

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of John Riddell Watson III on December 14, 2019

INTRODUCTION

On Saturday, December 14, 2019, at approximately 0809 hours, Henderson Police Department (“HPD”) North Area Command Officers N. Hamby #2329, M. Dahlquist #2332 and D. King #915 were dispatched to 2716 N. Green Valley Pkwy, Trader Joe's, reference a male inside of the store with a knife. The person reporting advised that a 50-year-old white male adult, wearing a black leather jacket and blue jeans, later identified as John Riddell Watson III (hereinafter Decedent), was standing at the entrance; furthermore, Decedent had told the person reporting, "I'm going to stab someone, call the police."

While officers were en route, dispatch received another call, and this person advised a male had threatened her. The person reporting described the male as a 40-year-old Hispanic/White male adult, wearing a black jacket, blue shirt and jeans. Dispatch received a third, similar call.

HPD North Area Command Officers M. Frank #2323 and Officer M. Smith #2328 were dispatched to assist. Officer Hamby arrived on scene and, as Decedent exited Trader Joe's and started walking toward him in an aggressive manner while holding a knife in his right hand, gave Decedent verbal commands. Officer Hamby demanded that Decedent drop the knife as Decedent closed in on Officer Hamby. Decedent failed to comply as he continued to close in on Officer Hamby, causing Officer Hamby to discharge his service weapon four times, striking Decedent and causing him to fall to the ground. Officer Smith arrived as the incident occurred.

Officers gave Decedent additional commands to discard the knife as both of his hands were concealed underneath his body. Officer Smith was able to place Decedent into handcuffs, checked him for injuries and proceeded to render first aid. Henderson Fire

Department (“HFD”) Rescue 95 arrived on scene and transported Decedent to Sunrise Hospital for further medical treatment.

On December 18, 2019, at approximately 2315 hours, Decedent died at Sunrise Hospital from his injuries.

The Clark County District Attorney’s Office has completed its review of the December 14, 2019, 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 Hamby were not criminal in nature. This review is based upon all the evidence currently available.

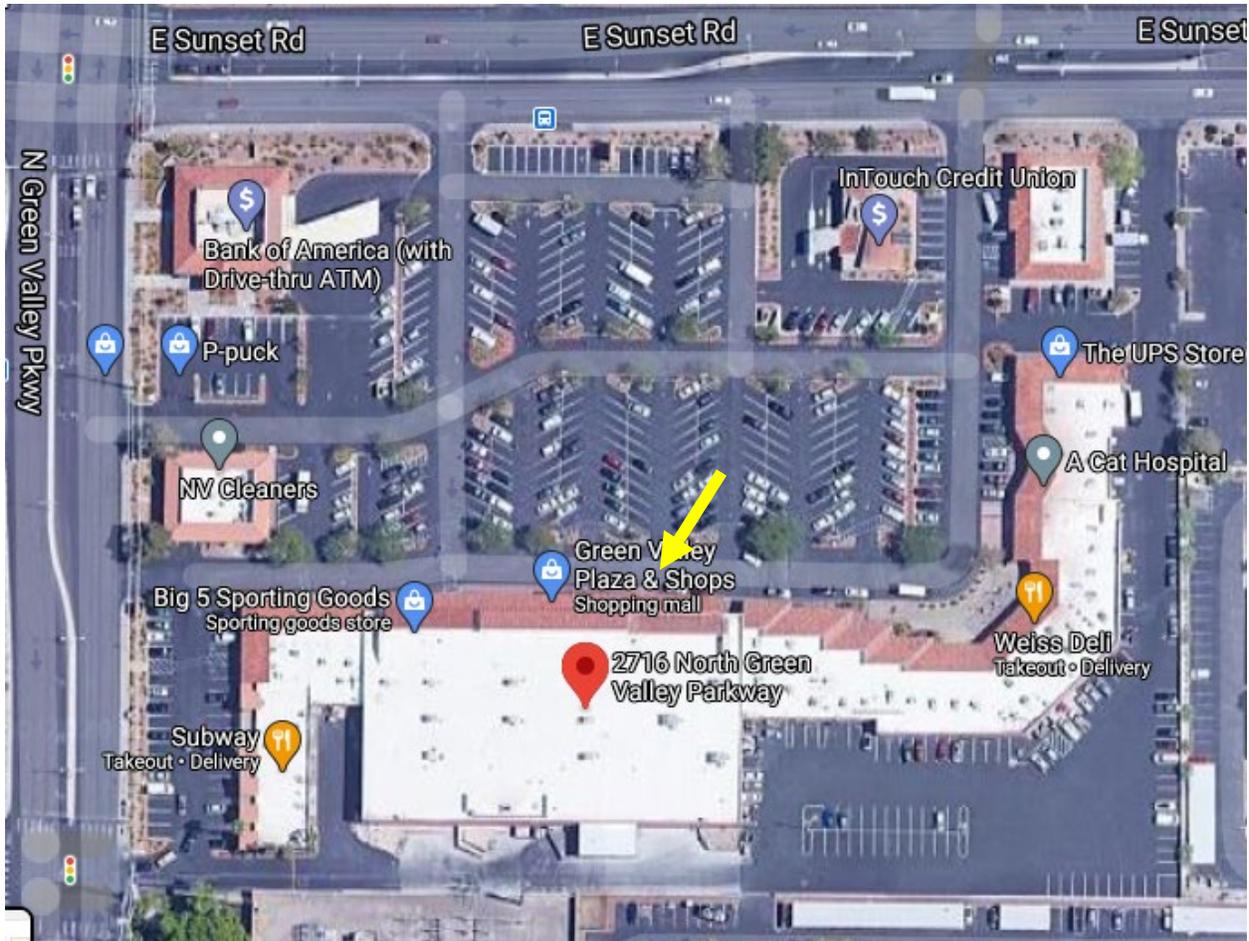
This report explains why criminal charges will not be forthcoming against Officer Hamby. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review, which was held on June 14, 2021.

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

I. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scene was located at Trader Joe's store which was in a strip mall at 2716 N. Green Valley Pkwy.

Trader Joe's had two sets of north facing entry doors: There was a set of automatic sliding double entry doors at the west end of the store and an automatic sliding single entry door at the east end of the store.



Vehicle 1 (civilian vehicle) was parked, facing north east, in an uncovered parking spot located north of the Dollar Tree store which was located next to (east of) Trader Joe's, at 2718 N. Green Valley Pkwy.

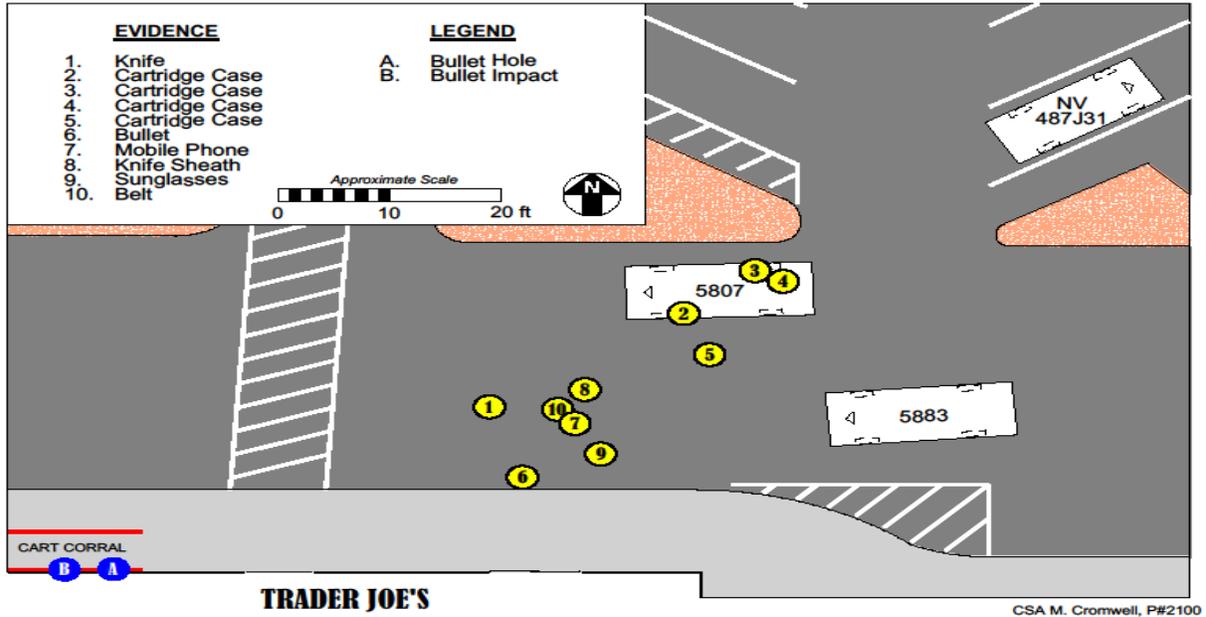
Vehicle 2 (patrol unit) was parked, facing west, in front (north) of the east end of Trader Joe's, along the north side of the driving area [southwest of Vehicle 1 and northwest of Vehicle 3].

Vehicle 3 (patrol unit) was parked, facing west, in front of the Dollar Tree store, in the middle of the driving area [south of Vehicle 1 and southeast of Vehicle 2].

The following items were located on the ground of the driving area, north of Trader Joe's' east entry door near a pool of blood: A knife bearing apparent blood; a bullet; a mobile phone; a knife sheath; a pair of sunglasses; a brown leather belt; miscellaneous items of medical intervention; a receipt; a cigarette pack; a set of keys; a lighter; and a pair of handcuffs.



Four cartridge cases (all bearing headstamp "SPEER 9mm LUGER") were located on the ground of the driving area, in the following areas: adjacent to the back of the front left tire of Vehicle 2; adjacent to the front of the right rear tire of Vehicle 2; underneath the right rear of Vehicle 2; and south of the front driver side door of Vehicle 2.



Two orange cones were placed at the approximate locations that Officers N. Hamby #2329 and M. Smith #2386 reported to be standing when the shooting occurred, each labeled with the last name of the respective officer.



II. INVESTIGATION

Law Enforcement Witnesses

Officer Nicklaus Hamby

On December 17, 2019, Officer Hamby gave an interview at the Henderson Police Department Main Station.

Officer Hamby advised he has been working for the Henderson Police Department since January 7th, 2017, and he was currently assigned to the Days B North Squad which works Thursday through Sunday, 0600 hours to 1600 hours. Officer Hamby, who was in a police uniform, was operating a Henderson P.D. Tahoe, #5807, and his call sign was 2N31 the day of the incident.

On December 14th, 2019, Officer Hamby was dispatched to a call regarding a male with a knife at Trader Joe's. Officer Hamby went en route, but he was not driving with his lights and sirens on at first as there was not enough information at the time of his dispatch. While en route, dispatch started to receive multiple calls that the male was inside of the store with a knife, and he was going to start stabbing people and they needed to call the police. Officer Hamby then turned on his lights and sirens to expedite his response time as he knew Trader Joe's was extremely busy on a Saturday morning; therefore, there was a potential for multiple victims.

Upon his arrival, Officer Hamby believed he observed about twenty or thirty people standing outside in front of the store. Officer Hamby pulled in front of the store in an attempt to draw the male's attention to him and away from the civilians at the store. Officer Hamby exited his vehicle and believed he drew his duty weapon at the low ready while he looked for the male, who was described as a white male wearing a long sleeve shirt and blue pants. He did not see the male initially. Officer Hamby then believed he asked some of the bystanders where the male with the knife was, and they pointed toward the front of the store.

Officer Hamby started to make his way to the front of the store. As he got close to the automatic doors, he believed he observed the male exit urgently. The male looked around and observed Officer Hamby. The male put both of his arms out from his side while he presented the knife in what Officer Hamby believed to be the male's left hand. Officer Hamby pointed his duty weapon at the male while the male immediately approached Officer Hamby with at a fast-paced walk.

Officer Hamby believed the distance between him and the male was extremely close, and he believed he only had time to tell the male to drop the knife one time before he resorted to using deadly force on the male. Officer Hamby believed if he did not use deadly force to stop the threat, the male would have started stabbing the people around them or attacked him.

Officer Michael Smith

On December 17, 2019, Officer Smith gave an interview at the Henderson Police Department Main Station.

Officer Smith advised he has been working for the Henderson Police Department since January of 2017, and he was currently assigned to the Days B North Squad which works Thursday through Sunday, 0600 hours to 1600 hours. Officer Smith, who was in a police uniform, was operating a Henderson P.D. Tahoe, #5883, and his call sign was 2N61 the day of the incident.

On December 14th, 2019, Officer Smith was at Sunset and Stephanie when dispatch conducted a hot tone that followed with a broadcast of a male with a knife at Trader Joe's on Sunset and Green Valley, but Officer Smith was not originally dispatched to the call. The details came out that the subject said he was going to start stabbing people unless the police arrived.

As Officer Smith was traveling southbound on Stephanie, dispatch advised they were receiving multiple calls stating the same, that a male was going to start stabbing people unless the police arrived. Officer Smith self-dispatched on the MDT and went en route with his lights and sirens on. Prior to Smith's arrival, another dispatch note came in that the subject was asking the person reporting where the police were and if they called the police.

Officer Smith knew it was approximately 0800 hours, there were multiple people reporting and it was a busy grocery store; therefore, he was trying to respond as fast as he could. Officer Smith was traveling westbound on Sunset when he observed Officer Hamby arrive as he made a left into the complex. Officer Smith believed Officer Hamby asked for emergency traffic only and that's when Officer Smith informed Officer Hamby that he was behind him via the radio. As Officer Smith made the same left into the complex, he observed Officer Hamby's vehicle parked in front of Trader Joe's.

Officer Smith made a right within the complex to be behind the location where Officer Hamby's vehicle was parked. Officer Smith observed Officer Hamby out of his vehicle with his service weapon drawn. Officer Smith then observed the subject walking toward Officer

Hamby with his hands out from his sides, and he then heard gunshots. Officer Smith did not remember if he was outside of his vehicle or still inside of his vehicle when he heard the gunshots, but he did remember the gunshots sounded muffled. As he exited his vehicle, he immediately recognized Officer Hamby had fired rounds and the subject was down.

The male was down with his hands underneath his body. As Officer Smith approached the subject, Officer Hamby told him the subject had a knife and to be careful. Officer Smith told Officer Hamby to cover him, and that is when he noticed there was blood everywhere. Officer Smith put on rubber gloves and proceeded to pull the subject's left hand out and place the handcuff on. Officer Smith then pulled the subject's right hand out and a knife slid from underneath the subject's body. The knife stopped in the middle of the roadway.

Officer Smith got the subject into custody and searched him for weapons. He then started to assess the subject for injuries. Officer Smith lifted the subject's shirt, but he could not find any gunshot wounds. Officer Smith asked Officer Hamby where he believed he hit the subject, and Officer Hamby stated he believed the head. Officer Smith rolled the subject around, but he could not see any injuries. Officer Smith then observed what he believed to be an entry round on the left side of the subject's neck. He advised he could not see anything on the right side of the subject's face or head because it was covered in blood.

Officer Smith returned to his vehicle, retrieved a medical kit, and returned. At that time, Officer Smith believed Officer Dahlquist was present. Officer Smith opened the medical kit, and somebody grabbed some gauze and Officer Smith held the gauze on the subject's head. Officer Smith advised over the radio that it was safe for medical to respond. Officer Frank, who Officer Smith knew had an EMS background, arrived. Officer Smith advised he did not know where the wound was. Officer Frank lifted the subject's head and located a wound, possibly an exit, on the back of his head. They continued to hold pressure until Henderson Fire Department showed up. Henderson Fire Department then transported the subject, additional officers arrived, and Officer King advised Officer Hamby to go sit inside of his vehicle.

Officer Smith believed the knife was left in its original spot after it came out from underneath the subject's body; furthermore, he believed somebody placed a cone over it.

Lay Witnesses

Numerous people (approximately 22 eyewitnesses) were in the area and witnessed some portion of the incident. Most of the witnesses provided written statements and several provided audio recorded statements. The most descriptive statements will be described herein; however, all of the witness statements provide a very similar version of events.

L.A.

On December 14, 2019, L.A. provided a written and an audio recorded interview at the scene.

L.A. (Recorded Statement in Summary): L.A. was standing at the register stand paying for her items when the Decedent approached both L.A. and the clerk. Decedent was holding a knife and asked if L.A. wanted to get stabbed today. L.A. stated that the clerk asked the Decedent if this was a joke, and the suspect replied this was not a joke. Decedent stated, "Either you can get stabbed or call the police."

L.A. ran out of the store and got into her car and called 911. L.A. stated that she pulled her car in front of Trader Joe's to block other patrons from going inside, and she began warning people in the parking lot of the man with a knife inside. L.A. stated that she observed the suspect barricade the door with baskets and pace back and forth with the knife in hand. L.A. advised that it appeared as if Decedent was waiting on the police.

L.A. stated that as patrol officers arrived, Decedent barreled through the baskets and charged toward the officer with a knife in his hand. L.A. advised the officer yelled to Decedent to stand down, but Decedent continued charging the officer. L.A. then stated that officers began to check the vital signs of Decedent and the fire department arrived. L.A. also advised that she captured the event on her cell phone video. That video was handed over to detectives.

P.A.

On December 14, 2019, P.A. provided a written and an audio recorded interview at the scene.

P.A. (Recorded Statement in Summary): P.A. advised that he pulled into the Trader Joe's parking lot and started to walk into the store. P.A. stated that he was stopped by an employee and advised not to go in due to the fact a man was inside threatening people with a knife.

P.A. then decided to walk to the coffee shop and, as he was walking to the shop, he observed a marked Henderson Patrol vehicle arrive in front of Trader Joe's. As soon as the officer arrived, a male exited Trader Joe's with something in his hand. P.A. advised that the officer began yelling, "Drop the Knife." Seconds later, he heard shots fired and saw the male fall to the ground. When asked if he saw the male drop the knife at any time,

P.A. stated that the male continued a steady progression toward the officer in an aggressive manner.

T.C.

On December 14, 2019, T.C. provided a written and an audio recorded interview at the scene.

T.C. (Recorded Statement in Summary): T.C. arrived to work at Big 5 Sporting Goods when she was flagged down in the lot by a female stating that a male had a knife inside Trader Joe's and was threatening people. T.C. then observed Decedent exit Trader Joe's with his arms at his side, and she heard the officers yelling to put down the weapon and drop the knife.

T.C. stated that the male continued walking toward the officer and described Decedent's attitude as, "Give it to me, this is what's happening." Decedent "sort of" charged out, but not completely aggressive, and yelled, "C'mon, what are you going to do." T.C. heard shots fired and was not sure if the suspect or the police had fired a weapon.

DECEDENT'S WIFE (T.W.)

On December 14, 2019, T.W. was contacted by investigators at her residence which she shared with Decedent.

Det. K. Lippisch informed T.W. that he was attempting to learn details about her husband which might help explain the interaction. Det. Lippisch also informed her that the incident had occurred outside of the Trader Joe's located at Green Valley Pkwy and Sunset Road. She stated that was a common place they shopped.

Det. Lippisch asked T.W. about her relationship with Decedent, and she confirmed that they were married since August of 2018. They had known each other for approximately five years and lived in California until moving to Henderson in May of 2019. The two of them lived together at the Villas Apartments the entire time they have lived in Henderson.

T.W. stated Decedent was a disabled Navy veteran since he retired from the Navy in 2006 (approximate year). She said that Decedent had been diagnosed with PTSD, schizophrenia, and depression. Decedent took Abilify (aripiprazole - antipsychotic used to treat schizophrenia, bipolar disorder, and depression), but he had been increasingly agitated and anxious over the past three weeks. Decedent had not been sleeping well and had been pacing around the apartment. When T.W. asked him what was bothering

him, he stated that it had to do with something that happened when he was in the Navy, but he wouldn't be specific about the event. T.W. then said they stayed up until 0700 hours this morning, not sleeping at all through the night, because Decedent had insomnia. T.W. then fell asleep at approximately 0700 hours and woke to officers knocking on the door. She was unaware Decedent had left the apartment until Det. Lippisch advised her that he had been contacted by HPD.

Det. Lippisch asked T.W. if the topic of conversation during the night ever included committing suicide, or Decedent wanting his life to end. She stated that it did not. T.W. further stated that Decedent hasn't talked about that in a long time. When asked if Decedent was a violent person, or if he had been physical with her, she stated that he was not and he was a very kind and friendly person.

Det. Lippisch then asked T.W. to expand on the statement that "he hadn't talked about that in a long time." She stated that Decedent attempted to commit suicide approximately six years ago (2013) in California by driving his vehicle off a highway. As a result of the accident, he had been placed in a nursing/assisted living residence, and this was where the two of them met (she was also receiving care at the facility at the time). In February 2019, Decedent had to be hospitalized at the VA hospital in Loma Linda due to symptoms similar to what she had been seeing recently. After approximately a week in the hospital, Decedent was released to an assisted living facility and then returned home with T.W.

After discussing the details of their past and Decedent 's medical condition, T.W. was asked if Decedent owned any weapons, including firearms or knives. T.W. immediately stated they do not own any guns, but then stated Decedent carried a fixed blade knife. T.W. stated Decedent was known to carry the knife on his right hip in a sheath due to the fact that he was right-handed. T.W. further stated that when he was not wearing the knife, it was typically located either on top of the nightstand on his side of the bed or inside the drawers of the nightstand. T.W. then granted Det. Lippisch consent to look for the knife in that location. Upon searching the nightstand, Det. Lippisch did not locate the knife.

After learning Decedent's knife was not at the residence, the interview continued and T.W. provided details of the prior time period when Decedent was acting in a similar manner. Prior to being hospitalized and provided care approximately a year ago, Decedent stopped taking his prescribed medication due to the known side effects,

specifically that it could negatively affect the heart. T.W. then showed detectives where Decedent kept his medication, and multiple bottles of medication were located which made it appear that he was not taking the prescribed dosage.

As they were completing the interview, Det. Lippisch asked T.W. if detectives could take photographs of the apartment to show the living conditions (and show that it did not appear that any physical altercations had taken place in the residence). T.W. agreed to photos being taken, and the photos documented the apartment, Decedent's medication, and a note that was located on the kitchen counter of the apartment.

The note was written on the top page of an open notebook that was on the kitchen counter. The handwritten note stated the following:

I am sorry for everything I put you through

I Love you very much

God Bless!

Keep me in your thoughts and prayers

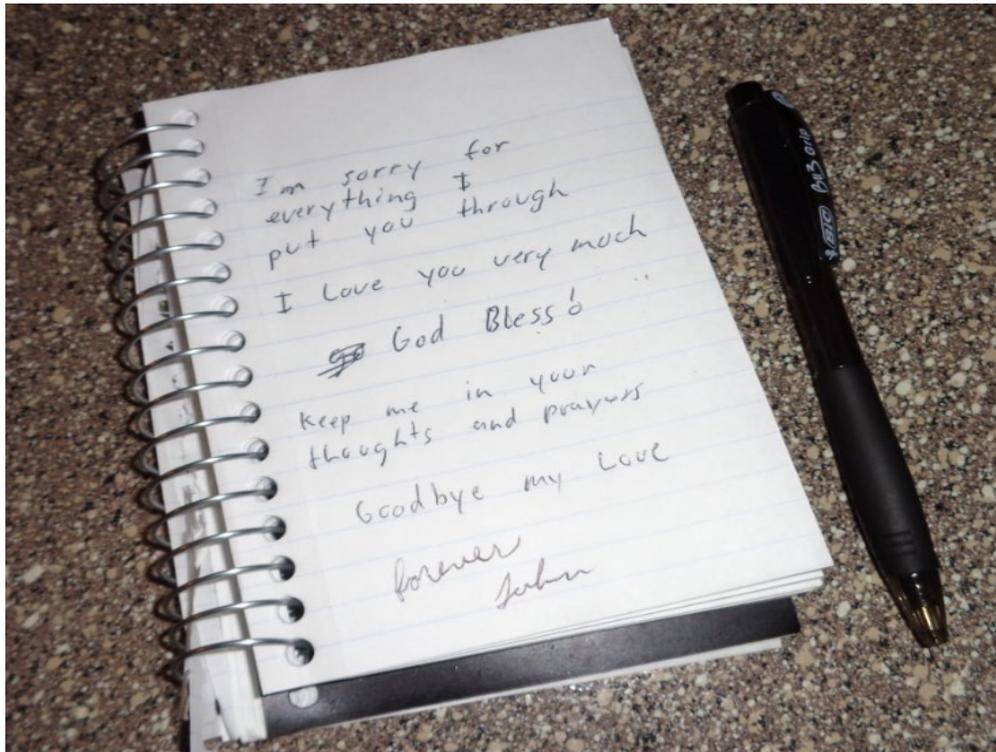
Goodbye my Love

forever

John

T.W. stated she had not seen the note before, and she confirmed that it appeared it was written by Decedent due to the handwriting and the signature.

Note left at the residence



III. VIDEO EVIDENCE

Video Surveillance from the Strip Mall

Det. N. Calvano #1339 learned the exterior cameras throughout the property belonged to the landlord, Phillips Edison. Det. Calvano contacted the representative for Phillips Edison and was advised the surveillance was monitored and maintained by Stealth Monitoring. Det. Calvano then contacted Stealth Monitoring and was provided with the surveillance footage available. It should be noted there was no coverage of the shooting incident; however, there was coverage of other areas in the parking lot.

Three cameras (#9, #11, #12) that showed coverage in the parking lot:

0802 hours (Camera 9) – Decedent's vehicle, a 2017 Nissan Sentra, entered the view of the west camera from the west and headed eastbound through the parking lot.

0803 hours (Camera 11) – The vehicle parked in front of the Trader Joe's / Dollar Tree and next to the red cart area, a white male adult, who was wearing blue jeans and a dark jacket, with dark hair exited the driver's seat. The male (Decedent) stood at the back of

his vehicle for a few seconds and then walked toward the front of the Trader Joe's / Dollar Tree and out of the camera's view.



0804 hours (Camera 12) –Decedent was seen standing on the east side of the Dollar Tree. Shortly thereafter, Decedent was out of the camera's view.



0806 hours (Camera 9) – Approximately four individuals headed north through the parking lot at a quick pace from the area of the Trader Joe's / Dollar Tree.

0807 hours (Camera 9) – A light colored vehicle pulled in front of the Trader Joe's / Dollar Tree area and stopped. This vehicle was determined to be L.A.'s vehicle.

0811 hours (Camera 9) – The light-colored vehicle then positioned in a way that blocked east and west bound vehicles in front of the Trader Joe's / Dollar Store area. It was determined the vehicle was positioned in front of the Trader Joe's west entrance doors.

0811/0812 hours (Camera 9 & 11) – A Henderson P.D. Patrol Vehicle (Officer Hamby) headed westbound through the parking lot and stopped in front of the Trader Joe's / Dollar Tree area just out of the camera's view. Approximately twelve seconds later, another Henderson P.D. Patrol Vehicle (Officer Smith) headed west bound through the parking lot and out of the camera's view.

0813 hours (Camera 11) – A third Henderson P.D. Patrol Vehicle (Officer Groll) was seen arriving from the east and this officer stopped his vehicle in the camera's view. The officer exited his patrol vehicle and ran westbound toward the front of the Trader Joe's / Dollar Tree area.

Video from L.A.'s Cell Phone (4 min & 07 seconds)

L.A. was inside of a vehicle that was parked in front of Trader Joe's, closest to the west entrance of the store when the video started. L.A. then rolled down her front passenger window and narrated. She advised that the male stated if they didn't want to get stabbed, they needed to call the police right now. She ran outside of the store, called the police and was now sitting outside of Trader Joe's to warn people not to go in as she slowly pulled the vehicle east bound.

Trader Joe's west entrance doors, which were blocked by red shopping carts from the outside, opened and Decedent, who was wearing a black jacket and blue shirt and jeans, was standing just inside of the store. He was facing the parking lot. L.A. then stated that he was right there at the door.



Decedent started to pace back and forth, holding something in his right hand as L.A. narrated that the male was pacing back and forth with a knife in his hand.



The male then looked out the doors, which were open, both east and west while L.A. advised she was standing there trying to help.



L.A. then advised Decedent was crazy, and she didn't want him to see her filming him. He was waiting for the police to come. They just called the police and she tried to help by warning people not to go in the store. At that point, Decedent was still waiting at the west entrance while another male was seen standing just outside of the east entrance doors.

L.A. repositioned her vehicle while advising Henderson was taking forever to get there while she continued to record video. L.A. stated it was crazy as she called the police five minutes ago. L.A. got honked at and started to go around and to go back as if she was talking to the person behind her. L.A. continued to state "go back" while you could hear sirens in the background. She then advised there was a male in there with a knife.

L.A. then turned the video to the vehicle behind her as she was trying to tell the driver there was a male with a knife. At that point, the sirens appeared to be closer, and she turned the video back to the front of Trader Joe's. Decedent started to walk east away from the doors, and L.A. turned the video toward the officer (Officer Hamby) who arrived while advising they finally came.

L.A. turned the camera back toward the front while stating, "Oh shit." Decedent was walking toward what was believed to be the officer.



The officer (Officer Hamby) was heard stating, “Drop the knife” three times and then four gunshots were heard. L.A. then stated “they just killed him” as she turned the video toward the area of the incident and slowly pulled forward (north). At the same time, another HPD Patrol vehicle arrived. The officer (Officer Smith) exited the vehicle and went over to Decedent who was on the ground. L.A. exited her vehicle and continued to video the incident.

L.A. then stated “suicide by cop.” Officer Hamby was heard telling Decedent on the ground to pull his hands out as he had his duty weapon pointed at Decedent. Officer Smith then pulled the male’s right hand out from underneath his body and a knife came flying across the street.



L.A. continued to film as the officers placed Decedent into handcuffs, another Henderson P.D. Patrol Vehicle (Officer Dahlquist) arrived from the west and they attended to Decedent medically.

Video from T.B. Cell Phone (1 min & 38 seconds)

T.B. appeared to be standing outside of Trader Joe's while filming the front of the store. She was focused on Decedent, who was wearing a black jacket and blue shirt and jeans, with dark hair and was standing just inside of the west entrance doors of Trader Joe's. Decedent was looking out the doors toward the east and west. She then turned the video on another male standing just outside of the east entrance doors of Trader Joe's. She turned the video back onto Decedent, as he continued to look out the doors. Somebody was then heard stating "here come the cops" and sirens could be heard in the background. It should be noted a light-colored vehicle stopped just outside of the west entrance doors (L.A.). Somebody was then heard advising he was now "freaking out."

Decedent continued to look out the doors as the sirens appeared to get louder. A Henderson P.D. patrol vehicle (Officer Hamby) then stopped just to the east of the west entrance doors and slightly in front of T.B. Decedent pushed the red carts aside as he exited the west entrance doors and walked toward the area of the patrol vehicle at a quick pace with his hands out by his side. The video depicted an object in the male's right hand as he continued to walk quickly toward the same area and an officer (Officer Hamby) was heard stating, "Drop the knife" three times as the male continued in the same direction then four gunshots were heard.



Body Worn/Dashboard Camera Video Footage

Both Officers Hamby and Smith had activated Body Worn Cameras ("BWC"), and both patrol vehicles had dashboard cameras which were activated. Officer Hamby's BWC footage will be summarized below.

Officer Nicklaus Hamby:

Officer Hamby's BWC started at 0812 hours on 12/14/2019. Officer Hamby was observed driving and, at approximately 0813 hours, Officer Hamby stopped his vehicle facing west in front of Trader Joe's (northeast). He exited and was immediately heard asking, "Where's he at?" Somebody advised, "Right there in the middle." Officer Hamby then approached the front of Trader Joe's on foot and a white male adult (Decedent), wearing a dark colored jacket and blue jeans, was seen coming from the far west front entrance/exit doors of Trader Joe's. Decedent started walking toward Officer Hamby, and Officer Hamby pointed his duty weapon at Decedent as he stated, "Drop the knife." Decedent continued to approach Officer Hamby with a fast pace with his arms out from his sides. There was an object in Decedent's right hand, but it was hard to make out what it was through the footage.

Officer Hamby started to move backward while stating, "Drop the knife" approximately two more times, but Decedent continued to close the distance on Officer Hamby with his arms out from his sides. Officer Hamby fired four rounds, and Decedent dropped to the ground in front of Trader Joe's. Decedent was laying slightly on his right side, and Officer Hamby notified dispatch of shots being fired while continuing to point his duty weapon at Decedent.

Officer Hamby moved around to Decedent's left side, and Decedent's hands were not visible as they were underneath his body. Officer Smith was then heard asking where the knife was, and Officer Hamby advised it was underneath him and for him to be careful. Officer Smith asked Decedent to see his hands and to pull them out, but there was no response. Officer Hamby told Decedent, "Pull your hands out" two more times, but there was no response. Officer Smith asked Officer Hamby if he had Decedent, and he advised he did. Officer Smith moved in to handcuff Decedent while Officer Hamby continued to have his duty weapon drawn on Decedent. Decedent made some unusual breathing noises and there was blood pooling underneath his head.

Officer Smith placed Decedent into handcuffs with his hands behind his back and proceeded to roll Decedent over on his right side while he checked Decedent for injuries. Officer Smith asked where he was hit, and Officer Hamby stated he didn't know, but then advised the body and possibly in the face. Officer Smith lifted Decedent's shirt up to where he could see his stomach and chest area. There was a large amount of blood on the ground, and Decedent had blood around his mouth area.

At this point, Officer M. Dahlquist #2332 was seen assisting Officer Smith while Officer Hamby still had his duty weapon drawn. At that point, Officer Smith walked away, Officer Dahlquist was putting on gloves and Officer A. Groll #2486 was seen. Officer Hamby asked if the knife was secured and advised he was securing his duty weapon. Officer Smith returned with what appeared to be a medical kit while telling Officer Groll to get started on witness statements. Officer Hamby was putting on gloves at that time to assist Officers Smith and Dahlquist with providing medical aid to the male (Decedent). Officer Smith advised Officer Hamby that he had it and for him to go stand by his (Officer Smith's) vehicle. The male (Decedent) still appeared to have some unusual breathing noises.

IV. OFFICER WEAPON COUNTDOWNS

On December 14, 2019, Officer Nicklaus Hamby and Officer Michael Smith had their duty weapons counted down at the Henderson Police Department North Substation. During the countdowns, each officer had his photo taken to document his appearance at the time of the incident. Detective D. Lynaugh #1554 conducted the countdowns with each officer.

Officer Nicklaus Hamby

Officer Nicklaus Hamby was dressed in a standard HPD long sleeve uniform. The uniform had HPD patches on each shoulder and an HPD badge over the left breast. Officer Hamby wore a black duty belt with attached tools and equipment, and he carried his handgun on his right side secured in a holster.

Officer Hamby stated he carried 17 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (17 + 1 = 18 Total). Investigators confirmed Officer Hamby fired a total of 4 rounds from his Glock 17. The gun's inserted magazine had 13 remaining bullets (out of a capacity of 17 total rounds). The gun also had one chambered bullet for a total of 14 remaining bullets out of 18 (17 in magazine, topped off by one round in

chamber - which is consistent with how HPD officers keep their firearms loaded). Officer Hamby's additional 3 handgun magazines were properly loaded (17 rounds each).

Officer Michael Smith

A countdown of Officer Smith's duty weapon established he did not fire any rounds during this incident.

V. AUTOPSY

On December 19, 2019, under CCOCME case 19-06257, an autopsy was performed on the body of Decedent at the CCOCME by Doctor Corneal.

The following wounds/injuries were noted on Decedent:

- 1) Perforating Gunshot Wound of Head
- 2) Perforating Gunshot Wound of Left Lower Cheek
- 3) Scattered Contusions in multiple stages of healing on the chest, upper extremities, and lower extremities.

The toxicology did not reveal any positive findings.

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

VI. 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 SELF OR 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:

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 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.

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 Hamby. After leaving a suicide note indicative of his intent, Decedent intentionally created a need for self-defense by threatening members of the public with a knife if the police did not arrive. As Officer Hamby arrived on scene, Decedent displayed the knife and advanced on Officer Hamby in an aggressive manner. As is demonstrated by the video-graphic evidence, witness statements, and crime scene evidence, Decedent was approaching Officer Hamby in such a manner that a reasonable person would fear imminent substantial bodily injury or death.

Thus, Officer Hamby 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 Hamby 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 Hamby had probable cause to believe that Decedent posed a threat of serious physical harm to himself and others. This probable cause became evident after Officer Hamby observed Decedent advancing on him while displaying a knife. Despite three separate orders to drop the knife, Decedent continued to advance on Officer Hamby in an aggressive manner with the knife displayed. Thus, Officer Hamby had a reasonable belief that Decedent was a threat to his life or others around him.

In light of this evidence, the actions of the officers 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 Henderson Police Department Officer Hamby were 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.