

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Donovan Kyle Anderson on September 22, 2015

Introduction

On September 22, 2015, the North Las Vegas Police Department (NLVPD) received a 9-1-1 call from D.U. who lived at 116 Spur Ranch Avenue. D.U. stated that his daughter, L.U., was arguing with her boyfriend, Donovan “Kyle” Anderson (Anderson), at his residence. Further, D.U. stated that Anderson had armed himself with a 20 gauge shotgun and had threatened to kill D.U. At the time of the 9-1-1 call, D.U. stated that his daughter’s three minor children were inside the home. The children were six-years-old, two-years-old and 7-months-old.

Uniformed North Las Vegas Police Department (NLVPD) officers arrived at the Spur Ranch residence. Shortly after officers arrived at the home, D.U. was able to leave his residence. L.U. followed with her 2-year-old daughter. The 6-year-old and 7-month-old children were still inside the residence with Anderson, who was armed with a 20 gauge shotgun.

The NLVPD Special Weapons and Tactics (SWAT) unit was called to respond because Anderson was now a barricaded suspect, armed with a loaded shotgun, and had threatened to kill family members (D.U. and L.U.) and “shoot police officers.” L.U. told officers that she was concerned for the safety of her two children who remained in the home and that Anderson was, in her opinion, under the influence of methamphetamine.

NLVPD SWAT officers took positions around the 116 Spur Ranch residence. Sometime later, Anderson exited the residence to the front porch area armed with a loaded 20 gauge shotgun. Anderson raised the shotgun and aimed it at officers. Shots were exchanged between officers¹ and Anderson. Officers Jason Scarale (Scarale) and Drew Albers (Albers) were struck, as was Anderson. Anderson suffered fatal gunshot injuries. Officers Scarale and Albers were treated at the scene by medical personnel for what turned out to be non-life threatening injuries inflicted by Anderson.

The Clark County District Attorney's Office has completed its review of the September 22, 2015, death of Anderson. 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 Jason Scarale and Drew Albers 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 Officers Jason Scarale and Drew Albers. 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 January 6, 2017.

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 North Las Vegas Police Department or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

I. INCIDENT DETAILS

At 5:09 p.m. on September 22, 2015, NLVPD received a 9-1-1 call from D.U. who reported that Anderson was at his residence, located at 116 Spur Ranch Avenue, causing a disturbance. D.U. advised police that Anderson was armed with a shotgun and had threatened to kill family members. D.U. advised police that three (3) minor children were also in the home.

Uniformed officers of NLVPD responded to 116 Spur Ranch Avenue and set up a perimeter around the residence. Based upon the barricaded suspect, the presence of multiple persons being held against their will, and the target of threats by Anderson, NLVPD called out their SWAT unit. Soon thereafter, SWAT took operational control over the situation.

¹ Investigation concluded that Officers Albers and Scarale fired their weapons during this incident.

D.U. and his adult daughter, L.U., were able to leave the home safely along with one minor child. Immediately, D.U. and L.U. told police that Anderson was armed with a loaded shotgun and a large knife, and he had threatened to shoot police officers if they showed up at the scene. Additionally, they advised officers of their belief that Anderson “was coming down from meth” based upon his aggressive and violent behavior. D.U. and L.U. also advised officers that two minor children - - a 7-month-old baby in a high chair in the kitchen and a 6-year-old child upstairs in the master bedroom - - were inside the home.

All SWAT officers gave recorded statements to investigating detectives. Officers Albers and Scarale were the only two officers who observed the conduct of Anderson. Therefore, the details listed below are derived from those statements and the physical evidence at the scene.

Based upon the ongoing risk to the imprisoned minor children still inside the home, several SWAT officers took up positions near the front door to effectuate an entry team if necessary. SWAT officers positioned themselves 7-10 yards from the front door of the residence. Officers soon thereafter observed two surveillance cameras positioned at the front door of 116 Spur Ranch.





Soon after taking their positions, SWAT Officer Drew Albers noticed that Anderson was using a key fob to lock and unlock the doors of a vehicle immediately accessible from the front doors of the residence. Officers were concerned that Anderson was making preparations to exit the residence to access the vehicle and flee the scene.



Approximately five minutes later, Officer Albers observed Anderson at the open front door of the residence; he was looking across the street. Officer Albers observed that Anderson was holding the loaded shotgun. Officer Albers immediately advised nearby SWAT officers of the presence of the shotgun. While verbalizing this threat, Anderson turned towards Officer Albers and made direct eye contact with the officer. Anderson then raised the shotgun in a position to fire the weapon.

Officer Albers began firing his Colt rifle at Anderson. After firing a few shots, Officer Albers heard and saw Anderson fire a shotgun round towards him and felt a “stinging sensation” in his right shoulder; Officer Albers believed he had been struck by a portion of the shotgun blast.

Officer Albers saw Anderson move back towards the residence and lost sight of him. Immediately after losing sight of him, Officer Albers heard another shotgun blast. Officer Scarale fired several times from his duty weapon at Anderson. Another shotgun blast was heard from Anderson’s weapon. Officer Scarale was struck by a portion of the shotgun blast from Anderson’s weapon.

Officer Albers turned the corner and saw Anderson lying on the ground. He fired a round at the chin area of Anderson. After that shot, Officer Albers was confident that Anderson was deceased.

Forensic examination of the primary scene confirmed the exchange of multiple rounds by SWAT officers Albers and Scarale with Anderson in the general location of the front door area of 116 Spur Ranch Avenue.

II. CIVILIAN WITNESSES

L.U.

L.U. was interviewed and told detectives she was a former girlfriend of Anderson and had several children with him. She believed him to be “coming down from meth” prior to his contact with police. She noted that Anderson’s behavior was, on this particular day, consistent with what she had observed in the past – that he was acting erratically and was verbally and physically aggressive/violent.

Anderson became verbally abusive towards L.U. while in her home. Anderson threatened to kill L.U.’s father if he called the police. These threats were made while Anderson had in his possession a loaded 20 gauge shotgun.

L.U. was with police at the time the fatal gunfire was exchanged between SWAT officers and Anderson. L.U. immediately asked a police officer, “Did you guys kill that motherfucker?” L.U. explained she was referring to Anderson and hoped police had killed him.

D.U.

D.U. was the father of L.U. and knew Anderson as the on-again/off-again boyfriend of his daughter. D.U. and his wife had evicted Anderson from their home on multiple occasions for inappropriate behavior towards them and their daughter. Further, D. U. reported, and police records confirmed, that D.U. had called police on multiple occasions to have Anderson removed from their home.

On the night in question, D.U. heard Anderson yelling and using vulgarities at his daughter in the downstairs portion of his home. D.U. responded to that location and demanded that Anderson leave the home. Anderson told D.U. not to get involved in their argument. D.U. told Anderson that L.U. was his daughter; they were in his home, and three minor children were also inside the residence.

D.U. observed Anderson put a 20 gauge shotgun on his shoulder and state, “Fuck you. I’m going to shoot you, I’m going to kill you.” D.U. immediately called 9-1-1 and advised operators of the relevant facts, including that Anderson was armed with a loaded shotgun and the presence of three minor children in the residence.

Approximately five (5) minutes later, D.U. saw police arriving at his home. Soon thereafter, he was directed by police to leave the residence, which he did, along with his daughter, L.U., and one minor child.

Immediately after leaving the home, D.U. briefed police as to the facts outlined above.

Investigating officers interviewed neighbors in the immediate vicinity of 116 Spur Ranch Road. While several neighbors heard voices and ultimately multiple gunshots, no one saw or heard anything specific to the facts leading up to or during the shooting.

III. WEAPON COUNTDOWNS

All SWAT officers’ weapons were checked to ascertain if any were fired during this event. This investigation involved all officers and all of the weapons they carried that evening. The investigation revealed that only two officers fired their weapons – Officers Scarale and Albers. The officers fired rifles only. The result of the relevant portion of the weapon countdown is listed below.

Additionally, the investigation revealed that Anderson fired a 20 gauge shotgun three times.

A. ANDERSON’S WEAPON

Investigation revealed Anderson fired a Maverick Model 88 20 gauge shotgun three (3) times during the shootout with SWAT officers. An additional spent 20 gauge round was found inside the home, but it was unlikely that it was fired during this altercation.

B. OFFICER SCARALE

Examination of Officer Scarale’s weapons indicated that he fired one weapon – a Colt M4 rifle. Examination revealed that the weapon was in a condition of a malfunction. A .223 round was stuck in the ejection port area of the weapon. Damage was noted on the right side grip area consistent with being struck by shotgun ammunition fired by Anderson.

The countdown revealed that Officer Scarale fired five (5) rounds from this rifle.

C. OFFICER ALBERS

Examination of Officer Albers' weapons indicated that he fired one weapon – a Colt M15A2 rifle. Further examination indicated that Officer Albers fired 16 rounds from this weapon.

Two .223 cartridge cases could not be located at the primary residence or the surrounding areas. Extensive efforts were made to locate these missing cartridge cases but to no avail.

IV. AUTOPSY RESULTS

Anderson suffered several gunshot wounds to his person. The Clark County coroner concluded that Anderson died from multiple gunshot wounds and listed the manner of death as homicide.

The toxicology report identified nine (9) positive findings from Anderson. These substances are as follows:

1. Amphetamine	71 ng/ml
2. Methamphetamine	960 ng/ml
3. 7-Amino Clonazepam	470 ng/ml
4. 11-Hydroxy-Delta – 9 THC	1.8 NG/ML
5. Delta-9 Carboxy THC	64 ng/ml
6. Delta – 9 THC	1.1 NG/ML
7. Dihydrocodeine/Hydrocodol	24 ng/ml
8. Hydrocodone	140 ng/ml
9. Hydromorphone	43 ng/ml

The toxicology report reflected that Anderson was under the influence of a combination of drugs: clonazepam, methamphetamine, hydrocodol, hydromorphone and marijuana. The results indicated both acute and chronic use of the aforementioned drugs. The majority of the drugs used by Anderson were depressants/opiates and are frequently abused by recreational users.

The autopsy report stated the ingestion of methamphetamine levels between 200-600 ng/ml “have been reported in methamphetamine abusers who exhibit violent and irrational behavior.” Anderson’s methamphetamine level was: 960 ng/ml.

LEGAL ANALYSIS

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

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide and NRS §171.1455 – Use of Deadly Force to Effect Arrest).

The shooting of Anderson 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. Additionally, the shooting was arguably justified under the parameters set forth in N.R.S. 171.1455. These will be discussed in detail 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.² 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:

² 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.

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

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and,
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that 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, Officers Scarale and Albers observed Anderson with a loaded 20 gauge shotgun. Anderson was observed by Officer Albers raising the shotgun to fire the weapon at Officer Albers and/or other officers. Fearing for his own life, Officer Albers fired his rifle multiple times at Anderson. Anderson was successful in firing his shotgun three (3) times at SWAT officers. Officer Scarale also observed and heard Anderson fire the shotgun at officers, and he too fired his weapon based upon the threat of imminent death

to officers. Anderson's conduct established imminent danger that Anderson would either kill the officers or cause them great bodily injury. Thus, it was absolutely necessary under the circumstances for the officers to use deadly force for the purpose of avoiding death or great bodily injury. Accordingly, each officer fired their respective weapon in a manner and under circumstances that were legally justified under the laws of the State of Nevada.

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, Officers Scarale and Albers described events which would demonstrate probable cause to believe that Anderson posed a threat of serious physical harm to the officers and others. Anderson was armed with a loaded 20 gauge shotgun and was firing that weapon at officers. Both officers had non-life-threatening injuries consistent with being hit by the shotgun rounds. Additionally, two minor children were present in the home while Anderson was armed with the 20 gauge shotgun, under the influence of drugs, and engaged in a shootout with police. The threat to the lives of the officers and the children justified the use of deadly force by the officers.

C. Use of Deadly Force to Effect Arrest - N.R.S. 171.1455

N.R.S. 171.1455 states an officer, may, if necessary, use deadly force to effect the arrest of a person if there is "probable cause to believe that a person: (1) committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or (2) poses a threat of serious bodily harm to the officer or to others."

As outlined above, Officers Albers and Scarale had a reasonable belief that Anderson posed a threat of serious bodily harm to themselves or others, and that he had previously threatened the commission of violent felony offenses on the occupants of 116 Spur Ranch. D.U. observed Anderson put a 20 gauge shotgun on his shoulder and state, "Fuck you. I'm going to shoot you, I'm going to kill you." He had threatened to harm other family members as well. Anderson shot both officers. Two minor children were present in the home while Anderson was armed with the 20 gauge shotgun, under the influence of drugs, and engaged in a shootout with police. Accordingly, the provisions of N.R.S. 171.1455 authorized Officers Albers and Scarale to use deadly force to stop the immediate threat confronting them and the children, and to use deadly force to effectuate the arrest of Anderson.

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, this report concludes that the actions of Officers Albers and Scarale 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 Albers and Scarale, and, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.