

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Bryan Bauer on July 4, 2015

INTRODUCTION

On July 4, 2015, Bryan Bauer (hereinafter "Decedent") was shot and killed by Henderson Police after Decedent fired his weapon multiple times while inside his hotel room and then exited the room carrying a firearm. The incident took place at the Hilton Garden Inn, located at 1340 Warm Springs Road, Henderson, Nevada.

During this time period, Decedent was living with his longtime girlfriend, A.S. The two had been dating for approximately six (6) years. During the several weeks preceding this incident, Decedent had become extremely paranoid. While at home, Decedent imagined there were people hiding in the attic and were after Decedent. Decedent couldn't explain to A.S. what these "people" wanted from Decedent, or why he felt that "people" actually were in the attic. This paranoia caused Decedent to leave the residence and stay at local hotels to feel safe. These hotel stays occurred several times over the weeks leading up to July 4, 2015.

The night prior to the shooting, Decedent believed people were inside of their house; he needed to go to a hotel to be safe. A.S. wanted to help Decedent, so she agreed to go with him to the hotel. Before leaving, Decedent asked A.S. to bring her handgun. Six months prior to the incident, Decedent purchased a handgun for A.S., telling her she needed it for her safety. A.S. later told police that, according to Decedent, he wanted A.S. to bring the gun because he wanted to take her to the shooting range in the morning to teach her how to use it. The two left their home and checked into room #124 at the Hilton Garden Inn.

In the early morning hours, Decedent became paranoid again and said he could hear people outside the door. Decedent also believed people were inside the room. Decedent ultimately sprayed bear repellent inside of the hotel room and subsequently took out the firearm that A.S. had brought to the hotel. Eventually, A.S. left the room and reported to the hotel front desk employee that she needed to contact 911. The employee contacted 911. A minute later, Decedent contacted the same employee via telephone and advised her that she needed to get the police to the hotel immediately.

Multiple police officers responded to the hotel, including several SWAT officers. From the point Henderson Police Department arrived on scene, Decedent fired several rounds inside his hotel room and out of the room towards the parking lot. In addition, he made several statements to the effect of “put down your weapons,” “here I come, here I come,” “get the fuck out of here,” “I can’t take it anymore,” and “please come help me, police.”

Originally, first responding patrol officers set up outside of Decedent’s room in case he made the decision to exit. Once SWAT officers and the crisis entry team arrived they relieved patrol officers and took position outside of the room. During this time period a plan was being devised to protect citizens, officers, and Decedent. The plan was for a “BearCat”¹ to be parked outside of Decedent’s window to stop any and all bullets that Decedent was shooting outside. Once the BearCat was safely in place, officers could use the “PA” system to communicate with Decedent. However, law enforcement never received the chance to do so.

Approximately 1035 hours, SWAT Officer Harper was located outside Decedent’s hotel room in the hallway. He could hear Decedent yelling as though he was just inside of the hotel room door. Officer Harper heard Decedent yell something to the effect of, “Well fuck it.” The door handle could be heard moving, and Officer Harper observed the hinged side of the door separate from the frame as though the door was opening. Officer Harper announced that the door was opening and Decedent quickly rushed out of the room, turning east down the hallway towards SWAT officers. Officers Harper and Shields observed Decedent carrying a black backpack in his left hand and a black handgun in his right hand. Due to the close proximity - - less than ten (10) feet - - officers did not have time to give verbal commands to tell Decedent to stop. Officer Harper pulled his trigger two times, in full automatic mode, which shot two bursts of .223 rounds at Decedent. Officer Shields fired one round from his handgun. Decedent stopped moving, dropped the gun, twisted clockwise, and fell into the hallway with his head at Officer Harper’s feet.

Officer Shields holstered his weapon and, with the assistance of Officer Delgado, grabbed Decedent by the arms and dragged him down the hallway and out to the parking lot. During this time period, other officers notified dispatch to have the staged Fire Rescue 82 respond to the north parking lot to attend to Decedent. Fire Rescue 82 transported Decedent to Sunrise Hospital where he later succumbed to his injuries.

INFORMATION REGARDING DECEDENT BRYAN BAUER



Decedent Bryan Bauer was a 36-year-old male who lived in Las Vegas with his girlfriend A.S; the two dated for six years. Decedent and A.S. lived in a residence purchased by A.S. in the Las Vegas area. According to A.S., Decedent was working at a company called Promo Direct for four to five years and was doing very well. She believed him to be one of their top sales associates, and Decedent’s sisters confirmed that he had been their top sales associate for three years in a row. According to A.S., Decedent quit his job two months ago, telling her he did so because he felt he needed to deal with his anxiety and stress issues and focus on working them out.

¹ A “BearCat” is a Ballistic Engineered Armored Response Counter Attack Truck. These trucks are commonly used to transport tactical officers to and from hostile situations and assist with recovery and protection of civilian’s in harm’s way.

A.S. stated that within the six weeks prior to Decedent's death, Decedent became severely paranoid. He believed he was being followed and there were people in their home. He put up a camera in their residence and would continuously check the camera. Decedent did not believe he was safe at home, so it was common for him to leave the home for days at a time, often staying at random hotels. Decedent also spent several nights at local taverns and bars playing Keno; that was the only way he could get his mind to calm down. Along with installing a camera and an alarm, he also carried cans of "bear spray" around the house for protection.

A.S. did not believe Decedent was taking illegal drugs. She knew he was being treated by a physician for a back injury and had been prescribed Oxycodone. She also knew him to be going to a methadone clinic daily where they would treat him, prescribe him Methadone, and randomly drug test him.

C.C. was employed at Promo Direct and worked with Decedent. C.C. stated that Decedent was a very hardworking, successful sales associate for the company. However, around May, C.C. started seeing changes in the way Decedent was acting. C.C. stated that it started out with him coming in late, always seeming very tired, and buying needless items in large amounts online, and culminated with him finally no-showing for work. Shortly thereafter, he was let go by the company.

Around June 7th, C.C. got a call from Decedent saying that he needed to speak with him. C.C. picked Decedent up, and Decedent immediately started crying saying that he just wasn't himself. He explained that he was taking Xanax and Methadone, but the Methadone was making him really sick so he tried to wean himself off of it. He admitted that he had smoked methamphetamine as well.

Decedent discussed his paranoia with C.C. He told C.C. he didn't feel safe at home and it was common for him to stay at hotels. Sometimes, Decedent didn't even feel safe doing that so he would park his vehicle at one hotel, and then take a cab to a different hotel where he would stay the night. C.C. told Decedent he needed to tell his girlfriend, A.S., what was going on with him. C.C. then drove Decedent to where A.S. was located so Decedent could discuss his issues with A.S. After Decedent did so, he went back to C.C.'s house, stayed for two nights, and then returned home. According to C.C., Decedent seemed to be doing much better up until about two weeks before the incident. C.C. got a call from A.S. saying that Decedent wasn't coming home at night and his paranoia had gotten out of control. C.C. never heard from Decedent again, except for a text message he received from Decedent showing a Keno winning.

D.N. was the office manager at Promo Direct. She advised that the company fired Decedent on May 26, 2015. He was with the company since August of 2011. In February 2014, Decedent had a verbal altercation with a supervisor. It was during a disciplinary meeting where Decedent informed them that he had a prescription pill addiction. The company sent him to Desert Treatment Clinic for help with the addiction. After going to the treatment facility, Decedent started using Methadone to cure his addiction. However, in early 2015, Decedent became undependable at work. He either called in sick or showed up late all the time. When they brought Decedent in to tell him that he was being fired, he became very emotional and begged them to keep him as an employee; he promised he would change. The company agreed to give him another chance, nothing changed, and he was fired.

D.M. and C.B. are Decedent's sisters. Both describe their brother as a "drug addict." C.B. lives in Washington so her contact with her brother was minimal in comparison to D.M. who lives in Las Vegas.

C.B. felt that her brother was violent, had a temper, and was manipulative. Her relationship with her brother was not a close one, and she did not have very much contact with him. She did believe him to be drug free since the move to Las Vegas.

D.M. stated that her brother was clean for the past five years and was routinely at her home spending time with her and her family. However, before Decedent lived in Las Vegas, he lived in Washington and had a serious addiction to pills. Decedent got into trouble in Washington, had gone to prison, and received drug treatment. Since he had moved to Las Vegas, they believed him to be clean and doing well.

PREVIOUS CRIMINAL CONDUCT COMMITTED BY DECEDENT

Decedent is a two-time felon out of Washington for drug and domestic violence convictions. Additionally, Decedent has two gross misdemeanor convictions for assault.

LAYOUT OF HILTON GARDEN INN AND SURROUNDING PROPERTIES



Decedent's room location indicated by red oval.

OVERVIEW OF SURROUNDING FACTS

INFORMATION RECEIVED BY CITIZENS

A.S.

As aforementioned, A.S. was the girlfriend of Decedent. A.S. stated that in the two weeks before the incident, Decedent's paranoia had become out of control.

On July 3rd, A.S. and Decedent went to breakfast. While they were eating, Decedent checked the cameras at the house where he heard one of the dogs barking. He immediately left so he could check on the house. After he checked their home, he returned to the restaurant to pick A.S. up and they returned home together. Decedent was convinced that people were trying to break in the home or that they were already in the home. He told A.S. to get "things" out of his "Army" box, but Decedent had never been in the Army. He was also carrying bear spray.

A.S. told Decedent they should leave the house and go to Wet 'n Wild waterpark; Decedent agreed. They were there all day and didn't return home until evening. Around 2000 hours or 2100 hours, Decedent thought there was somebody in the home again. He had A.S. check all of the rooms in the house, and then he pretended to be on the phone with police so the person whom he believed to be in the house would know he was on the phone with 911. It finally got so bad that Decedent and A.S. left the house and checked in at the Hilton Garden Inn located at 1340 West Warm Springs Road at 2:00 a.m. Before leaving the house, Decedent told A.S. she needed to bring her handgun because he was going to take her to the shooting range in the morning.

After arriving at the hotel, the two were intimate and A.S. fell asleep. Decedent seemed to be doing much better and the paranoia had subsided. However, in the morning when A.S. woke up, Decedent believed there were people outside the door. Shortly after 0700 hours, Decedent called the front desk and spoke with K.R. He told K.R. there were people outside his door making noise. K.R. asked maintenance to run by the room and check, but there was nobody there.

A short time later, Decedent became even more paranoid and thought there were people inside the closet. Decedent started yelling for them to get out of the closet. He then used a can of bear repellent spray and sprayed the outside of the closet door. This caused the room to be filled with repellent. Both Decedent and A.S. began to feel the effects of the spray. Decedent then took A.S.'s gun, knelt down next to the bed, and pointed the gun at the closet. Decedent told A.S. to get her things and get out of the room, which she did immediately.

At approximately 0858 hours, A.S. can be seen on surveillance video walking by the front desk. A.S. was carrying her clothing in her arms and rubbing her eyes. A.S. took a seat in the lobby and was seen rubbing her face and her eyes, irritated by the repellent spray.

At approximately 0901 hours, A.S. approached the front desk and spoke with the front desk clerk K.R. A.S. told K.R. she wanted to check out of the hotel; she also informed K.R. that her boyfriend was still in the room. K.R. told her that if she checked out, her room key would no longer be active; thus, if her boyfriend left the room, he would not be able to gain reentry. A.S. told K.R. she would just let Decedent check out when he was ready, and A.S. left the hotel.

At approximately 0908 hours, A.S. re-entered the hotel lobby, approached the front desk and spoke with K.R. again. A.S. told K.R. that her boyfriend was in the room and was having an anxiety attack.

She requested that K.R. send security to check on Decedent. K.R. informed A.S. the hotel did not have security but maintenance would be sent. A.S. told K.R. that would not be safe and the police should be called. According to A.S., she was afraid if maintenance went to the door Decedent might be paranoid and think that maintenance was an individual “after” him, and thus attempt to shoot the maintenance worker.

A.S. then went home, grabbed her dogs, packed her things, and went to a friend’s house because she no longer felt safe around Decedent. She stated she wasn’t fearful of him specifically, but was unsure of how his paranoia was affecting him and what he might do to her or the dogs.

At approximately 0917 hours, Henderson police dispatchers called A.S. on her cellular phone. A.S. advised the dispatcher that Decedent was in room #124 and was suffering from severe paranoia. Specifically, she told them Decedent thought someone was following him and that someone was hiding in the hotel room. A.S. also informed dispatch that Decedent had a handgun which was out when she left the room.

After the incident, A.S. sat down with Detectives and gave them a formal statement. After the interview was conducted, A.S. approached Detectives and stated she forgot to tell them that recently Decedent had come to her with \$8,000 cash. Decedent told her she was the only person he could trust with the money. He also told her he was afraid something bad was going to happen. If it did, Decedent told her she needed to use the money to bail him out of jail.

M.M.

M.M. was working room service at the Hilton Garden Inn on the morning of July 4th, 2015. On that day, the occupants of room #124 ordered breakfast, and she delivered breakfast around 0730. When she got to the room, she went inside to deliver the food. Once inside, she noticed that Decedent was, what she believed to be, drunk. M.M. also saw a female sleeping in the bed. She said there was a bottle of alcohol in the room, and she asked Decedent what it was. He responded by first saying it was tequila and then corrected himself, saying it was vodka. M.M. left the room without incident.

K.R.

K.R. was working the 0700 to 1500 shift at the front desk of the Hilton Garden Inn on July 4, 2015. Soon after getting to work, K.R. received a telephone call from room #124. The male occupant told her, “Tell them to stop, tell them to stop.” She asked the male, “Stop what, sir?” However, the male hung up. K.R. then sent maintenance to the room to see if there was anybody near the door, but nobody was there. Shortly after that phone call, the female occupant came down to check out of the room. The factual rendition of the exchange between K.R. and A.S. is the same as that given from A.S. with one addition; K.R. stated A.S. did not want Decedent to know that she recommended the police be called. After speaking with A.S., K.R. made the decision to call 911.

After A.S. left the hotel, K.R. received another phone call from room #124 where the male occupant could be heard coughing and asking her to call 911.

INFORMATION RECEIVED FROM HENDERSON POLICE OFFICERS AND DETECTIVES

OFFICER TSITSINAKIS

Officer Tsitsinakis is a patrol officer who was patrolling near the area of the hotel on July 4th. When she heard what was going on over the radio, she immediately responded and was one of the first officers on scene. Officer Tsitsinakis was informed there was an individual in room #124 having an anxiety attack and he had a gun. She and two other officers set up outside Decedent's hotel room. While setting up, she felt the effects of what she believed to be pepper spray. She heard Decedent say, "I have another can." Shortly after, she heard him fire his gun. Decedent repeatedly fired his gun while in the room and was yelling in a manner that made sense to no one. He yelled things such as, "Motherfuckers"; "Where are these cops at?" and "Police, police, come inside, help me." Officer Tsitsinakis felt as though Decedent was trying to "lure" them in and went on the radio informing officers of her concerns. At that point, she believed he had already fired four rounds. It was believed that Decedent then shot the can of bear spray with his gun which caused Officer Tsitsinakis and other officers to feel the effects of the spray even more. Decedent then yelled, "You motherfuckin' pigs don't know what you are doing. Why don't you do your job already? Where the fuck are you?" Decedent then fired his weapon again. Decedent continuously went towards the door, jiggled the handle, and then retreated into the room. Officer Tsitsinakis described Decedent's demeanor as him being on a "roller coaster." He would go from screaming and shooting his gun, to completely quiet, then screaming again.

Officer Tsitsinakis stayed at her post outside of the room until SWAT arrived and relieved her.

OFFICER CHEN

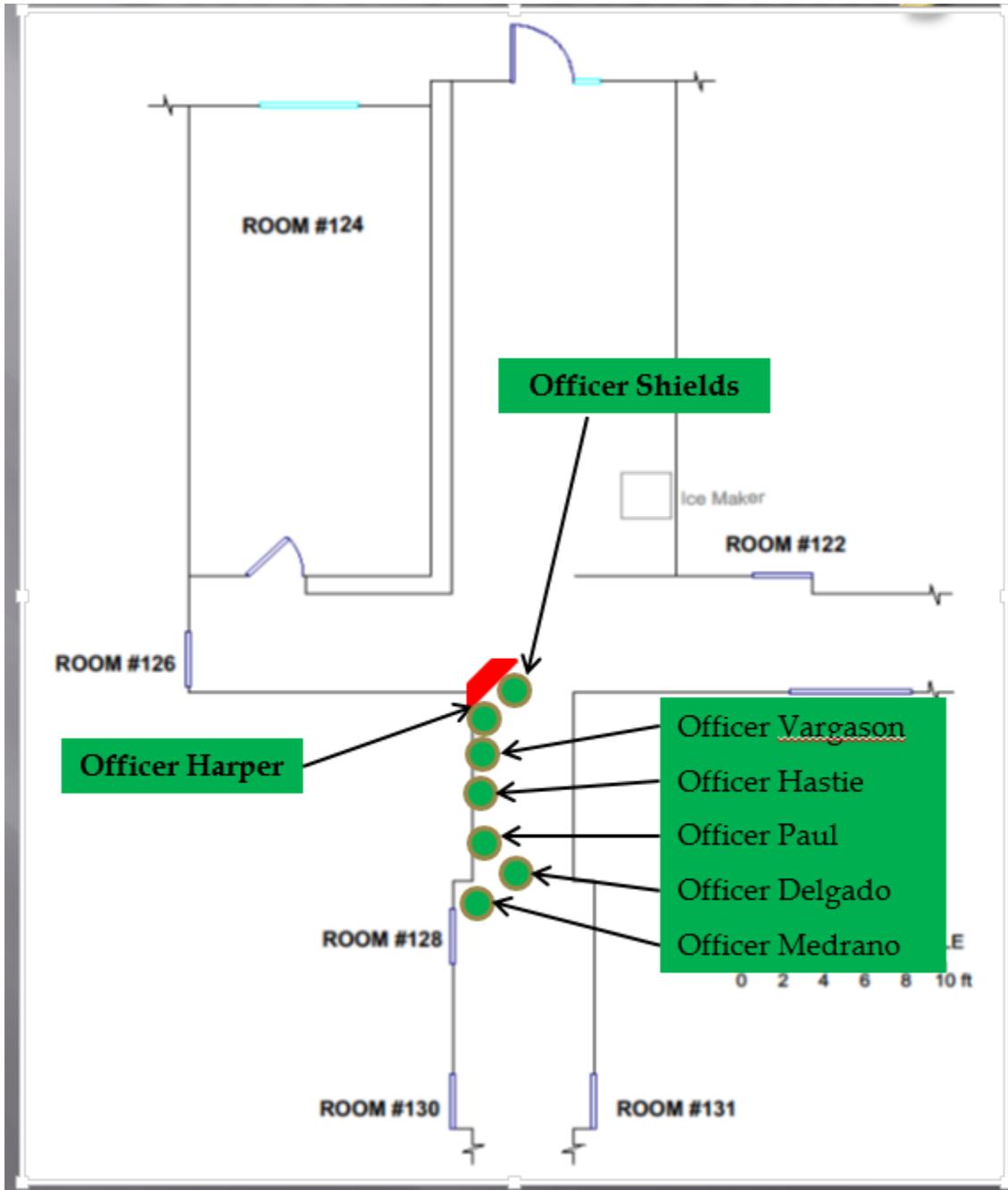
Officer Chen is a patrol officer who was working in the area on July 4th. While patrolling, he heard over the radio that there was something going on at the Hilton Garden Inn. When he responded, he saw another officer who stated that they needed help outside the hotel because there were already several patrol officers inside. He was ordered to take position in an area where he could maintain visual of Decedent's hotel room window. Officer Chen took position on the northeast corner of the parking garage where he established a good visual of Decedent's hotel room. While posted, he heard a shot come out of the window and heard something fly past him. Then, over the radio, he heard that there were shots being fired by Decedent from inside the room. After a couple shots could be heard fired inside the room, two more shots came out of the window, breaking most of the window out. Shortly after that, Officer Chen heard "shots fired" over the radio and "suspect down."

OFFICER HARPER

Officer Harper is a patrol officer but also assigned as a "SWAT Alternate." A "SWAT Alternate" is a patrol officer whose primary job is to work patrol, but who has also received SWAT training and responds to SWAT calls. On July 4th around 0930 hours, Officer Harper was called to work in his SWAT capacity and report to the Hilton Garden Inn. When he arrived on scene, he was wearing his green SWAT uniform. He was also equipped with a "shot lock" shotgun which has rounds specifically for breaching doors, an M4 rifle, and two Glock 17 handguns.

When he arrived, he was directed to the hallway just outside room #124. Upon arrival, Officer Vargason, another SWAT officer, had the "number one" position closest to the door with his gun raised towards the door in case Decedent left the room. Officer Harper took the "number two" position, meaning he was second in position closest to the door. The view from where the officers were located towards the hotel room was the best view within the hallway. Due to the configuration of the hallway,

officers had to set up a mere ten (10) feet from the door to room #124. Even though they were physically close to the door, they couldn't see the door itself - - only the hinges of the door - - thereby making it very difficult to see if the door in fact opened.



POSITIONING BY SWAT OFFICERS

Due to the fact that Officer Vargason had been holding his weapon at the door for so long, Officer Harper switched places and moved into the “number one” position. His position was only ten (10) feet from the room #124, so Officer Harper moved his weapon from semi-automatic into full-automatic. Officer Harper felt this was appropriate, not only because of the short distance between him and the room, but also because of Decedent's behavior. Officers outside of the room could hear Decedent

yelling and shooting off rounds inside the room. In fact, not only was Decedent shooting the gun into multiple places within the hotel room, he was also shooting rounds out the window towards the parking area. Due to Decedent firing his weapon out his window, a pre-school, located across the way from the hotel, had to be placed on lockdown.

Decedent continued to fire his gun while in the room and say things such as, "What are they doing out there," "Get away," "Come in and get me," and "Why aren't you coming in?" Officer Harper then heard Decedent "psyching himself up" saying things like, "Alright, screw this." Officers could then hear that Decedent was very close to the door and they believed him to be leaving. Decedent then came out of the door, "hard charged" with his head down holding a backpack in his left hand and a gun in his right hand. Officer Harper stated he could tell Decedent did not know they were outside of the room; Decedent looked surprised at the fact they were there when he looked up. Decedent took two steps out of the door, no commands were given, and Officer Harper shot his weapon a total of two times striking Decedent. Decedent fell to the ground, one foot in front of Officer Harper. Officer Harper immediately checked Decedent's hands to make sure he had no other weapons. He then called for other officers to take Decedent out to get him medical attention. After officers took Decedent away, Officer Harper and other officers went into the room to make sure there were no other individuals within the room. As they entered the room, they immediately recognized the room had been sprayed with bear repellent spray.

On July 6, 2015, Officer Harper was interviewed by Detective Michael Condratovich. When asked why he fired his weapon, Officer Harper replied by stating that Decedent was actively shooting his weapon, and he placed lives in danger. When Decedent came out of the room, he was not attempting to surrender, he was coming out looking for a fight and still had the gun with him. "So, at that point, I believed he needed to be stopped at that moment or somebody else could get hurt."



Officer Harper's view of Decedent's room.

OFFICER SHIELDS

Officer Shields is a full time SWAT member with the Henderson Police Department. Specifically, he works with the crisis entry team. The crisis entry team handles emergency response prior to the entire SWAT team being able to assemble itself and put a plan into place. Officer Shields was called out to the Hilton Garden Inn around 0900. When he arrived, he put on his vest, helmet, and gun belt. Officer Shields was armed with a M4 rifle, two 9mm Glock 17 handguns, a single shot 40, and an L6 multi-launcher.

Officer Shields and other members of his SWAT team - -Officers Delgado, Paul, and Vargason - - went through the lobby and towards room #124 to set up and relieve patrol. When they arrived at the room, Officer Shields directed Officer Vargason to be in the “number one” position with his rifle. Officer Shields situated all of his equipment and then moved into the “number two” position. Moments later, Officer Harper arrived with a shield which was handed off to Officer Vargason for protection. Officer Harper also relieved Officer Vargason since Officer Vargason had been holding his rifle and looking through his sights for a period of time, which is very common in these situations.



Officer Shields' view of Decedent's room.

While the officers were standing outside of the room, they could hear Decedent firing his weapon and breaking things. Officer Shields kept hearing Decedent yell things such as, “Fuck this” and, “Get in here.” In Officer Shield's opinion, he thought Decedent was trying to “bait” them into coming into the hotel room. He could not see Decedent because the door was closed; however, from the noises coming from the room, it seemed as though Decedent was yelling towards the window out to the parking lot. Officer Shields did not believe Decedent knew that he and the other officers were in the hallway. Most of Decedent's anger seemed to be at somebody in the parking lot. Then, Officer Shields heard a loud

crash from inside the room followed by Decedent saying, "Fuck it, fuck it," after which he heard the door open. Decedent then came out of the room in a hurry with his head down. Decedent looked up in surprise that the officers were in the hallway. When Decedent came out of the door, Officer Shields estimated there to be about five (5) feet between him and Decedent. Officer Shields immediately recognized Decedent to be carrying a weapon, and Officer Shields shot his weapon one time. After Officers Harper and Shields fired their weapons, they checked Decedent for other weapons. After no weapons were found, Officer Shields and Officer Julio picked up Decedent and rushed him outside so he could get medical attention.

On July 6th, Officer Shields was interviewed by Detective Michael Contradovich. During that interview, Officer Shields was asked why he deployed his weapon. He stated due to the fact Decedent had his weapon and he was coming towards Officer Shields and the other officers he felt like his life and his partners' lives were in jeopardy. Also, due to the things Decedent was saying in the room, it seemed as though Decedent was coming out of the room to confront whomever was outside of the window. Lastly, when Decedent left the room, he had a handgun and was within an arm's length of Officer Shields.

TIMELINE

- 0914 hours: Henderson Police Dispatchers received a 911 call from person reporting, K.R., at the Hilton Garden Inn. K.R. reported that she was approached by a guest who stated the remaining guest in room #124 was having an anxiety attack. Henderson Police Officers D. Medrano #1666 and R. Hunt #1361 were dispatched to the call of unknown trouble at the Hilton Garden Inn.
- 0915 hours: K.R. received a call from room #124 at the front desk. K.R. could hear the male on the phone coughing and told her to "get 911 here now." K.R. called 911 again and relayed the information to Henderson Dispatchers. At this point, dispatchers also sent Henderson Rescue #82 and Henderson Engine #82.
- 0917 hours: Henderson Police Dispatchers called A.S. on her cellular phone. A.S. advised dispatch of the situation regarding Decedent's severe paranoia and the fact that he has a handgun.
- 0918 hours: Dispatch relayed the information to responding officers. Officers Hunt and Medrano arrived on scene at approximately 0918 hours and got a "Code Red" on the main radio channel for emergency traffic only. Several other Henderson Police officers responded to the scene to assist. These officers included: Sgt. K. Moore #978, Officer C. Tsitsinakis #1458, Officer J. Dunn #1040, Officer J. DeAngelis #1578, Officer B. Stokes #1450, Officer J. Hassett #1628, Officer R. Chen #1292 and Officer R. Wilkins #1319. Shortly after arrival, Officer Dunn observed that a children's daycare was located north of the hotel across the parking lot with children and people outside. A request was placed to dispatchers to have the daycare placed on lockdown.
- 0938 hours: Officers heard a gunshot fired from inside of the room with Decedent yelling afterwards. At that point, Sgt. Moore requested an "all call for SWAT" to respond to the hotel.
- 0943 hours: A gunshot was fired out the hotel room window north into the parking lot.

- 0946 hours: Another gunshot was fired inside of the room and Decedent yelled for police to “put down your weapons” and “here I come, here I come.”
- 0952 hours: More gunshots were heard coming from inside of the room. Decedent was also heard yelling, “Get the fuck out of here,” and “I can’t take it anymore.” Decedent then started yelling, “Please come help me, police.” Decedent also started saying something to the effect that he was going to set the place on fire.
- 1011 hours: Another gunshot was heard coming from the room.
- 1019 hours: Another gunshot was fired out the hotel room window.
- 1024 hours: Henderson SWAT officers arrived on scene and replaced the officers in the north/south hallway. Officers Stokes, DeAngelis and Wilkins were also cleared from the east/west hallway. SWAT Officers B. Harper #1085, F. Shields #1354, J. Vargason #1623, T. Hastie #1226, R. Paul #1453, and J. Delgado #1314 took position in the north/south hallway. Officer Vargason was set up on the shield with his M4 rifle keeping visual on the door for room #124, with Officer Shields to his right as a cover officer. Officers Harper, Hastie, Paul and Delgado were positioned in a stack behind Officer Vargason but were unable to see room #124. Officer Medrano returned to the stack wearing his SWAT gear. Ultimately, Officer Harper relieved Officer Vargason.
- 1032 hours: Another shot was heard coming from room #124 along with yelling from Decedent.
- 1035 hours: Officer Harper could hear Decedent yelling as though Decedent was just on the inside of the hotel room door. Officer Harper heard Decedent yell something to the effect of, “Well fuck it.” Decedent exited the room and was met by gunfire from Officers Harper and Shields. After being shot, Decedent was immediately rushed for medical attention to the fire rescue unit waiting outside of the hotel.

WEAPONS COUNTDOWN

Officer Harper was armed with 2 (two) handguns and 1 (one) rifle. The handguns were identified as two (2) Glock 17 9mm firearms. The rifle was a Colt M4 LE 5.56 mm. Evidence indicated that Officer Harper fired 8 (eight) rounds from his rifle. No shots were fired from either handgun. Officer Harper’s firearms and ammunition were impounded into evidence.

Officer Shields was armed with two (2) handguns. The handguns were identified as two (2) Glock 17 9mm firearms. Officer Shields advised he had only fired one round, which was consistent with evidence at the scene. Officer Shields’ firearms and ammunition were impounded into evidence.

No other officers on scene discharged their weapons.

DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

Hotel Location and Layout

The Hilton Garden Inn hotel is east facing, located on the north side of West Warm Springs Road, between Marks Street and North Stephanie Street. The hotel is bordered by a three-story parking garage to the west/northwest, the Galleria Commons shopping complex to the northwest, and a Children's Choice Learning Center (child daycare facility) to the northeast, as well as the main parking garage of the Sunset Station Hotel and Casino, directly north of Children's Choice.

West Hallway

The following evidence was documented and/or collected in the west hallway where guest rooms 124 and 126 are located.

- Tall ballistic shield utilized by SWAT.
- One (1) cartridge case bearing head-stamp "SPEER 9mm LUGER."
- Cigarette bearing apparent blood.
- Black framed "Versace" eyeglasses missing the left lens with a damaged left lens frame (tape in the area of the damage) and red stains on the right lens.
- 'Nike' brand, size "M" sweatpants with a defect in back of the right leg.
- Three (3) cellular telephones were removed from the right, rear pocket of the sweatpants, identified as follows: black 'Tracfone' cellular phone, model H891L, S/N N9V7N15324007027; blue 'HTC' cellular phone, Model HTC0PCV1, S/N FA519SR08886; and blue 'T-Mobile ZTE' cellular phone, Model ZTEZ730, S/N 322441230983.
- White and black backpack marked, "OGIO" bearing reddish brown stains that contained the following items: a pair of gray camouflage 'Route 66' size 32 shorts; a white 'Lucky Brand' size M t-shirt; a pair of black 'Joe Boxer' size M boxer briefs; and a brown wallet with miscellaneous papers. In addition, a black/silver case containing a digital recorder was also recovered from inside the backpack.
- South of the door to guest room #124, a silver-colored bullet fragment of negligible weight was located.
- Across from the door, there was an empty firearm magazine marked, "Walther CCP" and a 9mm, Walther semi-auto pistol, model CCP, bearing serial number WK012027. The pistol, which was carried by Decedent when he exited the room, was laying on its right side with the safety in the off position and an unknown substance on its frame and slide.

It should also be noted that the door to guest room #124 was damaged in the area of the door lock, with an obvious void for the lock itself. The keycard-lock, a lamp shade, as well as pieces of compressed wood surrounding the lock mechanism, were on the floor below the door. A penetrating bullet hole was observed in the west door frame to guest room #124, on the hallway-side of the frame.



Decedent's weapon found outside of room #124.

East Hallway

Located in the east hallway were six (6) cartridge cases. Each of these cartridge cases bore head-stamp SPEER 14 223 REM and were located on the floor in the east hallway, west of the west housekeeping storage room door frame.



Six .223 cartridge cases located in the hallway outside of room #124.

North Hallway

In the alcove, there were two (2) cartridge cases bearing head-stamp SPEER 14 223 REM.

TWO .223 CARTRIDGES LOCATED IN THE ALCOVE OFF OF THE HALLWAY BY ROOM #124



Room #124

The room showed signs of damage throughout. There were two (2) prescription pill bottles lying on the floor. One (1) had a partially torn-off label with the letters “BRY” and “OXY” visible and a fill date of “__/06/2__” on the floor in the entry hallway. The other bottle was marked, “Bryan Bauer”, “Oxycodone 30mg” with the fill-date scratched off and a use by date of “10/03/13.”



Inside the refrigerator, a black “Samsung” cellular telephone, model SPH-M270, bearing “HEX #A000047CFB4C1,” with various chargers was located.

Apparent bear spray (oleoresin capsicum based) was located in several areas of the room. Two (2) canisters of bear spray were observed on the floor. A 9 oz. canister of Ruger Bear Repellent was located the entertainment cabinet. A 9.5 oz. canister of Frontiersman Bear Attack Deterrent was observed under the bed.



Throughout Room #124, there were perforating bullet holes, bullet strikes, and bullets themselves in multiple places including the sliding door to the closet, inside the closet, the carpet, chair, air conditioning unit, drapes covering the windows, the windows, the bed, and the nightstand. Additionally, eight (8) cartridge cases were observed inside the room, each bearing the head-stamp SPEER 9mm LUGER.

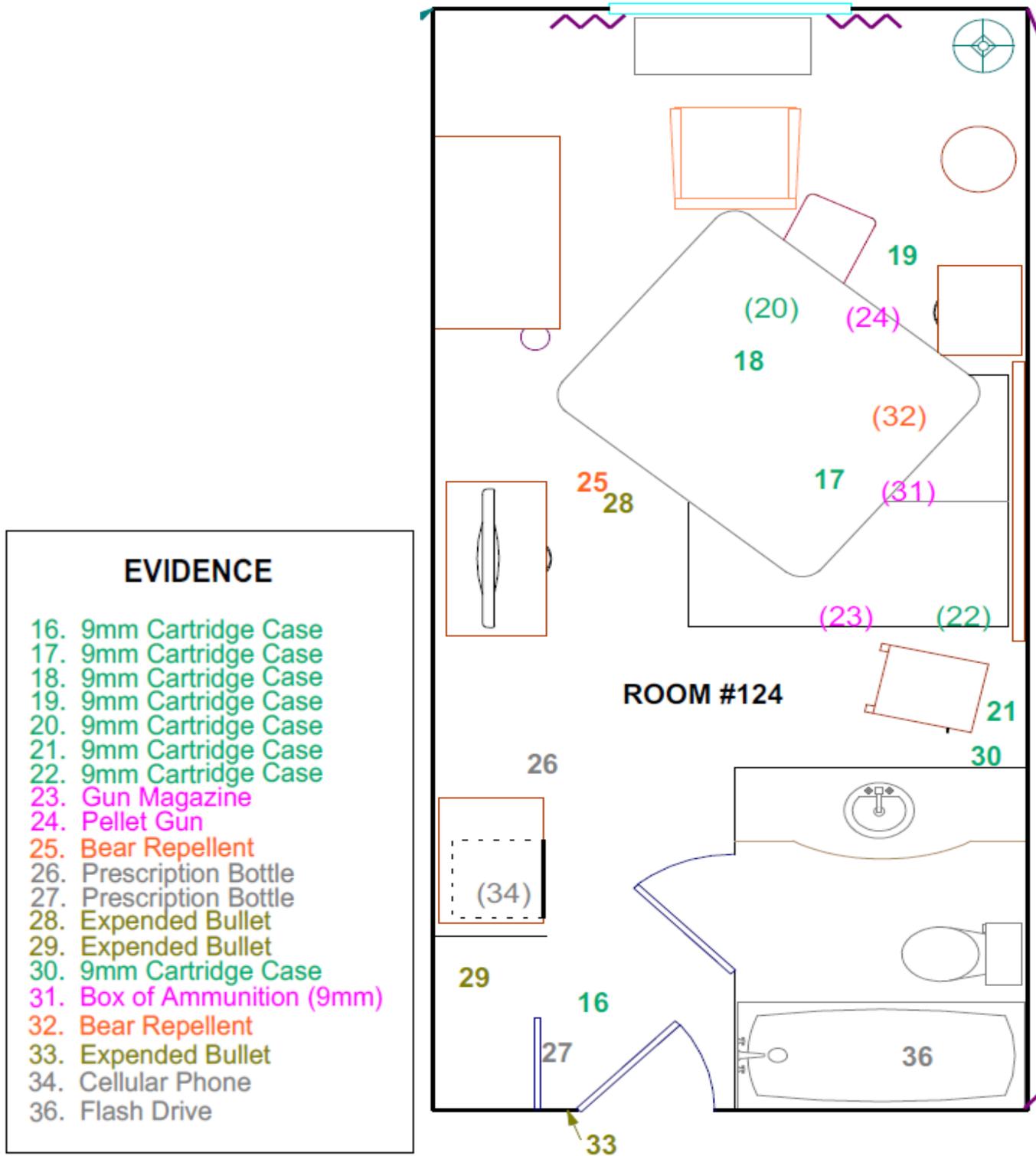


In addition, a firearm magazine marked Walther CCP was located on the floor under the box spring of the bed which contained seven (7) cartridges. CSA Proietto also observed a Sig Sauer X Five CO2 powered, .177caliber pellet/BB gun, bearing serial number 31122855, loaded with a CO2 cartridge and sixteen (16) steel BB's under the mattress, near the ottoman. Finally, a box marked BLAZER BRASS containing fifty (50) 9mm cartridges was observed under the box spring near the center of the bed. The box contained forty-eight (48) cartridges consistent with ammunition in Decedent's gun.



Decedent's imitation handgun - - pellet gun and 48 9MM cartridges.

LAYOUT OF ROOM #124 AND EVIDENCE COLLECTED



FORENSICS RESULTS

Firearm Examination

On September 9, 2015, a LVMPD Forensic Laboratory Request was submitted on Decedent's Walther model CCP 9mm caliber semi-automatic pistol. The results are as follows:



The Walther pistol was examined, test fired, and found to be in normal operating condition with no noted malfunctions. The barrel length was found to be 3-11/16 inches, with an overall length of approximately 6-1/2 inches, and a trigger pull of 5 to 5-1/2 pounds.

The evidence cartridge cases were microscopically examined in conjunction with the test cartridge cases. Based on these comparative examinations, it was determined that the eight cartridge cases found within Decedent's hotel room had all been fired by the Decedent's Walther pistol.

Latent Print Analysis

Latent print analysis was conducted on Decedent's 9mm semi-automatic Walther pistol and Decedent's empty gun magazine. Results showed Decedent's left thumbprint located on the lower end of the magazine of the weapon.

Conclusions

Through CSA evidence recovery, autopsy, and countdowns conducted on the firearms of the officers involved, the following conclusions were made:

Officer Harper fired his rifle, Colt M4, a total of eight (8) times. This evidence was consistent with the eight bullets recovered from Decedent's body at autopsy.

Officer Shields fired his Glock 17, 9mm one (1) time. This evidence was consistent with the bullet recovered from the doorframe of room #124 as seen below.



AUTOPSY

On July 5, 2015, an autopsy was performed on the body of Bryan Bauer at the Clark County Office of the Coroner/Medical Examiner by Dr. Lary Simms. This was done under case number 15-06721.

Dr. Simms opined that Decedent was shot a total of eight times and died of multiple gunshot wounds.

A toxicology screen indicated Decedent's blood tested positive in high dose amounts for the following drugs: Amphetamine, Alprazolam, Methadone, Oxycodone, Oxymorphone, and Methamphetamine.

LEGAL ANALYSIS

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

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

A. The Use of Deadly Force in Defense of Another

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ...” against the other person.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:

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].

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.

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 disprove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent danger to SWAT Officers Vargason, Hastie, Paul, Delgado, Medrano, Harper, and Shields. Decedent also posed imminent danger not only to the patrons of the Hilton Garden Inn, but also patrons of the surrounding businesses, including a children's daycare facility.

The facts illustrate that both officers who fired their weapons were faced with a suspect who had been firing his weapon multiple times not only inside of his room, but also from his room to the parking lot area. Furthermore, both officers knew that Decedent was acting in a manner that was consistent with either drug use or unstable mental status. For almost an hour, officers could hear Decedent rambling on and off about violence with police, setting the hotel on fire, etc. Immediately before exiting his hotel room, officers heard Decedent yell, "Well fuck it," and then Decedent came rushing out of the room. The distance at that point between Officers Shields and Harper and Decedent was at most nine (9) to ten (10) feet. Evidence collected at the scene, as well as statements given by multiple witnesses, confirmed that Decedent had a weapon, had fired it many times within the room, and was in possession of that weapon when he exited his hotel room. Thus, Decedent posed an objectively reasonable imminent danger to all officers and civilians in the area. Therefore, Officers Harper and Shields acted in reasonable fear of a threat to their lives and the lives of others at the time each fired.

B. Justifiable Homicide by a Public Officer

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, the facts illustrate that Officers Harper and Shields were reasonable in their belief that Decedent posed a serious threat to the safety of all officers involved, as well as the surrounding patrons. As aforementioned, both officers heard the things that Decedent was yelling from his hotel room, heard Decedent fire his weapon multiple times from the room, and knew that if Decedent left his hotel room, not only were they in danger, but other officers and patrons were also in danger. It was glaringly obvious that when Decedent came out of his hotel room carrying his weapon, action had to be taken to eliminate the deadly threat he posed.

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

In light of all the evidence reviewed to date, the actions of Officer Harper and Officer Shields were justified and appropriate “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of the Officers were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” (NRS 200.190).

As there is no factual or legal basis upon which to charge Officers Harper and Shields, and, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.