

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of David Baxter on January 31, 2020

INTRODUCTION

On January 30, 2020, 38-year-old David Baxter (hereinafter “Decedent”) died while in the custody of Las Vegas Metropolitan Police Department (“LVMPD”) Sergeant Brett Levasseur, Officer Steve Saxon and Officer Ryan Thacker, and while receiving medical attention from Clark County Fire Department (“CCFD”) and American Medical Response (“AMR”) medical personnel. At approximately 12:28 p.m., police officers and medical personnel were called to 7452 Hawk Shadow Avenue, Las Vegas, Nevada 89113, in reference to a person reporting Decedent was attempting suicide and had consumed a large amount of methamphetamine. Upon arriving at the residence, officers found Decedent conscious, but in an agitated state of distress and not verbally responsive. Officers restrained the decedent in handcuffs in order to allow medical personnel to administer a sedative medication and, shortly after the medication began to take effect, placed the decedent onto a gurney. In order to restrain the decedent using the gurney’s soft restrains, officers attempted to remove the handcuffs from Decedent’s hands, which were behind his back. During that time, officers and medical personnel held Decedent’s body forward and head down to allow an officer to unlock the handcuffs. While in that forward position, Decedent stopped breathing. Medical personnel immediately began lifesaving measures, including cardiopulmonary resuscitation (“CPR”), but Decedent was ultimately pronounced deceased after his arrival at Spring Valley Hospital Medical Center.

This report explains why criminal charges will not be forthcoming against LVMPD Sergeant Brett Levasseur, Officer Steve Saxon, and Officer Ryan Thacker. 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 November 19, 2020.

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

In preparing this report, the Clark County District Attorney's Office considered the facts known at the time including, but not limited to, those contained in the investigative reports, coroner's reports, audio recordings of a 9-1-1 call and police radio traffic, body-worn camera ("BWC") footage, surveillance footage, and statements of involved persons and witnesses.

INCIDENT DETAIL

On Friday, January 31, 2020, at 12:26 p.m., Decedent's friend, M.P., called 9-1-1 requesting medical personnel be dispatched to 7452 Hawk Shadow Avenue, Las Vegas, Nevada 89113. M.P. told the 9-1-1 call takers Decedent was "possibly going to OD," stating Decedent had "just ingested a lot of methamphetamine." M.P. indicated Decedent intentionally ingested the large amount of methamphetamine and may have been attempting to commit suicide. M.P. described Decedent as awake, breathing, and "kind of" alert. In response to the call-takers' questions, M.P. stated that Decedent had also been drinking earlier in the day and that M.P. didn't think the decedent was violent, at least not in that moment.

At approximately 12:28 p.m., police officers were dispatched via radio to the attempt-suicide call at 7452 Hawk Shadow Avenue. Officer Saxon was assigned at that time. Paramedics and emergency medical technicians ("EMT") from CCFD and AMR were also dispatched to the residence. CCFD and AMR medical personnel arrived in the neighborhood and awaited police officers to make sure the scene was safe for their arrival.

Officer Saxon arrived at the front driveway of the residence where he contacted M.P., who identified himself as the resident of 7452 Hawk Shadow Avenue. M.P. directed Officer Saxon to the garage where Decedent was located. M.P. informed Officer Saxon that Decedent had been staying at his home and sleeping in the garage for approximately a week. According to M.P., Decedent was from Utah, was dealing with some family issues, and had come to Las Vegas to get away. M.P. believed that Decedent's emotional state had improved over the last few days, as he appeared happier. M.P. said he left the residence earlier in the day to get some supplies for work and when he returned home Decedent seemed upset. He believed that Decedent had received a phone call or text from a family member which upset him. M.P. indicated that Decedent made a statement to the effect of "not wanting to do it anymore." Decedent then ate what M.P. believed to be approximately fifteen (15) grams of methamphetamine. Being concerned that Decedent was attempting to take his own life, M.P. called 9-1-1.

Officer Saxon entered the garage and located Decedent in a small corner of the garage seated aside a desk in a rolling chair. Decedent was wearing a black hooded sweatshirt and pants. At the time of his death, the decedent was six (6) feet tall and weighed approximately two-hundred forty-nine (249) pounds. Decedent appeared to be restless with his muscles

twitching and tightening. Officer Saxon attempted to speak with Decedent, who looked at him, appeared to acknowledge him visually but did not respond verbally.

At 12:39 p.m., Officer Saxon requested via radio that “medical come up” and indicated the scene was safe for their arrival. CCFD and AMR arrived at the residence and CCFD personnel entered the garage to contact Decedent. CCFD personnel made contact with Decedent, but then exited the garage approximately one minute later without beginning treatment. While exiting the garage, a CCFD Captain briefly said something to Officer Saxon. According to AMR Paramedic K.J. and EMT J.M., who were standing outside the garage, CCFD personnel believed the scene was not safe. Officer Saxon then immediately entered the garage. Officer Saxon asked the decedent to stand up but was again met with nonverbal responses as Decedent made indiscernible hand gestures and continued to shake and fidget.

At 12:42 p.m., Officer Saxon requested via radio that an additional police unit respond to the scene. Officer Saxon remained in the garage with Decedent, who Officer Saxon believed showed signs of excited delirium¹, including shaking, muscle twitches and restlessness, which appeared to become more pronounced with time.

Officer Saxon again asked Decedent, “Dave, can you stand up and come out here,” to which Decedent did not respond verbally and continued to fidget, appear restless and agitated. At 12:43 p.m., Officer Saxon advised dispatch via radio that he “would probably need a couple of units.” In response to being asked about his status via radio, Officer Saxon indicated he was okay, Decedent was “just not being very cooperative.” Officer Saxon repeatedly tried to calm Decedent by telling him to “just relax, we are going to get you some help.”

While waiting for backup, Officer Saxon remained with Decedent in the garage and medical personnel waited outside. At 12:46 p.m., Officer Saxon requested via radio to have officers expedite their response. Decedent, still restless and twitching, began rummaging through a desk next to where he was seated and then removed his hooded sweatshirt. Officer Saxon then advised dispatch via radio that Decedent appeared to be experiencing excited delirium. Decedent then slid himself off the chair onto the floor while continuing to shake.

Additional officers arrived on scene and joined Officer Saxon inside the garage. The officers quickly made a plan to take Decedent into custody in order to get him medical attention. An officer moved items inside the garage to facilitate the officers’ approach to Decedent. Decedent appeared to slap Officer Saxon away as the officers approached him. Officers then grabbed the decedent by the arms, pulled him away from the confined corner, rolled him onto his stomach and placed him in two sets of handcuffs. Two sets of handcuffs were

¹ Excited delirium has been defined in medical journals as characterized by agitation, aggression, acute distress and sudden death, often in the pre-hospital care setting, and being often associated with the use of drugs that alter dopamine processing. LVMPD policy defines excited delirium as, “[a] state of extreme excitation usually associated with illicit or prescription drug use and manifested by behavioral and physical changes that may result in sudden and unexplained death.” Signs of this condition typically include some or all of the following: excessive body temperature, profuse sweating, dilated pupils, uncontrollable shaking, talking incoherently, screaming, yelling, paranoia, extreme aggression toward objects, violent resistance/struggling, inappropriate shedding of clothing and self-inflicted injuries.

used to lessen the strain on the decedent's body due to his size by placing a separate set of handcuffs on each wrist, then connecting the two sets of handcuffs together. Once Decedent was in handcuffs, the officers verbalized with one another to place Decedent on his side, into the "recovery position." The officers rolled Decedent onto his side into a recovery position to enable him to breathe easier. Several officers continued to hold the decedent in that position while he continued to shake and twitch and began to sweat and have a white foam form around his mouth.

Medical personnel suggested sedating the decedent prior to moving him onto the gurney and officers agreed. Paramedic K.J. moved to where officers had the decedent on the ground and administered 5 mg of Versed² into the decedent's arm. Once the medication had been administered, Paramedic K.J. advised officers to give the sedative about five minutes to take effect. The officers continued to hold the decedent on his side in the recovery position while they waited for the sedative to take effect. Decedent remained in this position for approximately four (4) more minutes allowing the sedative time to work, while he continued to show the same behaviors and actions.

Medical personnel approached the opening of the garage with the gurney. Five (5) of the officers gathered around Decedent, picked him up and placed him on the gurney with the assistance of Paramedic K.J. and Engineer-Paramedic B.F. Once Decedent was on the gurney, the officers secured his feet with soft restraints as well as securing his legs with built-in straps on the gurney. Decedent was wheeled out of the garage and into the driveway.

Once in the driveway, medical personnel sat Decedent up so the officers could remove the handcuffs. Paramedic K.J. pushed on Decedent's left shoulder and base of his neck while Engineer-Paramedic B.F. pushed on Decedent's midback just below the neck. Officer Thacker placed his hand on the back of Decedent's head and pushed forward while Officer Saxon grabbed the decedent by the left arm pulling him forward. Officer J.C. kneeled behind the decedent and worked to remove the handcuffs. Sergeant Levasseur reached over Decedent and placed his right hand on the back of Decedent's head. Sergeant Levasseur then reached over with his left hand and used both hands to pull Decedent's head down pushing Decedent's chin to his chest. As Officer J.C. continued to work to remove the handcuffs, Sergeant Levasseur then overlapped his hands placing his left hand on top of his right pulling Decedent's head downward.

Once the handcuffs were removed, Decedent was laid back on the gurney. Two officers immediately began to comment about Decedent's appearance and his breathing. Decedent had visible discoloration in his face and the center of his neck, widened eyes and the foam around his mouth had thickened. Paramedics K.J. and J.M. checked for vital signs and, upon not getting a response, Engineer-Paramedic B.F. quickly began chest compressions. As chest compressions were occurring, medical personnel wheeled the gurney to the waiting AMR ambulance. Decedent was then transported to Spring Valley Hospital, where he was pronounced deceased by Doctor C.L.

² Versed is a benzodiazepine sedative used to sedate a person.

Due to the fact Decedent died while in the custody of police officers, the Force Investigation Team ("FIT") responded to the scene and assumed responsibility of the investigation.

The Clark County Coroner subsequently conducted an autopsy on Decedent and determined Decedent died of methamphetamine intoxication with other significant conditions being cardiomegaly, severe coronary artery disease and police restraint. The Coroner ruled Decedent's manner of death a homicide.

DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scene consisted of the garage area of 7452 Hawk Shadow Avenue, which was a one-story residence on the north side of the cul-de-sac.

The exterior south garage door was open and there were multiple pallets, miscellaneous furniture, tools, and household items outside and inside of the garage. There was a surveillance camera mounted on the exterior southwest corner of the south garage, the footage it captured is detailed below. A black Toyota truck was parked facing south in the south driveway.

Inside the garage, there was a desk to the north, a rolling chair east of the desk, and a recliner east of rolling chair. A black "Under Armor" hooded sweatshirt and grey shirt were on the recliner. A pair of grey shoes were on the floor between the desk and the recliner. A Gatorade bottle was underneath the desk.



Photograph of the front exterior of the residence.



Photograph of the inside of the garage where Decedent was located.

Crime scene analysts documented and captured digital photographs of the scene, LVMPD officers, and the officers' body-worn cameras.

BODY-WORN CAMERA FOOTAGE

There were a total of eleven (11) police officers on scene, including Sergeant Levasseur, Officer Saxon, and Officer Thacker. Ten (10) of the officers were equipped with body-worn cameras ("BWC") and all their BWCs were activated. One (1) of the officers on scene,

Detective H.N., was working in a mandatory temporary uniformed-patrol assignment on the day of this incident, but normally worked in a plain-clothes detective assignment and, as such, was not assigned a BWC.

Due to the confined space within the garage and the limited movement and activity of the decedent, similar footage was captured by all BWCs considering the various times in which the officers arrived on scene and their interactions while there.

The footage captured on the BWCs was consistent with the witness officers' statements.

The following is a summary of the BWC footage of Officer Saxon, Officer Thacker, Sergeant Levasseur, and the witness officers.

Officer Steve Saxon's BWC Footage

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

The camera was activated when he was assigned the attempted-suicide call. Officer Saxon arrived in the neighborhood of the call approximately nine (9) minutes later and passed medical personnel staged just outside of the neighborhood.

About one (1) minute later Officer Saxon arrived at the residence and contacted M.P. in the driveway of the residence. M.P. stated that Decedent was breathing and led Officer Saxon toward the open garage door. M.P. informed Officer Saxon that Decedent had eaten a bag containing methamphetamine, as M.P. led Officer Saxon to Decedent, who was seated behind some cupboards and in front of the desk inside of the garage. Decedent was wearing a black hooded sweatshirt, camouflage pants and athletic shoes. Officer Saxon talked to Decedent, who looked at him but did not verbally acknowledge him. Officer Saxon informed Decedent that he was going to get him medical attention and, approximately thirty (30) seconds after arriving at the residence, used his radio to broadcast that it was safe for medical to come to the residence. Officer Saxon continued to talk to Decedent but did not receive a verbal response.

Officer Saxon continued to converse with M.P., who told Officer Saxon Decedent's backstory and personal information, including that Decedent was staying in Las Vegas but lived in Utah. CCFD and AMR arrived at the residence less than two (2) minutes after Officer Saxon's radio broadcast. Officer Saxon briefed medical personnel about Decedent's condition. CCFD medical personnel then entered the garage to contact Decedent but exited the garage shortly thereafter and said something inaudible to Officer Saxon. Officer Saxon reentered the garage and asked Decedent to stand up. Decedent looked at Officer Saxon but did not verbally acknowledge him. Decedent was fidgeting, waving his hands and appeared as though his muscles were tensing up. Decedent appeared unable to hold still as he tapped his feet and turned in his chair. Less than thirty (30) seconds after reentering the garage, Officer Saxon used his radio to request additional units to assist him.

Decedent's erratic behavior continued as Officer Saxon remained in the garage with him. Decedent leaned forward in his chair grabbing what appeared to be a rag as he began to wipe down the desk he sat behind. Officer Saxon told Decedent to relax, however Decedent did not respond and just continued to fidget and shake. Decedent opened desk drawers and looked around his immediate area. Less than four (4) minutes after his previous radio request, Officer Saxon requested dispatch to have the additional units responding to his location expedite their response.

Decedent made grunting noises as he clasped his hands behind his back. He appeared to have muscle spasms with his legs kicking outward in front of his body. Officer Saxon told Decedent to "take deep breaths buddy, just calm down okay, calm down buddy." After Officer Saxon told Decedent to calm down, an arm with a long sleeve blue shirt could be seen grabbing the cabinet next to Officer Saxon, to gain a visual of Decedent. The person was not in view, but it appeared to be one of the medical personnel based on the uniform. While the decedent continued to shake and grunt, he removed the sweatshirt he was wearing and Officer Saxon broadcast via radio that he believed the decedent was experiencing "ED" or excited delirium.



Decedent now sat shirtless and his breathing seemed to be more labored. His body shook and he slid out of the chair in which he was seated. Decedent sat on the floor with his back against the chair as he continued to fidget. Decedent grabbed a Gatorade bottle that was in front of him and he began shaking with it in his hands. It appeared as if Decedent was attempting to pour the contents of the bottle on himself but was unable due to his apparently uncontrollable shaking and the bottle possibly being empty.



Shortly thereafter, Officer Saxon informed somebody that Decedent had not been patted down for weapons and had swallowed methamphetamine. An officer who arrived began to move items from the immediate vicinity of the decedent. The arriving officers began to have a conversation in which they formulated a plan to take Decedent into custody as they moved more items from the area. Within a few minutes, officers moved in to take control of Decedent. Decedent appeared to slap Officer Saxon away as he reached in towards Decedent. Officer Saxon's BWC became partially blocked as several officers grabbed Decedent and pulled him away from the desk and chair. The officers could be heard discussing their plan to move Decedent to his stomach, place him in two (2) sets of handcuffs, and then move him into a recovery position.

As officers rolled Decedent into the recovery position about a minute later, Officer Saxon moved into a position that allowed for a partial view of Decedent, as well as several other officers holding him in the recovery position. Decedent could be heard breathing and grunting while they maintained this position. Paramedic K.J. then moved in and administered a shot into Decedent's arm and advised officers it would take approximately five (5) minutes for the sedative to take effect. For approximately four (4) minutes, officers assisted the decedent while keeping him in the recovery position as they waited for the sedative take effect. Medical personnel moved the gurney from the driveway into the garage. Once the gurney was inside the garage, officers assisted with picking up and placing Decedent onto the gurney and strapping down his feet and legs.

Decedent was then wheeled out of the garage by medical personnel, where they inclined the back of the gurney placing Decedent in a seated position so his handcuffs could be removed. Paramedic K.J., Engineer-Paramedic B.F. and Officer Thacker could be seen pushing the decedent's body forward by his upper back and neck area. The back of the gurney was lowered as they held the decedent in a seated/upright position allowing access to the handcuffs. Officer J.C. was observed to the right of Officer Saxon as he knelt on the ground and attempted to access and remove the handcuffs.



While Officer J.C. was unlocking the handcuffs, another set of hands from an LVMPD officer could be seen wrapped around the back of the decedent's head and pulling it forward and down toward his chest. Approximately seventy-one (71) seconds after the decedent's body was pushed forward, Officer J.C. announced he had removed the handcuffs and an officer gave direction to "pull his head back, pull his head back" as the decedent was lowered toward the gurney. Once laid back on the gurney, officers could be heard asking if the decedent was breathing. Paramedics B.F. and K.J. immediately began assessing the decedent's vitals. Within seconds, Engineer-Paramedic B.F. began CPR as medical personnel wheeled the gurney to the waiting AMR ambulance.

Officer Saxon's BWC continued to record as he entered his vehicle and prepared to follow the ambulance to Spring Valley Hospital but was advised to remain at the scene. Officer Saxon deactivated his camera.

Officer Ryan Thacker's BWC Footage

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

Upon arrival, Officer Thacker walked up the driveway past medical personnel, who were waiting with a gurney, and into the garage where at least four (4) uniformed police officers could be seen positioned around Decedent, who was seated on the ground and shirtless. The officers inside of the garage could be heard formulating a plan and moving items away from Decedent. The officers asked Decedent to stand up. Decedent did not comply with their commands. Officer Thacker and at least two other officers then moved in and grabbed ahold of the decedent.

From the view of Officer Thacker's BWC, it appeared he assisted with the upper body of the decedent and helped place him into handcuffs. As Decedent was placed in handcuffs the

officers had a conversation about putting two pairs of handcuffs on him and to make sure they placed him in the recovery position for the stated purpose of allowing Decedent to breathe easier. The officers handcuffed Decedent and rolled him into the recovery position. Decedent could be seen shaking and struggling while the officers held him in place. An officer can be heard asking about moving Decedent and was advised that medical is going to sedate him first.

Very shortly thereafter, one of the medical personnel approached and gave Decedent an injection into his arm. The officers remained around Decedent and continued to assist him by holding his body in the recovery position. An officer inquired if medical needed to come check on Decedent who was still shaking and making grunting noises while on the ground. Other officers responded that medical said the sedative would take five minutes to "kick in." The decision was then made to move items in the garage and bring the gurney inside. As the gurney was brought into the garage, officers worked together to lift Decedent off the ground and placed him onto the gurney. The officers nearest to the decedent's feet assisted with strapping Decedent down to the gurney. With Decedent on the gurney, medical personnel moved him out of the garage and into the driveway.

Once in the driveway, somebody stated that they would need to sit the decedent up. Officer Thacker then moved toward the upper body of the decedent. As Officer Thacker moved toward Decedent, medical personnel sat him up in a seated position on the gurney. Officer Thacker placed his right hand on the back of Decedent's neck while medical personnel pushed Decedent's back forward. While in this position, somebody requested the back of the gurney be laid down while they worked to remove the handcuffs. Officer Thacker alternated the use of his right and left hand as he maintained control of Decedent by the back of the head and neck. During this time, Officer Thacker's face blocked the BWC view of Decedent's head, but it appeared Officer Thacker had now changed his hand position with his left hand on Decedent's right shoulder area. As the handcuffs were removed Officer Thacker then reached down to assist with bringing Decedent's hands out from behind his back.

Immediately thereafter, announcements were made within the group to "pull his head back." Decedent was then laid back down onto the gurney. Officers immediately began to ask questions about whether Decedent was breathing when he was laid down. Medical personnel began to perform chest compressions on Decedent. Decedent was wheeled on the gurney toward a waiting ambulance. Officer Thacker then deactivated his BWC.

Shortly thereafter, Officer Thacker re-activated his BWC when he approached the back of the open ambulance where Decedent was being treated. Approximately four (4) minutes later, medical stated they have nothing and closed the ambulance doors in order to transport Decedent to the hospital.

Officer Thacker's BWC was re-activated about fifteen (15) minutes later as officers began to gather information from M.P. and conduct their preliminary investigation. Officer Thacker's BWC remained on and active for about thirty (30) minutes and was later re-activated for several minutes as officers cleared the residence.

Sergeant Brett Levasseur's BWC Footage

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

As Sergeant Levasseur arrived in the area of the call, he passed several police vehicles while walking toward the residence. As he walked up the driveway and toward the garage, Sergeant Levasseur passed waiting medical personnel standing in the driveway.

Sergeant Levasseur entered the garage where Decedent was observed on the ground, lying on his side, handcuffed. Several officers stood around Decedent, holding him on his side. An officer advised Sergeant Levasseur that medical would give Decedent medication to sedate him. Sergeant Levasseur then advised dispatch over the radio that medical was preparing to sedate Decedent. After medical personnel administered the sedative, medical personnel advised they would wait approximately five (5) minutes for the medication to take effect. Sergeant Levasseur then coordinated officers to move items within the garage in order to facilitate bringing the gurney into the garage. Several minutes after the medication was administered, Sergeant Levasseur requested medical personnel to bring the gurney into the garage. As the gurney was brought in, Decedent could be seen shaking and making grunting noises on the ground. Several officers lifted Decedent and placed him onto the gurney. Sergeant Levasseur moved up with the officers and assisted with strapping Decedent's feet to the gurney prior to it being moved out to the driveway.

Once in the driveway medical personnel placed Decedent in an upright position to facilitate removing the handcuffs and placing him in the gurney's soft restraints. At time stamp 21:00:17³, Sergeant Levasseur approached and stated, "I'll grab his head." He then reached over the decedent and placed his right hand on the back of Decedent's head. Sergeant Levasseur then reached over with his left hand and used both hands to pull Decedent's head down. As officers continued to work to remove the handcuffs, Sergeant Levasseur overlapped his hands placing his left hand on top of his right as he pulled the decedent's head downward putting the decedent's chin to his chest. At time stamp 21:00:43, Sergeant Levasseur told the officers "He's pulling back pretty good," as he readjusted his grip and continued to pull downward. As an officer announced the handcuffs are almost off, Sergeant Levasseur again readjusted his hands at time stamp 21:00:55, interlocking his fingers together, still behind Decedent's head as he pulled downward. Sergeant Levasseur released his grip at time stamp 21:01:13 and assisted with pulling the decedent's arm from behind his back when the handcuffs had been released. Sergeant Levasseur gave verbal commands to the officers to "pull his head back, pull his head back" referring to Decedent as they laid him back down onto the gurney. Officers can be heard asking if Decedent is breathing as medical personnel began to assist and intervene. Medical personnel wheeled Decedent down the driveway on the gurney as Sergeant Levasseur deactivated his BWC at time stamp 21:02:29.

³ LVMPD equips their officers with the Axon Flex body-worn camera (BWC). The Axon Flex BWC time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero degrees longitude and passes through Greenwich, England. Axon BWCs also have a "time drift" where the camera's internal clock drifts from actual time based on when the cameras are synced when the camera is docked. Each BWC can display a slightly different time based on a time drift.

Witness Officers' BWC Footage

There were seven (7) witness officers with BWC. Six (6) of the officers activated their BWC before their arrival on scene and one (1) officer, Officer R.S., activated his BWC shortly after arriving on scene. The witness officers' BWC footage is consistent with all other footage, including that of Officer Saxon, Officer Thacker, and Sergeant Levasseur.

Officer C.T. entered the garage to assist and, during the contact with the decedent, assisted with holding and controlling the decedent's feet and legs.

Officer A.N. entered the garage to assist and, during the contact with the decedent, assisted with controlling both the decedent's left arm, right arm and hands.

Officer K.B. entered the garage to assist and, during the contact with the decedent, assisted with securing the decedent's left leg to the gurney.

Officer D.V. entered the garage to assist and, during the contact with the decedent, assisted with controlling and holding the decedent's legs.

Officer V.F. entered the garage but did not assist with controlling the decedent.

Officer J.C. entered the garage to assist and, during the contact with the decedent, assisted with holding the decedent's right arm, placing him on the gurney and, once on the gurney, knelt to remove the handcuffs from the decedent.

Officer R.S. entered the garage but did not assist with controlling the decedent.

SURVEILLANCE CAMERAS

7452 Hawk Shadow Avenue

At the time of the incident, there was a camera mounted on the residence, 7452 Hawk Shadow Avenue, above the garage. The camera footage was provided to detectives. Upon review of the provided footage, it appeared the camera was set on a motion setting, only recording when motion was detected, with some minor gaps and lapses in the recording. The video was saved in forty-four (44) digital-video files named according to the date and time that recording began. Detectives noted the date and time appeared to be accurate. In looking to other video evidence recovered during the investigation, the footage is consistent, and the time noted appears to be generally accurate.

The video showed M.P. exit his garage at approximate time of 12:05 p.m., enter his vehicle and return to the garage. At an approximate time of 12:19 p.m., an unknown male exited the garage and walked west toward the cul-de-sac. The unknown male then re-entered the garage and then exit with what appeared to be a gas can as he proceeded east out of camera view at approximately 12:32 p.m.

At approximately 12:38 p.m., Officer Saxon walked into the driveway and contacted M.P. where they both entered the garage. Officer Saxon re-emerged from the garage and he appeared to use his radio. Officer Saxon remained in the driveway with M.P. as medical personnel appeared in camera view at approximately 12:40 p.m. Medical personnel entered the garage at approximately 12:41 p.m., exited at approximately 12:42 p.m., and Officer Saxon re-entered.

The next view was at 12:44 p.m., which shows medical personnel with a gurney standing in the driveway near the entrance to the garage. Additional LVMPD officers are observed arriving at approximately 12:51 p.m. as medical was still positioned in the driveway. At 12:53 p.m., additional officers arrived running toward the garage as medical personnel and LVMPD officers moved around the driveway and garage entrance. A small group of medical personnel entered the garage at approximately 12:53 p.m. and re-emerged at approximately 12:55 p.m.

At 12:59 p.m., a gap was present where medical personnel were no longer in the driveway with the gurney, but some of them are observed at the edge of the camera view inside the threshold of the garage. The next view was at 1:02 p.m., showing medical personnel and officers in the street moving around the waiting ambulance. The video files that followed were all captured after the ambulance and medical personnel departed from the scene.

7467 Hawk Shadow Avenue

7467 Hawk Shadow Avenue was a two-story home on the southwest side of the cul-de-sac. At the time of the incident, a camera was in the second-floor northeast window facing the Hawk Shadow Avenue cul-de-sac, including 7452 Hawk Shadow Avenue, where the decedent was located. The camera footage was provided to detectives. Upon review of the footage provided, it showed the north side of the cul-de-sac, to include 7452 Hawk Shadow. The footage had an embedded date and time stamp which appeared to be accurate.

The footage begins at 12:00 p.m., with the cul-de-sac and 7452 Hawk Shadow Avenue visible. 7452 Hawk Shadow Avenue had a dark colored vehicle in the driveway and the roll-up garage door open. A person who appeared to be M.P., exited the garage, walked to the vehicle, and then returned to the garage. Over the next thirty-three (33) minutes there was little movement while the garage remained open, with an occasional view of what appeared to be the M.P. At 12:33:10 p.m., an unidentified person exited the garage with what appeared to be a gas can and walked east out of camera view.

No other movement was observed until 12:37:53 p.m., when a person was seen moving inside of the garage. This movement appeared to be M.P., who then went and stood by the vehicle as a uniformed LVMPD officer approached the residence and contacted M.P. before he went into the garage. The officer exited the garage at 12:39:35 p.m. and stayed at the threshold of the driveway and garage until CCFD Engine 34 and an AMR ambulance arrived at 12:41 p.m. With the arrival of medical, the view of the driveway was partially obstructed. At 12:41:55 p.m., AMR was observed as they pulled a gurney into the driveway and began

to prepare. The CCFD personnel appeared to enter inside of the garage, remain inside for a short time and then return to the driveway.

Due to the obstructed view, movement can be seen in the driveway and entrance to the garage, but it is unclear what was happening. At 12:50:44 p.m., two additional LVMPD officers arrived at the residence and ran into the garage. Over the next eight (8) minutes additional LVMPD officers arrived and movement is observed in the driveway.

At 12:58:53 p.m., it appeared medical personnel moved the gurney inside the open garage. Due to the obstructed view and distance, it was unclear what was occurring in the driveway. At 1:02:20 p.m., medical personnel and officers walked down the driveway with the gurney and moved toward the rear of the AMR ambulance, which was just out of camera view. The AMR ambulance left the residence at 1:09:53 p.m. followed by the CCFD Engine at 1:16:35 p.m.

The camera continued to record capturing LVMPD officers moving around the area, with the footage ending at 2:00 p.m.

STATEMENT OF M.P.

Below is a summary of the interview detectives conducted with M.P.

M.P. had known the decedent for most of his life, as they both grew up in the Salt Lake City area. M.P. had not heard from the decedent for many years until approximately a week prior to this incident. Decedent sent M.P. a message and asked if he could come to Las Vegas due to the decedent experiencing some family problems. Decedent arrived in Las Vegas on Sunday, which would have been January 26, 2020, and stated he was having problems with two identified family members, as they both blamed the decedent for his brothers-in-law's overdose death a few months prior.

M.P. told the decedent he could stay in his garage and sleep in the recliner. M.P. offered the decedent work assisting M.P. on construction jobs. Decedent appeared to be in better spirits the last few days. The morning of the incident, M.P. went to Home Depot to pick up supplies and upon his return home he noticed the decedent seemed upset.

Decedent made a statement to M.P., about "not wanting to do it anymore," which M.P. took as a threat of suicide. Decedent then produced a baggie which M.P. believed contained methamphetamine or cocaine. M.P. estimated the bag to contain fifteen (15) to twenty (20) grams of the substance. Decedent then ate the contents of the bag. M.P. then called 9-1-1 and waited for officers and medical personnel.

M.P. waited outside his garage for the officers to arrive. Once the officers arrived, M.P. stayed out of the way and was unable to observe most of the officers' and medical personnel's interactions with the decedent. M.P. did observe the officers as they pulled the decedent out of the garage for medical personnel to render aid. M.P. did not believe the officers' actions were excessive. M.P. stated paramedics then transported the decedent to the hospital.

On March 30, 2020, detectives met with M.P. again. Detectives did not audio or video record the interaction. M.P. was asked about a subject observed on video surveillance at the residence prior to officers' arrival. M.P. stated an acquaintance known only as "Vince" had called him stating that he had run out of gas and wondered if he could come get a gas can. M.P. stated he had one and Vince came to pick it up. M.P. informed detectives that he did not know where Vince lived and only had a phone number. M.P. gave detectives the phone number. Detectives attempted to contact Vince at the number provided which had a recording stating "The number you are trying to call is not in service at the moment."

STATEMENTS OF SUBJECT OFFICERS

The subject officers are Officer Saxon, Officer Thacker, and Sergeant Levasseur. Per LVMPD Policy, a subject officer may provide a recorded statement to FIT detectives. All three Subject Officers declined to provide a voluntary statement to FIT detectives.

STATEMENTS OF INVOLVED MEDICAL PERSONNEL

The involved medical personnel are CCFD Engineer-Paramedic B.F. and AMR Paramedic K.J. Engineer-Paramedic B.F. declined to provide a voluntary statement to FIT detectives.

AMR Paramedic K.J.

Paramedic K.J. voluntarily participated in an audio-recorded interview with FIT detectives on March 19, 2020. Below is a summary of the interview.

Paramedic K.J. arrived at the address of 7452 Hawk Shadow Avenue with CCFD. CCFD medical personnel went into the garage of the residence where they contacted the decedent. Paramedic K.J. could barely see the decedent who was inside of the garage seated in a chair. Decedent appeared to be agitated, making fists, shaking, and clenching his fists. CCFD personnel exited the garage and wanted to make sure the scene was safe and secure prior to providing any treatment.

The LVMPD officer (Officer Saxon) entered the garage, contacted the decedent, and waited for other officers to arrive. Paramedic K.J. waited outside for LVMPD to secure the scene. He talked with M.P. to gain further information on the decedent's condition. Due to the information learned from CCFD as well as M.P., Paramedic K.J. obtained a narcotics kit in order to further assist the decedent. Paramedic K.J. could hear the decedent due to his heavy breathing. It sounded as though he was wrestling or knocking items over. Paramedic K.J. could also see the LVMPD officer who appeared hesitant to get too close to the decedent until help arrived.

Once additional police officers arrived, they took the decedent into custody and placed him in handcuffs. Paramedic K.J. gave the decedent a sedative and told officers that it would take at least five minutes for it to take effect. The medication was to calm the decedent down and be able to safely treat him. Paramedic K.J. stated that the decedent's entire body was rigid,

his muscles were tense, which caused him to believe the decedent could become combative. Once the minimum time lapse of the sedation had passed, the gurney was moved into the entrance of the garage. Decedent was placed on the gurney.

A plan had previously been made to secure the decedent to the gurney as a combative patient, which required him to have a four-point restraint system. The four-point restraint consisted of both ankles and wrists to be secured in soft restraints to the gurney. The police officers secured the decedent's feet with soft restraints as well as strapping a seat belt across his legs. The gurney was moved outside where Paramedic K.J. sat the head of the gurney up. He then held the top of the decedent's back prior to lowering the gurney back down, exposing the decedent's hands and handcuffs. Decedent was held in a seated position as an officer worked to remove the handcuffs. Paramedic K.J. was down by the decedent's left arm as he worked to place it in a soft restraint after the handcuffs had been removed. Due to Paramedic K.J.'s location he was unable to see what the others were doing while they held the decedent in the seated position.

Paramedic K.J. stated that the placement of the decedent on the gurney as well as the removal of the handcuffs was not out of the ordinary and was similar to many other instances where he treated similarly situated patients with law enforcement assistance.

STATEMENTS OF WITNESS OFFICERS

Officer C.T.

FIT Detectives conducted an audio-recorded interview with Officer C.T. Below is a summary of the interview.

Officer C.T. and his partner, Detective H.N., heard a broadcast of a suicidal subject call and responded to the residence. Upon their arrival, Officer C.T. entered the garage where the decedent was lying under a computer desk, shaking, sweating and foaming at the mouth as if possibly on some type of narcotic. Officer C.T. believed the decedent was likely in a state of excited delirium. Officer C.T. began moving items in the decedent's reach that could be used as a weapon. Officers then pulled the decedent out from under the desk, handcuffed him and then rolled him onto his side to ensure he could breathe. Medical personnel administered an injection and waited a few minutes for the injection to take effect, calm the decedent down. Officer C.T. then assisted as officers placed the decedent on the gurney and his legs into soft restraints. The officers leaned the decedent forward and Sergeant Levasseur held his head in order to remove the handcuffs. Upon laying him back down, they noticed the decedent was not breathing. Medical personnel began chest compressions on the decedent and transported him to the hospital.

Detective H.N.

FIT Detectives conducted an audio-recorded interview with Detective H.N. Below is a summary of the interview.

Detective H.N. and Officer C.T. were operating as a marked patrol unit when they were requested to assist with a suicidal subject. Upon arrival, Detective H.N. observed the decedent sitting down. Decedent was flexing his arms, tensing up his body and clenching his teeth. Medical personnel intended to administer an injection to sedate the decedent. Officers placed the decedent on the ground and used two pairs of handcuffs to restrain the decedent due to his size. Detective H.N. placed a handcuff on the decedent's left wrist while Officer Saxon placed a separate handcuff on the decedent's right, then they connected both pair of handcuffs. Officers then rolled the decedent onto his side. Medical personnel administered the injection and advised officers it would take five to ten minutes to take effect.

Detective H.N. observed the decedent had slightly calmed down before medical personnel requested the decedent be placed on the gurney. Decedent was placed on the gurney by officers with his legs strapped down. In order to strap the decedent's arms to the gurney, officers first had to remove the handcuffs. Officers leaned the decedent forward to access his handcuffs and Detective H.N. observed Sergeant Levasseur hold the decedent's head as officers held his arms and upper body. Officers removed the handcuffs and leaned the decedent back on the gurney.

Detective H.N. noticed the decedent's face appeared to look purple and there was foam coming from his mouth. Medical personnel assessed the decedent, began chest compressions, and loaded him into an ambulance for transport to the hospital.

Officer A.N.

FIT Detectives conducted an audio-recorded interview with Officer A.N. Below is a summary of the interview.

Officer A.N. responded to the attempt suicide call after the officer on scene (Officer Saxon) requested assistance due to the person (Decedent) being emotionally disturbed. Upon arrival at the scene, Officer A.N. saw the decedent in the garage along with several officers. Decedent was sweating, had erratic breathing, was not communicating with officers and was grabbing at his own body. It appeared the decedent was going through some kind of episode, possibly narcotics related.

Officers started to move items away from the decedent to make the area safe and prevent any injuries. After moving some items, officers grabbed the decedent with the intent to get him under control and get him medical assistance. Officers eventually placed the decedent into handcuffs, using two sets, and moved him onto his side into a recovery position. Officer A.N. held onto the decedent's shoulder and base of the neck area to prevent the decedent from rolling over.

Medical personnel were on scene but stood in the driveway instead of entering the garage. One of the medical personnel eventually entered the garage and gave the decedent an injection. After that, the medical personnel told the officers to wait about five minutes for the sedative to take effect. After the decedent began to relax, officers picked

him up to move him onto the gurney. While moving the decedent, Officer A.N. stated he somehow got knocked out of position and had to step back so he wasn't in the way.

Once the decedent was on the gurney, Officer A.N. watched as the decedent was helped into the seated position to remove the handcuffs but did not notice who was controlling the decedent's body.

Officer K.B.

FIT Detectives conducted an audio-recorded interview with Officer K.B. Below is a summary of the interview.

Officer K.B. was on another call when he heard another officer (Officer Saxon) ask for assistance on the attempt suicide call. Officer K.B. cleared the call he was on and responded to the residence. When Officer K.B. arrived, multiple officers were attempting to place the decedent into handcuffs. Once the decedent was handcuffed, he was making noises and had white stuff coming out of his mouth. Medical personnel asked if officers wanted him sedated and the sergeant on scene stated yes. Medical personnel administered a drug to sedate him.

Once the male was sedated, the officers helped put the decedent on a gurney. Officers and medical personnel then leaned the decedent forward and removed his handcuffs. Once the handcuffs were removed the decedent was leaned back onto the gurney, Officer K.B. noticed that the decedent was not breathing and asked out loud, "Is he breathing?" Medical personnel began CPR and transported the decedent to the hospital.

Officer D.V.

FIT Detectives conducted an audio-recorded interview with Officer D.V. Below is a summary of the interview.

Officer D.V. was assigned to another call when he heard an officer (Officer Saxon), who was assigned to an attempt suicide, request another unit. Officer Saxon later asked responding units to expedite their response. Officer D.V. received information that the person who was attempting suicide (Decedent) was trying to overdose on methamphetamine and was possibly emotionally disturbed and shaking.

Upon arrival, Officer D.V. observed additional officers in the garage with the decedent. Decedent was on the ground and officers were attempting to take him into custody. Officers placed the decedent in two sets of handcuffs behind his back and had him lying on his side in the recovery position. Officer D.V. held the decedent's feet and could feel his muscles were tense. Decedent was shaking, unable to communicate and had a dry white foam around his lips. Medical personnel were on scene and standing in the driveway observing.

A medical person entered the garage and gave the decedent an injection in his arm. After the injection, the decedent began to relax and Officer D.V. could feel that the decedent's muscles were less tense. Officers then picked the decedent up and moved him onto the medical gurney. Soft restraints were placed on the decedent's ankles and officers placed seat belts over his legs. Officer D.V. then moved to help officers unlock the handcuffs. Decedent was leaned forward and Officer D.V. held the handcuffs while Officer J.C. unlocked the left cuff. Once that handcuff was unlocked, Officer D.V. passed the decedent's right arm to officers on the right side of Decedent's body.

Officer D.V. stated he was focused on the handcuffs and didn't see who was controlling the decedent's upper body. Officer D.V. stated he could not tell when it occurred, but he noticed that the decedent's heavy breathing and resistance stopped sometime after the handcuffs were removed. Medical personnel then took over and started CPR on the decedent.

Officer D.V. stated that officers were there to help the decedent and get him to medical personnel so they could help him.

Officer V.F.

FIT Detectives conducted an audio-recorded interview with Officer V.F. Below is a summary of the interview.

Officer V.F. was working another call when she heard over the radio that officers were needed at 7452 Hawk Shadow. Officer V.F. was close to the address so she self-dispatched to the call and responded. Once she arrived, Officer V.F. saw officers already on scene with a subject, later identified as the decedent. Decedent was already in custody, positioned on his side, on the ground. Medical and fire department personnel were also on the scene to render medical attention to the decedent.

Officer V.F. observed these actions while standing outside of the garage. Officers began moving items out of the way so the decedent could be lifted from the ground to the gurney. Once officers lifted the decedent onto the gurney, the decedent was sat up so the handcuffs could be removed, and he could then be laid down on his back. Officer V.F. did not assist with lifting the decedent or removing the handcuffs due to the number of officers and medical personnel already assisting the decedent.

Officer V.F. stated that, as the handcuffs were removed, she was able to see the decedent lying flat on the gurney. She noticed something white around his mouth as medical personnel checked to see if the decedent was breathing. Medical personnel began CPR on the decedent and loaded him into the ambulance. Officer V.F. was tasked with following the ambulance to the hospital and staying with the decedent until she was relieved. Once she arrived at the hospital, Officer V.F. observed medical staff applying CPR and rendering aid to the decedent.

Officer J.C.

FIT Detectives conducted an audio-recorded interview with Officer J.C. Below is a summary of the interview.

Officer J.C. had finished working a call when he heard Officer Saxon over the radio request additional units to his call. Officer Saxon had a non-compliant subject who was possibly in an excited delirium state. Officer J.C. activated his lights and siren and drove to Officer Saxon's location. When Officer J.C. arrived, he observed other patrol officers and medical personnel already on the scene.

Officer J.C. approached the garage and saw other officers with the decedent, who was double cuffed and lying on his side in the recovery position. Officer J.C. noticed medical personnel giving the decedent medical aid. Officer J.C. assisted the other officers with lifting the decedent onto the gurney. Officer J.C. lifted the decedent by the leg area so he could be secured.

Once the decedent was on the gurney, he was in a seated position and officers removed the handcuffs from the decedent so he could be fully secured onto the gurney. Officer J.C. assisted by unlocking the handcuffs and removing the first pair from the decedent's left wrist. As the other set of handcuffs were removed by another officer, the decedent was laid flat on his back. Officer J.C. stated that, when he observed the decedent laying down, the decedent appeared purple but was still moving. Medical personnel began chest compressions on the decedent.

Officer J.C. stated as he removed the handcuffs, someone else was holding and controlling the decedent's head, which was done to stop the decedent from headbutting or striking Officer J.C. in the head or face while he was positioned behind the decedent.

Officer R.S.

FIT Detectives conducted an audio-recorded interview with Officer R.S. Below is a summary of the interview.

On January 31, 2020, Officer R.S. was working as a uniform patrol officer, when he heard an officer request back up on a suicidal person call. Officer R.S. cleared from the call he was handling and assigned himself to assist on the suicidal-person call. When Officer R.S. arrived at the residence, he observed multiple officers already present. He approached the garage where the officers were located and observed the decedent lying on the ground with additional officers keeping the decedent in the "recovery position."

Officer R.S. stated medical personnel recommended the decedent be sedated and gave him something in his arm. There were enough officers to maintain control of the decedent, so Officer R.S. moved furniture and items in the garage out of the way to facilitate moving the decedent out of the garage. Officers were able to lift the decedent onto the gurney. As they lifted, the decedent made erratic movements and was making noises. Once they

got the decedent onto the gurney, Sergeant Levasseur pulled the decedent's head forward so officers could get behind him and remove the handcuffs. Officer R.S. believed Sergeant Levasseur held the decedent's head how they were taught to prevent positional asphyxiation. Officers were able to remove the handcuffs from the decedent and place him into the gurney's soft restraints.

Once the handcuffs were removed, the decedent's face appeared very red, had foam or substance coming out of his mouth and his eyes were very large. Officers pointed out to medical personnel that it did not appear that the decedent was breathing. Medical personnel immediately took over and began chest compressions.

STATEMENTS OF WITNESS MEDICAL PERSONNEL

Witness CCFD medical personnel, Captain L.B., Firefighter-Paramedic J.H., and Firefighter D.H., declined to provide voluntary statements to FIT investigators.

AMR Emergency Medical Technician ("EMT") J.M.

FIT Detectives conducted an audio-recorded interview with AMR EMT J.M. Below is a summary of the interview.

EMT J.M. was working for AMR riding with Paramedic K.J. and responded to the incident to provide medical attention. He arrived at the residence where CCFD contacted the decedent inside of the garage of the residence. CCFD exited the garage without providing medical attention due to the scene not being secure. EMT J.M. was not sure how or why the scene was not secure, but he works with CCFD routinely and trusted their opinion. EMT J.M. explained that medical personnel's safety is the priority on calls and if a subject is combative, uncooperative or the situation is not safe they will not provide medical attention.

EMT J.M. did not go into the garage during the contact between the decedent and officers. During the incident, from a distance outside of the garage, EMT J.M. did observe the decedent. Decedent had taken off a hoodie and EMT J.M. was able to hear his labored breathing. He described the breathing as being heavy, loud and sounded as though the decedent was full of anger. Seeing the decedent and hearing the level of breathing that was taking place caused EMT J.M. to believe that CCFD had made the right call. The scene was not yet secure for them to treat the decedent. EMT J.M. knew once the police had custody of the decedent, he would need to be secured to the gurney in their four-point system which is policy for combative subjects. The four-point restraint is soft restraints on a subjects feet and wrists, as well as a seat belt type system which forms an "x" across both shoulders and connects around the abdomen area.

EMT J.M. stated he knew the decedent was given a sedative but is not authorized or certified to provide medication of that level and could not speak to what it was. EMT J.M. stated that typically when a person is given that medication it calms them down and enables medical personnel to treat them. Due to the behavior the decedent had exhibited and EMT J.M.'s belief that the decedent could be combative, the decedent needed to be secured to the

gurney in the four-point system. After the decedent had been placed on the gurney, the officers removed the handcuffs from the decedent and EMT J.M. did not see anything out of the ordinary in the way they were removed.

No vital signs had been checked on the decedent up to this point which would have been done once the patient was secured on the gurney.

AUTOPSY

Doctor Jennifer Corneal of the Clark County Office of Coroner/Medical Examiner (CCOCME) performed an autopsy on the body of the decedent. Through the course of the autopsy, Dr. Corneal obtained a blood sample from the decedent, which was sent to NMS Labs for toxicology testing. NMS Labs issued a toxicology report finding the decedent had a methamphetamine blood concentration level of 12,000 ng/ml.

The NMS Labs report noted that methamphetamine blood concentration levels of 200 to 600 ng/mL “have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.” The report further provided that methamphetamine is an addictive “stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions.”

Dr. Corneal determined the decedent had the following the pathologic diagnoses: methamphetamine intoxication; hypertensive and atherosclerotic cardiovascular disease, noting cardiomegaly (i.e. an enlarged heart) with dilatation and severe coronary artery disease; hepatomegaly (i.e. abnormal enlargement of the liver) with hepatic steatosis (i.e. accumulation of large vacuoles of triglyceride fat in the liver cells, causing nonspecific inflammation); splenomegaly (i.e. an enlarged spleen); minor contusions and abrasions; and police restraint, noting petechial hemorrhages, bilateral eyes, and blanching of the decedent’s anterior neck.

After a complete autopsy, Dr. Corneal opined the decedent died as a result of methamphetamine intoxication with other significant conditions being cardiomegaly, severe coronary artery disease and police restraint. Dr. Corneal determined the manner of Decedent’s death was homicide due to the police restraint being a factor.

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.

NRS Chapter 200 defines crimes against the person. NRS 200.010 defines murder as the unlawful killing of a human being with malice aforethought, either express or implied.

NRS 200.020 defines malice as the deliberate intention to take away the life of another, as in the case of express malice, or when the circumstances of the killing show an abandoned and malignant heart, as in the case of implied malice. In the instant case, there is no evidence of any intent to kill on the part of Officer Saxon, Officer Thacker, or Sergeant Levasseur. In fact, the evidence indicates the opposite: All involved officers and medical personnel were trying to save the decedent's life at the time he died.

With regard to implied malice, the Nevada Supreme Court has suggested that the theory requires the defendant knew that the victim was in serious or mortal danger. See Labastida v. State, 115 Nev. 298, 307-8, 986 P.2d 443, 449 (1999) ("[t]here is insufficient evidence that she ever knew that her child was in serious or mortal danger prior to the time she telephoned for an ambulance" and thus "there is insufficient evidence to support a reasonable inference that Labastida had the criminal intent required for a conviction of murder"). Applying that knowledge standard to the instant case, there is similarly no evidence that Officer Saxon, Officer Thacker, or Sergeant Levasseur knew the decedent was in serious or mortal danger as a result of the brief positional change to remove the handcuffs. It wasn't until they laid the decedent back that the officers observed the decedent had stopped breathing, at which time medical personnel immediately began administering CPR in an attempt to resuscitate him. Accordingly, there is no evidence of malice, either express or implied.

NRS 200.040 defines manslaughter as the unlawful killing of a human being without malice, either express or implied, and without any deliberation. In Nevada, manslaughter is a willful killing. What reduces the killing from murder to manslaughter is explained in NRS 200.050, which explains that for manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing "sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing." The factual situation in the instant case does not fit the crime of voluntary manslaughter.

NRS 200.070 defines involuntary manslaughter as the killing of a human being without any intent to do so in the commission of an unlawful act or "a lawful act which probably might produce such a consequence in an unlawful manner." Here, Officer Saxon, Officer Thacker, and Sergeant Levasseur were not committing an unlawful act.

Accordingly, the analysis here turns to involuntary manslaughter committed by way of a lawful act, that being whether Officer Saxon, Officer Thacker, or Sergeant Levasseur were committing a lawful act which probably might produce the killing of a human being in an unlawful manner. In regard to this theory of involuntary manslaughter, the Nevada Supreme Court has found that "in order to impose criminal liability for a homicide caused by negligence, there must be a higher decree [*sic*] of negligence than is required to establish negligent default on a mere civil issue." See Bielling v. Sheriff, Clark Cty., 89 Nev. 112, 113, 508 P.2d 546, 546 (1973) (citing People v. Penny, 44 Cal. 2d 861, 878, 285 P.2d 926, 937 (1955)) (internal quotations omitted). The mere civil negligence standard the Nevada Supreme Court referred to is established when a person owed a duty of care to another, breached that duty, and that breach was the legal cause of the

other's injury which resulted in damages. See, e.g., Scialabba v. Brandise Const. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996). That civil standard of negligence appears to be consistent with the definition of "negligence" contained in NRS 193.018, which defines negligence as to "import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent person usually exercises in his or her own business." Nevada courts have not specifically defined criminal negligence as applied to the crime of involuntary manslaughter committed by way of a lawful act. Cf. Boyes v. State, No. 76856-COA, 2019 WL 4511616, at *4 (Nev. App. Sept. 18, 2019) (noting that appellant offered no support for proposition that "willful or wanton conduct, is equivalent to criminal negligence"). However, the crime of involuntary manslaughter committed by way of a lawful act is codified similarly in the State of Georgia as it is in Nevada. Georgia law, while not controlling, is illustrative. Courts in Georgia have determined that, to constitute involuntary manslaughter, the lawful act resulting in death must be performed with gross carelessness implying an indifference to consequences or be such as to show a reckless disregard for the safety of others, as distinguished from lack of ordinary care. See Collins v. State, 66 Ga. App. 325, 18 S.E.2d 24, 24 (1941); see also Geele v. State, 203 Ga. 369, 369, 47 S.E.2d 283, 283 (1948). The evidence in the instant case indicates that the officers showed care and concern for the well-being of the decedent, who was suffering from the apparent and extreme effects of a lethal dose of methamphetamine. Thus, the officers did not act in a manner that was grossly negligent or reckless and likely to produce the killing of the decedent. Therefore, the evidence does not support charging any of the subject officers with the crime of involuntary manslaughter.

Because the conduct of the Officer Saxon, Officer Thacker, and Sergeant Levasseur was legal, their conduct does not fall within the state criminal statutes and, therefore, does not support the District Attorney's Office charging them with a crime.

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 Sergeant Brett Levasseur, Officer Steve Saxon, and Officer Ryan Thacker were not criminal. 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 Sergeant Brett Levasseur, Officer Steve Saxon, or Officer Ryan Thacker.