

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Kenneth Alan Johnson on July 18, 2014

INTRODUCTION

On July 18, 2014, at approximately 0145 hours, North Las Vegas Police Officer R. Makinster was involved in a fatal officer involved shooting which occurred at the intersection of Revere Street and Dry Valley Avenue in North Las Vegas (NLV). Earlier that morning, at approximately 0132 hours, NLV police officers had attempted to make a traffic stop on Kenneth Alan Johnson, hereinafter “Decedent,” who was driving a stolen moped. Decedent failed to yield to officers and attempted to flee the scene. The officers began to pursue Decedent and they called other officers to help with that pursuit.

Decedent initially drove into and through a Smith’s shopping center parking lot, then into a residential neighborhood in his attempt to evade officers. After leading police on a circuitous path through various residential areas, Decedent abandoned the moped he was driving and continued to flee on foot. Decedent jumped over a number of walls and entered the backyards of homes in the process. Decedent abandoned a backpack which contained a BB-gun, computer and other items.

As Decedent continued to run from police, some officers were able to get glimpses of Decedent as he moved through the neighborhoods. At one point, officers on scene broadcast that Decedent appeared to be clutching something in his waistband that might be a gun.

At approximately 0145 hours, Officer Makinster located Decedent hiding under a vehicle in the driveway of 725 Dry Valley. Officer Makinster drew his service weapon and ordered Decedent to show his hands. Decedent did not comply, but instead ran westbound toward Revere. Officer Makinster holstered his weapon and drew his Taser as he chased Decedent.

Officer Makinster ordered Decedent to stop, but Decedent would not comply. Officer Makinster observed Decedent bring his right hand toward his own head with what appeared to be a gun and heard Decedent say, “Don’t make me do it! Don’t make me do it!” At this point, Officer Makinster discarded his Taser and drew his service weapon. Officer Makinster then observed Decedent continue to rotate to his left toward Officer Makinster, and Officer Makinster could see the muzzle of Decedent’s gun pointing in Officer Makinster’s direction. Believing he was about to be shot, Officer Makinster opened fire on Decedent, fatally shooting him.

Officer Makinster observed the weapon that Decedent was holding hit the ground as Decedent fell. It later was learned that the weapon was a pellet pistol which was a replica of a Colt Defender .45 caliber handgun.

Decedent was transported to University Medical Center where he was taken to surgery, but later died of his injuries. Decedent was pronounced dead at 0440 hours. On July 19, 2014, at approximately 1000 hours, an autopsy was performed on the body of Decedent by Medical Examiner Lisa Gavin at the Office of the Clark County Coroner.

The District Attorney’s Office has completed its review of the July 18, 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 Makinster were not criminal in nature. This review was based on all the evidence currently available, including the benefit of a Police Fatality Public Fact-finding Review.

This report explains why criminal charges will not be forthcoming against Officer Makinster. 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 officer was not criminal.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the North Las Vegas Police Department (NLVPD) 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 Friday, July 18, 2014, at approximately 0200 hours, Detectives responded to an officer involved shooting that occurred in the area of Revere St. and Tropical Parkway. Upon arrival, a large crime scene had been taped off on Revere from Tropical Parkway northbound to Azure.

Officers on scene reported that at approximately 0132 hours, Officer B. Wheeler and Officer E. Leavitt broadcast on their patrol radio channel that they were attempting to effect a traffic stop on a white male subject on a moped near the intersection of Camino Al Norte and Ann Road. The male suspect was later identified as Kenneth Alan Johnson.

Both Officers Leavitt and Wheeler were dressed in patrol uniforms and were assigned as a two man unit in an unmarked Ford Taurus police vehicle which was equipped with lights and siren. Decedent did not yield to officers, but instead attempted to flee, initially turning into a nearby Smith's shopping center parking lot. As the officers followed Decedent into a Smith's parking lot, they made another radio broadcast that the suspect on the moped was refusing to stop and was attempting to flee.

Sgt. Newson, who was monitoring the pursuit traffic on the radio channel, requested the traffic violation and the speed of the officers' vehicle. Officer Leavitt replied that the reason for the attempted stop was a traffic violation and their vehicle speed was 25mph. Because the vehicle being pursued was a moped, which was traveling at 25mph and presented a minimal threat to other motorists, Sgt. Newson allowed the vehicle pursuit to continue. Officers Wheeler and Leavitt provided updates of their direction of travel, as well as their vehicle speed as the pursuit continued. The officers also broadcast Decedent's description as a white male with tattoos, wearing a white tank-top shirt and blue jeans.

As Sgt. Newson arrived in the area of Ann Road and Revere, he heard Officer Wheeler give a radio update that Decedent was driving on a pedestrian pathway off of Bright Lights Avenue toward Revere. Sgt. Newson spotted Decedent riding the moped onto Revere then turn right to go northbound. Sgt. Newson heard Officer Wheeler say over the radio that he had lost sight of Decedent and was unable to follow him through the pedestrian pathway. Sgt. Newson, who was driving a marked police SUV, then took over as the primary patrol unit in the pursuit. Sgt. Newson pursued Decedent northbound on Revere then eastbound on Country Hill Drive. Decedent next turned left on Berry Hill Lane, then right onto Rio Royal Way. As Sgt. Newson drove onto Rio Royal, he lost sight of Decedent; however, Sgt. Newson realized he had passed Decedent on Rio Royal. As Sgt. Newson made

a U-turn, he heard a radio broadcast indicating the moped was now laying in the front yard of 714 Rio Royal, behind some bushes.

Officer Campbell and Sgt. Newson searched the area for Decedent, but could not find him. Sgt. Newson directed officers to establish a perimeter from Rio Royal North towards Azure Banks Avenue and adjacent streets. As the perimeter units were setting up, Officer Heitzenrater broadcast that he spotted Decedent on Brittany Falls Court. Sgt. Newson heard Officer Heitzenrater state that Decedent had jumped over a wall one street north of Azure Banks. Sgt. Newson, along with Officers Desinor, Leavitt, Heitzenrater, Makinster and Parrish, shifted their perimeter toward that direction in the area of Dry Valley and Revere.

As Sgt. Newson drove east on Dry Valley, he heard a radio broadcast that Decedent was running west toward Revere. Sgt. Newson turned around and proceeded toward the intersection of Revere and Dry Valley. As Sgt. Newson approached the intersection, he heard multiple gunshots and saw muzzle flashes. Sgt. Newson heard who he thought was Officer Desinor give a radio broadcast, "Shots fired!" Sgt. Newson brought his marked patrol SUV to a stop, exited and saw Decedent on the ground, lying on his stomach with his head facing southwest. Sgt. Newson noted that Decedent had sustained multiple gunshots wounds to his body and head. Sgt. Newson saw a black semi-automatic firearm laying approximately a foot away from Decedent's fully extended right hand.

Officer Wheeler then approached Decedent and secured his hands in handcuffs. Sgt. Newson immediately radioed NLVPD dispatch to have medical personnel respond to their location. Sgt. Newson also directed officers to set up a crime scene for both an inner and outer perimeter.

Sgt. Newson spoke with Officers Parrish, Makinster, Wheeler, Leavitt, Heitzenrater, and Desinor and determined that Officer Robert Makinster had fired his duty weapon. Sgt. Newson obtained a public safety statement and determined that Officer Makinster was the only officer to fire his weapon, and Decedent was the only person hit or injured. Medical personnel arrived and transported Decedent to University Medical Center (UMC) Trauma Center.

II. STATEMENTS OF WITNESSES:

Officer Wheeler:

On Friday, July 18, 2014, at approximately 0132 hours, Officer Wheeler and Officer E. Leavitt were working as a two man patrol unit in an unmarked Ford Taurus equipped with emergency blue and red lights and audible siren. At the time, Officer Wheeler was driving eastbound on Ann Road approaching Camino Al

Norte. Officer Wheeler said he saw a white male (Decedent) wearing a white tank top shirt, blue jeans, and black gloves operating a black moped driving eastbound on Ann Road. Officer Wheeler said he was driving in the #2 travel lane and the moped was in the right turn lane. Of note, the roadway markings on the pavement in the turn lane indicated the lane was for right turns only.

Officer Wheeler said he saw the moped drive eastbound through Camino Al Norte into the right storage lane on the south side of Ann Road. Because Decedent had failed to utilize the right turn lane for a right turn, Officer Wheeler said he activated his emergency lights to make a traffic stop. Decedent, however, did not stop and continued to drive the moped eastbound on Ann Road toward Revere. Decedent then made a southbound turn into the parking lot of the Smith's grocery store, located at 5564 Camino Al Norte. Officer Wheeler said he followed Decedent into the parking lot and Decedent then turned the moped westbound and drove down the first aisle of the parking lot. The moped slowed down and Decedent turned the moped so that its left side was facing the front of Officer Wheeler's patrol vehicle.

Officer Wheeler said that he quickly exited his patrol vehicle and could see that Decedent was approximately 30-35 years old and had tattoos on his arms. Officer Wheeler saw a black backpack on the floorboard of the moped in front of Decedent. Officer Wheeler ordered Decedent, "Hey! Stop! Get off the moped!" Officer Wheeler saw Decedent look directly at him, shake his head back and forth and heard Decedent say, "I can't. I can't stop." Decedent then accelerated his moped southbound away from the patrol vehicle.

Officer Wheeler re-entered his patrol vehicle and activated the emergency siren. He pursued Decedent southbound through the Smith's parking lot. Decedent then turned eastbound in the parking lot around the south side of the Smith's. Decedent continued to drive the moped northbound through the back parking lot of Smith's. He then turned the moped westbound onto Ann Road and then northbound onto Revere. Officer Wheeler pursued Decedent northbound on Revere. As they were northbound on Revere just south of Rock Hollow Avenue, Decedent drove the moped to the right, off the roadway, onto the sidewalk. Decedent then turned the moped eastbound and drove down a pedestrian access pathway that exited on Wizard Wand Street.

Officer Wheeler was unable to follow Decedent through the pedestrian access pathway. Officer Leavitt exited the passenger side of the vehicle and ran after Decedent on foot eastbound through the pedestrian access pathway. Officer Wheeler turned the patrol vehicle around and could hear Officer Leavitt over the radio state that Decedent was driving eastbound on Bright Lights. Officer Wheeler then drove southbound on Revere and turned eastbound on Ann Road. Office Wheeler then turned northbound onto Rancho Palms into the neighborhood to which

the pedestrian access pathway connected. As he was driving northbound on Rancho Palms Drive at Park Royal Road, Officer Wheeler heard Officer Leavitt state over the radio that Decedent had turned southbound onto an unknown street. Officer Wheeler saw a single illuminated headlight coming southbound through an undeveloped, un-landscaped area in the neighborhood. Decedent turned eastbound onto Park Royal and continued to drive away from Officer Wheeler's patrol vehicle. Decedent then left the roadway and drove back into the undeveloped area.

Officer Wheeler followed Decedent through the undeveloped area and they both exited onto Oasis Ridge Street northbound. Officer Wheeler saw Decedent stand up on his moped and bounce up and down on it. Decedent then turned eastbound onto Dune Ridge Avenue. Decedent looked back at Officer Wheeler's patrol vehicle and started waving his left hand out to his side. Officer Wheeler could see that Decedent was moving his mouth, but could not hear what Decedent was saying over the sound of his siren. Decedent turned southbound onto Cactus Blossom Street and then westbound onto Cactus Sands Avenue. Decedent then made a southbound turn back onto Oasis Ridge and continued southbound back into the undeveloped area of the neighborhood. Decedent exited the undeveloped area back onto Park Royal Road then drove northbound back through the undeveloped area and onto Copper Sun Court. Decedent then traveled northbound on Copper Sun and turned westbound onto Bright Lights then northbound onto Wizard Wand.

As Officer Wheeler turned northbound onto Wizard Wand, he saw Decedent leave the roadway and drive into the pedestrian access pathway that he originally drove through to get into the neighborhood. Officer Wheeler he lost sight of Decedent as he was driving westbound along the pathway towards Revere. Officer Wheeler turned his patrol vehicle around and exited the neighborhood onto Ann Road.

As Officer Wheeler was exiting the neighborhood, he heard Sgt. Newson on the radio state that he saw Decedent driving northbound on Revere. Officer Wheeler he heard Sgt. Newson on the radio state that he followed Decedent eastbound onto Country Hill from Revere and then northbound onto Berry Hill. Officer Wheeler heard Sgt. Newson on the radio state that Decedent turned eastbound onto Rio Royal. Officer Campbell then stated on the radio that the moped was in the yard of 714 Rio Royal and Decedent ran northbound.

Officer Wheeler stopped his patrol vehicle at the intersection of Tropical Pkwy. and Revere in an attempt to contain Decedent within the perimeter. As he was standing outside of his vehicle, Officer Wheeler heard Officer Makinster on the radio state that he had located a backpack in the pedestrian access pathway off of Revere, and he located a firearm inside. Officer Wheeler next heard Officer

Makinster and Officer Heitzenrater on the radio state that they had located Decedent on Azure Banks, and Decedent had run northbound from that location.

Officer Wheeler got back into his patrol vehicle, drove northbound on Revere, and stopped at the intersection of Revere and Azure. Officer Wheeler heard Officer Heitzenrater on the radio warn that Decedent was clutching his waist band as he was running away from them. A short time later, Officer Wheeler heard Officer Makinster on the radio state that he was in foot pursuit with Decedent westbound on Dry Valley. Officer Wheeler knew Dry Valley was a street that intersected with Revere. He immediately got into his patrol vehicle and began driving southbound on Revere from Azure. As Officer Wheeler was driving southbound, he saw two individuals enter onto Revere from the east side of the street. Officer Wheeler was approximately 125-150 yards away from the subjects at the time. Officer Wheeler then heard multiple loud bangs in quick succession. He saw the person, who was the farthest west, fall to the ground. Officer Wheeler glanced at the other person and saw an individual moving westbound across Revere with his arms raised out forward in front of his body.

Officer Wheeler pulled up to the intersection of Revere and Dry Valley and saw a white male in a white tank top, blue jeans, and black gloves (Decedent) lying face down on the west side of Revere. Officer Wheeler saw a dark colored handgun lying on the ground west of Decedent. Officer Wheeler approached Decedent and placed both of his wrists in handcuffs. As Officer Wheeler was handcuffing Decedent, he immediately recognized Decedent as being the operator of the moped who fled from his patrol vehicle.

Officer Leavitt:

Officer Leavitt gave similar details regarding the movements of Decedent and the officers through the neighborhoods prior to the shooting, including the observed traffic violation. Officer Leavitt saw Decedent drive eastbound from Revere, over the sidewalk and onto the pedestrian path leading to the 700 block of Bright Lights. Since the walkway was not large enough to fit a vehicle, Officer Leavitt exited the patrol vehicle and ran toward the moped in an attempt to keep visual contact until Officer Wheeler could get to the entrance of the community. As the moped traveled through the walkway, Officer Leavitt saw a black backpack fall off the moped and land on the rocks next to the concrete path. The moped then traveled eastbound on Bright Lights and turned southbound onto Copper Sun.

Officer Leavitt lost visual contact with the moped, but he was able to continue to hear the moped's muffler. Officer Leavitt heard over the radio Officer Wheeler make visual contact with Decedent and pursue him until he traveled back westbound onto Bright Lights back toward Officer Leavitt's position. Since

Decedent was traveling at about thirty miles per hour. Officer Leavitt did not attempt to get in the path of the moped.

Officer Leavitt lost visual contact of the moped as it traveled through the walking path leading back onto Revere. Officer Leavitt next saw Officer Heitzenrater arrive in the area in his patrol vehicle and Officer Leavitt got into that vehicle. Officer Heitzenrater and Officer Leavitt then traveled north on Revere where they picked up Officer Makinster at the entrance to the walking path.

Officer Makinster was holding the black backpack which had fallen off of the moped during the pursuit. Officer Makinster looked inside the backpack and saw what appeared to be a handgun. Officer Leavitt broadcast this information out to the other officers for officer safety.

Officer Heitzenrater:

Officer J. Heitzenrater and Officer Makinster were riding as a two man marked patrol unit, in the area of Centennial and Camino Eldorado, when they heard Officer Leavitt and Officer Wheeler call out a traffic stop on a vehicle at Ann Road and Camino Al Norte. Officer Heitzenrater heard a code red on the channel, and one of the officers broadcast that the suspect had failed to yield and was on a moped. Officer Heitzenrater activated his emergency lights and siren and started responding to the officers' location to assist in the pursuit.

Officer Heitzenrater and Officer Makinster entered the neighborhood on the northwest corner of Ann Road and Commerce and attempted to locate Officers Wheeler and Leavitt who were actively pursuing the suspect. Officer Heitzenrater heard Officer Wheeler broadcast that the suspect had driven westbound through the pedestrian access at the end of Wizard Wand, back onto Revere.

When they reached the pedestrian access, Officer Heitzenrater saw Officer Makinster exit their vehicle and attempt to pursue the suspect on foot, through the pedestrian access. Officer Heitzenrater then picked up Officer Leavitt, who had been chasing the suspect on foot, and drove out of the neighborhood to meet Officer Makinster. Officer Heitzenrater then heard Officer Makinster broadcast that he had located the suspect's black backpack and it contained a firearm.

Once Officers Leavitt and Heitzenrater reached Officer Makinster on the Revere side of the pedestrian access, Officer Makinster took custody of the backpack and placed it in the back seat of his patrol vehicle. Officer Makinster then got into the back seat of the patrol vehicle, and all three officers continued northbound on Revere to look for the suspect. The officers then drove to the intersection of Captains Vista Avenue and Magic Mesa Street to cover the north end

of the perimeter police were setting up. Officer Leavitt exited the vehicle and continued on foot north bound on Azure Banks.

Officers Heitzenrater and Makinster continued to search for Decedent as they were traveling westbound in the 700 block of Brittany Falls Court. Officer Heitzenrater started to make a U-turn at the end of the cul-de-sac when he noticed an individual matching Decedent's description standing up against the east wall of 730 Brittany Falls. Officer Heitzenrater saw that Decedent was standing in the corner where the east wall of the residence met the front fence. Decedent was sucked up against the wall of the residence with his right hand on the front waistband of his pants, as if he was concealing a weapon.

Officer Heitzenrater immediately stopped his patrol car, exited the vehicle, and yelled at Decedent ordering, "Police, Stop!" Decedent, however, started to flee over the fence into the back yard of 730 Brittany Falls. Officer Heitzenrater said that as he and Officer Makinster ran toward the location where they saw Decedent go over the wall, Officer Heitzenrater heard Officer Makinster call out, "Foot Pursuit!" over the radio. Officer Heitzenrater then jumped the same fence Decedent had gone over and saw Decedent walking on top of the wall, northbound, before he jumped into the back yard of 729 Dry Valley. Officer Heitzenrater then lost sight of Decedent.

As Officer Heitzenrater took the same path that Decedent had taken, he saw Officer Makinster go through the backyard of the house east of 730 Brittany Falls. This allowed Officer Makinster to reach the backyard of 729 Dry Valley and to continue out onto the street before Officer Heitzenrater. Officer Heitzenrater slowed down and started clearing the rear of 729 Dry Valley to make sure Decedent was not hiding in the backyard. He also advised over the radio that Decedent was holding the front of his waistband as if he was possibly concealing a firearm when Officer Heitzenrater last saw him.

Officer Heitzenrater heard radio traffic that the suspect was yelling and running westbound and on Dry Valley. Officer Heitzenrater jumped from the wall onto the east side of 729 Dry Valley and ran westbound toward Revere. Officer Heitzenrater saw Officer Makinster chasing Decedent westbound across Revere. Officer Heitzenrater saw what appeared to be a black handgun in Decedent's right hand as he was running across Revere. Officer Heitzenrater drew his firearm and pointed it at Decedent as he continued to move toward Decedent. As Officer Heitzenrater moved westbound across Revere, however, he saw Officer Makinster fire his duty weapon at Decedent. Officer Heitzenrater continued to move toward Decedent as Officer Makinster was engaging him. Officer Heitzenrater did not fire his weapon, but he did see Decedent fall to the pavement. Officer Heitzenrater then moved around to the right of Decedent next to Officer Makinster and provided cover

until Officer Wheeler moved in and handcuffed Decedent. Once Decedent was handcuffed, Officer Heitzenrater holstered his weapon and started to assist with taping off the crime scene.

Officer Makinster:

On July 21, 2014, Officer Makinster agreed to come to the North Las Vegas Police Department Detective Bureau and give a voluntary taped statement about the shooting incident. Officer Makinster said that on July 18, 2014, he was on duty as a uniformed patrol officer, in a marked unit along with Officer Heitzenrater. They were in the area of Centennial and Camino Al Norte when he heard Officers Wheeler and Leavitt begin to pursue an unknown suspect. They responded to the area to assist in the pursuit efforts.

Officer Makinster said at the time he wondered why a subject on a moped at 1:30 a.m. would evade the police. Officer Makinster believed that the moped was possibly stolen. When they got to the area of the pursuit, Officer Makinster exited his vehicle near the pedestrian walkway and saw the backpack which had been abandoned by Decedent. Officer Makinster looked inside the backpack and saw the grip of a handgun.

Officer Makinster recovered the backpack and got back into his car which was being driven by Officer Heitzenrater. Officer Makinster took a closer look at the gun in the backpack and saw it was a Daisy pellet gun. Officer Makinster remembered seeing Decedent crouching by a garage door in the cul-de-sac of Brittany Falls Ct. and also seeing Decedent with his hand by his waistband as if he was clutching something. Officer Makinster thought Decedent may have been holding a firearm. Officer Makinster then saw Decedent flee northbound into the backyard of a nearby residence. Officer Makinster got out of the patrol vehicle and began to pursue Decedent on foot towards Dry Valley. Officer Makinster lost sight of Decedent as he was clearing the backyards, but he knew that Decedent went towards Dry Valley. When Officer Makinster made it out into the street, he started to clear threat areas in the front yards of 721 and 725 Dry Valley using his flashlight.

Officer Makinster saw Decedent underneath a vehicle in the driveway of 725 Dry Valley. Officer Makinster ordered Decedent to show his hands, but Decedent would not comply. Decedent then stood up, turned away from Officer Makinster, and ran through the residential yards westbound towards Revere. Officer Makinster holstered his handgun and began to chase Decedent again. Officer Makinster next drew his Taser, intending to close the gap between himself and Decedent and to get close enough to deploy his Taser. Officer Makinster ordered Decedent, "Stop - stop - stop! You're gonna get tased!" Officer Makinster said that Decedent ignored these commands and kept running.

Officer Makinster then saw Decedent bring his right hand towards his own head with a gun in hand. He saw Decedent put the gun to his own head as he continued to run away. He heard Decedent say, "Don't make me do it! Don't make me do it!" Decedent then turned his head to his left and was looking back over his left shoulder towards Officer Makinster.

Upon seeing the gun, Officer Makinster said he immediately dropped his Taser and drew his firearm. He saw Decedent bring his right hand with the gun down from his head and start to turn his upper body left and back towards Officer Makinster's position. Decedent continued to rotate to his left and Officer Makinster could then start to see the muzzle of the gun Decedent was holding pointing in his direction. Believing that Decedent was about to shoot him, Officer Makinster said he felt that he had no other choice but to defend himself.

Officer Makinster fired his handgun at Decedent. Officer Makinster remembered firing multiple times as Decedent kept moving. After firing his last shot, however, Officer Makinster he saw Decedent fall to the ground face first. Officer Makinster said that he also saw the gun that Decedent was holding hit the ground.

After the shooting, Officer Makinster approached Decedent and stood over him, covering him and watching the gun on the ground. He radioed, "Shots fired! Shots fired! Medical 10-18." He saw another officer place Decedent in handcuffs. Officer Makinster realized he had fired his handgun and per his training, he performed a "tac reload" by exchanging the magazine that was in his gun with another fully loaded magazine from his waist pouch. Once other officers, supervisors, and medical personnel started to arrive, Officer Makinster gave his public safety statement to his supervisor, Sgt. Eric Newson.

Non-Law Enforcement Witnesses:

There were no reported citizen witnesses in the 700 block of Dry Valley. Detectives conducted a canvass of houses in the 6000 block of Star Decker Road, which was the street located on the other side of a brick wall adjacent to the west curb line of Revere where the shooting took place.

Citizen #1

Detectives were able to make contact with Citizen #1, the resident of 6060 Star Decker, whose backyard faces the T-intersection of Revere and Dry Valley. Citizen #1 stated that on July 18, 2014, about 0145 hours, he was in his bedroom and heard seven to eight gunshots on Revere. Citizen #1 looked out his bedroom

window and saw the police and several marked police units arriving. Citizen #1 did not see anything out his window prior to hearing the gun shots. Detectives were unable to locate any other citizen witnesses in the area.

III. DESCRIPTION OF VISIBLE EVIDENCE AT THE SCENE

Among the items recovered from the scene were fourteen 9mm cartridge cases and a Colt Defender pellet pistol. All of the cartridge cases were located on the roadway in the 6100 block of Revere. The pellet pistol, also located in the roadway in the 6100 block of Revere, was a realistic looking replica of an actual Colt Defender .45 caliber handgun. At first glance and without close inspection, the Colt Defender pellet pistol is indistinguishable from the real gun it replicates.

In addition, a black Fenix LED tactical flashlight was located in the “on” position in the street in front of 725 Dry Valley Avenue. A Taser discharge device was also found on the roadway in the northbound travel lanes of the 6100 block of Revere Street. A black compact Mag-Light XL-50 LED flashlight, a silver Leatherman Wave multi-tool, along with some handwritten notes, were all located on the roadway of the 6100 block of Revere Street.

The notes found contained the name and phone number of an individual, as well as the word “BOOST.” In addition, one of the notes had what appeared to be a reference to some sort of printer/toner cartridge. Clothing, which had been cut off of Decedent by medical personal, along with some of Decedent’s related personal effects were also recovered from the location where Decedent fell after the shooting.

The plastic grip panels on the recovered pellet pistol were partially unsecured and a CO2 cartridge was visible inside the grip. It was unknown how the grip panels became loose, but it appeared likely that they became dislodged from the impact that occurred when the pistol hit the ground. Since the grip panels were part of the handle of the gun, it is likely that the CO2 cartridge would not have been visible in Decedent’s hand when he was holding it.

IV. COUNT DOWN

Officer Makinster’s duty firearm was a department issued Glock 17 9mm pistol, loaded with department issued Winchester Ranger SXT 127 grain jacketed hollow point 9mm +P+ ammunition. The Glock pistol was equipped with a department approved Streamlight TLR-1 tactical flashlight. It was determined that Officer Makinster's Glock was fully loaded with 18 rounds prior to the shooting, with 17 rounds loaded in the magazine and one round in the chamber.

Officer Makinster fired his weapon 14 times, leaving 3 rounds in the magazine and one round in the chamber. After firing his weapon, he reloaded with a full magazine of 17 rounds and placed the partially loaded magazine of 3 rounds into his belt mounted magazine pouch.

V. AUTOPSY

On July 19, 2014, an autopsy of Decedent was performed by Dr. Lisa Gavin. Dr. Gavin determined that the cause of Decedent's death was multiple gunshot wounds, and the manner of death was homicide.

The autopsy revealed that Decedent was shot a total of seven times as follows:

1. Head – Right Parietal Scalp;
2. Right Axilla/Right Lateral Chest and Right Neck;
3. Right Buttock;
4. Right Lower Buttock;
5. Graze Wound – Left Lateral Chest/Axilla and Left Arm;
6. Right Lower Lateral Leg; and
7. Right Lower Flank.

Toxicology results from Decedent blood revealed the presence of methamphetamine and amphetamine (methamphetamine metabolite), caffeine, theobromine (caffeine metabolite), nicotine, and cotinine (nicotine metabolite). **Decedent's methamphetamine level was 1000 ng/ml and was considered a toxic/lethal level.***

* Blood levels in the range of 200 – 600 ng/ml have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

VI. DECEDENT'S CRIMINAL BACKGROUND

A records check of Decedent revealed that he had an outstanding arrest warrant for Possession of Dangerous Drugs Not To Be Introduced Into Interstate Commerce. Decedent also had prior felony convictions for Possession of Credit Card Without Owner's Consent, Attempted Burglary, Stop Required On Signal Of Police Officer, Burglary and Attempt To Commit Forgery.

Decedent's driver's license had also been suspended since 2009.

VII. FOLLOW-UP INVESTIGATION

On July 19, 2014, Detectives responded to Smith's Food King at 5564 Camino Al Norte and recovered a video recording from exterior cameras with a view of the parking lot along the path of the pursuit. At approximately 0132 hours on July 18, 2014, Decedent was seen driving a black moped through the parking lot. The footage also showed Officers Wheeler and Leavitt in pursuit with their emergency lights activated and Decedent failing to yield.

On July 19, 2014, Detectives responded to 714 Rio Royal (the residence where Decedent ditched the moped during the pursuit). The resident at that location had no idea who Decedent was or why he ditched his moped in the resident's yard. Despite further investigation, detectives were not able to find any link between Decedent and the resident of 714 Rio Royal.

On July 24, 2014, Detectives contacted the registered owner of the moped. The owner reported the moped stolen on July 15, 2014, under LVMPD event 140715-1621. The moped was apparently stolen from the parking lot of the owner's apartment complex approximately eleven miles from the location where police first made contact with Decedent. The moped owner did not have any information concerning the person who took his moped and said that he did not keep a brown tool bag under the seat. When shown a photo of Decedent, the moped owner said that he did not know him. Detectives were unable to find any link between Decedent and the moped owner.

Detectives also obtained copies of Officer Makinster's department firearms records. As per NLVPD policy, his Glock 17 was inspected by a department armorer on January 17, 2014, and found to be within specifications. Records also showed that Officer Makinster passed a department firearm qualification course on January 17, 2014.

Detectives submitted Officer Makinster's Glock 17, all magazines, all recovered 9mm cartridge cases, and all recovered bullets and bullet fragments for forensic examination and comparison. Officer Makinster's Glock 17 was test fired and found to operate normally. It was determined that all fourteen 9mm cartridge cases were fired from Officer Makinster's Glock 17. In addition, the three bullets and two bullet jackets recovered all had the same general rifling characteristics as the test fired bullets from Officer Makinster's Glock 17.

Detectives also submitted a known DNA reference sample from Decedent (obtained at autopsy) for a comparison to a swab of potential DNA collected from the Colt Defender pellet pistol. The forensic laboratory developed a DNA profile

from the swab taken from the gun and determined the DNA profile matched that of Decedent.





The Decedent's direction of travel through the intersection before the attempted traffic stop.



The home where Decedent abandoned the moped.



The location where Decedent abandoned the moped.



The bag with tools left in the moped (not property of the true owner).



The backpack abandoned by Decedent as he ran from police.



The “Dasey,” model #22, CO2 air pistol BB-gun located within Decedent’s backpack.



The “Dasey,” model #22, CO2 air pistol BB-gun removed from Decedent’s backpack.



The location where Decedent was shot. The police vehicle in this photo was not present at the time of the shooting.



The location of Decedent's weapon in relation to where he was shot. Medical is seen rendering aid to Decedent.



The Decedent's weapon at the shooting location.



A close-up image of Decedent's weapon without the hand grips.

VIII. TIMELINE

01:32:34 hours	Traffic stop initiated
01:33:19 hours	Subject running
01:34:06 hours	Subject drops backpack
01:38:46 hours	Dumped moped at 714 Rio Royal
01:48:03 hours	Foot pursuit! Foot pursuit!
01:48:39 hours	He went over a wall
01:49:40 hours	Suspect was hiding up against a house clutching his waist band
01:50:42 hours	Shots fired, suspect down, shots fired

IX. LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing 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 killing. As this case has been deemed a homicide by the coroner, the actions of the officer will be analyzed under the State's jurisprudence pertaining to homicides.

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). There is also a statute that defines excusable homicide by misadventure (NRS 200.180 – Excusable homicide by misadventure).

A. The Use of Deadly Force in Defense of Another

The authority to kill in defense of others is contained in NRS 200.120 and NRS 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 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.

In this case, Officer Makinster reasonably believed that he and the residents in proximity to Decedent at the time of the shooting were in imminent danger. Decedent's continual refusal to comply with the officers' commands and his threatening actions toward Officer Makinster created a dangerous situation for both Officer Makinster and the nearby residents.

Decedent's acts of evading officers in a residential neighborhood, along with Decedent jumping over walls and entering the backyards of nearby residences, clearly posed an immediate apparent threat to all involved. In addition, Decedent's statement to Officer Wheeler that, "I can't. I can't stop," and his statement to Officer Makinster that, "Don't make me do it. Don't make me do it," further heightened the danger an apparent threat to the officers and the citizens. Furthermore, the fact that Decedent was holding and pointing what appeared to be a gun in the direction of Officer Makinster justified the use of lethal force to stop the threat posed by Decedent.

In short, Officer Makinster had the right under Nevada law to use deadly force against Decedent in defense of himself and others.

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).

When Officer Makinster saw Decedent turn toward him and saw the muzzle of Decedent's apparent gun pointing in Officer Makinster's direction, there was a clear threat of serious physical harm to Officer Makinster. In addition, the fact that Decedent had told Officer Makinster, "Don't make me do it! Don't make me do it!" just prior to making this movement further heightened the threat such that, under the circumstances, Officer Makinster was unequivocally justified in using deadly force to neutralize that threat.

It light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officer Makinster were in fact unjustified “in the discharge of a legal duty.”

C. Use of Deadly Force by an Officer to Prevent Escape

The law in Nevada with regard to when an officer may use deadly force to effect an arrest and to prevent the escape of a fleeing felon is defined in NRS 171.1455.

NRS 171.1455 states that:

If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person:

1. Has committed a felony which involves the infliction of threat or serious bodily harm or the use of deadly force; or
2. Poses a threat of serious bodily harm to the officer or to others.

The use of deadly force by an officer in such circumstances was also addressed in the case of Weddell v. State, 118 Nev. 206, 43 P.3d 987 (2002). In Weddell, the Court held “that deadly force is, as a matter of law, unreasonable, unless the deadly force is used in defense of self or others against a threat of serious bodily injury.” Id. at 209, 43 P.3d at 988. The Court, however, went on to discuss the legislative intent behind NRS 171.1455. The Court stated that after reviewing the legislative history concerning the enactment of NRS 171.1455, the Court recognized that the legislature intended to adopt the United States Supreme Court’s holding in the case of Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). Id. at 212, 43 P.3d at 990, in relation to when an officer may lawfully use deadly force to apprehend a felon.

In Garner, the United States Supreme Court in considering this issue held that:

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a

weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. *Id.* at 12, 150 S.Ct. at 1701.

In the instant case, Officer Makinster was faced with a very dangerous situation. Not only was Officer Makinster's life directly placed in jeopardy by Decedent's actions, but there were also other persons in the immediate vicinity that day who were equally threatened. As such, therefore, under both subsections one and two of NRS 171.1455, Officer Makinster was justified in using deadly force to stop Decedent from escaping.

CONCLUSION

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved shooting death of Decedent, it has been determined that the actions of Officer Makinster was reasonable and 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 Officer Makinster based on the totality of the circumstances, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED: February 6, 2015

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