

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Chase Rosa on April 21, 2020

### INTRODUCTION

On April 21, 2020, Las Vegas Metropolitan Police Department (LVMPD) Officers Alex Kempf and Johnathan Tomaino shot and killed 24-year-old Chase Rosa (Decedent). The use of force occurred at approximately 3:02 p.m. on East Twain Avenue in front of the northwest driveway of the Siegel Suites located at 455 East Twain Avenue, Las Vegas, Nevada, just east of Paradise Road.

### SYNOPSIS

During the afternoon of April 21, 2020, LVMPD Sergeant Roger Palmer was on duty in plain clothes and driving an unmarked LVMPD vehicle in the area of U.S. 95 and Decatur Boulevard. At approximately 1:54 p.m., Sergeant Palmer observed a white Acura being driven in a reckless manner and subsequently discovered the Acura displayed a stolen license plate. Sergeant Palmer activated his lights and sirens and attempted a vehicle stop. The driver of the Acura, later identified as Decedent, refused to pull over and fled the area at a high rate of speed. Decedent continued to drive the vehicle in a reckless manner and at speeds well in excess of 100 miles per hour.

At approximately 1:55 p.m., an LVMPD Air Unit assigned itself to the call and located Decedent's vehicle near the intersection of Washington Avenue and Jones Boulevard. The Air Unit followed Decedent and broadcast Decedent's speed and direction of travel to patrol units; however, due to the dangerous manner in which Decedent continued to drive, LVMPD Lieutenant Raul Rodriguez directed marked patrol units not to follow or attempt to stop Decedent at that time. Instead, Lieutenant Rodriguez instructed the Air Unit to track Decedent while flying in surveillance mode and ordered patrol units to bubble Decedent's

location. As the pursuit continued, Decedent drove recklessly and at excessive speeds, at one point reaching 120 MPH on U.S. 95. Decedent nearly caused several traffic accidents, and he placed pedestrians and road workers in danger as the pursuit transitioned from highway to surface streets.

At approximately 2:41 p.m., Decedent pulled into the Chevron gas station located at the corner of Spencer Street and Sunset Road. Two females exited Decedent's vehicle and went into the store. Decedent then quickly drove the vehicle away from the gas station, exiting onto Sunset Road. Patrol officers arrived and detained the females who stated that Decedent had a shotgun in the vehicle. The Air Unit continued to follow Decedent in surveillance mode while he fled the area.

At approximately 3:00 p.m., Decedent entered a parking lot located at 764 East Twain Avenue. Decedent parked the vehicle, exited for a moment, but then quickly re-entered the vehicle and drove back onto Twain Avenue westbound. At that time, no officers were in the immediate area who could attempt to prevent Decedent from re-entering his vehicle.

As unmarked police units closed in on Decedent's location at approximately 3:02 p.m., Decedent made an abrupt U-turn on Twain Avenue and stopped his vehicle in the righthand lane of eastbound Twain and in front of the northwest driveway to the Siegel Suites located at 455 East Twain Avenue. Decedent's vehicle blocked a citizen's vehicle that was stopped and waiting to exit the Siegel Suites. As officers positioned their unmarked vehicles to the front and rear of Decedent's vehicle, Decedent exited his vehicle while holding a shotgun, moved to the front of the citizen's vehicle, pointed the shotgun at the female driver, B.B., and yelled for her to exit her vehicle. With their firearms drawn, Officers Alex Kempf and Johnathan Tomaino yelled at Decedent. Decedent immediately focused his attention toward the officers, turning his body to face Officer Tomaino. Officers Kempf and Tomaino fired their weapons, striking Decedent several times. Decedent immediately fell to the ground next to his vehicle, dropping his shotgun next to his body in the process.

LVMPD Officers Blake Dixon and Benjamin Vasquez, as well as Detective Jeffrey Clark, joined Officers Kempf and Tomaino to assist with securing Decedent. As officers surrounded Decedent, Officer Dixon observed Decedent moving slightly and still within reach of the shotgun. Because Officer Dixon was unable to see Decedent's left hand, Officer Dixon called for a K-9 unit. Sergeant Matthew Harris, who had arrived on scene with his K-9, Bones, approached. Sergeant Harris released Bones toward Decedent, but Bones inadvertently charged toward the line of officers and bit Officer Kempf on the right upper arm area. After Sergeant Harris was able to remove Bones from Officer Kempf, Bones advanced toward Decedent. Officers were then able to secure Decedent in handcuffs and immediately called for medical personnel. Officers with previous medical training assisted in treating Decedent until the Clark County Fire Department and medical personnel arrived and continued treatment. Decedent was transported to Sunrise Hospital where he was pronounced dead. Officer Kempf was transported to University Medical Center for treatment of his injuries sustained from the K-9.

Officers confirmed that the license plate displayed on the Acura driven by Decedent previously was reported as stolen from a Dodge truck. Also, the Acura vehicle was reported stolen on April 10, 2020.

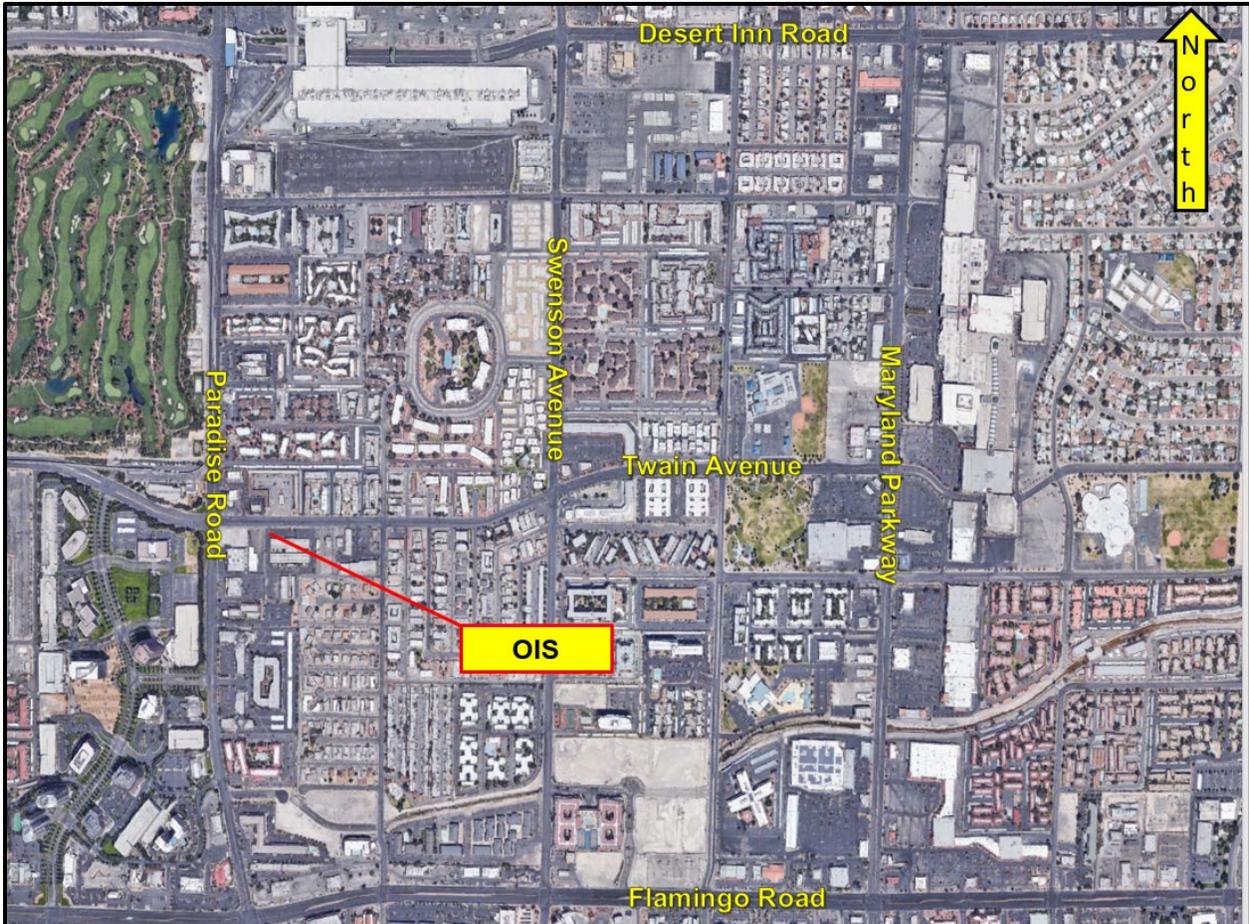
Due to the officer-involved shooting (OIS) aspect of the incident, detectives from LVMPD's Force Investigation Team (FIT) were requested and responded to the scene to conduct the investigation.

This report explains why criminal charges will not be forthcoming against LVMPD Officers Kempf and Tomaino. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on March 10, 2021.

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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

# DESCRIPTION OF THE SCENE

## Overview



Satellite map of location.

The use of force event occurred in the far righthand lane of eastbound East Twain Avenue and in front of the northwest driveway of the Siegel Suites located at 455 East Twain Avenue, Las Vegas, Nevada, just east of Paradise Road.

## Vehicle Positions Immediately Prior to OIS

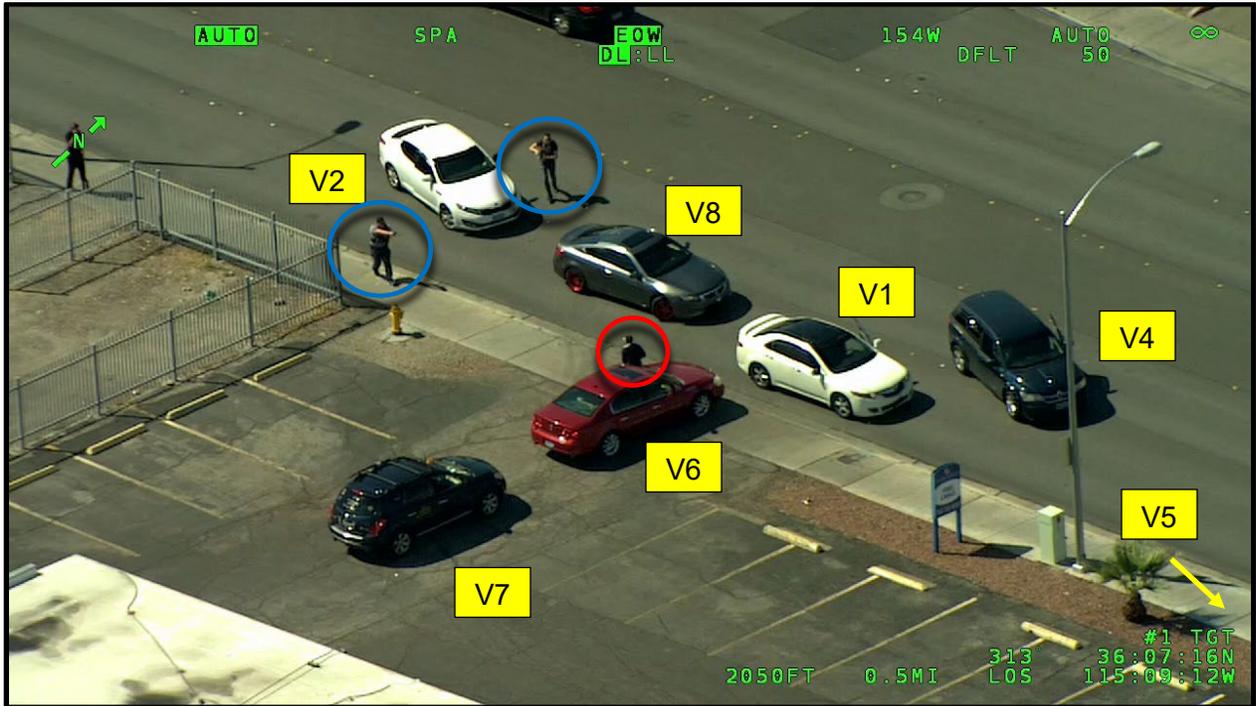


Image capture from LVMPD Air Unit AIR 5 surveillance immediately before OIS; V3 not stopped at scene yet.

Immediately before officers discharged their firearms, Decedent's white Acura TSX (V1) was stopped in an eastern direction directly in front of the Siegel Suites northwest driveway. One citizen vehicle (V8), a gray Honda Accord occupied by M.R. and J.H., was stopped in an eastbound direction directly behind Decedent's vehicle. Officer Kempf and Tomaino's unmarked LVMPD vehicle (V2), a white Kia Optima, was positioned in a southeastern direction directly behind M.R. and J.H.'s vehicle. Officer Dixon and Vasquez' unmarked LVMPD vehicle (V4), a dark blue Dodge Journey, was positioned in a southeastern direction just to the northeast of Decedent's vehicle. One citizen vehicle (V6), a red Buick Lucerne occupied by B.B., was stopped perpendicular to V1 and positioned to exit the Siegel Suites driveway. A third citizen vehicle (V7), a dark colored SUV, was stopped directly behind V6 and positioned in the same direction.

## Vehicle Positions Immediately After OIS

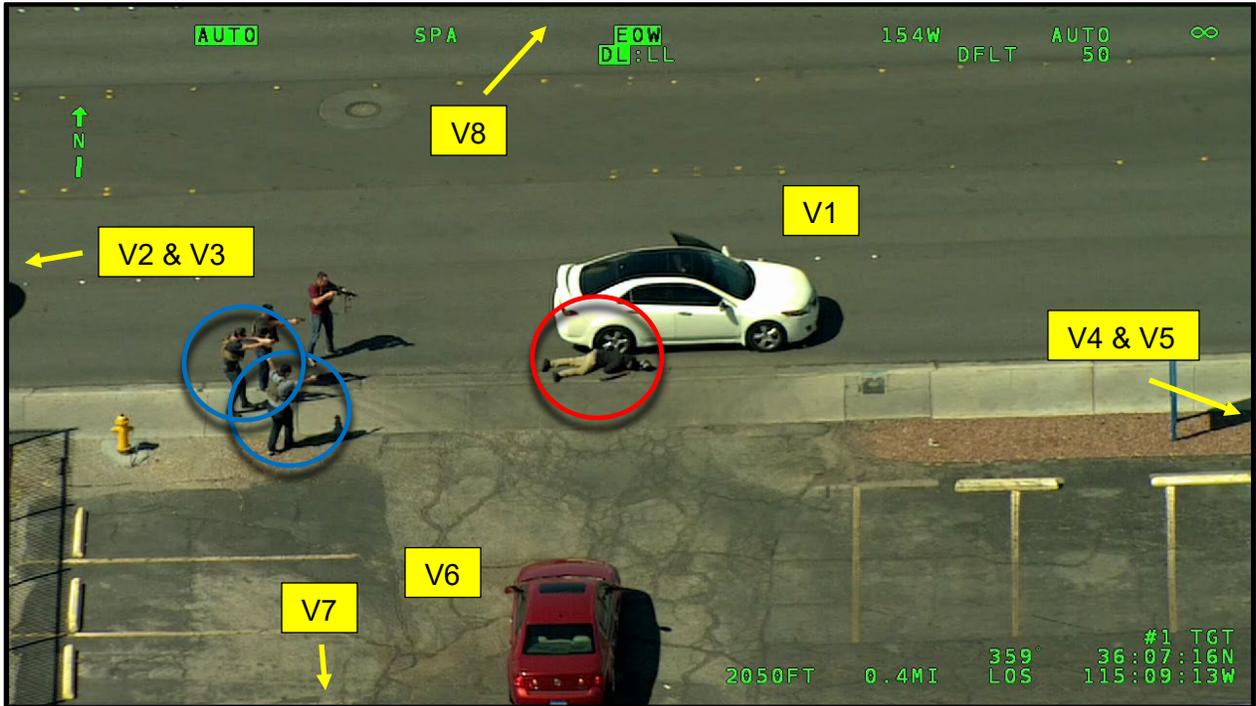
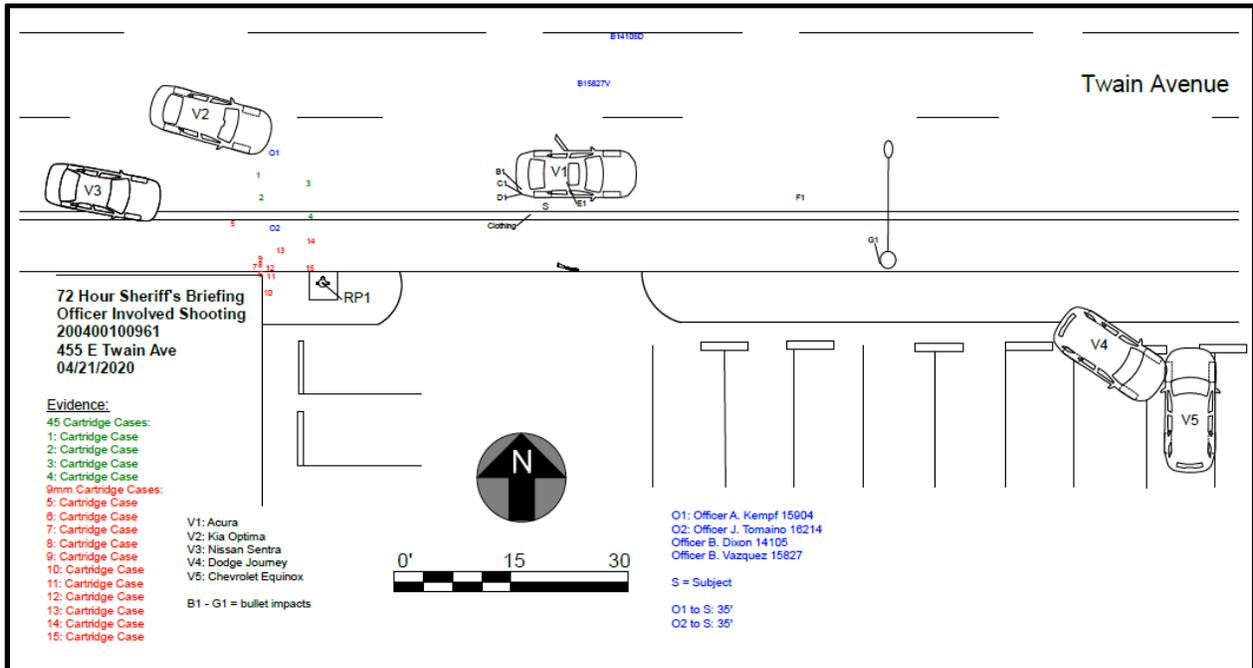


Image capture from LVMPD Air Unit AIR 5 surveillance shortly after OIS; V4 had rolled into V5, and V6 began to back up.

Just after officers discharged their firearms, and after Officers Dixon and Vasquez exited V4, V4 rolled forward in a southeast direction over the sidewalk and struck a Chevy Equinox (V5) parked in the Siegel Suites parking lot. At the same time, M.R. drove V8 to the northeast and left the scene, but shortly after, M.R. stopped, turned around, and parked in the westbound lanes on Twain. V8 sustained an apparent bullet hole in the right side of the rear windshield and a corresponding hole in the right rear side panel. V6 and V7 drove in reverse away from the scene and toward the southern end of the Siegel Suites property.

# Visible Evidence



Computerized Diagram prepared by CSA I. Peterson

V1 sustained 3 bullet holes to the rear bumper. One bullet was located on the ground under the vehicle, and when V1 was moved slightly forward, a second bullet dropped out of the vehicle. A pocketknife was located on the driver's seat.

Four (4) Speer 45 Auto cartridge cases were located at the scene, including three (3) in the eastbound south travel lane of Twain and one (1) in the nearby gutter.

Eleven (11) Speer 9mm Luger +P cartridge cases were located at the scene, including six (6) on the sidewalk south of Twain and five (5) on the dirt/rock ground south of the sidewalk.

Decedent's Lefever Arms 12-gauge shotgun with a sawed-off barrel with apparent blood was located on the sidewalk in front of the Siegel Suites driveway and just south of V1. The shotgun chamber contained one shotshell case.



## **SCENE WALK-THROUGHS**

### **Officer Johnathan Tomaino**

On April 21, 2020, at approximately 7:02 p.m, Officer Tomaino provided a walk-through of the scene. Officer Tomaino exited the passenger side of the unmarked police vehicle. Officer Tomaino observed Decedent with a shotgun and point it at B.B. who was sitting inside of her vehicle. Decedent was yelling at her to exit the vehicle. Officer Tomaino yelled, "Metro Police! Drop the gun!" Decedent turned toward Officer Tomaino and pointed the shotgun at him. Officer Tomaino believed he fired four (4) to six (6) shots at Decedent. Decedent fell to the ground.

### **Officer Alex Kempf**

Officer Kempf was unable to conduct a walk-through due to being transported to the hospital for treatment of his injuries sustained from the K-9.

### **Officer Benjamin Vazquez**

On April 21, 2020, at approximately 6:30 p.m., Officer Vazquez provided a limited walk-through of the scene for the purpose of identifying his perceived location when shots were fired. Officer Vazquez identified his location as approximately five feet to the north from Decedent's driver's side door when shots were fired by officers. CSA Supervisor Martin utilized an orange traffic cone to identify that location.

### **Officer Blake Dixon**

On April 21, 2020, at approximately 6:45 p.m., Officer Dixon provided a limited walk-through of the scene for the purpose of identifying his perceived location when shots were fired. Officer Dixon identified his location as approximately five feet to the north of Officer Vazquez when shots were fired by officers. CSA Supervisor Martin utilized an orange traffic cone to identify that location.

## OFFICER PUBLIC SAFETY STATEMENTS

### **Officer Alex Kempf**

On April 21, 2020, at approximately 5:55 p.m., Detective Blake Penny interviewed Sergeant Russ Backman regarding the Public Safety Statement he obtained from Officer Kempf.

Note: Detective Penny is designated by (BP) and Sergeant Backman is designated by (RB).

*BP: Operator, this is Detective Penny with the Force Investigation Team conducting a recorded Public Safety Statement interview with Sergeant Russ Backman, B-A-C-K-M-A-N, P# 6518, call sign 818. Date of hire 10-06 of '99. Uh, works out of Bolden Area Command, squad BA24. RDOs Wednesday, Thursday, Friday, shift 0630 to 1630. This interview will be in reference to the Public Safety Statement he obtained reference an officer-involved shooting which occurred on 04-21 of 2020, uh, at 1502 hours, at the location of 455 E. Twain Avenue, under event number 200400100961. This statement is being conducted in the 400 block of E. Twain. Also present is PMSA Representative, uh, Krumme, K-R-U-M-M-E, P# 7167. Uh, Sergeant Backman, can you go over the Public Safety Statement for me please?*

*RB: Uh, yes, I can. On, um, 04/21/2020, at 1550 hours, I conducted a Public Safety Ss...Safety Statement with Alex Kempf, P# 15904, at UMC. Um, first question I asked him was #1: "Is anybody injured? If so, where is the person located?" Um, anyone injured, he said, "Yes," um, "me," um, "at UMC. I have a dog bite." Uh, I asked him if anybody else was injured and where they were at, and he said, "The suspect, yes." Twain and Paradise was the location of where they were at.*

*Um, I asked him, uh...the second question I asked him was, uh, "Are there any outstanding suspects?" Um, he replied initially, "No."*

*"If so, what are their description, direction and mode of travel, how long have they been gone?" And, um, he said that there were two Hispanic females that got out of the suspect vehicle prior to the shooting at Sunset and Eastern.*

*Um, the third thing I asked him was, "For what crimes," uh, "are they wanted for, and what type of weapons did they possess?" Um, at the time, he said, uh, "They..." for*

*the outstanding... "Negative crimes," um, then he followed up and said, "Yes, there was a shotgun in the ss...the suspect had a shotgun."*

*Um, I asked him if the HFAs had anything, he said, "No."*

*Uh, the fourth question I asked him was, "Were you...were you or another officer involved in a...were you or another officer involved in a shooting?" He said, he stated, "Yes," and then he followed up, he says, "I think Tomaino," and Tomaino was at the scene.*

*Um, I asked him then, um...the fifth question I asked him was, um, "Where were you when you fired your weapon?" Um, he said he was on the street. Uh, he was in his plainclothes vehicle on the street when he fired his weapon.*

*Um, I asked him, uh...followed up with the sixth question, "How many rounds did you fire, and which direction did you shoot your firearm?" He said, "I fired four times at the suspect in a easterly direction."*

*Um, I followed up with the next question, "Is it possible the suspect fired at you?" He stated, "No."*

*Um, eighth question was, "Are there any weapons or evidence that would...that we would secure? If so, where are they located?" He said, "No," his firearm was with another officer.*

*Um, the next question I asked him was, "Are there any weapons or evidence that we should secure?" Um, "If so, where are they located?" Oh, actually, I need to follow up.*

*Um, did I talk about question 7, "Is it possible the suspect fired at you?"*

*BP: Yes, you already said that.*

*RB: Okay. Am...are th...covered eight. Um, nine, I'm sorry. "Are you aware of any witnesses to the event?" He stated, "Two citizens, one in a red car, um, that he...that suspect was trying to carjack." He ss...described it as a 4-door sedan, possibly a Hyundai. Um, and then he also said that there was three officers to the event: Officer Tomaino, Dixon, and Vazquez, and they were all at the scene.*

*BP: Cool.*

*RB: And that was the end of the statement.*

*BP: All right. Operator, this will be end of the interview. Time is going to be 1756 hours.*

## **Officer Jonathan Tomaino**

On April 21, 2020, at approximately 6:03 p.m., Detective Penny interviewed Sergeant Matthew Harris regarding the Public Safety Statement he obtained from Officer Tomaino.

Note: Detective Penny is designated by (BP) and Sergeant Harris is designated by (MH).

*BP: Operator, this is dd...dd...Detective Penny with the Force Investigation Team conducting a Public Safety Statement interview with Sergeant Matthew Harris, P# 9885, call sign 652K. Date of hire 01/30/2007. Uh, squad is K932. RDOs Friday, Saturday, Sunday, shift 0600 to 1600. This Public Safety Statement interview is in reference to an officer-involved shooting that occurred on 04-21 of 2020, at approximately 1502 hours, in the area of 455 E. Twain Avenue, under event number 200400100961. Today's date is 04-21 of 2020. Time is going to be 1803 hours. This statement is being conducted in the 400 block of E. Twain Avenue. Also present is PMSA Sergeant Krumme, K-R-U-M-M-E, P# 7167, and PMSA Sergeant Huddler, P# 7789. Uh, Sergeant Harris, can you go over the Public Safety Statement for me please?*

*MH: Yeah. Uh, I believe the time was about 1515. I read, uh...or I asked the Public Safety Statement questions to Officer Tomaino after the OIS.*

*(Cell phone ringing). Excuse me, it's my lieutenant. Sorry about that.*

*BP: It's okay.*

*MH: All right. First question I asked him was, "Did you discharge your firearm?" He responded, "Yes."*

*I asked him, "In what direction?" He said, "Eastbound," and then he later said, "Eastbound, maybe a little northeast."*

*Uh, "Approximately where were you," uh, "when you..." or, "Were you located when you fired?" He said he was at 455 E. Twain on the sidewalk.*

*"How many shots do you think you fired?" He responded, "Four to six."*

*I asked him, "Is anyone injured?" He said, "Yes, the suspect."*

*"And where are they located?" He pointed to the suspect laying on the ground on the sidewalk, uh, where the suspect vehicle was.*

*Uh, "Are there any outstanding suspects?" He said, "No."*

*"Is it possible the suspect fired rounds at you?" He said, "No."*

*I asked him, "Do you know if any other officers discharged their firearm?" He said, "Yes." He identified Officer Alex Kempf.*

*Um, where did I go? "Approximately where were the officers located when they fired?" He said, "Two feet north of me, on my left side."*

*I asked, "Are there any weapons or evidence that needs to be secured or protected?" He said, "The shotgun and the car," and then he pointed to where they were located.*

*"Are you aware of any other witnesses?" He said, "There was a citizen," uh, "who was trying to exit," uh, "455 E. Twain," uh, "at the parking lot exit where the suspect had parked and the suspect was blocking his vehicle." He said, uh, "The suspect pointed the shotgun at that driver, and then he turned the gun towards," uh, "the officers that were," uh, "ad...that were addressing the suspect." He does not know where that driver went, and, uh, never saw him again, so he dd...he said that that was one witness that he thought of in his mind. Um, and then we both talked about, of course, a lot of the citizen witnesses there and tt...and the officers that he was with.*

*And that was the end of my interview with him.*

*BP: All right. Operator, this will be the end of the interview. Same persons present. Time is going to be 1806 hours.*

## **OFFICER WEAPON COUNTDOWNS**

On April 21, 2020, Officers Kempf and Tomaino had their duty weapons counted down at 455 East Twain Avenue.

### **Officer Alex Kempf – Glock 41, .45 Caliber**

Officer Kempf was injured on scene by a K-9 and was transported to University Medical Center. Officer Kempf's weapon was secured on scene by Officer Christian Olson in his vehicle until CSA Tasha Olson arrived and took custody of the firearm to conduct the countdown.

Officer Kempf's firearm was a Glock 41, .45 caliber with a mounted light. His firearm had a capacity of 13 cartridges and was loaded with nine (9) Speer .45 Auto cartridges at the time of countdown. When compared to evidence at the scene, detectives concluded that Officer Kempf discharged his firearm four (4) times. CSA Olson photographed and impounded Officer Kempf's firearm, magazine, and cartridges.

### **Officer Johnathan Tomaino – Glock 17, 9mm**

Prior to the countdown, Officer Tomaino stated that he carried seventeen (17) cartridges in the magazine loaded in his firearm and one (1) cartridge in the chamber for a total of eighteen (18) cartridges.

Officer Tomaino's firearm was a Glock 17, 9mm, and was loaded with seven (7) Speer 9mm Luger +P cartridges at the time of countdown. Officer Tomaino also carried two (2) spare magazines, each with a capacity of seventeen (17) cartridges, and each was loaded with seventeen (17) cartridges at the time of countdown. When compared to evidence at the scene, detectives concluded that Officer Tomaino discharged his firearm eleven (11) times. CSA Olson photographed and impounded Officer Kempf's firearm, magazine, and cartridges.

## **FIREARM EXAMINATIONS**

LMVPD Forensic Scientist Stephanie Fletcher examined Officer Kempf's firearm and Officer Tomaino's firearm. Per her report dated June 2, 2020, Officer Kempf's Glock 41, 45 Auto semiautomatic pistol and Officer Tomaino's Glock 17, 9mm Luger semiautomatic pistol were both examined, test fired, and found to be operational with no noted malfunctions.

According to her report, Forensic Scientist Fletcher also performed comparisons of two (2) bullets recovered from the scene. One of the recovered bullets was determined to be consistent with nominal .45 caliber, to include 45 Auto. That bullet has similar general rifling characteristics as those of the test fired bullets from Officer Kempf's Glock 41, but it could not be conclusively identified or excluded as having been fired from that pistol. The bullet could be ruled out as having been fired from Officer Tomaino's Glock 17.

As for the second bullet, Forensic Scientist Fletcher determined the bullet to be consistent with nominal .38 caliber, to include 9mm Luger. That bullet has similar general rifling characteristics as those of the test fired bullets from Officer Tomaino's Glock 17, but it could not be conclusively identified or excluded as having been fired from that pistol. The bullet could be ruled out as having been fired from Officer Kempf's Glock 41.

Forensic Scientist Fletcher also examined, test fired, and found Decedent's Lefever Arms 12 gauge break action, single shot shotgun to be operational. The shotgun was test fired using a primed 12 gauge shotshell (no gunpowder, wad, or pellets) and, although operational, the primed shotshell failed to properly extract when the action was opened.

## **SUMMARY OF RELEVANT WITNESS STATEMENTS**

### **Subject Officers**

#### **Officer Alex Kempf**

On April 22, 2020, at approximately 9:21 a.m., Lieutenant Lloyd contacted Officer Kempf and asked if he would like to provide a voluntary statement to FIT investigators. Officer Kempf respectfully declined.

#### **Officer Johnathan Tomaino**

On April 24, 2020, at approximately 9:58 a.m., Detective Scott Mendoza conducted an audio recorded interview with Officer Tomaino at the FIT office located at LVMPD Headquarters.

Officer Tomaino stated he was informed over his police radio that an officer attempted to stop a vehicle that had a stolen license plate and the driver failed to pull over. Information was updated that the vehicle was in the area of Jones Boulevard and U.S. 95 and that the driver continued to drive erratically. Due to working in a plain clothes capacity and driving unmarked police vehicles, Officer Tomaino and his squad were tasked with locating and monitoring the vehicle. As the LVMPD Air Unit tracked the vehicle, Officers Tomaino and Kempf drove toward the area of Flamingo Road and I-15 to locate the vehicle. Officer Kempf drove the unmarked police vehicle as Officer Tomaino rode in the passenger seat. As Officers Tomaino and Kempf arrived in the area of Paradise and Sunset Roads, the Air Unit broadcast that two female passengers exited the vehicle. Once the females exited, the vehicle fled the area. Information was broadcast that the vehicle was possibly related to a robbery and kidnapping event earlier in the year.

Officer Tomaino stated that he and Officer Kempf continued toward the vehicle's location. The plan was to catch up and track the vehicle until the driver stopped and exited. Officer Tomaino was instructed to take the driver into custody away from the vehicle. Officer Tomaino said they eventually caught up to the vehicle while on Twain Avenue. Officers Dixon and Vasquez were also following the vehicle.

The vehicle made a U-turn in front of 455 East Twain Avenue. Both unmarked vehicles also made U-turns and followed. The driver stopped his vehicle, and Officers Dixon and Vasquez stopped their vehicle in front of the suspect vehicle. As Officers Tomaino and Kempf stopped their vehicle behind the suspect vehicle, the driver exited with a short barrel shotgun and pointed it at a driver (B.B.) who was sitting in a maroon sedan. As the suspect walked toward B.B. with the shotgun still pointed at her, Officer Tomaino heard the suspect yell, "Get out of the fucking car!" Officer Tomaino quickly exited his vehicle and verbally identified himself as a police officer. The suspect focused his attention on Officer Tomaino and pointed the shotgun toward him. Officer Tomaino fired his weapon at the suspect. Officer Kempf fired his weapon as he stood to the left of Officer Tomaino.

The suspect fell to the ground with the shotgun lying next to him. As the officers stacked together with their guns drawn on the suspect, assisting officers arrived on the scene. K-9 Sergeant Harris arrived to assist with taking the suspect into custody. Due to the suspect still moving with the shotgun immediately to his right, Sergeant Harris released his K-9. The K-9 diverted and ran toward the stack of officers and bit Officer Kempf. The K-9 then diverted from Officer Kempf and was released toward the suspect so officers could approach. Officers approached and secured the suspect in handcuffs. Assisting officers rendered medical aid to the suspect until medical personnel arrived.

## **Witness Officers**

### **Sergeant Roger Palmer**

On April 21, 2020, at approximately 6:16 p.m., Detective Penny conducted an audio recorded interview with Sergeant Palmer in the 400 block of East Twain Avenue.

Sergeant Palmer was driving his unmarked LVMPD vehicle northbound on I-15 approaching Charleston Boulevard. While driving, he noticed a white Acura that was being driven recklessly, speeding, and crossing several travel lanes. Sergeant Palmer caught up to the vehicle and conducted a record check of the license plate. The license plate on the vehicle was previously reported as stolen.

The vehicle continued northbound and exited onto northbound U.S. 95. Sergeant Palmer advised the Bolden Area Command dispatcher that he was initiating a traffic stop on the vehicle. After Sergeant Palmer activated the emergency lights and siren on his unmarked police vehicle, the driver of the Acura continued to drive in a reckless manner and failed to yield. Sergeant Palmer deactivated his emergency equipment and notified the dispatcher he was no longer following the vehicle. The Acura was last seen exiting onto Jones Boulevard, and Sergeant Palmer continued toward LVMPD Headquarters.

Shortly after it exited onto North Jones Boulevard, the LVMPD Air Unit located the white Acura and followed it. The driver continued to drive recklessly at speeds over 100 MPH and drove through several area commands across the Las Vegas valley. As Sergeant Palmer continued to monitor the radio traffic, he drove to the area where the vehicle was being tracked.

Bolden Area Command FLEX team officers caught up to the vehicle and stopped it. Sergeant Palmer heard radio traffic stating that shots had been fired. When Sergeant Palmer arrived at the scene, the officer involved shooting had already occurred. Sergeant Palmer used his vehicle to block the road. Sergeant Palmer did not witness the actual shooting.

## **Officer Blake Dixon**

On April 21, 2020, at approximately 6:56 p.m., Detective Penny conducted an audio recorded interview with Officer Dixon at the 400 block of East Twain Avenue.

Officer Dixon was on duty with the Bolden Area Command FLEX Unit at the time of the event. Officer Dixon was directed with his partner, Officer Vazquez, to bubble the suspect vehicle's location. Officer Dixon bubbled the vehicle as they entered the South Central Area Command. While in the area of Palos Verdes Street and East Twain Avenue, Officer Dixon saw the suspect as he drove westbound on East Twain Avenue. As Officer Dixon followed, the suspect vehicle made a U-turn and stopped in the travel lane. A gray sedan stopped directly behind the suspect vehicle.

As Officers Dixon and Vasquez approached the vehicle, the suspect exited the driver's door while holding a shotgun. The suspect walked toward the rear of his vehicle, and Officer Dixon stopped his unmarked police vehicle. Officer Dixon deployed his rifle and exited the driver's door as Officer Vasquez exited the passenger door. Upon his exit, Officer Dixon heard several gunshots and believed the suspect was shooting at him or Officer Vasquez. By the time Officer Dixon reached the rear of the suspect vehicle, the shooting had stopped.

Officer Dixon joined Officers Tomaino and Kempf and learned they were involved in the officer involved shooting. Officer Dixon saw the suspect lying on the ground with his right hand tucked under his body and the shotgun lying next to him. The suspect's right elbow was touching the shotgun, and Officer Dixon noticed he was still breathing. Officers gave the suspect verbal commands, but he did not comply. An LVMPD K-9 arrived and was released toward the suspect. Officers approached, handcuffed the suspect, and requested medical attention. As additional officers responded, the crime scene was secured, and the suspect was provided medical aid. Due to Officer Dixon's position, he did not witness the actual shooting.

## **Civilian Witnesses**

### **B.B.**

On April 21, 2020, at approximately 6:02 p.m., Detective Marc Colon conducted an audio recorded interview with B.B. at Paradise Road and Twain Avenue.

B.B. stated she was having an issue with her vehicle and called her mechanic, J.J., to assist her. J.J. arrived and inspected B.B.'s vehicle and informed her that she needed a new battery. J.J. jump started her vehicle and attempted to follow her to the closest auto parts store to purchase a new battery.

B.B. was stopped at the exit of the apartment complex at 455 East Twain Avenue and waited to turn eastbound. J.J. was positioned behind B.B.'s vehicle. A white Acura that was travelling east on Twain Avenue stopped in front of B.B.'s vehicle, blocking her from exiting.

A Hispanic male exited from the driver's side, pointed a shotgun at B.B., and yelled at her. B.B. assumed the male was telling her to exit her vehicle. B.B. feared for her life believing the male was going to shoot her.

A white vehicle stopped behind the white Acura, and undercover police officers exited and yelled at the male to drop the gun. The male did not drop the gun, and the officers shot him. Shortly thereafter, a police K-9 ran to one of the officers and attacked him.

J.J. yelled at B.B. to get out of her vehicle and run away from the area. Both J.J. and B.B. fled the area and took cover in the apartment complex.

### **J.H.**

On April 21, 2020, at approximately 6:40 p.m., Detective Walter Sharp conducted an audio recorded interview with J.H. at Sunrise Hospital located at 3186 South Maryland Parkway.

J.H. stated she and her husband, M.R., were traveling east on Twain Avenue when a white vehicle traveling westbound made a U-turn and stopped in front of them. The vehicle was directly in front of them, blocking the travel lane and blocking a vehicle that was waiting to exit onto Twain Avenue.

J.H. described the driver of the vehicle as a black male with long hair but does not remember how he was dressed. J.H. said the driver exited his vehicle, walked around the rear of his car to the front passenger door, and retrieved a firearm from inside his car. M.R. honked his horn at the male. The male pointed his firearm at J.H. and M.R. as if he was telling them, "You don't want to get involved in this." The male focused his attention on the other vehicle, pointing the firearm at them. J.H. described the firearm as being smaller than a rifle and brown in color.

J.H. said she was scared and began screaming, instructing M.R. to go. As M.R. accelerated, J.H. braced herself with her left arm and immediately felt pain in her left wrist. J.H. said the male pointed the firearm at the driver of the vehicle who waited to exit onto Twain Avenue. J.H. said it was at that moment that she heard multiple gunshots, and then the back window of her vehicle shattered. J.H. said she felt something scrape her right arm. M.R. drove east on Twain Avenue and out of the immediate area. Once she saw multiple police vehicles traveling west, M.R. turned around and returned to the scene and waved down officers informing them of their involvement.

J.H. said she did not see who fired shots but believed the officers who fired were shooting at the male and not at her.

## **S.G.**

On April 21, 2020, at approximately 4:27 p.m., Detective Farrah Edge conducted an audio recorded interview with S.G. at 1785 East Sunset Road. Detective Edge read S.G. her Miranda Rights prior to any questioning, and she stated she understood.

S.G. indicated that, on April 20, 2020, she met Decedent at the Albertson's grocery store located near her apartment complex. Decedent approached S.G. and began a conversation. Decedent asked S.G. if she smoked marijuana and she stated that she did. They subsequently went to a parking lot area and smoked marijuana for a while. After they were done, Decedent took S.G. to her residence.

The next day, S.G. saw Decedent driving near her apartment complex. Again, Decedent asked if she wanted to smoke marijuana with him. Her friend, V.V., was at her apartment and they both left with Decedent in his vehicle. They picked up some marijuana and searched for an area to smoke when Decedent informed S.G. that he was getting pulled over.

S.G. turned around and looked out the rear window and saw an unmarked police car behind them. Decedent sped up and would not stop for the police. Decedent continued to drive at a high rate of speed. S.G. stated that Decedent reached down between the driver seat and the middle console and pulled out a short shotgun. She described the gun as having a wood grip in front of the trigger area and a handle grip behind the trigger. Decedent rested the gun on his lap and continued to drive without stopping for officers.

S.G. and V.V. demanded that Decedent stop the car and let them out, but he would not stop. At one point, Decedent put the shotgun back between the seat and console. He eventually pulled into the parking lot at the Chevron gas station located at 1785 East Sunset Road and stopped at the gas pump area. S.G. and V.V. exited the vehicle and headed toward the Chevron store. Decedent fled out of the parking lot toward Sunset Road, but S.G. did not know which direction he fled. S.G. and V.V. entered the Chevron store and used the bathroom and attempted to get a ride home. After they exited the bathroom, patrol officers who were waiting outside detained them. S.G. denied taking anything into the bathroom to dispose of or conceal. S.G. advised she did not see any other weapons in the vehicle.

## **A.M.**

On April 21, 2020, at approximately 5:59 p.m., Detective Kraft conducted an audio recorded interview with A.M. in the 7-11 parking lot located at 3716 South Paradise Road.

A.M. walked eastbound on the south side of Twain Avenue toward the Siegel Suites located at 455 East Twain Avenue. As he walked, A.M. observed a red vehicle waiting to pull out of the Siegel Suites parking lot. A.M. observed a white vehicle stop in the right lane on Twain Avenue and block the red car from exiting the driveway.

A.M. observed a light skinned black male exit the driver's seat of the white vehicle and believed the male was holding a sawed-off shotgun. A.M. observed the male walk around the trunk of his car and head towards the red vehicle.

A.M. saw four (4) police officers in the area who wore beige or green vests with yellow "Police" lettering on the back. A.M. heard the officers screaming at the male to drop his weapon as the male walked around the rear of his vehicle and headed toward the red vehicle.

A.M. heard officers yell approximately four (4) times instructing the male to drop his weapon, but he refused. A.M. observed the male raise the shotgun and point it towards the windshield of the red vehicle. A.M. stated the male did not comply with the officers' commands, and A.M. heard the officers discharge their firearms a total of eight (8) to ten (10) times. A.M. stated the male did not fire any shots.

A.M. indicated that after the shots were fired, he observed the male fall to the ground and several other marked police vehicles arrived in the area. A.M. said the officers went into a "tactical position" and then put the male into handcuffs.

## AIR UNIT VIDEO AND BODY-WORN CAMERAS

### **LVMPD Air Unit Video (AIR 2)**

AIR 2 arrived in the area of U.S. 95 and Jones Boulevard and eventually located Decedent's vehicle in the area of Jones Boulevard and Vegas Drive. AIR 2 zoomed its camera and was able to confirm the Nevada license plate 538-G27 on the suspect vehicle. AIR 2 continued to track Decedent's vehicle in surveillance mode (high altitude and out of view). AIR 2 continued to update the dispatcher of Decedent's location, speed, and direction of travel. Decedent continued to drive recklessly and drove at speeds in excess of 120 miles per hour while on U.S. 95. AIR 2 stated they were monitoring Decedent from approximately two and a half miles away and stated no police vehicles were following him.

Decedent continued on the U.S. 95 freeway and exited at Eastern Avenue. After Decedent drove through the downtown area, he made his way to the intersection of Sunset Road and Spencer Street. Decedent pulled into the Chevron Gas Station and parked under the awning. Two females exited the vehicle, and Decedent returned to Sunset Road. AIR 2 followed Decedent to the area of Maryland Parkway and Twain Avenue. At that point, AIR 2 was low on fuel and needed to return to the Air Support hanger to re-fuel. AIR 5 arrived and located Decedent's vehicle and continued the surveillance mode tracking.



Image capture from AIR 2 confirming license plate.



Image capture from AIR 2 of suspect stopping at Chevron.

### **LVMPD Air Unit Video (AIR 5)**

AIR 5 located Decedent's vehicle heading westbound on Twain Avenue. AIR 5 broadcasted that Decedent was driving approximately 70 MPH and drove through a red light. Decedent pulled into an apartment complex located at 764 East Twain Avenue, parked the vehicle, and exited. Decedent immediately re-entered the vehicle and fled through the neighborhood. Decedent eventually made his way onto Twain Avenue. Plain clothes officers who were driving unmarked police vehicles were in the immediate area.

Decedent made a U-turn on Twain Avenue and stopped in front of the Siegel Suites apartment complex located at 455 East Twain Avenue. A red sedan was stopped at the exit of the Siegel Suites, waiting to turn onto Twain Avenue. Decedent exited his vehicle as the plain clothed officers positioned their vehicles to the front and rear of Decedent's vehicle. Decedent exited his vehicle with a short-barrel shotgun and walked toward the red sedan while pointing the shotgun at the driver.

Officers contacted Decedent and shots were fired. Decedent fell to the ground and officers waited for assisting officers to help take Decedent into custody. K-9 Sergeant Harris arrived on the scene and deployed his K-9. The K-9 charged toward the line of officers and bit one of the officers on the upper arm. The K-9 was then released toward Decedent and he was secured in handcuffs. Officers cleared Decedent's vehicle and the scene was secured with crime scene tape.



Image capture from AIR 5 of suspect with shotgun raised at red sedan driver.



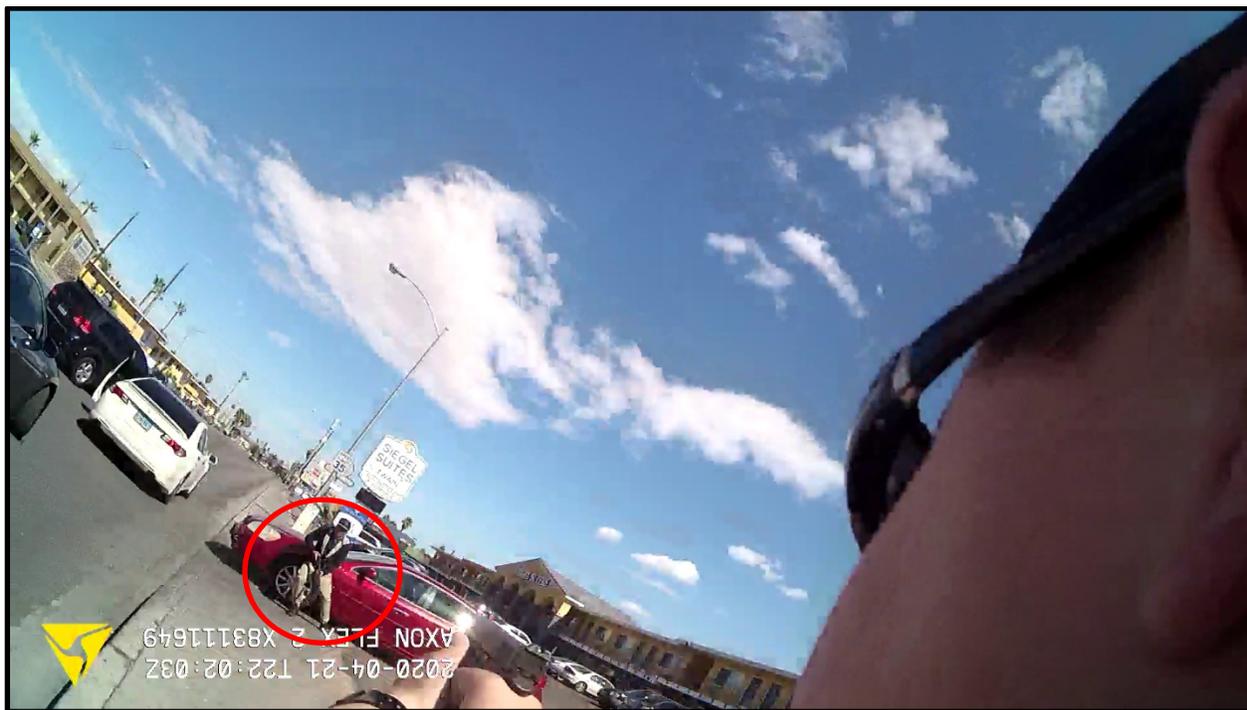
Image capture from AIR 5 after discharge; shotgun next to suspect on ground

## BWC Video – Officer Johnathan Tomaino

Officer Tomaino was wearing body-worn camera (BWC) at the time of the incident and the camera was activated. Officer Tomaino's BWC footage depicted as described below.

Officer Tomaino's first activation of his BWC occurred at 2:17 p.m. The video reveals the inside of his unmarked patrol vehicle and that the camera was inadvertently positioned upside down. Officer Tomaino was positioned on the passenger side of the vehicle. The BWC is then deactivated. At 3:02 p.m., the camera is reactivated just before Officer Tomaino exits the vehicle and contacts Decedent. As Officer Tomaino exits his patrol vehicle, Decedent was seen walking toward a red vehicle while pointing a short-barrel shotgun at the driver. Officer Tomaino pointed his handgun toward Decedent as Decedent turned in Officer Tomaino's direction and began to raise the shotgun. Officer Tomaino fired his handgun at Decedent, and Decedent fell to the ground. Officers waited for responding officers to arrive before approaching Decedent, who still had the shotgun within his reach.

As the officers were positioned to approach Decedent, an LVMPD K-9 was released and went after one of the officers. The K-9 was then released on Decedent, and officers approached Decedent and secured him in handcuffs. Officers began medical treatment on Decedent. An ambulance arrived on the scene, and Officer Tomaino deactivated his BWC.



Officer Tomaino's viewpoint immediately prior to discharging his firearm.

## BWC Video – Officer Kempf

Officer Kempf was wearing a BWC at the time of the incident and the camera was activated. Officer Kempf's camera footage depicted the following:

Officer Kempf was driving a police vehicle, made a U-turn, stopped, and quickly exited his vehicle. A grey sedan was stopped in front of him. Officer Kempf drew his firearm and fired several shots toward Decedent who was positioned between a white vehicle and a red vehicle. Decedent fell to the ground and other plain clothes officers arrived. Several verbal commands were given to Decedent as he laid next to the shotgun.

Officers requested a K-9 to assist with taking Decedent into custody. K-9 Sergeant Harris arrived on scene and released his K-9 toward Decedent. The K-9 headed toward the officers and bit Officer Kempf in the arm. Officer Kempf fell to the ground and the K-9 was released from Officer Kempf. Officer Kempf laid on the ground until medical personnel arrived on scene. Officer Kempf was taken to an ambulance where his BWC was then deactivated.



Officer Kempf's viewpoint immediately prior to discharging his firearm.

## **BWC Video – Officer Vazquez**

Officer Vazquez was wearing a BWC at the time of the incident and the camera was activated. Officer Vazquez' camera footage depicted the following:

Officer Vazquez was positioned in the passenger seat of a police vehicle with Officer Dixon driving. Officer Dixon made a U-turn and stopped his vehicle in front of Decedent's white sedan. Officer Vazquez quickly exited the vehicle with his handgun drawn. Officer Vazquez made his way around the white sedan, and Decedent was seen lying on the ground.

As the officers waited for assistance, K-9 Sergeant Harris arrived on the scene with his dog. Sergeant Harris released the K-9 toward Decedent, but it headed toward the group of officers and bit an officer. The K-9 was then released on Decedent. The group of officers approached Decedent and secured him in handcuffs.

Once Decedent was secured, officers searched for any gunshot wounds to Decedent. Officers began medical treatment on him until Clark County Fire Department personnel arrived and transported Decedent from the scene. The scene was secured with crime scene tape, and Officer Vazquez obtained information from the medical personnel. Once the scene was static, Officer Vazquez was instructed to deactivate his BWC.

## **BWC Video – Officer Blake Dixon**

Officer Dixon was wearing a BWC at the time of the incident and the camera was activated. Officer Dixon's camera footage depicted the following:

Officer Dixon's drove his unmarked patrol vehicle and trailed Decedent's white sedan. Decedent made a U-turn and stopped in front of 455 East Twain Avenue. Officer Dixon positioned his vehicle in front of Decedent's vehicle and exited with a rifle. Multiple gunshots were heard as Officer Dixon exited and made his way to the rear of Decedent's vehicle. Decedent was seen on the ground lying next to the right rear tire of his vehicle. Officer Dixon requested additional resources via his radio and requested a K-9 unit to approach and assist with taking Decedent into custody. K-9 Sergeant Harris arrived on the scene and released his K-9 toward Decedent's direction. The K-9 headed toward the stack of officers and bit an officer.

The K-9 subsequently was released toward Decedent, and officers approached and secured Decedent in handcuffs. Officer Dixon immediately requested medical personnel for Decedent. Officers on the scene assessed Decedent's injuries and began first aid. Clark County Fire Department and Medic West Ambulance personnel responded to the scene.

## **THIRD PARTY AUDIO/VIDEO**

### **Surveillance Video and Audio – 455 East Twain Avenue (Siegel Suites)**

The Siegel Suites complex had multiple cameras affixed to the property that were both audio and video capable. The camera located on the northwest parking entrance captured the incident. The footage showed a maroon vehicle and a dark colored vehicle pulling up to the exit of the northwest parking lot. Both vehicles stopped at Twain Avenue. A white sedan driven by Decedent stopped in front of the maroon vehicle. Several vehicles stopped behind Decedent's vehicle. Decedent exited the driver's side with a shotgun and pointed it directly at the driver of the maroon vehicle.

Several officers exited their vehicle and began yelling at Decedent. Decedent turned toward the officers and pointed the shotgun toward their direction. Numerous gunshots were heard, and Decedent fell to the ground. K-9 Sergeant Harris arrived on the scene and released his K-9 toward Decedent. The K-9 ran toward the group of officers and bit one of the officers on the arm. The K-9 was then released toward Decedent. Assisting patrol officers arrived on the scene and Decedent was taken into custody. Medical personnel arrived and transported Decedent from the scene.

### **Cell Phone Video – D.S.**

D.S. recorded the incident with his cell phone and was positioned across the street just north of where the incident took place. D.S. began recording after the shooting had occurred but captured the LVMPD K-9 inadvertently biting Officer Kempf and taking him to the ground. K-9 Sergeant Harris removed the K-9 from Officer Kempf and re-released the dog toward Decedent. Once the K-9 was secured, officers rendered medical aid to Decedent. A Medic West ambulance, along with the Clark County Fire Department, arrived on the scene and provided medical aid and transportation.

## **AUTOPSY**

On April 22, 2020, at approximately 7:00 a.m., under CCOCME case 20-02170, an autopsy was performed on the body of Decedent at the CCOCME by Doctor Di Loreto.

The following wounds/injuries were noted on Decedent:

- 1) Multiple gunshot wounds to include the head, left arm, and back.
- 2) Abrasions, lacerations and penetrating injuries to the face.
- 3) Abrasions, lacerations and penetrating injuries to the right axillary region.
- 4) Abrasions to the upper and lower extremities.
- 5) Incised wound to the left fifth digit.
- 6) Coronary artery atherosclerosis, mild, focal, left anterior descending artery.

Upon the completion of toxicology testing, the following results were noted:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Amphetamine	61	ng/mL	001 - Cavity Blood
Methamphetamine	630	ng/mL	001 - Cavity Blood
Delta-9 Carboxy THC	22	ng/mL	001 - Cavity Blood
Delta-9 THC	2.2	ng/mL	001 - Cavity Blood

After a complete autopsy, Doctor Di Loreto opined Decedent died as a result of multiple gunshot wounds. The manner of death was homicide.

## **LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

### **A. The Use of Deadly Force in Defense of Self or Defense of Another**

The authority to kill another in self-defense or defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... another person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the person or other person.<sup>1</sup> NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished ....

NRS 200.160(1).

The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in Runion v. State, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in Runion and modified for defense of others are as follows:

The killing of [a] person in self-defense [or 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 himself [or the other person] or cause himself [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [self-defense or defense of another] force or means that might cause the death of

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<sup>1</sup> NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

the other person, for the purpose of avoiding death or great bodily injury to [himself or the person(s) 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 self-defense [or 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 self-defense [or 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 he [or 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 himself [or 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 exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that the slayer did not act in self-defense [or defense of another]. *Id.* at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense or defense of another, the State, at trial, must prove beyond a reasonable doubt that the slayer was not acting in self-defense or defense of another.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officer Kempf and Officer Tomaino as well as to B.B. and other citizens in the immediate area. At the time the officers approached Decedent, Decedent had a shotgun pointed directly at B.B. and was demanding she exit her vehicle. Officers gave Decedent multiple commands to drop his weapon; instead of complying, Decedent turned toward Officer Tomaino and appeared to start to raise his weapon as he turned. Officer Tomaino and Officer Kempf discharged their weapons at that time.

The totality of the evidence, to include BWC video and witness statements, illustrates that both Officer Kempf and Officer Tomaino had a reasonable belief that Decedent would cause great bodily harm or death to B.B., other citizens in the immediate area, and/or to themselves. The officers were confronted with the appearance of imminent danger and acted out of a reasonable belief that someone was about to be shot by Decedent. The officers reasonably acted in defense of themselves and others. Consequently, the shooting of Decedent is justifiable under this legal theory.

## **B. Justifiable Homicide by a Public Officer**

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, all of the evidence indicates that Officers Kempf and Tomaino had probable cause to believe that Decedent posed a threat of serious physical harm to B.B., other citizens in the immediate area, as well as to themselves. Immediately preceding the shooting, Decedent refused to comply with their lawful orders to drop the gun and instead turned toward the officers while starting to raise his weapon. B.B., other citizens, and the officers were in close proximity to Decedent. B.B., other citizens, and/or Officers Kempf and Tomaino could have been injured or killed. At the point that the officers fired their weapons at Decedent, Officers Kempf and Tomaino had a reasonable belief that Decedent could cause serious physical harm to B.B., other citizens in the immediate area, or to themselves. Thus, the use of deadly force by Officers Kempf and Tomaino was legally justified and appropriate under NRS 200.140(2).

## **CONCLUSION**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Officer Kempf and Officer Tomaino were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. See 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, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming against Officer Kempf or Officer Tomaino.