

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Demontry Boyd on December 1, 2018

Introduction

On December 1, 2018, at approximately 7:41 a.m., Las Vegas Metropolitan Police Department Officer N. Paul Bruning conducted a traffic stop at 18th Street and Sunrise Avenue on an unregistered blue Infiniti driven by Demontry Boyd, hereinafter “Decedent.” During the stop, Officer Bruning asked the dispatcher for another officer to respond to his location. Shortly after requesting another officer, Officer Bruning advised he had deployed his Taser. Officer Bruning then advised shots had been fired, and requested medical personnel respond to the scene to care for Decedent.

The Clark County District Attorney’s Office has completed its review of the December 1, 2018, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer N. Paul Bruning were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer N. Paul Bruning. 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 August 26, 2019.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

I. BODY WORN CAMERA

Officer Bruning wore a body worn camera (BWC) at the time of the incident and the camera was activated. The camera was collected by Detective Joseph Patton and secured. The camera footage depicted the vehicle stop conducted by Officer Bruning on an unlicensed blue Infiniti sport utility vehicle (SUV). Officer Bruning made contact with the driver, Decedent, and asked him to step out of the vehicle. Officer Bruning attempted to arrest Decedent and a physical altercation ensued. Officer Bruning discharged his Taser and firearm.

II. SCENE WALK-THROUGH

On December 1, 2018, at approximately 11:45 a.m., Officer Bruning provided a walk-through of the scene. During the walk-through, Officer Bruning stated he had been fighting with Decedent and discharged his Taser. During the struggle with Decedent, the wires from the Taser had wrapped around Officer Bruning's arms and boots. As the Taser was cycled, Officer Bruning felt the shock of the Taser.

At some point, the Taser fell to the ground. Officer Bruning stated to Decedent, "Don't you dare," as Decedent picked up the Taser. Officer Bruning was in fear for his life and discharged his firearm two times. Officer Bruning was asked about an item on the ground which when viewed on BWC appeared to have been attached to Decedent's hip. Officer Bruning stated he observed the object during the incident and believed it was either a holster for a firearm or a sheathed knife. Officer Bruning also explained he placed orange traffic cones where he believed he and Decedent were standing at the time he discharged his firearm.

III. PUBLIC SAFETY STATEMENTS

On December 1, 2018, at approximately 9:53 a.m., Detective Mendoza interviewed Sergeant James McGuire in reference to the Public Safety Statement he obtained from Officer Bruning. Below are the questions asked by Sergeant McGuire, with the answers provided by Officer Bruning in italics.

- 1) Did you discharge your firearm? *Yeah.*
 - a. If so, what direction? *Twice that way. (He then pointed north.)*
 - b. Approximately where were you located when you fired? *Right where he's laying.*

- c. How many shots do you think you fired? *Two.*
- 2) Is anyone injured? *Just the suspect laying over there.*
 - a. If so, where are they located? *By the blue car.*
- 3) Are there any outstanding subjects? *No.*
 - a. If so, what is their description? *N/A.*
 - b. What direction and mode of travel? *N/A.*
 - c. How long have they been gone? *N/A.*
 - d. What crime(s) have they committed? *N/A.*
 - e. What type of weapon do they have? *N/A.*
- 4) Is it possible the suspect fired rounds at you? *No.*
 - a. If so, what direction were rounds fired from? *N/A.*
 - b. How many shots do you think the suspect may have fired? *N/A.*
 - c. Approximately where was the suspect located when you fired? *N/A.*
- 5) Do you know if any other officers discharged their weapon? *They did not.*
 - a. If so, who are they? *N/A.*
 - b. Approximately where was the officer(s) located when they fired? *N/A.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
 - a. If so, where are they located? *No.*
- 7) Are you aware of witnesses? *These people over there.*
 - a. If so, what is their location? *Possibly vagrants by the old gas pumps. (He pointed to the apartments on Fremont.)*

IV. OFFICER WEAPON COUNTDOWNS

On December 1, 2018, at approximately 12:15 p.m., Officer Bruning had his duty weapon counted down at LVMPD headquarters. Officer Bruning was photographed by CSI personnel for appearance purposes and his weapon was photographed for identification purposes.

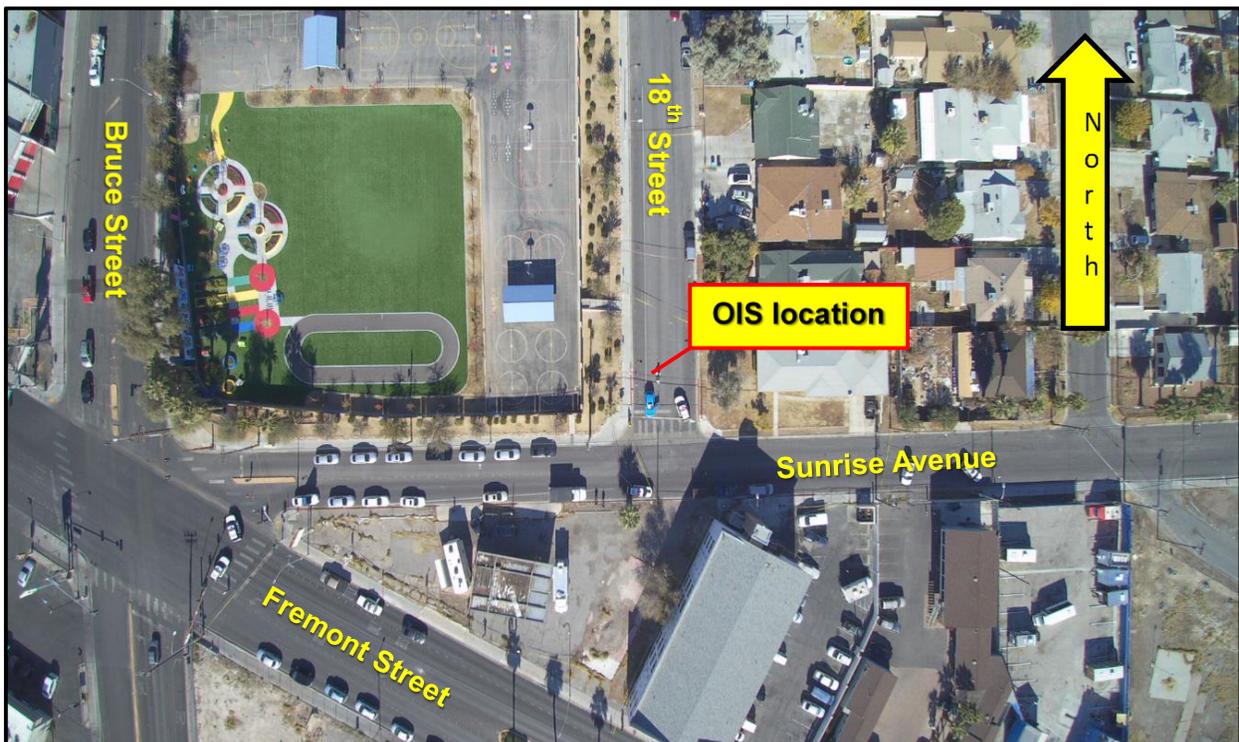
Officer Bruning was dressed in a standard tan LVMPD long sleeve uniform and a green LVMPD jacket. He wore LVMPD patches on each shoulder and an LVMPD badge over his

left breast. Officer Bruning wore a black duty belt with attached tools and equipment as part of his position as an officer assigned to the Traffic Bureau. Officer Bruning's handgun was carried on the right side of his body and secured in a holster. Officer Bruning's jacket had a large tear along the right side. There was a long tear on the inside of his left pant leg, and the button from his left shirt sleeve was missing.

Prior to countdown, Officer Bruning stated he carried 14 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (14+1, 15 total). At the completion of the countdown, it was determined Officer Bruning discharged his firearm two times during this incident.

V. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

On December 1, 2018, at approximately 8:27 a.m., CSA Steinmetz responded to 18th Street and Sunrise Avenue to photograph and document the scene, and photograph and collect evidence. The following are some of the photographs taken of the overall scene and items impounded as evidence.



Above: Street level view of the OIS scene.



Above left: Decedent's knife inside of the sheath.



Above right: Decedent's knife out of the sheath.



Above: Officer Bruning's torn jacket and uniform pants.



VI. THIRD PARTY VIDEO AND PHOTOGRAPHIC EVIDENCE

On 18th Street, Las Vegas, NV 89101

Home surveillance video footage was obtained from a camera mounted on the exterior of a residence on 18th Street. The camera captured a blue Infiniti SUV travelling southbound on 18th Street, followed by Officer Bruning on his police motorcycle. The vehicles stop in an area where the view from the camera was obstructed by a tree in the front yard.

Officer Bruning's Taser was observed bouncing and sliding across the asphalt approximately three minutes after the vehicles stopped. Officer Bruning was then observed walking backwards as Decedent walked towards him. Decedent knelt down and attempted to pick up the Taser. Officer Bruning stepped on the Taser, but Decedent was able to gain control of it. Decedent stood up with the Taser, but appeared to drop it.

Decedent and Officer Bruning remained in close proximity and appeared to be grabbing onto each other. Officer Bruning appeared to reach for his firearm, and Decedent attempted to strike Officer Bruning several times with his hands. Decedent fell to the

ground, and the view of him was partially obscured by a tree in the front yard. Officer Bruning moved out of camera view. Another officer then approached Decedent and appeared to place him in handcuffs.

VII. AUTOPSY

On December 2, 2018, at approximately 10:00 a.m., under Clark County Officer of the Coroner/Medical Examiner (CCOCME) case 18-12139, an autopsy was performed on the body of Decedent at the CCOCME by Doctor Chiara Mancini. The following wounds/injuries were noted on Decedent: penetrating gunshot wound of central chest, perforating gunshot wound of right chest, puncture wound on the right side of the abdomen (limited to skin and subcutaneous soft tissues) related to conducted electrical weapon, multiple red linear and irregularly-shaped abrasions on the scalp, face, posterior left ear, bilateral upper extremities (particularly the posterior forearms and hands), and right lower extremity.

Toxicology testing revealed positive findings as follows:

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
11-Hydroxy Delta-9 THC	4.5	ng/mL	001 - Peripheral Blood
Delta-9 Carboxy THC	33	ng/mL	001 - Peripheral Blood
Delta-9 THC	>50	ng/mL	001 - Peripheral Blood
Amphetamine	28	ng/mL	001 - Peripheral Blood
Methamphetamine	110	ng/mL	001 - Peripheral Blood
Creatinine (Vitreous Fluid)	0.60	mg/dL	004 - Vitreous Fluid
Sodium (Vitreous Fluid)	140	mmol/L	004 - Vitreous Fluid
Potassium (Vitreous Fluid)	10	mmol/L	004 - Vitreous Fluid
Chloride (Vitreous Fluid)	124	mmol/L	004 - Vitreous Fluid
Urea Nitrogen (Vitreous Fluid)	18	mg/dL	004 - Vitreous Fluid
Phenylpropanolamine	95	ng/mL	005 - Urine
Amphetamine	2700	ng/mL	005 - Urine
Methamphetamine	>10000	ng/mL	005 - Urine
Delta-9 Carboxy THC - Total	360	ng/mL	005 - Urine

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

VIII. INVESTIGATION

Witnesses

Officer Manuel Papazian

On December 1, 2018, at approximately 9:53 a.m., Detective Penny conducted an audio recorded interview with Officer Papazian inside LVMPD vehicle 19430, which was parked in the area of 1740 Fremont Street. Also present for the interview was Detective Melton, and Las Vegas Police Protection Association representative Brian Grammas.

Officer Papazian was on duty when he heard Officer Bruning request assistance from another unit. Officer Papazian stated Officer Bruning's voice over the radio sounded stressed. Officer Papazian was driving towards the scene of the traffic stop when he heard Officer Bruning advise over the radio he had deployed his Taser.

Officer Papazian arrived and he saw Officer Bruning backing up while pointing what he thought to be a Taser at the suspect (Decedent). Decedent was standing and facing Officer Bruning, and appeared to be getting ready to lunge at him when Boyd looked over and saw Officer Papazian. Decedent then laid on the ground in the prone position.

Officer Papazian believed Decedent was being tased and ran towards him with the intent of handcuffing Decedent during the cycle of the Taser. Officer Papazian handcuffed Decedent, rolled him to his side, and noticed a pool of blood. Officer Papazian asked Officer Bruning if Decedent was shot and was told yes. Medical personnel were requested to the scene.

Officer Papazian was securing the scene when he saw Officer Bruning's Taser on the street. Officer Papazian then realized Officer Bruning was holding his firearm while he was retreating away from Decedent and not a Taser as Officer Papazian first believed.

Witness # 1

On December 1, 2018, at approximately 12:09 p.m., Detective Mendoza conducted an audio recorded interview with Witness # 1 at an apartment located on East Fremont Street. Also present for the interview was Detective Melton.

On December 1, 2018, at approximately 7:35 a.m., Witness # 1 was inside his apartment when he heard through his window what he described as a "commotion." Witness # 1's window faced westbound and overlooked a vacant lot, and beyond the lot was the intersection of Sunrise Avenue and 18st Street where the OIS occurred. Several moments later, Witness # 1 exited his apartment building and was walking westbound on the north side of Fremont Street toward the 7-Eleven located at 1740 E. Fremont Street. Witness # 1 then looked in a northbound direction, past the vacant lot and toward the intersection of Sunrise Avenue and 18st Street. Witness # 1 observed a blue vehicle, along with a police officer (Officer Bruning) and a black male adult wearing dark clothing (Decedent) involved

in a confrontation. Witness # 1 described Decedent as looking “kinda homeless” and a “dirty dude” who did not fit the nice car he was driving.

Witness # 1 observed Decedent lunge at Officer Bruning at least three different times, and Officer Bruning pushed Decedent down each time and yelled, “No!” Witness # 1 stated Officer Bruning looked scared, and was becoming tired after having pushed Decedent away multiple times. Witness # 1 believed at one point Decedent yelled, “Shoot me!” to Officer Bruning. Witness # 1 believed Decedent was attempting to reach for Officer Bruning’s firearm because Officer Bruning was covering his firearm with both hands while yelling at Decedent. Witness # 1 then heard one gunshot, followed shortly thereafter by another gunshot. Witness # 1 said the majority of the incident took place behind the blue car Decedent was driving.

On December 1, 2018, at approximately 11:00 a.m., Detectives Melton and Mendoza conducted a witness canvass at the residences in the area. Below is a summary of the canvass.

<u>LOCATION</u>	<u>PERSON CONTACTED</u>	<u>INFORMATION OBTAINED</u>
E. Sunrise Avenue	Witness # 2	Heard someone say, “Get down on the ground,” and two gunshots.
N. 18 th Street	Witness # 3	Did not hear or see anything related to the incident.
N. 18 th Street	Vacant house	
N. 18 th Street	Witness # 4	Heard gunshots while inside his house.
N. 18 th Street	Witness # 5	Heard sirens in the area.

Fremont Manor Apartments – 1841 E. Fremont Street

Apartment	Witness # 6	Did not hear or see anything.
Apartment	Witnesses # 7 & 8	Heard gunshots.
Apartment	No answer.	
Apartment	Witness # 9	Heard gunshots.
Apartment	No answer.	
Apartment	No answer.	

<u>LOCATION</u>	<u>PERSON CONTACTED</u>	<u>INFORMATION OBTAINED</u>
Apartment	Witness # 10	Did not hear or see anything.
Apartment	No answer.	
Apartment	Witness # 1	Gave a recorded interview.
Apartment	No answer.	
Apartment	Witness # 11	Did not hear or see anything.
Apartment	Witness # 12	Heard sirens in the area.
Apartment	Witness # 13	Heard gunshots.
Apartment	No answer.	
Apartment	Witness # 14	Was not home during incident.
Apartment	No answer.	
Apartment	No answer.	

Palms Piazza Apartments – 2011 E. Fremont Street

Apartment	Witness # 15	Heard two gunshots.
Apartment	Vacant	
Apartment	No answer.	

IX. FORENSICS REQUESTS/RESULTS

Firearm Examinations

On December 27, 2018, Forensic Scientist Glen Davis submitted a Firearms Report of Examination that determined that the cartridge cases found at the scene had been fired by Officer Bruning's firearm.

Biology/DNA Examination

On February 7, 2019, Forensic Scientist Kimberly D. Dannenberger submitted a DNA Report of Examination which determined that Decedent's DNA was found on a swab taken from Officer Bruning's Taser.

X. LEGAL ANALYSIS

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

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

I. THE USE OF DEADLY FORCE IN DEFENSE OF ANOTHER

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.¹ 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:

¹ NRS 200.120(3)(a) defines a crime of violence:

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

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and,
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent danger to Officer Bruning. As evidenced by the BWC video, the video surveillance from a nearby home, and explained by Officer Bruning and Witness # 1, Decedent did not comply with Officer Bruning's commands as Officer Bruning attempted to conduct a vehicle stop of Decedent, who was driving in an

unregistered vehicle. A physical altercation occurred during the vehicle stop and Officer Bruning used his Taser in an effort to stop Decedent. However, as Decedent struggled with Officer Bruning the Taser wires became wrapped around the Officer's legs and he was also affected by the electricity. During the incident, Officer Bruning noticed Decedent had an object on his hip that Officer Bruning thought was a holster for a firearm or a sheathed knife. As the struggle that tore Officer Bruning's uniform pants and jacket continued, the Taser fell to the ground and Decedent picked it up. At this point, Officer Bruning issued commands to Decedent, "Don't you dare." Decedent lunged at Officer Bruning, and as described by Witness # 1, began to reach for Officer Bruning's firearm. Officer Bruning then discharged his weapon twice as he was in fear for his life. Thus, Officer Bruning was confronted by the appearance of imminent danger, which created in his mind an honest belief and fear that he was about to be killed or suffer great bodily injury. Accordingly, Officer Bruning was justified in acting upon those appearances, fears and actual beliefs.

II. JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

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

In this case, the facts demonstrate that Officer Bruning had probable cause to believe that Decedent posed a threat of serious physical harm to himself. This probable cause became evident after Officer Bruning observed Decedent driving an unregistered vehicle. As such, Officer Bruning initiated a vehicle stop. During the vehicle stop, the Decedent did not comply with commands to exit the vehicle and a physical altercation ensued. During the altercation, Decedent posed a threat of serious physical harm to Officer Bruning as he obtained the Taser and attempted to obtain Officer Bruning's firearm. Thus, Officer Bruning had a reasonable belief that Decedent was a threat to his life.

In light of this evidence, the actions of the officer were legally justified and appropriate "in the discharge of a legal duty."

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Las Vegas

Metropolitan Police Department Officer Bruning was reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” (NRS 200.190).

As there is no factual or legal basis upon which to charge, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.