

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Officer Involved Shooting of David Robinson on March 10, 2014

### **Introduction**

On March 10, 2014, North Las Vegas Police Department (“NLVPD”) Officer Raymond Lopez was involved in a shooting at Woodard and Tonopah, North Las Vegas, Nevada. The incident occurred at night and in an area with poor lighting conditions. Officer Lopez had called out over the radio that he was investigating a male in the area. He requested that backup respond. Lopez said he observed the male near vacant homes at 808 East Tonopah and was attempting to contact him. He stated he asked the male for identification and the male pulled out his wallet. Officer Lopez then reported that the male dropped the wallet and moved for his waistline. Officer Lopez saw a knife and fired at the man. David Robinson (“Decedent”) died from these injuries.

The District Attorney’s Office has completed its review of the March 10, 2014, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Lopez cannot be deemed criminal.

This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Fact-Finding Review

conducted on June 8, 2015. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Lopez cannot be held criminal.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.



View of scene from street

## The Events at 808 East Tonopah on March 10, 2014

### Officer Denise Aguilar

Officer Aguilar had worked with Officer Lopez for over a year at the time of the incident. When she heard the radio call for assistance from Lopez, she noted distress in his voice. While enroute, Officer Lopez advised that shots had been fired and requested medical response. She and her partner, Officer Noahr, arrived within seconds.

When Officer Aguilar arrived, she and Officer Noahr saw Officer Lopez northeast of 808 East Tonopah with his firearm drawn. As she approached Lopez, she saw a black male

adult, later identified as Decedent, lying on the ground, not moving, and bleeding from the head. Decedent was not breathing.

Officer Aguilar asked Lopez if there were any outstanding suspects and Officer Lopez said no, but the house was not cleared for additional suspects. Officers Aguilar and Noahr checked the abandoned house for additional people with negative results. According to Officer Aguilar, Officer Lopez told her that Decedent was not obeying his commands and was acting nervous, saying he had warrants. Aguilar also stated that Lopez told her that Robinson was pumping his arms up and down, swearing, and refusing to walk back to the sidewalk which was why Lopez requested backup. Aguilar also stated that Lopez told her that the incident happened fast. He explained that he saw a knife and Decedent reaching toward his waistband. Lopez said he saw the knife because his tactical light reflected off of it.

MedicWest and Las Vegas Rescue arrived shortly thereafter and confirmed there were no signs of life with Robinson.

Officers Noahr and Aguilar removed Officer Lopez from the scene. Other arriving officers set up a perimeter on the area.

### Officer Noahr

Officer Noahr was with Officer Aguilar. Upon arrival to the scene, he observed Officer Lopez with his gun drawn. He saw Robinson on the ground, bleeding. When paramedics arrived, Officer Noahr escorted them through the scene. The paramedics determined Robinson was beyond resuscitation. Officer Noahr completed a report, but was not interviewed by investigating detectives.

### Sergeant Randy Carter

Sergeant Carter was in the area of Cheyenne and Martin Luther King when he heard Officer Lopez's radio traffic explaining he was out for an investigation in the area of Tonopah and Woodard. He also recalled Lopez requesting a backup unit. Seconds later, Carter heard Lopez yelling, "Shots fired, shots fired!"

Sergeant Carter responded to the scene. While en route, Carter advised the watch commander and lieutenant. Upon arrival, Carter saw officers setting up a perimeter at the scene. He also saw Lopez who appeared very emotional.

Sergeant Carter asked Lopez for his account of events. Lopez told Carter that he had observed a subject near the vacant house of 808 East Tonopah and he went to contact him. He stated he asked the subject for identification and the subject pulled out his wallet. Lopez stated that the subject then dropped his wallet and made a move toward

his waistline. Officer Lopez saw a knife and fired. Sergeant Carter asked Lopez if he was the only person near the house and he said yes. Officer Lopez was not sure how many rounds he had fired.

### Officer Raymond Lopez

After the events, Officer Lopez agreed to provide a voluntary statement to detectives. Lopez explained that he is a graveyard shift patrol officer and has been with the department for five years.

Prior to the encounter with Robinson, Officer Lopez had just booked someone into the jail. He was looking for someone involved in an earlier incident. As he made a left turn onto Tonopah, he saw a silhouette by an abandoned house on Woodard. He pulled over and put a spotlight on the house. The silhouette ducked.

Officer Lopez turned off the spotlight so he would not backlight himself and got out of his vehicle and walked up to the subject. The subject started walking away from him. Officer Lopez commanded the subject to come over to his car, but the subject kept walking behind the house. Officer Lopez followed. As the subject went around the corner of the house, Officer Lopez pulled out his gun while his flashlight was in his left hand. As he cleared the corner, the subject was in a crouched position in the corner of the structure with his hands over his head.



Leading into scene of shooting

Officer Lopez asked, "What are you doing? Why didn't you come to me?" Robinson responded, "I got warrants, I don't wanna go to jail, I don't wanna go to jail." Officer Lopez said that he did not care about warrants. Robinson said his warrants were for tickets. Officer Lopez said, "Okay, well, come to the front of my car and we will talk about it." At that point, Robinson stood up and started walking back and forth, pumping his arms and saying, "fuck, fuck, fuck, fuck."

At that point, Officer Lopez called out for assistance and told Robinson to calm down. Robinson kept putting his hands in his pockets of his jacket. Officer Lopez directed Robinson to go up against a wall and put his hands on the wall and lean forward, so that he could see Robinson's hands. Robinson complied.

Two seconds later, Robinson got off the wall and started pacing again, pumping his hands as Officer Lopez waited for backup. Officer Lopez put his flashlight away and turned on the tactical light of his gun, freeing up his left hand.

Officer Lopez ordered Robinson back to the wall but Robinson did not comply. Officer Lopez told Robinson that warrants are not that serious and that he did not care about them. Robinson went back to the wall and put his hands up on the wall. Robinson reached into his jacket pocket and pulled out his wallet and tried to hand it to Lopez. Robinson said, "Just run me, just run me. You'll see. You'll see." Officer Lopez told Robinson not to worry. Robinson came off the wall again and Officer Lopez pushed him forward with his left hand and then moved two steps away from Robinson.

As Robinson went up against the wall, he put both hands on the wall and then moved his right hand down. Officer Lopez saw a blade and Robinson reach toward it in a backhand position. Officer Lopez moved his left hand to his gun and tried to get a read of Robinson's face. Officer Lopez saw Robinson's elbow moving up. Officer Lopez thought Robinson was going to swing the knife and harm him with it. Fearing he would be killed, Officer Lopez shot. After one shot hit, Robinson stumbled toward Officer Lopez and Lopez fired two more rounds after that. (He believed he fired three rounds).



Scene of shooting

He radioed shots fired and requested medical. Other officers arrived seconds later.



Scene in daylight

## Description of the Scene

At the scene, crime scene analysts noted the location of various items of evidence. Near a mattress in the area, analysts found a butter knife. They also found a cell phone at the scene, but it would not turn on. Investigators took the phone and attempted to charge it, but it would not hold a charge. Analysts removed the SIM card and determined the phone number associated with the phone, but not other relevant information. Investigators found Robinson's wallet on the ground.



Robinson's wallet

Investigators found a silver bladed straight knife, eight inches in length in the rear, right pocket of Robinson's jeans. The blade was pointed up.



Knife found in pocket



Knife at lab

Four shell cases were found at the scene.

## Investigation

Detectives made several attempts to canvass the area and never found a witness who saw the incident. They did find a witness who claimed she heard an officer repeatedly directing someone to show their hands—consistent with Lopez’s description of his actions.

Detectives submitted the knife found in Robinson’s pocket for fingerprint testing. No usable prints were developed.

Finally, as Officer Lopez mentioned the decedent expressing concerns about warrants, they checked to see if, indeed, he had warrants. Detectives found that the decedent did have active misdemeanor cases, but the cases had not gone into warrant status.

## Weapon Countdown

Analysts counted down Lopez’s weapon. The weapon was a black Glock .45 caliber semi-automatic pistol with an attached tactical light. This was his service weapon. At the time analysts examined the weapon, it contained one live round in the chamber and eight live rounds in the inserted magazine. Lopez carried three magazines on his duty belt, each with thirteen rounds of ammunition. Lopez told investigators that he carried a full magazine in the service weapon, thirteen rounds, and one in the chamber, totaling fourteen rounds. Later investigation suggested that Lopez had a total of twelve rounds in his gun and that he fired four times.

The weapon was within the manufacturer’s and North Las Vegas Police Department specifications.



Officer Lopez's weapon

## Autopsy

Dr. Timothy Dutra reported that Robinson sustained four gunshot wounds: three to the head and one to the shoulder. All gunshot wounds were of indeterminate range. Toxicology tests revealed the presence of amphetamine, methamphetamine, and ethanol.

## Force Science Institute

Because of the lack of witnesses and forensic evidence, the Office of the District Attorney asked experts at the Force Science Institute<sup>1</sup> to review and analyze the evidence in this case.

Experts at Force Science noted that the timing of the interview of Officer Lopez was within an appropriate time period. Force Science recommends a delay between the incident and interview based on research which supports that consolidation of memory occurs with at least one good sleep cycle and to allow for emotional decompression before describing events.

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<sup>1</sup> The Force Science Institute was recommended to the Office of the District Attorney by the United States Department of Justice. Force Science has conducted numerous studies of law enforcement encounters involving the use of force.

Force Science noted that its research establishes that shots to the head are normally those of novice shooters. Combat training also teaches tactical officers to shoot rapidly to the head at close distances. Force Science assessed Officer Lopez's overall performance—control of the situation, tactical awareness, physical and psychological control of the incident—no greater or perhaps below average.

In Officer Lopez's interview regarding the events, Force Science noted that he was able to give detail to the facial expressions of Robinson, suggesting that, like novice shooters, he was focused on Robinson's face after he detected the threat from the knife. Lopez's ability to see Robinson's face indicates that his gun and tac light were likely directed in an upward direction at Robinson's head.

The time frame to raise a gun upward from approximate waist level to approximate face level is 4/10 tenths of a second. The time frame for someone to make a turn to their right is about the same amount of time. Thus, it is possible that Lopez immediately fired once as his tac light illuminated Robinson's face, making the first shot the one that struck Robinson's face. This would be consistent with Lopez's account.

It is likely that after being shot, Robinson stumbled forward, which would make Lopez perceive Robinson as coming forward at him, accounting for the three additional shots. Three shots can be fired in one half a second and the entire incident likely lasted in under two seconds.

Force Science noted that it cannot challenge or validate that Officer Lopez saw a knife, initiating his perception of a threat to his life. "However, everything after that is consistent with an officer recoiling in response to a perception of a threat and shooting rapidly to save his life."

## **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 Robinson 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, by violence or surprise, to commit a felony ...” against the other person. 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].

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 defendant 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, Officer Lopez described Robinson reaching for a knife while the two were in close proximity. Thus, Robinson could have posed an objectively reasonable imminent danger to Officer Lopez. There is no witness nor evidence suggesting that Robinson did not pose such a threat. To some extent, physical evidence at the scene corroborates Lopez's version of events. Investigators found a wallet as described by Lopez. They found a knife as described by Lopez. Moreover, the only witness who heard the incident, who heard an officer issuing verbal command, corroborates Lopez. Further, no witness nor any piece of evidence contradicts the version of events offered by Lopez. Given that the law requires the State to disprove self-defense beyond a reasonable doubt, in order to prosecute Lopez, the State would have the burden of establishing that Robinson did not pose a threat to Lopez. There is no witness nor evidence to prove this. There is only Lopez's account. Accordingly, the State has no evidence to challenge Officer Lopez's contention that he was acting upon reasonable fear of a threat to his life at the time he fired at Robinson.

## 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, Officer Lopez describes events which would demonstrate that he had probable cause to believe that Robinson posed a threat of serious physical harm either to himself or other persons.

As previously discussed, there is no witness or evidence which contradicts Officer Lopez's account of events. In a purely factual inquiry, the shooting could be interpreted in a variety of ways. The burden of the State however, is to disprove self-defense beyond a reasonable doubt. With no evidence disproving the claim, the State could not pursue such allegations.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officer Lopez were in fact unjustified "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 has no ability to conclude that the actions of Officer Lopez were unreasonable and/or legally unjustified. 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 the agent, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

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STEVEN B. WOLFSON  
District Attorney

By

PAMELA WECKERLY  
Chief Deputy District Attorney