

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Thomas McEniry on November 24, 2015

### INTRODUCTION

At 1:59 a.m. on November 24, 2015, Officer Kyle Prior was on patrol when he observed a white Mitsubishi driving in the area of 1750 Karen Avenue. A records check by Officer Prior revealed that the Mitsubishi was cold-plated.<sup>1</sup> Officer Prior attempted to stop the vehicle, but the driver refused and proceeded to run a stop sign. Officers Thomas Griffin and Robert Nord were also on patrol in the area. They observed the Mitsubishi run a red light at Desert Inn and Maryland Parkway. As the car turned onto Sierra Vista from Maryland Parkway, Officer Griffin was able to see that the lone occupant and driver of the Mitsubishi was a male adult, later identified as Thomas McEniry (hereinafter Decedent). Officer Griffin made a U-turn and attempted to stop Decedent's vehicle; he refused to comply. The patrol officers were told not to engage in a high-speed pursuit of the vehicle, so they followed at a distance.

Officer Griffin saw the Mitsubishi turn east from Cambridge onto Katie Avenue. Officer Griffin followed the vehicle onto Katie Avenue. After he turned, Officer Griffin noticed the Mitsubishi was now traveling slower. The headlights were now turned off. Officer Griffin caught up to the car as it drove down Katie Avenue and, when he did, he observed

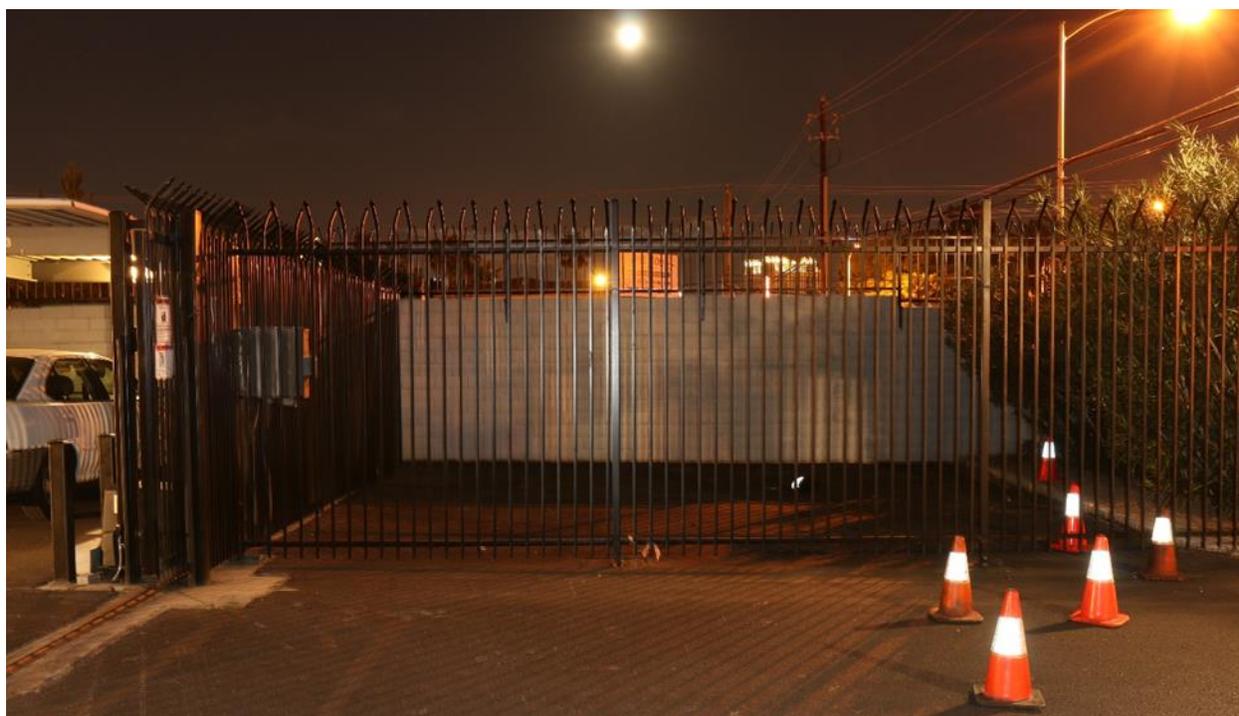
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<sup>1</sup> The license plate belonged to a Chevrolet rather than a Mitsubishi.

it now to be unoccupied. Officer Griffin maneuvered his patrol car into the front of the Mitsubishi and then slowed his car. This caused the Mitsubishi to bump into the rear of his patrol car and stop.

An apartment complex was located just south of the area where the Mitsubishi was abandoned by Decedent. A security guard was on duty in the parking lot of the apartment complex. He observed Decedent walking from the area near the Katie Avenue entrance. He watched as Decedent reached into a parked vehicle and attempted to enter it. The security guard approached Decedent and asked what he was doing in the parking lot. Decedent initially claimed it was his sister's car he was trying to enter, but he eventually admitted he was lying. The security guard began walking Decedent out of the complex towards the Katie Avenue entrance. Officer Prior pulled into the complex, exited his patrol car and began talking to Decedent. Decedent was uncooperative and claimed he had entered into the complex from the south, but the security guard told Officer Prior that Decedent had entered from the north (the Katie Avenue entrance).

Officer Prior then told Decedent to put his hands onto the hood of his patrol car, but Decedent refused. Decedent backed up and refused to comply with multiple commands by Officer Prior to get on the ground and/or put his hands onto the patrol car. Officer Prior called out a "Code Red" over the police radio and followed Decedent on foot across the parking lot. As this occurred, two other patrol officers in the area pulled into the complex as Decedent ran away from Officer Prior. Officer Robert Nord arrived first and got out of his patrol vehicle just as Decedent was running north into a square enclosure in the far northwest corner of the apartment complex.



Officer Donald Sutton arrived second and parked his patrol car. He observed that Decedent was refusing to comply with numerous commands by both Officers Prior and Nord to show his hands.

Officer Prior followed Decedent into the enclosure and ordered Decedent repeatedly to show his hands. Decedent was facing Officer Prior with both of his hands behind his back near his waist area. Decedent continued to refuse to show his hands and, at one point, went to his knees but continued to keep his hands behind his back at his waist area. Officer Prior then announced to his fellow officers that he was going “low lethal.” He pulled out his Taser stun gun. Since Decedent continued to refuse to follow all commands to put his hands in the air or show them from behind his back, Officer Prior fired the Taser and appeared to strike Decedent on his chest. This caused Decedent to fall forward and yell. His hands also went forward and, at the same time, a black handgun fell from Decedent’s waist area onto the ground behind Decedent. Moments after falling forward from being struck by the Taser, Decedent reached back and grabbed the black handgun. Officer Nord saw this and called out, “Gun, gun, gun!” to his fellow officers. Decedent then began to turn his torso towards Officer Prior with the gun still in his right hand. Officers Nord, Sutton and Prior all fired their service weapons virtually simultaneously. Officer Nord fired three times, Officer Prior fired three times, and Officer Sutton fired two times. Decedent was struck by numerous bullets and fell to the ground, dropping the handgun near his body.

Officers immediately called out that shots had been fired and summoned for medical assistance. Emergency personnel responded. Decedent was transported to Sunrise Hospital where he was declared deceased. A subsequent autopsy revealed that he died of six gunshot wounds into his body.

The Clark County District Attorney’s Office has completed its review of the events surrounding the death of Decedent. This review was based on all the evidence currently available, including the benefit of a public police fatality review. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officers Kyle Prior, Robert Nord and Donald Sutton were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. 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 review was based on all the evidence currently available, including evidence adduced at the Police Fatality Public Fact-Finding Review held on September 19, 2016.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Las Vegas Metropolitan 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**

On November 24, 2015, at approximately 1:59 am, Patrol Officer Kyle Prior observed a white Mitsubishi Mirage in the area of 1750 Karen Avenue. Officer Prior ran a license plate check, and the information came back that the plate belonged to a Chevrolet rather than a Mitsubishi. Officer Prior informed dispatch that he was going to attempt to stop the vehicle. When he did so, the driver of the vehicle did not comply. Rather, the driver continued to drive turning southbound on La Canada where the car ran a stop sign. Officer Prior did not engage in a high-speed pursuit of the vehicle. Instead, he continued to drive and observe at a distance. Officers Thomas Griffin and Robert Nord were also patrolling in the area and were assigned as back-up to Officer Prior.

Officer Nord first saw the white Mitsubishi driving west on Dessert Inn. He then observed it run a red light and turn southbound onto Maryland Parkway. He then saw it turn west onto Sierra Vista. Officer Griffin was stopped at the light facing west at Sierra Vista and Maryland Parkway when he saw the white Mitsubishi make the turn and, as it did so, he noticed that the driver (later identified as Decedent Thomas McEniry) was the lone occupant. Officer Griffin made a U-turn and initiated his lights and siren, but Decedent did not comply. Decedent turned south onto Cambridge with Officer Griffin following him in his marked patrol car. Due to the nature of the call, the officers' sergeant called out over the radio that they should not engage in a pursuit. Officer Griffin did not speed up to keep up with the Mitsubishi. He observed Decedent turn east off of Cambridge onto Katie Avenue.

After Officer Griffin got to Katie Avenue, he noticed the white Mitsubishi was now traveling slower eastbound on Katie with its headlights off. Officer Griffin pulled behind the car and realized it was now unoccupied as it traveled towards the intersection of Katie and Maryland Parkway. Officer Griffin maneuvered his patrol vehicle in front of the Mitsubishi and managed to stop it by having it run into the back of his patrol car. As this occurred, Officer Nord pulled onto Katie Avenue. Officer Griffin told him Decedent had exited the vehicle somewhere on Katie, and he was likely in the French Oaks Apartments. The apartment complex was on the south side of Katie Avenue between Cambridge and Maryland Parkway.

A security guard, J. B., was on duty during the early morning hours of November 24, 2015, for the French Oaks Apartments. At this time, J. B. was positioned in the parking lot of the complex where he could observe both entrances to the complex, one of which was off Katie Avenue and the other near Maryland Parkway. J. B. noted police presence in the area when he heard both a helicopter and sirens in the neighborhood. He then saw Decedent running alongside the wall of the complex's parking lot on the west side of the property. J.B. saw Decedent go towards a grey Neon vehicle and attempt to enter it. J. B. approached Decedent and asked him if it was his vehicle. Decedent responded that it was his sister's car and she lived in the complex. J. B. asked Decedent his sister's name and in which unit she lived. Decedent could not answer the questions. Decedent then admitted to J. B. that he was lying about the vehicle belonging to his sister. J. B. began to escort Decedent off the property when he noticed Officer Prior, who had just driven into the complex from Katie Avenue in his patrol car.

Officer Prior exited his car and asked Decedent what direction he was coming from. Decedent indicated from the south, but J. B. told Officer Prior that Decedent had come from the north (Katie Avenue). Officer Prior then told Decedent to put his hands on the bumper of his patrol car. Decedent refused to comply and, as the Officer came around his vehicle, Decedent continued to walk away from Officer Prior. He refused to comply with multiple commands to put his hands on the car and get on the ground. Officer Prior then called out a "Code Red" on his radio and pointed his firearm at Decedent. He continued to walk away from Officer Prior and yelled, "I didn't do nothing!" Officer Prior continued to yell commands at Decedent to show his hands and get on the ground, but Decedent ignored the commands and instead began moving more quickly towards the north in the parking lot in an effort to flee. Decedent unknowingly entered into the square-shaped enclosure at the edge of the complex. The enclosure was surrounded on the north and west by brick walls, and on the south and east by vertical metal bars.

Officer Nord was in his patrol car on Katie Avenue when he heard the "Code Red" over the radio from Officer Prior. He pulled into the complex at approximately the same time Decedent was running and entered the square enclosure. Officer Nord took up a position to the east of the square enclosure and could see Decedent through the metal bars.

Likewise, Patrol Officer Donald Sutton also was in the immediate area when he heard the call for assistance by Officer Prior. This caused him to turn onto Katie Avenue and then into the French Oaks entrance. Officer Sutton exited his patrol car and took a position just

east of the square enclosure and just to the north of Officer Nord, but he arrived after Officer Nord and after Decedent had entered into the enclosed area.

Officer Prior continued to follow Decedent through the parking lot with his firearm pointed at Decedent. Officer Prior entered into the enclosure. He gave Decedent additional numerous verbal commands to show his hands and put his hands in the air. Officer Nord also yelled out several commands to Decedent to show his hands. As Officer Prior entered the enclosure, Decedent was standing in the northwest portion of the enclosure facing Officer Prior. He kept both of his hands towards his back near his waistline.



A screen shot of the video from Officer Prior's body camera showing Decedent as he stood inside the square enclosure and refused to show his hands.

Decedent refused to comply with numerous commands to show his hands and remove them from his waistband area. Decedent dropped to his knees while still facing Officer Prior, and he kept both hands behind his back and near his waistband. Officer Sutton arrived at that point and also gave numerous verbal commands to Decedent to show his hands; Decedent failed to comply.

Officer Prior then took out a Taser electronic control device (stun gun) and announced to his fellow officers that he was going “low-lethal.” Since Decedent continued to disobey numerous orders to show his hands, Officer Prior deployed the Taser and struck Decedent. This caused Decedent to fall forward, now showing his hands as he yelled. At the same time Decedent fell forward, a black semi-automatic handgun fell from the back of Decedent’s waistline onto the ground near the west wall of the enclosure. Seconds later, Decedent was observed by all three officers to reach back towards the ground near the west brick wall of the enclosure. As this occurred, Officer Nord saw the gun on the ground and yelled out, “Gun, gun, gun!” Officer Sutton also saw the gun on the ground and yelled, “Gun!” Decedent then picked up the gun with his right hand and began moving his torso towards Officer Prior’s direction. At that point, all three officers discharged their weapons and fired numerous rounds into Decedent.

After the shots were fired, Officer Nord entered the enclosure to assist Officer Prior. Decedent was placed into handcuffs and patted down for additional weapons. None were found. Emergency medical personnel were summoned to the scene by Officer Prior. Because the entrance to the enclosure was too narrow for a gurney to enter, Officers Prior and Nord picked up Decedent and moved him to the parking lot so medical personnel could treat him. Within minutes, medical personnel arrived and began treating Decedent. He was taken to Sunrise Hospital where he was pronounced deceased.

### Body Worn Cameras

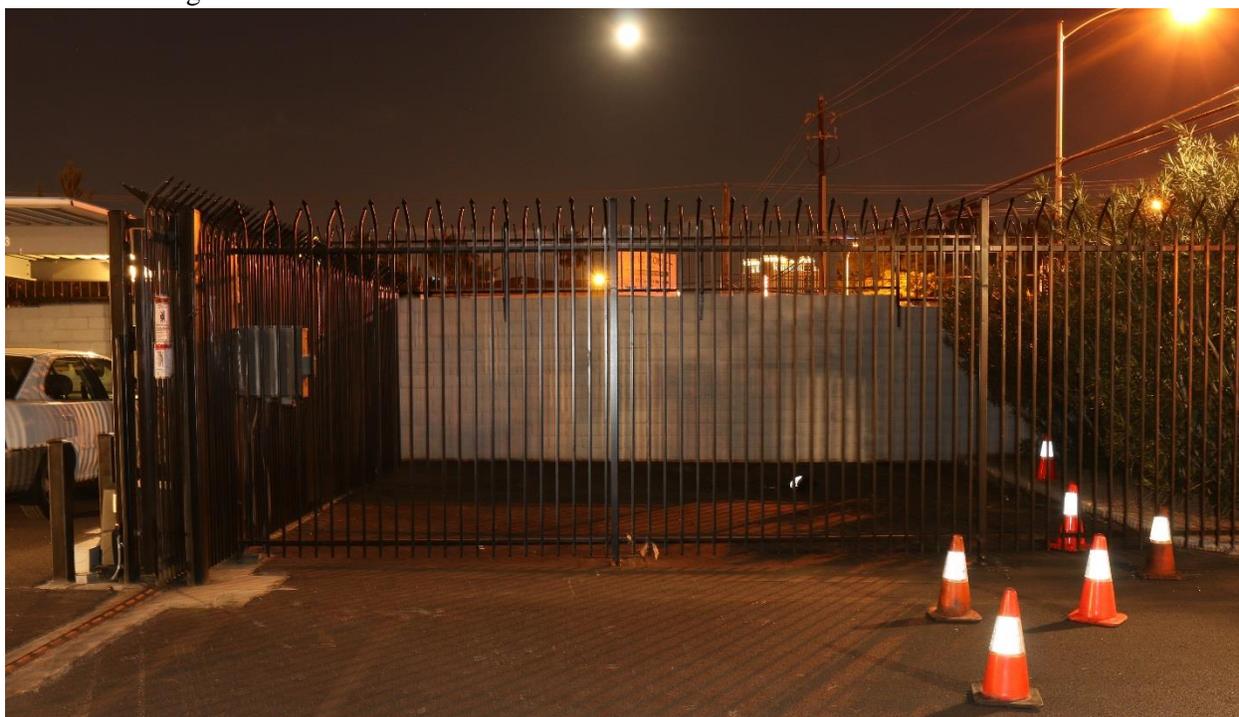
Patrol Officers Kyle Prior, Robert Nord, Donald Sutton and Thomas Griffin were wearing body cameras that were activated at various times during this incident. LVMPD Force Investigation Team (FIT) Sergeant Jerry MacDonald took custody of the body worn cameras from each of the officers and secured the videos. The actions of Decedent were best captured in the camera worn by Officer Prior who was the first officer to encounter him and closest to him during the shooting.

## Examination of Crime Scene

The French Oaks Apartments were located at 3823 South Maryland Parkway. They were a series of buildings that were just to the west of Maryland Parkway and south of Katie Avenue. There were two entrances into the complex, one of which (from the east) is off Maryland Parkway and the other (from the north) is off Katie Avenue.



The entrance into the French Oaks Apartments from Katie Avenue. The square enclosure is to the right of the entrance gate.



Photograph showing the square enclosure just to the west of the entrance gate off of Katie Avenue.

A square enclosure was located in the far northwest portion of the complex, just to the west of the entrance into the complex from Katie Avenue. The south and east side of the

enclosure were surrounded by a metal fence of mostly vertical metal bars. The west and north sides of the enclosure were composed of brick walls. There was a planter area that ran along the north portion of the area that contained several large bushes.



The opening into the square enclosure.

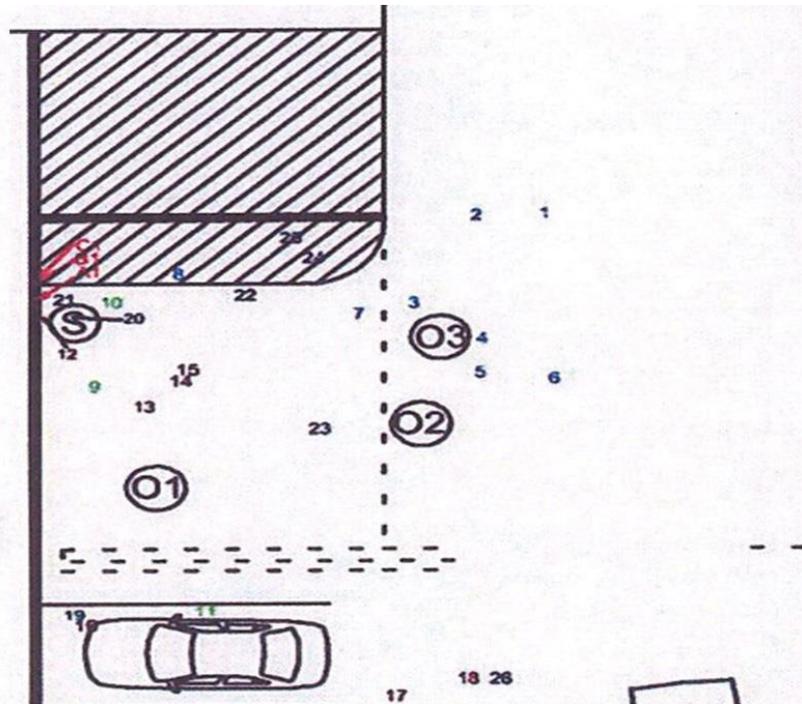
In the southwest portion of the enclosure was a narrow, 16” wide opening. Crime scene analysts took perspective photographs showing the locations of the three officers, as well as Decedent during the time of the gunshots.



Photograph showing the location of the three officers when they discharged their weapons.

Crime scene analysts also measured the distance between the officers and Decedent at the time of the shooting. Officer Prior was approximately 15' 1" away while Officer Sutton was 22' and Officer Nord 22' 4" away from Decedent.

- Legend**
- 1 - Cartridge case
  - 2 - Cartridge case
  - 3 - Cartridge case
  - 4 - Cartridge case
  - 5 - Cartridge case
  - 6 - Cartridge case
  - 7 - Cartridge case
  - 8 - Cartridge case
  - 9 - Taser cartridge
  - 10 - Taser doors/wire/AFID
  - 11 - Taser wire
  - 12 - BB gun
  - 13 - Wallet
  - 14 - Glasses
  - 15 - Hat
  - 16 - Glove
  - 17 - Coat
  - 18 - Clothing
  - 19 - Bullet fragment
  - 20 - Bullet fragment
  - 21 - Bullet fragment
  - 22 - Bullet fragment
  - 23 - Bullet fragment
  - 24 - Bullet fragment
  - 25 - Bullet fragment
  - 26 - Bullet
- A1 through C1 - Bullet impacts**
- V1 - LVMPD SC10301 (NV - EX51081)
  - V2 - LVMPD SC10075 (NV - EX44819)
  - V3 - LVMPD SC10340 (NV - EX47330)
- ⊙1 Officer K. Prior #13498
  - ⊙2 Officer R. Nord #14889
  - ⊙3 Officer D. Sutton #15153



Crime scene diagram of the square enclosure and the items of evidence found in the area as well as the positions of the officers and Decedent at the time of the shooting.

Just to the east of the enclosure, crime scene analysts documented and recovered six different expended cartridge casings. Inside of the enclosure, on the north side, they recovered two additional expended cartridge casings. Subsequent ballistic testing on the casings showed that cartridge cases 1 and 2 (as indicated on the crime scene diagram) were fired by Officer Donald Sutton's duty weapon. Testing also showed that cartridge cases 4, 5 and 6 were fired by Officer Robert Nord's duty weapon. Finally, testing showed that cartridge cases 3, 7 and 8 were fired by Officer Kyle Prior's duty weapon.

In the northwest portion of the enclosure, crime scene analysts recovered an expended Taser cartridge, wires and two Taser cartridge blast doors all containing the same serial number (#C3102V180). Outside the enclosure to the southeast was a broken piece of Taser wire as well as two Taser probes which were imbedded into a black coat which was laying on the ground. Additional cut clothing with blood and apparent bullet defects along with medical paraphernalia were laying on the ground adjacent to the jacket.



Along the west wall of the enclosure was a black handgun laying on the ground. Upon closer inspection, it was found to be a Stinger P9T 6 MM pellet gun with serial #12C07010.



Close-up of Decedent's gun.



Close-up of the magazine and green pellets found inside the Decedent's gun.

Inside of the gun was a black magazine with numerous green pellets.

Crime scene analysts also documented numerous bullet fragments that were inside of the enclosure, as well as three bullet strikes to the west wall just above where Decedent's handgun was located.



Three bullet impacts to the west wall of the square enclosure.

The analysts also documented and examined the scene near the intersection of Katie Avenue and Maryland Parkway. To the west of the intersection, they found Officer Thomas Griffin's marked patrol car in the northernmost east bound lane parked with a 1994 Mitsubishi Galant Nevada with license plate 728 YTD against the rear of the patrol car.



The vehicle that was driven by Decedent and stopped by Officer Griffin on Katie Avenue.

A records check of the car showed that its license plate belonged to a Chevrolet, and the vehicle was owned by a woman from North Las Vegas who had no connection to Decedent. Inside the car, crime scene analysts found that, although it was parked at the time, the gear shift was still in the drive position. The vehicle had a key in its ignition, but it had rather extensive damage to the steering column.

Inside of the car, police located numerous items including miscellaneous clothing, a capped syringe in the pocket on the driver's side door, a car battery in the backseat area of the vehicle, several bags containing miscellaneous tools, cellular phones, a watch, a bag containing multiple zip-ties and a zippered pencil pouch containing green and yellow pellets which appear to be the same color and size of the pellets found inside Decedent's handgun.



Bag of green and yellow pellets found inside the backseat area of the 1994 Mitsubishi.

On both the driver and front passenger sides, police also located several other loose green pellets of the same variety of those found in Decedent's handgun lying on the floorboards.

## II. AUTOPSY

On November 25, 2015, Dr. Lisa Gavin conducted an autopsy on Decedent. During the initial external examination of the body, Dr. Gavin noted that Decedent had gunshot entrance wounds to his left upper chest, the left upper quadrant of his abdomen, the right upper quadrant of his abdomen, the left shoulder, the left wrist and his right thigh. The Decedent also had graze wounds to his left bicep and his abdomen area. At the completion of the autopsy, Dr. Gavin opined that Decedent died from multiple gunshot wounds. There were two exit wounds noted on the body on his left wrist and his right thigh. Four bullets were recovered from inside the body.

The autopsy also included toxicology tests on Decedent's blood and urine. The results revealed that Decedent was intoxicated due to methamphetamine use at the time of his death. Methamphetamine is a stimulant drug capable of causing hallucination, aggressive

behavior, and irrational reaction. Blood levels above 200 ng/ml have been reported in methamphetamine abusers who have exhibited violent and irrational behavior. Such high doses can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.<sup>2</sup> Decedent's toxicology report indicated that he had a methamphetamine level of 1000 ng/ml and an amphetamine level of 240 ng/ml.

### **III. OFFICER WEAPON COUNTDOWNS**

Officer Prior's firearm was a "Heckler & Koch VP9" 9 mm caliber, serial number 224-010703 and was affixed with a tactical light. Officer Prior had a total of four magazines, all with the capacity to hold 18 cartridges. Officer Prior also kept one cartridge in the chamber while still maintaining 18 cartridges in his magazine. All of the cartridge cases were head stamped "SPEER + P." The countdown of Officer Prior's firearm showed that Officer Prior's weapon was fired three times.

Officer Nord's firearm was a "Glock 17" 9 mm caliber, serial number SYE518 and was affixed with a tactical light. Officer Nord had a total of four magazines, all with the capacity to hold 17 cartridges. Officer Nord also kept one cartridge in the chamber while still maintaining 17 cartridges in his magazine. All of the cartridge cases were head stamped "SPEER + P." The countdown of Officer Nord's firearm showed that Officer Nord's weapon was fired three times.

Officer Sutton's firearm was a "Smith & Wesson M & P 9" 9 mm caliber, serial number HVC5447. Officer Sutton had a total of four magazines, all with the capacity to hold 17 cartridges. Officer Sutton also kept one cartridge in the chamber but did not add another cartridge to the magazine that was loaded into his weapon. All of the cartridge cases were head stamped "SPEER + P." The countdown of Officer Sutton's firearm showed that Officer Sutton's weapon was fired two times.

### **IV. DECEDENT'S PRIOR ROBBERY WITH USE OF A DEADLY WEAPON**

On November 20, 2015, just four days before the shooting, Decedent was observed at a Home Depot store located at 1401 South Lamb. A loss prevention officer observed the Decedent carry some items out of the store without paying, or attempting to pay, for the items. Loss prevention attempted to stop Decedent, but he proceeded to run to a nearby car. Loss prevention approached Decedent and identified himself as an employee for the

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<sup>2</sup> Information detailed in Decedent's toxicology report authored by NMS Labs report dated December 8, 2015.

store. Decedent reacted by pulling out a black handgun from his waistband, pointing it at the employee and yelling, "Back the fuck up." The loss prevention employee did back up at that point, but he also documented the event by taking photographs of Decedent and his car. Decedent opened the hood of the car and put the gun in the engine compartment area before fleeing the area in the same car.



Photograph of Decedent in front of the Home Depot in front of the same car he was driving on the evening of November 24, 2015. Decedent is about to put the black handgun into the engine compartment of the car following the threat he made to the loss prevention employee.

## V. 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.<sup>3</sup> 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:

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<sup>3</sup> 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 or defense of others, in order to prosecute, the State must prove beyond a reasonable doubt that an individual did not act in self-defense or in defense of others.

Nevada law also provides that a pellet gun is a *per se* deadly weapon. See NRS 193.165 and 202.265.

In this case, Decedent posed an apparent imminent danger to Officers Prior, Nord and Sutton. He refused to comply with multiple orders to show his hands, and he continued to manipulate his gun behind his back. Despite being struck by a Taser and dropping the gun, Decedent, instead of choosing to comply by leaving his gun on the ground, chose to reach back and pick up his gun. He then attempted to turn towards the officers with the gun in his hands. When confronted with an individual who was handling an apparent firearm, refusing to comply with commands to show his hands, and then picking up the gun a second time and moving in an aggressive manner towards one or more officers, all three officers had a duty to respond and a right to utilize deadly force. The fact that the weapon turned out to be a pellet gun is not legally relevant to the analysis of the facts of this case since a pellet gun qualifies as a deadly weapon under Nevada law. Moreover, the pellet gun appeared to be an actual firearm. Decedent's actions in picking up the pellet gun a second time also qualifies as an apparent danger such that officers had the right to defend themselves and fellow officers from Decedent and his weapon. Therefore, Officers Prior, Nord and Sutton 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 Prior, Nord and Sutton were reasonable in their belief that Decedent posed a serious threat to the safety of all officers involved, as well as the surrounding residents of the apartment complex. As aforementioned, the officers saw Decedent initially refuse to show his hands as he manipulated a handgun behind his back. Then, when struck with a Taser, Decedent dropped the gun on the ground and fell forward. Moments later, Decedent reached back to pick up his gun from the ground and turned towards the officers with the gun still in his hands. Decedent's continued refusal to comply with lawful commands being issued to him, as well as his actions in picking up the gun a second time and moving towards the officers, provided legal justification for the officers

to end the threat posed by Decedent. These circumstances created probable cause in Officers Prior, Nord and Sutton's minds that Decedent posed a threat of serious physical harm either to them, 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 Officers Prior, Nord and Sutton 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 Prior, Nord, or Sutton, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

J. Timothy Fattig  
Chief Deputy District Attorney  
Gun Crimes Unit  
Clark County District Attorney's Office