered the walk-in closet. Officer Penney used his non-gun hand to move some clothes on the left-hand side of the closet and encountered the Decedent. Officer Penney told Decedent, "Let me see your fuckin' hands" and noticed that Decedent had a metallic object in his right hand. Decedent told Officer Penney that he had a knife.

Officer Penney backed out of the walk-in closet to try to create space between him and the armed Decedent. While backing out of the closet, Officer Penney gave commands to Decedent to drop the knife. At some point during the encounter, Officer Penney believed Decedent made suicidal comments such as, "I want to die."

As Decedent exited the closet he was ordered several times to drop the knife but he continued to hold on to it. Officer Penney heard Officer Prior deploy his Taser and he decided to deploy his Taser at Decedent as well. The Tasers appeared to have minimal effect on the Decedent and Decedent quickly appeared to be back to full function. Decedent charged toward Officer Prior while holding the knife and Officer Penney heard

two shots. Decedent fell down on his back and Officer Penney kicked the knife out of Decedent's reach.

Officer Penney, with Sergeant Levasseur's aid, placed restraints on Decedent. Officer Penney said Decedent told officers, "Just kill me."

Officer Penney was in full patrol uniform including his badge during the incident.

Officer Kevin Schakaford

Officer Schakaford told investigators that he was dispatched to a domestic disturbance call at the Cimarron Residence. When he arrived, he met with Sergeant Levasseur and another officer. Officers knocked on the door and announced themselves as police officers but no one answered. Officer Schakaford noticed that the lights in the kitchen area would turn on and off inside the apartment while officers knocked on the front door. When Officer Penney arrived at the scene, he used his PA system to try to get the occupants of the residence to respond to the door.

Shortly thereafter, an adult female (M.M.) answered the door. M.M. opened the security screen at the request of Officer Prior and told officers that she was okay. Officer Prior asked if anyone else was inside the residence and M.M. said no. Officer Prior asked if it was okay if they checked the residence and M.M. said, "Yeah, that's fine." Officer Schakaford went into the residence with Officer Prior and they were shortly joined by Officer Penney.

When officers entered the master bedroom, they announced themselves by stating, "Metro Police" and, "If you're here, make a sound." Officer Schakaford checked the bedroom including under the bed and did not find anyone. He observed Officer Penney enter the walk-in closet and heard him yell, "Let me see your hands." Officer Schakaford realized someone was in the closet and stepped toward the closet doorway. Officer Schakaford saw Decedent holding a knife in a threatening manner. Officer Penney said, "Put the knife down" but Decedent did not comply with the command. Eventually, Officer Penney deployed his Taser but Decedent kept coming toward officers with the knife. Officer Schakaford believed he fired one shot and heard other gunshots.

Officer Schakaford advised dispatch that shots were fired and attempted to restrain Decedent. Decedent resisted being taken into custody. Once Decedent was restrained,

officers began to render first-aid. Officer Schakaford exited the apartment and directed medical to the scene.

Officer Schakaford was in full patrol uniform including his badge during the incident.

SCENE WALK-THROUGH

On June 20, 2017, Officer Kyle Prior provided a walk-through of the scene in the presence of investigators.

Officer Prior told investigators that he approached the master bedroom and moved toward the left side of the closet. He had his handgun drawn when he entered. Officer Penney went into the closet first and gave verbal commands to Decedent who Officer Prior could not see from his position. He heard Officer Penney tell Decedent to "drop the knife." Decedent exited the closet and Officer Prior moved backwards, closer to the south wall and left of the closet. Officer Prior was approximately five feet from Decedent when Decedent exited the closet.

With his firearm still in his right hand, Officer Prior drew his Taser with his left hand and fired it at Decedent. The Taser did not seem to have any effect on Decedent. When Officer Prior deployed his Taser he believed another officer also had deployed a Taser. Decedent's knife was outstretched at about the stomach level when he continued to move toward officers. When the Taser did not have an effect, Officer Prior fired approximately three rounds from his handgun.

Officer Prior was in full patrol uniform including his badge during the incident as observed from body worn camera footage.

OFFICER WEAPON COUNTDOWNS

On June 20, 2017, Sergeant Levasseur and Officers Penney, Prior and Schakaford had their duty weapons counted down at LVMPD headquarters.

At the completion of the countdown it was determined that Officer Penney and Sergeant Levasseur did not fire their weapons. Officer Schakaford believed he might have fired one round and that his firearm was down one round. However, when compared to evidence at the scene, it does not appear Officer Schakaford fired a round during the incident (please see Description and Evidence from Scene Section for further detail).

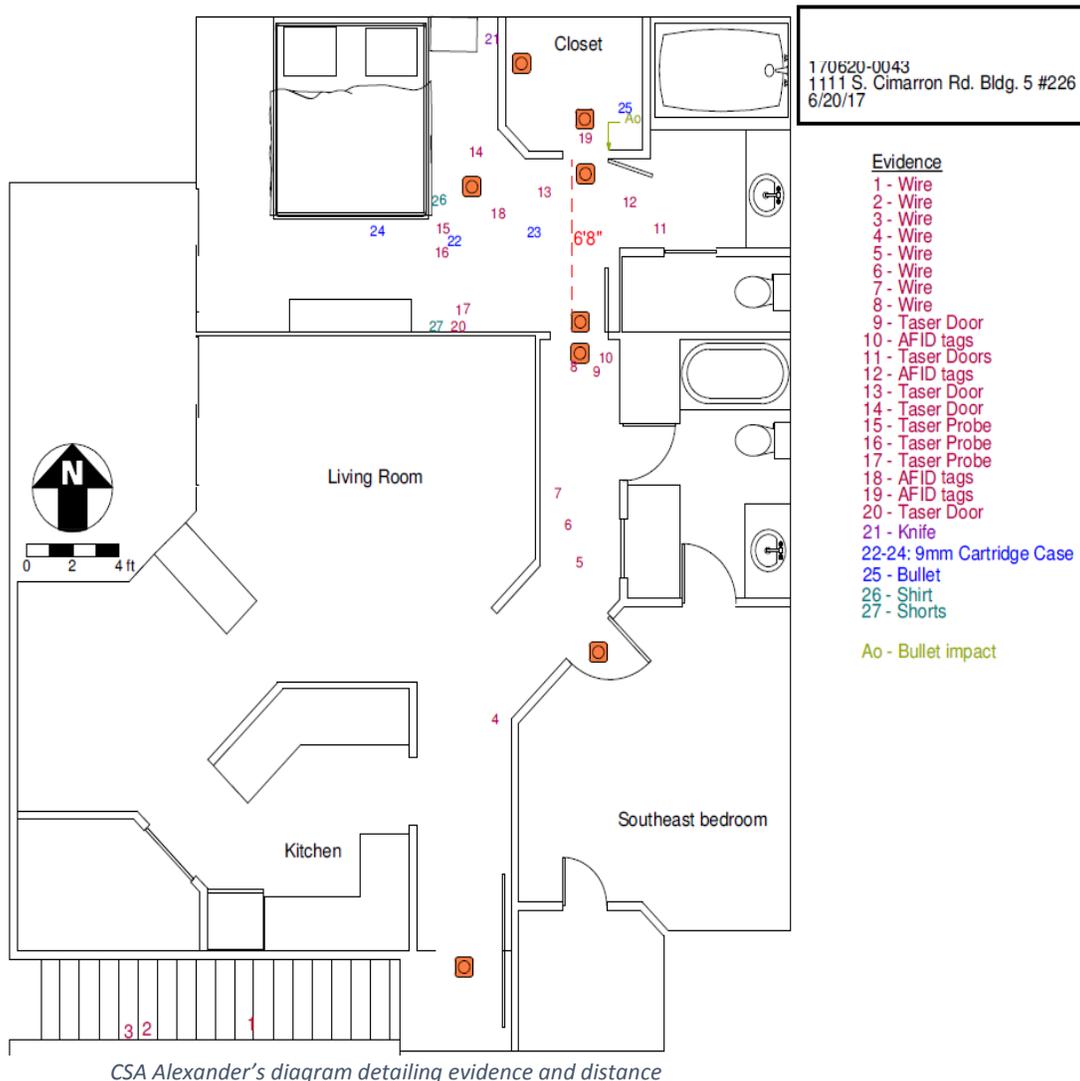
Officer Prior's firearm during the incident was a Heckler & Koch 9mm Luger semiautomatic pistol equipped with a flashlight. His ammunition was "SPEER 9mm Luger +P" cartridges. At the completion of the countdown, it was determined that Officer Prior had seventeen (17)

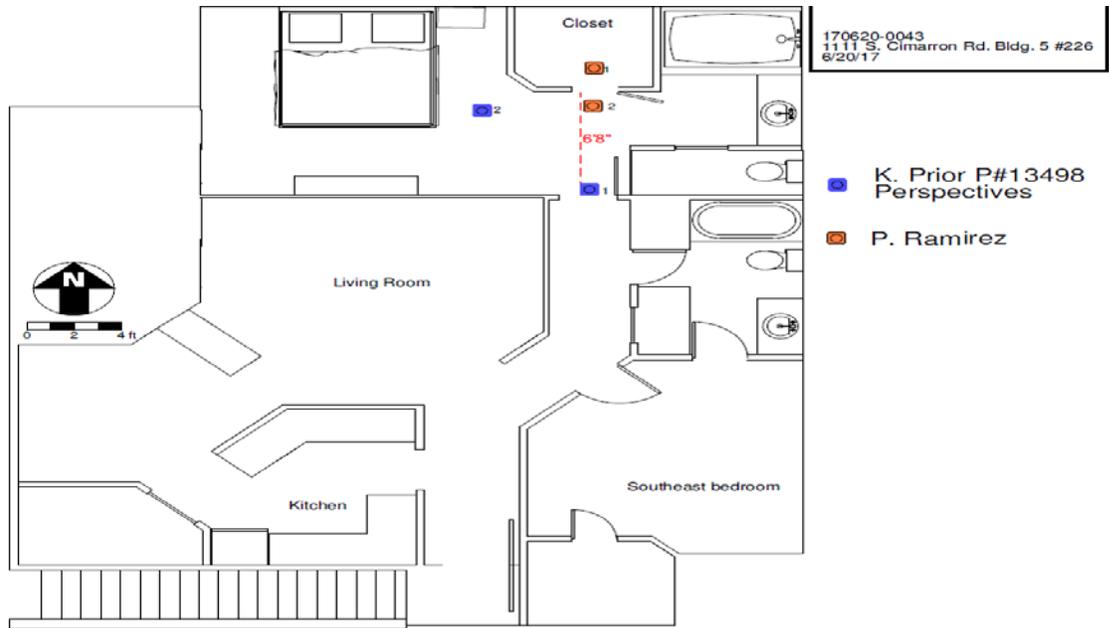
rounds remaining in his magazine and one (1) round in the chamber of his firearm. It was determined that Officer Prior discharged his firearm three (3) times.

On July 18, 2017, a download for Officers Penney, Prior and Schakaford's Tasers were completed. Officer Schakaford's device was not used during this incident.

Officers Penney and Prior's Taser devices were used on June 20, 2017 at 12:38 AM for the full five second duration. The download for both Tasers showed a completed circuit was made with the devices. A completed circuit means positive and negative connection was made but does not guarantee neuromuscular incapacitation occurred.

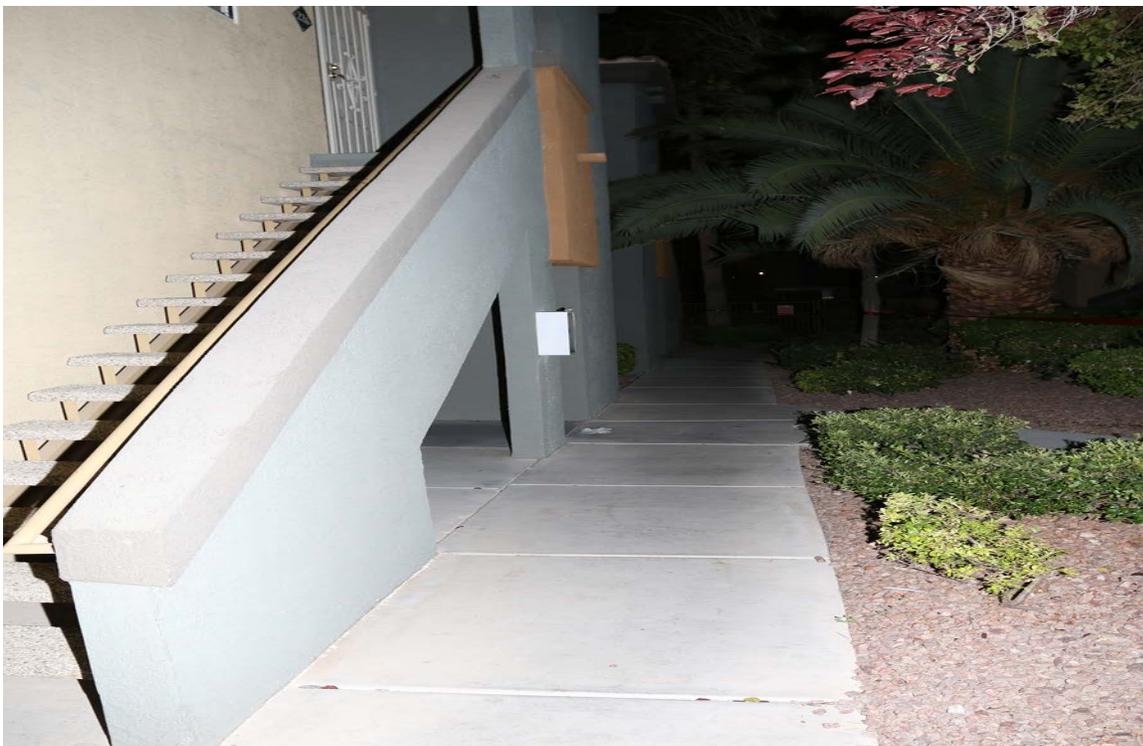
DESCRIPTION AND EVIDENCE FROM THE SCENE





CSA Alexander's diagram showing Officer Prior's perspective and distance

The Cimarron Residence was located at building 5 on the north side of the complex near the northwest corner. Apartment 226 was a second level southwest unit with a south facing entrance. There is an exterior stairway leading up to the front door.



Exterior staircase leading up to the front door of the Cimarron Residence

The front door of the Cimarron Residence opens into a foyer and the remainder of the residence consists of a southwest kitchen and dining room; west living room; central north-south hallway with a closet and bathroom on the east side; a southeast children's bedroom; and a northeast master bedroom with a bathroom and closet.

In the kitchen, investigators located a "Farberware" knife block with four empty slots. In the hallway and foyer area, investigators located several pieces of evidence related to the deployment of Tasers including a Taser cartridge and Taser wires.

In the master bedroom area, investigators located several additional pieces of evidence related to the deployment of Tasers including two gray Taser doors, AFID tags, Taser wires and probes. Some of these items had apparent blood on them. Investigators also located three expended cartridge cases bearing the head stamp, "SPEER 9mm Luger +P". A bullet was located inside the closet with a corresponding bullet impact. Clothes with apparent blood on them that were cut during medical intervention were also found in the room. Finally, a silver-colored metal "Farberware" kitchen-style knife with a blade measuring eight inches in length was located in the northeast corner of the master bedroom between the nightstand and the corner of the room.

Investigators measured the distance between the master bedroom closet doorway to the hallway wall at six feet and eight inches.



Positions of Officer Prior and Decedent

Officer Schakaford's firearm was a .45 caliber Glock that contained "SPEER 45 Auto" ammunition. Investigators did not find any evidence of that caliber firearm or ammunition being used during the incident.

FIREARM EXAMINATION

On July 31, 2017, Forensic Scientist Anya Lester issued Firearms & Tool Marks Report for this incident with her findings. Lester found that two of the 9mm cartridge cases found at the scene were fired by Officer Prior's firearm. The third cartridge case shared similar general characteristics with the test fired items from Officer Prior's firearm but due to a lack of individual microscopic marks, Lester was unable to make a conclusive identification.

BODY WORN CAMERA EVIDENCE

Sergeant Levasseur and Officers Penney, Prior and Schakaford were all wearing body worn cameras ("BWC") during the incident. Sergeant Levasseur's body camera was not activated until after the incident.

Due to the close proximity that Officers Prior, Schakaford, and Penney were to one another, their captured BWC footage was similar in content. Below is a brief summary of the captured BWC footage.

The camera footage depicted the officers enter, announce "Police" several times, and begin to clear the residence. The officers had their handguns drawn as they cleared the residence. Officer Prior entered the master bedroom and covered the walk-in closet which had the door closed. Officer Schakaford cleared the master bedroom to the left and Officer Penney cleared to the right.

Officer Prior opened the door of the closet and moved to the left. Officer Schakaford stood at the door to the bedroom and Officer Penney entered the closet to clear it. Officer Penney located Decedent inside the closet hiding behind hanging clothing. Decedent can be seen holding a large knife as he gets up from his hiding place. Decedent also stated to Officer Penney that he had a knife. Officer Penney backed out of the closet. Officers Prior and Penney gave verbal commands to Decedent to drop the knife and come out of the closet.

Officers Prior and Penney drew their respective Tasers with their left hands and discharged them at Decedent. The discharge had little effect on Decedent. Decedent then quickly exited the closet with a large knife in his right hand and lunged at Officer Prior who was located only a few feet away from the closet doorway. Officer Prior, who was holding his handgun in his right hand, fired his handgun three times at Decedent, who immediately fell to the ground.

Officers immediately took Decedent into custody, began medical intervention and requested medical personnel to the scene.



Still from Officer Prior's BWC before he fires his handgun (located in his right hand). A Taser is in Officer Prior's left hand



Still from Officer Prior's BWC at the point Decedent charged toward the officer with the knife and right before Officer Prior fired his weapon

AUTOPSY

On June 20, 2017, an autopsy was performed on the body of Decedent by Doctor Lisa Gavin of the Clark County Coroner's Office. Decedent had gunshot wounds to his left clavicle, left posterior shoulder and left groin. Doctor Gavin also noted that Decedent had injuries related to an electronic control device on his chest and upper left arm. Decedent also had blunt force injuries to his head, neck, torso and extremities. Doctor Gavin opined Decedent died as a result of multiple gunshot wounds

Per the Toxicology Report, Decedent was found to have only caffeine in his system at the time of death.

TIMELINE

Time	Description of Event / Action	Source
12:14 AM	A.S. called 911 and reported hearing a female screaming inside the Cimarron Residence	LVMPD Dispatch records
12:17 AM	A.S. reported to dispatch that he heard a female and a small child screaming inside the Cimarron Residence but did not hear a male voice	LVMPD Dispatch records
12:20 AM	A.S. is heard yelling for the occupants of the Cimarron Residence to open the door	LVMPD Dispatch records
12:22 AM	A.S. breaks the window over the stairs in attempt to enter the Cimarron Residence. He reports that he can still hear screaming from inside the residence.	LVMPD Dispatch records
12:24 AM	A.S. reports that the screaming has stopped	LVMPD Dispatch records
12:25 AM to 12:39 AM	Officers arrived at the Cimarron Residence and attempted to make contact with the occupants. Eventually, M.M. opened the door and allowed officers to enter the apartment.	LVMPD Dispatch records
12:39 AM	Shots fired was broadcasted and medical personnel were requested.	LVMPD Dispatch records

LEGAL ANALYSIS

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

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

I. THE USE OF DEADLY FORCE IN SELF DEFENSE/DEFENSE OF ANOTHER

The authority to kill another in self-defense or in the 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 self-defense [or 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 him [or the other person] or cause him [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense [or 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 himself [or 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 self-defense [or 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 self-defense [or 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 he [or 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 himself [or 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 self-defense or defense of another exists], the State must prove beyond a reasonable doubt that defendant did not act in self-defense [or defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to convict, the State must prove beyond a reasonable doubt that an individual did not act in self-defense.

In this case, Decedent was reasonably perceived to pose an imminent danger to Officer Prior. Officer Prior, along with his fellow officers, were responding to a domestic disturbance call. There was some information that a male was holding a female against her will. Officers tried several times to make contact with the occupants of the residence but initially were met with no response. When Officer Prior finally made contact with

M.M., the possible female victim, she was in obvious distress and allowed police officers inside the residence.

While inside the residence, Officer Prior and his fellow officers announced themselves numerous times and requested that if someone was inside the residence that they make a sound. While searching the master bedroom, Officer Penney encountered Decedent silently hiding in a closet while holding a large knife. Officer Prior was only a few feet away from Officer Penney and could hear Officer Penney give Decedent several commands to drop the knife. Decedent ignored the commands and kept heading toward officers with the knife in his right hand. As Decedent entered the doorway of the closet/master bedroom area, he was only a few feet away from the officers. Decedent ignored continued repeated demands to drop the knife. Officer Prior attempted to use non-lethal force to get Decedent to drop the knife by deploying his Taser. After the Taser was ineffective, Decedent charged directly at Officer Prior while holding the knife in a threatening manner. Officer Prior was in the master bedroom area away from the door and had no means to retreat away from Decedent's attack. Decedent was within a couple of feet of Officer Prior when the officer fired three rounds into the body of Decedent. Based on the close proximity of Decedent and the manner in which he used the knife, Officer Prior had no choice but to fire his weapon in order to protect his own life. Other officers were also within a few feet of Decedent and were realistically in danger as well. Therefore, Officer Prior's actions were justified under Nevada self-defense law.

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, at the time Officer Prior fired his weapon, the facts demonstrate that he had probable cause to believe that the Decedent posed an immediate threat of serious physical harm. Decedent was armed with a large knife and charged directly at Officer Prior with knife blade pointed toward Officer Prior. There was very little room, if any, for Officer Prior to move away from Decedent's attack. The circumstances demonstrate Officer Prior fired his weapon with a reasonable belief that Decedent was a threat to his life. In light of this evidence, Officer Prior's actions were legally 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 Officer Prior 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.