

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Al Jarreau Cross on October 10, 2014

INTRODUCTION

On October 7, 2014, at approximately 2300 hours, North Las Vegas Police Officers S. Forsberg and D. Wells were involved in a fatal officer involved shooting which occurred in a desert area near the intersection of West Carey Avenue and Englestad Street in North Las Vegas (NLV). Just prior to the shooting incident, Officers Forsberg and Wells had attempted to make a traffic stop on Al Jarreau Cross, hereinafter “Decedent,” who was driving a white BMW sedan at the time. Decedent failed to yield to officers and he subsequently abandoned his vehicle in a driveway located at 715 Miller Avenue and fled on foot.

Officer Forsberg subsequently pursued Decedent on foot while Officer Wells tried to cut Decedent off in his unmarked patrol vehicle. Decedent ran into a desert area off of Carey Avenue then turned and shot at Officer Forsberg. Officer Forsberg had a Taser in his hand at the time, but did not have his gun out when Decedent began to fire his weapon. Before Officer Forsberg could draw his gun, Officer Forsberg was hit in his lower extremities by a number of Decedents gunshots. Despite being shot by Decedent, Officer Forsberg was able to retreat over an embankment and return fire. During this exchange, Officer Wells arrived on scene and also engaged Decedent with gun fire.

Officers ultimately shot Decedent multiple times and he was pronounced dead on the scene by arriving medical units. Officer Forsberg sustained four nonlife threatening gunshot wounds to his lower extremities and was transported to University Medical Center (UMC) for treatment.

The Clark County District Attorney's Office has completed its review of the October 7, 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 Officers Forsberg and Wells were not criminal in nature. This review was based on all the evidence currently available, including the benefit of a police fatality review.

This report explains why criminal charges will not be forthcoming against Officers Forsberg and Wells. 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 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 October 7, 2014, at approximately 2300 hours, Officer Wells and Officer Forsberg notified North Las Vegas (NLV) Dispatch that they were involved in a foot pursuit of Decedent in the area of west Carey Avenue and Englestad Street. The officers also broadcast that they were moving northbound through what was described as an "open lot" and that both officers were north of a church, which was located on west Carey. Moments later, the officers radioed that shots had been fired and one of the officers had been shot. The broadcast also stated that Decedent was down.

NLV Dispatch immediately summoned medical personnel to the area to evaluate both the injured officer and Decedent. As assisting units began to arrive in the area, Officer Wells broadcast that he and Officer Forsberg had attempted to conduct a traffic stop on a white BMW sedan on west Miller, east of Revere. It was unknown at the time, if there were any other suspects in the area who may have fled from the initial traffic stop.

Upon arriving in the 700 block of west Miller, Officer Fellig observed a white BMW, bearing Nevada license number LV-J1M7, parked in the driveway of 715 west Miller. The engine of the BMW was not running and all four doors of the sedan, were closed. Officer Fellig immediately positioned his patrol vehicle at an angle, in an effort to prevent potential flight of the sedan, or physical contamination of the immediate area.

North Las Vegas Rescue arrived on scene to evaluate both Decedent, whose identity was unknown at the time, and Officer Forsberg, who was the officer struck by gunfire during the exchange. Paramedics determined that Decedent did not have any vital signs and was beyond resuscitation. Paramedics pronounced Decedent dead at the scene. Officer Forsberg, who sustained numerous gunshot wounds to his lower extremities, was transported via ambulance to University Medical Center (UMC) for further treatment.

While Officer Fellig remained at west Miller, he cleared the BMW confirming that there were no remaining occupants inside. Police established a perimeter around 715 west Miller because of concerns that other potential suspects might be in the area. Las Vegas Metropolitan Police Department's (LVMPD) on-duty air unit assisted in this process and no other suspects were located.

Police questioned the owner and resident of 715 west Miller to determine if she knew the owner or driver of the BMW parked in her driveway. The resident also allowed officers to enter her home and ensure that there were no potential suspects from BMW inside of the residence. Police did not locate other suspects in or around 715 west Miller and no one from that residence had any apparent connection with the BMW or its driver.

Police obtained the Department of Motor Vehicles (DMV) registration information for the BMW and subsequently responded to the residence listed in that registration which was 3512 west Colton. Officers Santos and Olson made contact with a black female adult at the Colton residence, who turned out to be Decedent's mother. Decedent's mother acknowledged that the BMW was Decedent's car and stated that she had last spoken to Decedent in the afternoon of the previous day.

Officer Simpson, responded to UMC and learned that Officer Forsberg had sustained four gunshot wounds to his right anterior leg (below the knee), right posterior thigh, right medial thigh and left anterior leg (below the knee). Officer Forsberg was noted to be in stable condition. Officer Wells was not hit by gunfire during the exchange.

II. COUNTDOWN

Officer Forsberg's Duty Weapon:

Officer Forsberg carried a Glock 21 .45 semiautomatic handgun with TAC light, serial number KHT774. Officer Forsberg's Glock 21 had one (1) WIN .45 auto cartridge in the chamber and seven (7) WIN .45 auto cartridges in the magazine.

Officer Forsberg also carried two back up magazines each holding twelve (12) WIN .45 auto cartridges.

Officer Wells' Duty Weapon:

Officer Wells also carried a Glock 21 .45 semiautomatic with TAC light, serial number MHG740. Officer Wells' Glock 21 had one (1) WIN .45 auto cartridge in the chamber and eight (8) WIN .45 auto cartridges in the magazine. Officer Wells also carried two back up magazines one holding twelve (12) WIN .45 auto cartridges and the other holding thirteen (13) WIN .45 auto cartridges.

III. DECEDENT INFORMATION AND LOCATION ON SCENE

Decedent, identified by his State of Nevada Driver License as Al Jarreau Cross, was a 28 year old black male adult. At the incident scene, Decedent was located in a prone position on the ground with his head turned to the left facing north. Decedent's two hands were handcuffed behind his back and his right thumb was stuck inside an apparent gunshot wound located within the lower right quadrant of his back, just above his right buttock. Decedent was wearing a blue striped polo shirt, blue jeans, and blue sneakers. Decedent's head was pointing to the east and his feet pointing to the west.

The weapon used by Decedent on October 7, 2014, was a Smith & Wesson "WALTHER" Model P99 9mm semi-automatic pistol, serial# FAC4727. This gun was reported stolen under LVMPD Event #131127-2401. Decedent also had numerous previous contacts with the police, including several arrests from multiple jurisdictions. Decedent had been convicted of two counts of assault with a deadly weapon in 2005 in case #C208803 and was sentenced to prison.

IV. VEHICLE INFORMATION AND LOCATION

Decedent's vehicle was a white 2000 BMW 7.40iL four-door sedan, bearing Nevada license plate #LVJIM7. Decedent's vehicle was located in the driveway of 715 west Miller Avenue, facing south. The vehicle was registered to Decedent.

V. EVIDENCE RECOVERED

PHYSICAL EVIDENCE:

Two prescription pill bottles containing a total of 124 tablets, prescribed to Decedent, were located inside of a small cloth bag which was located inside of a black handbag on the rear passenger seat of Decedent's BMW. One of the bottles was labeled "Hydrocodone/Aceta Tab 10-500." This bottle contained 50 oval white tablets each stamped with "Watson 853" and 6 oval yellow tablets each stamped with "3601" on one side and "V" on the other side. The other bottle was labeled "Carisprodol 350mg Tablets" and contained 68 round white tablets stamped with "2410 V" on each tablet.

The following items were collected or photographed from the vacant dirt lot where the shooting incident took place:

- (9) "WIN 45 AUTO+P" cartridge casings (**fired from the officer's guns**)
- (1) Black "TASER X26" Taser, serial# XOO-376779
- (5) "13 MKE 9P" 9mm cartridge casings (**fired from Decedent's gun**)
- (1) Expended copper wiring with two barbs from the "TASER X26" Taser
- (1) Pair of black frame eyeglasses and the broken pieces of one of the lenses
- (1) White APPLE cell phone with a gray "OTTER" suede cover
- (1) Key ring containing numerous keys and (1) vehicle remote removed from Decedent's body
- (8) Personal cards in the name of Decedent taken from his right rear pants pocket

- (1) Silver stainless steel clip-on folding knife taken from the right waist area of Decedent
- (1) Black automobile key and two gas keys on the same ring.
 - **THE AUTOMOBILE KEY FIT DECEDENT'S BMW WHICH WAS PARKED IN THE DRIVEWAY OF 715 WEST MILLER AVE.**
- (1) Black Smith & Wesson "WALTHER" Model P99 9mm semi-automatic pistol with serial# FAC4727 containing a magazine loaded with nine rounds of 9mm ammunition and one live round of 9mm ammunition in the chamber
 - **THIS GUN WAS REPORTED STOLEN UNDER LVMPD EVENT# 131127-2401.**

Police also conducted a general search of the path of pursuit of Decedent using canine units and a grid search of the area. Police conducted this search in an attempt to locate additional items of evidence. Police did not, however, recover any additional evidence.

VI. 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.

- The autopsy revealed that Decedent was shot a total of five times as follows:
 - Left Lateral Chest;
 - Right Posterior Shoulder;
 - Right mid-back;
 - Right Buttock; and
 - Right Thigh

Toxicology results from Decedent blood revealed the presence of the following: Delta-9 THC (active ingredient of Marijuana); Delta-9 Carboxy THC (inactive metabolite) in both urine and blood; caffeine; theobromine (caffeine metabolite); Thophylline; and meprobamate (carisoprodol metabolite).

- Peak THC concentrations in serum after smoking 1.75% or 3.55% THC Marijuana cigarettes are 50 – 270 ng/ml after beginning smoking, decreasing to less than 5 ng/ml by two hours. Corresponding delta-9-carboxy-THC concentrations range from 10-101 ng/ml about 32 to 240 minutes after the beginning of smoking and decline slowly. Decedent's THC level was measured at 22 ng/ml in his peripheral blood at autopsy.
- Meprobamate is a DEA Schedule IV sedative, antianxiety and muscle relaxant agent. Meprobamate produces central nervous system depression similar to barbiturates and has physical dependence addiction liability equal to that of barbiturates. Meprobamate is capable of producing an outward appearance of intoxication. Meprobamate can also cause derangement and/or impairment of alertness, judgment, sense of care and caution and nerve-muscle coordination. Sudden withdrawal of this drug can result in seizures and death.
- Theophylline is a xanthine derivative used in the treatment of asthma due to its bronchodilatory effects. Theophylline is also a metabolite of caffeine. Toxic manifestations include nausea, vomiting, tachycardia, hypotention and arrhythmias in the absence of hypoxia, fever or stimulant drugs. Seizures may occur before other signs of toxicity and may result in death.

At autopsy, Dr. Gavin located a prescription bottle in the front left pocket of Decedent's jeans in the name of Decedent for Meloxicam 15mg. The prescription was for 30 tablets and there were 25 tablets left inside the bottle. Meloxicam is a nonsteroidal anti-inflammatory drug (NSAID) and works by reducing hormones that cause inflammation and pain in the body. Meloxicam is used to treat pain or inflammation caused by osteoarthritis or rheumatoid arthritis in adults and children.

VII. STATEMENTS OF WITNESSES:

Officer Forsberg:

Officer Forsberg and Officer Wells were working the swing shift, 2 p.m. to midnight, as a problem solving unit in an unmarked patrol car on October 7, 2014. Officer Forsberg was dressed in a standard uniform with patches on his arms and a cloth badge on his chest.

Officer Forsberg said that at approximately 2300 hours he observed a white BMW driving west on Elizabeth Avenue fail to stop at the stop sign located at the intersection of Englestad St. Officer Forsberg said that the car stopped past the designated stop sign then drove north to Miller Avenue where it accelerated then turned into a private drive at 715 Miller Avenue. Officer Forsberg turned on his emergency lights and chirped his siren. The driver (Decedent) then exited the vehicle and ran in a north east direction. Officer Forsberg chased Decedent on foot to Carey where he gave orders for Decedent to stop. Officer Forsberg said Decedent did not stop, but continued to run in a northeast direction across a desert lot.

Officer Forsberg saw Decedent fall into a ditch or some type of ravine. Officer Forsberg said he had his Taser out at this point and when Decedent turned towards Officer Forsberg he could see that Decedent was pulling out a gun, Officer Forsberg did not have his gun out and he said that he felt he had no choice, but to shoot the Taser he had in his hand. Officer Forsberg said that he was trying to make Decedent pause long enough so he could retrieve his gun.

After firing his Taser, however, Officer Forsberg saw a muzzle flash from Decedent's gun and felt rocks hitting him. Officer Forsberg lost his footing and fell and when he tried to get up, Decedent continued to shoot at him. Officer Forsberg said that he felt the shots hit his legs and move up his body as he tried to get up and over an embankment. Officer Forsberg turned around and returned fire. Officer Forsberg wasn't sure if he hit Decedent with his first shot.

Officer Forsberg said Decedent still had the gun and turned away from Officer Forsberg which allowed Officer Forsberg to shoot at Decedent again. Officer Forsberg saw Decedent standing there still holding his gun so Officer Forsberg shot at Decedent again. This time, Decedent dropped to the ground and his legs did not appear to be working. Officer Forsberg said that Decedent still had the gun and he ordered Decedent to put his hands behind his back and lay down on his face. Decedent failed to comply so Officer Forsberg shot at Decedent again.

Officer Forsberg wasn't sure where Officer Wells was at this time, but he knew Officer Wells was close by and he heard Officer Wells' shots. Officer

Forsberg did not know how many times he or Officer Wells fired their respective weapons, but Officer Forsberg did think that he fired his gun twice before Officer Wells fired any rounds.

Officer Forsberg said that after the shooting, both he and Officer Wells approached Decedent who had completely stopped moving. Officer Wells put Decedent in hand cuffs and they broadcast the shooting incident out on the radio to dispatch.

Officer Wells:

Officer Wells provided a similar account to that of Officer Forsberg concerning the initial traffic stop. Officer Wells said that Decedent ran away from his vehicle and that Officer Forsberg chased after Decedent on foot. Officer Wells said that he got back into his patrol vehicle when Decedent ran and he chased after Decedent to a desert area northeast of where Decedent had originally stopped.

Officer Wells said that as he arrived on scene he could see a silhouette of Officer Forsberg and it appeared as though he wasn't running anymore. As Officer Wells pulled up on Carey Avenue, he saw muzzle flashes and heard multiple rounds being fired. Officer Wells saw Officer Forsberg scrambling up a berm in a southwest direction and saw dirt flying up around Officer Forsberg. Officer Wells said that at that moment, he believed that Decedent was shooting at Officer Forsberg.

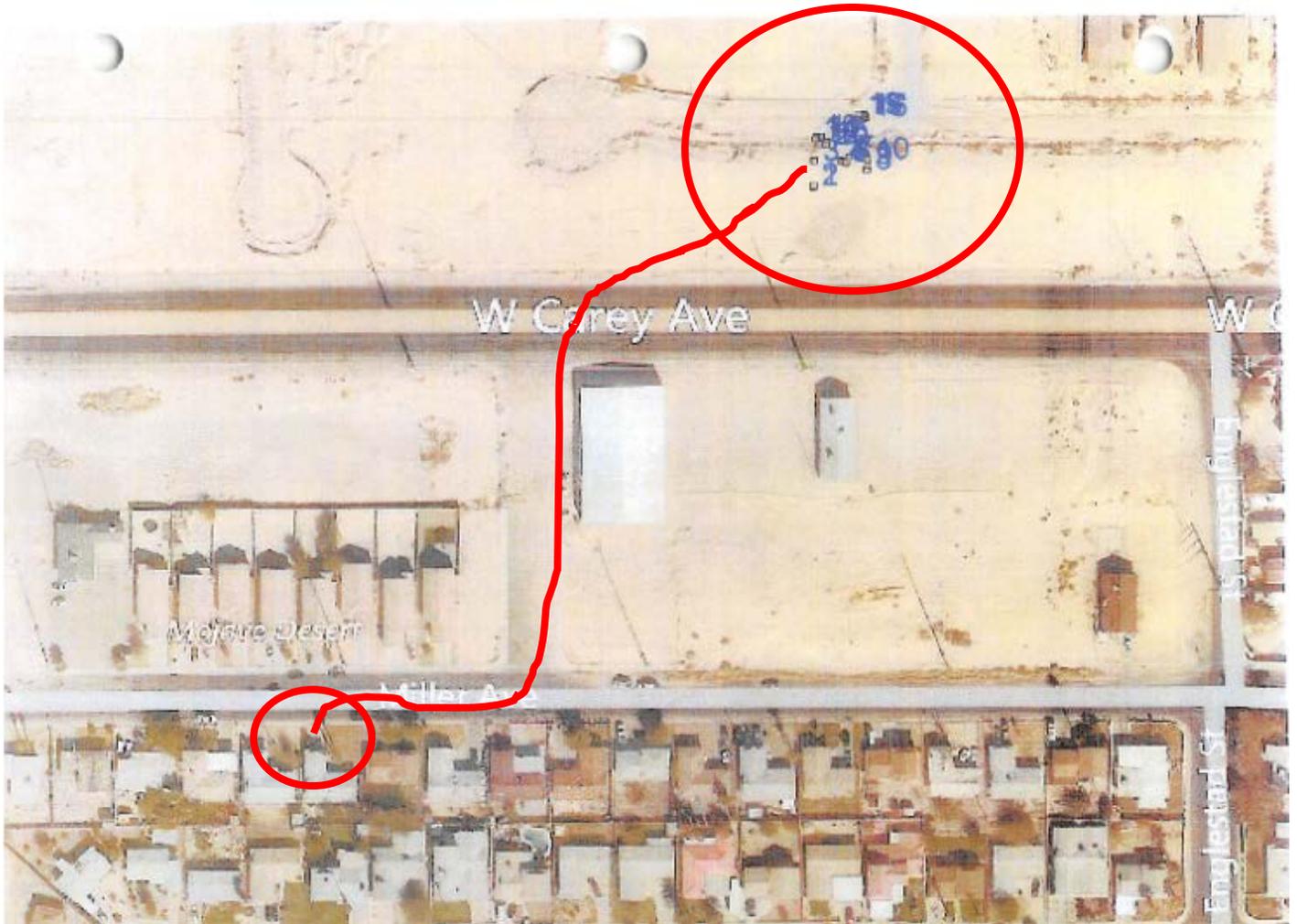
Officer Wells got out of his car and ran towards Decedent. When he got to the embankment, he could see Decedent and started firing at him. Decedent was on the ground in a kneeling position and it appeared as though he had been shot by Officer Forsberg. Decedent was not actually firing his weapon at that moment, but it did appear as though Decedent was still trying to engage Officer Forsberg.

Officer Wells continued to move towards Decedent. When he got to Decedent, Officer Wells said he was able to grab Decedent in an attempt to handcuff him. Decedent was still putting up a fight and Officer Wells had to pull Decedent's arm out from underneath him in order to handcuff him.

Officer Wells could see Decedent's gun nearby so Officer Wells kicked it away from Decedent. At that time, Officer Wells said that numerous other officers, as well as an ambulance and paramedics arrived.



The yellow pin is the approximate location Decedent abandoned his vehicle. The red line depicts the approximate path of travel during the foot pursuit. The red X is the approximate location of the shooting.



An enlarged image of the approximate vehicle and shooting locations, as well as the approximate path of travel to the shooting location. The blue numbers depict evidence recovery locations.



A gunshot wound suffered by Officer Forsberg – Right, anterior leg below the knee.



A second gunshot wound suffered by Officer Forsberg – Right, posterior thigh.



A third gunshot wound suffered by Officer Forsberg – Right, medial thigh.



A fourth gunshot wound suffered by Officer Forsberg – Left, anterior leg below the knee.



The shooting location depicting the lighting as it was at the time of the incident (looking north).



The shooting location depicting the lighting as it was at the time of the incident (looking west). The blue circle is the location of Decedent's body.



The location of Decedent's gun after Officer Wells kicked it away from Decedent (Decedent is blocked out in the upper left corner of the photo).



A closer image of Decedent's gun.



Decedent's direction of travel during the pursuit taken after sunrise (Officer Forsberg's Taser is located by placard #3). The black oval indicates the location of where Decedent was shot and fell.



A close-up image of Officer Forsberg's Taser at the scene.



The medication bottles recovered from Decedent's car.



The medication bottle recovered from Decedent's pocket at autopsy.

IX. FOLLOW-UP INVESTIGATION

The Clark County District Attorney's Office initially reviewed the investigative materials provided by law enforcement and made a preliminary determination that no criminal charges would be forthcoming. Subsequent to that preliminary finding and before the scheduling of a police fatality public fact-finding review, the District Attorney's office made contact with and met with family members of Decedent. The purpose of that meeting was to inform Decedent's family of the District Attorney's preliminary findings and to ask the family if they had any information or input which might be helpful to the investigation or to the District Attorney's final determination of the matter.

At the meeting held on December 10, 2014, a number of family members stated that they had spoken to individuals who had witnessed the shooting incident. It should be noted that, other than the involved officers, police had never been able to locate any direct witnesses to the shooting. Based on this potentially new information, the District Attorney's Office told the family members it was suspending any further action in the case until police could investigate further and interview those witnesses. The family members claimed to have videotaped statements of those individuals who witnessed the shooting.

The District Attorney's Office requested the names and contact information for those persons and subsequently contacted the lead police investigator to inform him of the situation. Many days passed without any responsive contact from the family regarding these purported witnesses. The District Attorney's Office again contacted the family regarding the witnesses, but did not receive any information from the family to forward to detectives. The District Attorney's Office did, however, eventually receive four hand written letters forwarded through the family's attorney. These letters, two of which bore October 10, 2014, dates, were from individuals who were not actual witnesses to the shooting and who were not present before or during the shooting. Furthermore, none of these individuals were present for or observed any of the pre-shooting interactions between the officers and Decedent.

The letters were subsequently forwarded to the lead police investigator in the case for follow-up, however, none of those individuals were able to provide any additional information helpful to the investigation. It should also be noted that no videotape of any witness interview was ever provided by the family to the District Attorney's Office or to the police investigators

X. LEGAL ANALYSIS

The Clark County 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 these officers 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 another 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 Forsberg and Officer Wells reasonably believed that they, and the citizens in proximity to Decedent at the time of the shooting, were in imminent danger. The fact that Decedent drew his gun and fired it at Officer Forsberg created a dangerous situation for both the officers and the nearby citizens and speaks to the real danger posed by Decedent at the time of the shooting.

Decedent's acts of evading officers, along with producing and firing a gun at officers in a residential neighborhood posed an immediate threat to all involved. In addition, the fact that Decedent was able to shoot Officer Forsberg four separate times before Officer Forsberg could draw his own weapon to defend himself further heightened that danger and threat. Officers Forsberg and Wells were, therefore, justified in the use of lethal force to stop the threat posed by Decedent.

In short, Officers Forsberg and Wells had the right under Nevada law to use deadly force against Decedent in defense of themselves 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 Forsberg saw Decedent turn toward him and saw Decedent start to fire his gun at Officer Forsberg, there was a clear threat of serious physical harm to Officer Forsberg. In addition, the fact that Decedent was able to shoot Officer Forsberg four times further heightened the threat of death posed by Decedent.

Likewise, when Officer Wells observed Decedent firing his gun at Officer Forsberg there was a clear threat of serious physical harm or death to both Officer Forsberg and to Officer Wells. Under the circumstances, therefore, Officers

Forsberg and Wells were unequivocally justified in using deadly force to neutralize that threat.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officers Forsberg and Wells 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, and 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, Officers Forsberg and Wells were faced with a very dangerous situation. Not only were Officers Forsberg and Wells lives directly placed in jeopardy by Decedent's actions, but there were also other persons in the immediate vicinity that night who were also threatened. As such, therefore, under both subsections one and two of NRS 171.1455, Officers Forsberg and Wells were justified in using deadly force to stop Decedent from escaping.

CONCLUSION

Based on the review of the available materials, including the police fatality public fact-finding review conducted on April 27, 2015, 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 Officers Forsberg and Wells were 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 either Officer Forsberg or Officer Wells 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: April 27, 2015
STEVEN B. WOLFSON
District Attorney

By

MICHAEL V. STAUDAHER
Chief Deputy District Attorney