

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jessie Vigil on July 29, 2014

INTRODUCTION

On July 29, 2014, Henderson Police Officer Charles Hedrick (“Hedrick”) was on patrol when he observed an individual, later identified as Jessie Vigil (“Vigil”), traveling on a bike unlawfully against a red light at the intersection of Horizon Drive and Boulder Highway in Henderson. Hedrick activated the emergency lights of his marked patrol vehicle in the parking lot of a 7-11 store located at 850 E. Horizon Drive. Vigil did not immediately stop in the parking lot, but did so on the sidewalk along Horizon Drive.

Hedrick advised Vigil of the basis for the stop. Vigil denied having any identification on him. Soon after the stop, Officers Fergus Baxter and Jamie McGeahy arrived to assist. Officer Hedrick asked Vigil to get off his bike and go to the front of the patrol car. Vigil was generally uncooperative with commands.

Through dispatch communications, Officer Hedrick was advised of some past law enforcement interactions that indicated Vigil might have a concealed weapon on his person. Officer Hedrick decided to conduct a pat-down of Vigil to determine whether he had any weapons. Hedrick found a folding knife clipped to Vigil’s pants, underneath his jacket, that initially was not visible to officers. That knife was removed and placed on the lower

windshield of the patrol vehicle and remained there throughout the stop.

Based upon the repeated history of failures to appear for court dates, Officer Hedrick decided to place Vigil into custody for his infractions. While attempting to place handcuffs on Vigil, Vigil violently pulled away from Officer Hedrick and a physical struggle ensued between Vigil and Officers Hedrick and Baxter. During the struggle, Vigil was able to get another knife that was secured to his bike. After getting the knife, he stabbed Officer Baxter in the right hip. Officer Baxter felt a sharp pain in his right hip and disengaged from the struggle with Vigil. After realizing he had been injured, Baxter announced that he had been stabbed by Vigil and both officers disengaged with Vigil.

Officer Hedrick observed Vigil moving towards the injured Officer Baxter and retrieved his duty weapon and fired four shots at Vigil. Multiple rounds struck Vigil and he died from these wounds at the scene.

The vast majority of the stop and subsequent events were captured on the Mobile Audio Video (MAV) dashboard camera from Officer Baxter and Hedrick's police vehicle.

The District Attorney's Office has completed its review of the events surrounding the death of Jessie Vigil. This review was based on all the evidence currently available, including the benefit of a Police Fatality Public Factfinding 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 the officers 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 information adduced at the Police Fatality Public Fact-Finding Review held on August 25, 2015.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Henderson 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 July 29, 2014, at 0323 hours, Officer Hedrick was east bound on Horizon Drive approaching Boulder Highway when he observed a male, subsequently identified as Vigil, pass through a steady red signal while traveling south bound on Boulder Highway crossing Horizon Drive on his bike. Officer Hedrick initiated an investigatory detention of Vigil

Officer Hedrick observed Vigil traveling west on Horizon Drive on the sidewalk along the east bound travel lanes. Upon seeing Officer Hedrick, Vigil quickly changed his direction and entered the 7-11 parking lot at 850 E. Horizon Drive. Officer Hedrick entered the parking lot and activated the emergency lights on his marked patrol vehicle. Vigil ignored this and continued to ride west through the lot. Vigil exited the lot through the west exit and stopped his bike on the sidewalk along Horizon Drive. Officer Hedrick parked his patrol vehicle in the parking lot just east of the west entrance and approached Vigil on foot. Officer Hedrick told Vigil that he stopped him because he crossed Horizon on Boulder Highway against a red signal. Officer Hedrick then asked Vigil if he had any identification with him and he said, “No, I don’t.”



Officers Fergus Baxter and Jamie McGeahy arrived to assist. Officer Hedrick asked Vigil to dismount his bike and approach the front of Officer Baxter’s vehicle. Vigil responded, “No, I have to go to work.” Officer Hedrick again told Vigil to get off of his bike, approach the police car, and, if he continued to disobey his lawful order, he would

take him to jail. Vigil stated, "Fuck it, I am just trying to get home and you motherfuckers want to fuck with me this early in the morning."

Vigil dismounted his bike, but did not go to the front of Officer Baxter's vehicle. Instead, Vigil knelt down near the seat post of his bike and began to manipulate an unknown item. Officer Hedrick again told Vigil to approach the front of the vehicle and Vigil stated, "Punk." After repeated verbal commands were ignored by Vigil, Officer Hedrick grabbed the back of Vigil's shirt and physically walked him to the front of Officer Baxter's patrol vehicle. During the walk to the front of the vehicle, Vigil became physically resistant to Officer Hedrick, swinging his left arm in an attempt to get Officer Hedrick to release his grip. Vigil also told Officer Hedrick, "Don't get jazzy, man." Officer Hedrick asked Vigil for his identifying information. Vigil initially lied about his identity, stating his last name was Vasquez, yet when Officer Hedrick asked how "Vasquez" was spelled, Vigil stated, "I can't remember." Vigil then stated his last name was not Vasquez and that his name was "Jessie Vigilante." Officer Hedrick told Vigil if he lied about his identity, he would go to jail for obstructing a police officer. Vigil then said his name was Jesse Vigil, yet he could not produce any form of identification.

Officer Hedrick conducted a records check of Vigil and found he had been arrested numerous times for crimes of violence and for possessing a concealed weapon. While Officer Hedrick was conducting a records check, Officer McGeahy spoke with Vigil. He asked Vigil where he was heading. Vigil stated he was going to work at "Labor Max." Officer McGeahy knew "Labor Max" to be further south on Boulder Highway and Vigil was going west on Horizon Drive, away from that business. Further, "Labor Max" did not open for several hours. Officer Hedrick returned and asked Vigil for his current address. Vigil stated it to be 216 Mojave Lane. Upon hearing the address, Officer McGeahy immediately recognized it and remembered dealing with Vigil recently during a stabbing investigation on 6/14/14 (HPD report 14-09634). At that point, Officer McGeahy notified Officer Hedrick that Vigil had not lived at the 216 Mojave address for nearly two years.

A dispatch call for an armed robbery caused Officer McGeahy to clear this scene and go to another location in Henderson. This left Officers Hedrick and Baxter at the scene.

Based upon Vigil's odd behavior, along with his prior arrests for violent crimes involving weapons, Officer Hedrick decided to conduct a pat down of Vigil. Officer Hedrick asked Vigil if he had any weapons. Vigil stated, "I don't remember," and he started to reach for his pockets. Officer Hedrick told Vigil not to reach inside of his pockets and to put his hands back on the hood of the vehicle. Then, Officer Hedrick went behind Vigil and asked him to place his hands behind his back, placing his palms together like he was clapping. Vigil ignored instructions and instead placed both hands on top of his head interlocking his fingers. Officer Hedrick again told Vigil to place his hands behind his back

like he was clapping. Vigil placed his hands behind his back, yet he again interlocked his fingers. Officer Hedrick told Vigil to straighten his fingers and he finally complied, but he stiffened his hands so they could not be manipulated by Officer Hedrick. Then, Officer Hedrick told Vigil to relax his hands and Vigil finally complied.

During the pat down of Vigil, Officer Hedrick located a black foldable knife concealed and clipped to the back of Vigil's pants under his jacket and shirt. This knife was given to Officer Baxter and placed on the driver side windshield of his patrol vehicle for the duration of the stop. No other weapons were located during the pat down, and Vigil was not placed into handcuffs.



At that point, Officer Hedrick decided to run the serial number on Vigil's bike. Officer Hedrick approached the bike and turned it so it was resting on the seat and handlebars. He wrote down the serial number and then laid the bike on the ground with the front of the bike facing Officer Baxter's patrol vehicle. The entire time that Officer Hedrick was checking the bike, Vigil appeared nervous and continued to look behind him to see what Officer Hedrick was doing.

Due to Vigil's long history of failing to appear in court, Officer Hedrick decided to place Vigil into custody for his infractions. At 0332 hours (MAV time stamp), Officer Hedrick went to the rear of Vigil and told him to place his hands behind his back like he was clapping. Vigil complied. Officer Hedrick grabbed Vigil's hands with his left hand and pushed up the sleeves of Vigil's jacket with his right. Officer Hedrick unsnapped his handcuff case, which was on his duty belt at his right back. Vigil turned quickly and violently to his right and pulled his hands from Officer Hedrick's grasp. Then, Vigil started to run east on Horizon Drive and Officer Hedrick grabbed the bottom back of Vigil's jacket with his right hand and slowed him. Officer Hedrick continued to pull back on Vigil's

jacket and was able to bring Vigil to the ground. Vigil had both knees on the ground and was facing west.

Officer Hedrick went to his right side and Officer Baxter went to his left in an attempt to control Vigil's arms and place him into custody. Vigil attempted to stand up and he placed his right arm around Officer Hedrick's left leg at the knee. Officer Hedrick ordered Vigil to let go of him, yet Vigil continued to hold on. Both officers threw punches to Vigil's head in an attempt to get Vigil to release Officer Hedrick's leg. Vigil was able to stand and spun to his left, towards his bike. Both Officers held onto him and followed.

Officers again brought Vigil to the ground, onto his knees, directly next to his bike. They continued attempting to get control of Vigil's hands and Vigil physically continued to resist these efforts. Vigil refused to release his hands from near his waistband and instead reached for the front handlebar area of his bike. Officers Hedrick and Baxter used department trained compliance techniques, such as knee strikes to Vigil's body and hand strikes to his head, yet Vigil continued to physically resist the officers.

Officer Hedrick continuously yelled, "Stop resisting," throughout the struggle, but Vigil ignored the command. Officer Baxter placed a knee strike to Vigil's left side causing his position to change and now giving Vigil access to the back of his bike. This action also caused both officers to release their grip on Vigil momentarily. When the officers re-engaged, Vigil grabbed a hold of his bike near the rear seat post. Officers tried to remove Vigil from the bike, yet ended up dragging him into the street while he was still holding onto his bike. Vigil continued to resist the Officers, and Officer Hedrick delivered another knee strike to Vigil's left side. This caused Officer Baxter to lose his balance. He fell forward laying on top of Vigil's back, exposing his right hip to Vigil's left hand. While in this position, Officer Baxter quickly disengaged the fight as he felt a sharp pain come from the area of his right hip. Officer Baxter initially thought he had gotten a cramp, yet upon disengaging he realized that he was bleeding and Vigil had stabbed him. At 0333 hours (MAV time stamp), Officer Baxter stated, "Fuck, he stabbed me, dude," and both officers immediately disengaged the physical contact with Vigil.

Officer Hedrick backed to the south and Officer Baxter fell to the ground just a couple feet north of Vigil in the far right travel lane of Horizon Drive. While backing away, Officer Hedrick tripped and fell backward into a landscaped dirt area between the 7-11 and Horizon Drive. Officer Hedrick drew his Glock 21 .45 caliber handgun with his right hand. He saw that Vigil was moving toward Officer Baxter's location.

Officer Hedrick fired two (2) shots at Vigil, believing he posed a threat of death or serious bodily injury to Officer Baxter. After the first two shots, Officer Hedrick saw Vigil turn slightly toward his direction. Now perceiving a threat to his own life, Officer Hedrick fired two (2) more shots until Vigil was no longer a threat.

After realizing he had been stabbed by Vigil, Officer Baxter observed Vigil moving towards him. Officer Baxter drew his Glock .45 caliber handgun and fired four (4) shots at Vigil. Vigil came to rest on his right side, still holding a 7" silver knife in his left hand.



Medical was summoned to the scene for both Officers Baxter and Vigil. Attempts were made to resuscitate Vigil; however, he succumbed to his injuries.

Officer Baxter's injuries were severe enough to compel arriving officers to transport Officer Baxter directly to the hospital rather than wait for medical personnel.

Two potential weapons - - a box cutter and a Leatherman type tool - - were located on a belt pouch were found on Vigil's person. Near Vigil and his bike, another fixed-blade knife was found on the ground.



Examination of Vigil's Bike

Attached to the rear post of the bike was a yellow and green box. Inside of this box was a black bike handle. Inside the hollowed out area of this handle were seven baggies, six of them containing a substance that field tested positive for 2.08 grams of methamphetamine.

Detectives contacted a close associate of Vigil, A.J., who told investigating detectives that she saw Vigil approximately two days before he was killed. During this visit, Vigil showed A.J. two silver knives that were affixed to his bike – one at the front of the bike and the other near the seat.



Two knife sheaths were found on the frame of the bike that made it very difficult to see that they were there or that they were in fact weapons. These sheaths matched the two fixed bladed weapons found at the scene near Vigil's body.

II. AUTOPSY:

On July 30, 2014, Dr. Dutra conducted an autopsy on Mr. Vigil. At the completion of the autopsy, Dr. Dutra opined Mr. Vigil died from gunshot wounds to the chest and abdomen. Autopsy revealed that Vigil was struck by at least 5 rounds.

Additionally, Dr. Dutra noted that the toxicology results indicated methamphetamine intoxication. The results showed methamphetamine at 1100 ng/ml and the metabolite of amphetamine. These results indicate several things. One, Vigil was actively under the influence of methamphetamine at the time of his death. Two, the amount of methamphetamine indicates a very high level. Overdose deaths can be seen at levels

from 400-600 ng/ml. Finally, methamphetamine can affect ones judgment and make a person more aggressive and violent.

III. OFFICER/SUSPECT WEAPON COUNTDOWNS

Officer Baxter's firearm was a Glock 21 .45 caliber with an M3 tactical illuminator light, serial number HRN951. The firearm had one cartridge seated in the chamber. The magazine inserted into the firearm had a thirteen cartridge capacity and contained nine cartridges, all head stamped with WIN 45 AUTO +P. This countdown showed that Officer Baxter fired four times.

Officer Hedrick's firearm was a Glock 21 .45 caliber with a Streamlight TLR1 light, serial number MNS694. The firearm had one cartridge seated in the chamber. The magazine had a capacity of thirteen cartridges and contained nine cartridges, all head stamped with WIN 45 AUTO +P. This count showed that Officer Hedrick fired four times.

IV. HISTORY OF POLICE CONTACT WITH JESSE VIGIL LEADING UP TO JULY 29, 2014

Several prior incidents with law enforcement and legal convictions may explain the conduct of Vigil in this incident. Further, these incidents explain the concern officers had about the presence of a weapon on Vigil.

- 1/29/80 convicted of second degree murder in Canon City, CO (registered)
- 10/19/83 convicted of 2nd degree assault in Fremont County, CO (registered)
- 7/20/89 convicted of 1st degree assault in Denver, CO (registered)
- 6/18/07 arrested by HPD for felon in possession of a concealed firearm
- 7/16/08 arrested by HPD for felon in possession of a concealed firearm
- 8/17/10 arrested by NLVPD for felon in possession of a firearm (registered)

In addition, Vigil was the prime suspect in the stabbing death of Timothy Malloy which occurred in late April 2013. More importantly, Vigil knew that members of the Henderson Police Department suspected him in this murder. On several occasions, Vigil was interviewed by detectives regarding this murder, and detectives had obtained a DNA sample of Vigil during their investigation.

V. FAMILY HISTORY OF JESSE VIGIL

Detectives contacted Vigil's daughter J.V. She stated her father was homeless and would often show up at her house. The last time she saw him was on 7/22/14, and he seemed to be doing fine. J.V. stated her father would sometimes appear to be angry, yet he would not talk to her about what was going on in his life. She could not shed any light

on why her father would confront police officers with a weapon.

Based upon the lack of confirmed address of a residence for Vigil, detectives were unable to search a residence to look for additional evidence to explain the circumstances leading up to Vigil being stopped by Henderson police on July 29, 2014.

VI. 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 action 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.

Officers Baxter and Hedrick had the right under Nevada law to use deadly force against Vigil in defense of themselves and each other. Vigil used a deadly weapon by stabbing Officer Baxter at least twice. These injuries were inflicted under circumstances that clearly reflect an intent to kill Officer Baxter. After inflicting these stab wounds, the officers released their hold of Vigil. Vigil, still armed with a large fixed bladed knife, moved in the direction of an injured Officer Baxter who was lying in the street. Officer Baxter had no other option than to use lethal force to protect himself from death or substantial bodily injury. Likewise, Officer Hedrick, having direct knowledge that a deadly weapon had just been used against Officer Baxter and observing Vigil moving towards Officer Baxter armed with a knife, Officer Hedrick was justified in using deadly force to halt Vigil from killing or attempting to kill Officer Baxter.

Vigil then turned and moved towards Officer Hedrick. As before, Officer Baxter and Hedrick were justified in using deadly force to stop Vigil - - armed with a large knife - - from moving any closer to Officer Hedrick.

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).

Vigil’s conduct, as depicted in the MAV, justified Officers Hedrick and Baxter in using deadly force to prevent Vigil from inflicting further violence upon the already injured Officer Baxter. Further, Vigil’s turning and moving in Officer Hedrick’s direction was a separate and independent basis to use deadly force to stop the life-threatening actions directed towards that officer.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officers Hedrick and Baxter were in fact unjustified “in the discharge of a legal duty.”

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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 Vigil, it has been determined that the actions of Officers Hedrick and Baxter 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 Officer Hedrick or Baxter, 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.