

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Lloyd Napouk on October 27, 2018

INTRODUCTION

On October 27, 2018, 44-year-old Lloyd Napouk (hereinafter “Decedent”) was shot and killed by Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) Officer Cameran Gunn and Sergeant Buford Kenton. The incident took place at approximately 12:39 a.m. on the street in front of 5436 Tinker Toy Avenue. Officer Gunn fired three (3) rounds at Decedent, and Sergeant Kenton fired four (4) rounds at Decedent. Decedent was struck one (1) time in the head and four (4) times in the chest and abdomen.

This report explains why criminal charges will not be forthcoming against Officer Gunn and Sergeant Kenton. 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 May 16, 2019.

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

OVERVIEW OF SURROUNDING FACTS

On October 27, 2018, at approximately 12:17 a.m., D.P. called 9-1-1 to report a suspicious male (Decedent) in his neighborhood located in the 5300 block of Floating Flower Avenue. According to D.P., Decedent was looking into vehicles, walking onto patios of residences, and carrying what D.P. believed was a black sword or stick.



Sergeant Kenton and Officer Gunn were dispatched to the call. As they were en route to the call, a second person, A.B., called 3-1-1 and reported that Decedent was talking to himself as he pointed a sword at vehicles and walked door to door down the street. D.P. called LVMPD again and advised dispatch that Decedent had a machete and was possibly trying to break into his neighbor's house.

The LVMPD Air unit, Sergeant Kenton, and Officer Gunn arrived in the neighborhood at the same time, approximately 12:31 a.m., and contact was made with Decedent on the street in front of the residence at 5436 Tinker Toy Avenue. Decedent was holding what appeared to be a black machete (it was determined later through the investigation that the machete was a 22-inch, plastic homemade machete). Decedent pointed the machete at different houses and at the officers. Sergeant Kenton and Officer Gunn issued several verbal commands to Decedent to drop the machete, which he refused. Decedent did not speak clearly and appeared to mumble "get out of here" to the officers.



Decedent walked slowly around patrol vehicles in the immediate area as Officer Gunn and Sergeant Kenton continually attempted to speak with Decedent, including numerous commands to put down the weapon he was carrying.



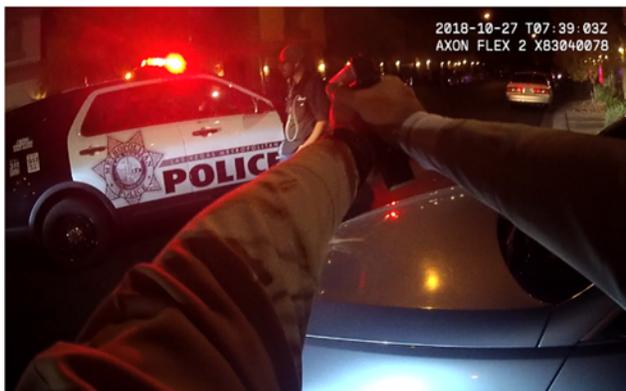
At one point, Decedent began to slowly approach Officer Gunn who was standing to the side of a patrol vehicle. Officer Gunn retreated behind the other side to the rear of the vehicle. Decedent then began to slowly approach Sergeant Kenton who backed up and admonished Decedent to stop and to put down his weapon.



After approximately five (5) minutes of attempting to speak to Decedent, Decedent walked directly toward Sergeant Kenton.



Sergeant Kenton told Decedent that he did not want to shoot him and again gave Decedent commands to stop and drop the machete; however, Decedent refused Sergeant Kenton's commands.



Above: Officer Gunn's viewpoint at time of the shooting

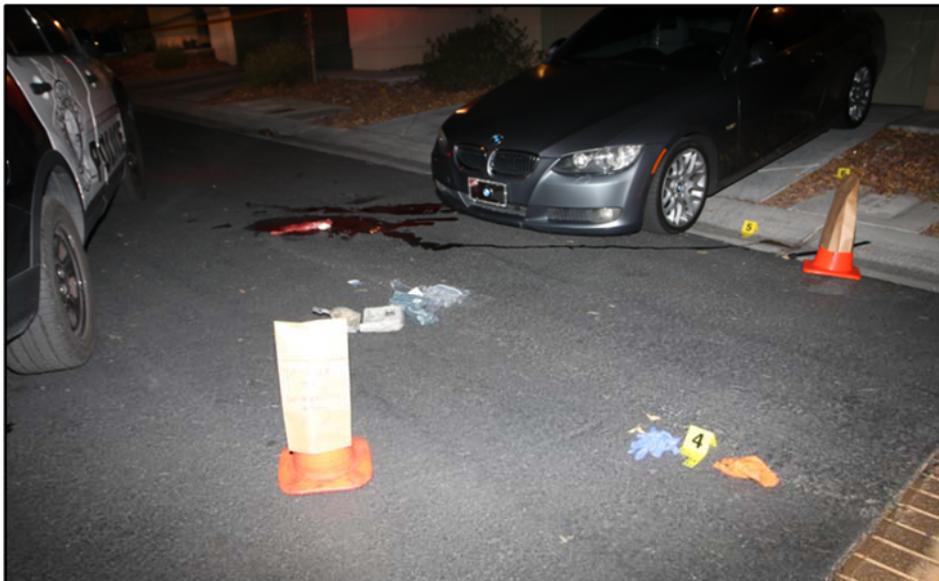
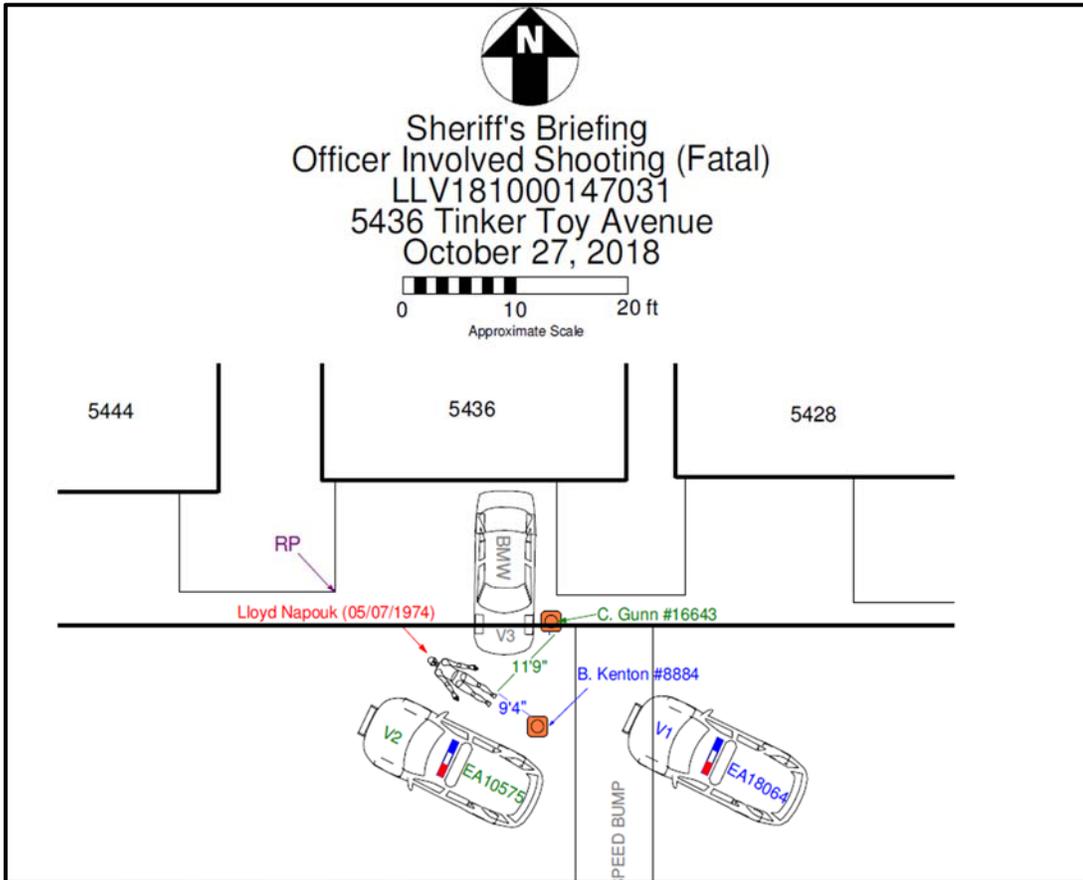


Above: Sergeant Kenton's viewpoint at time of the shooting

Sergeant Kenton fired four (4) rounds from his handgun and Officer Gunn fired three (3) rounds from his handgun, striking Decedent, and causing him to fall to the ground.

Officers at the scene administered CPR on decedent and applied pressure to his wounds. Decedent was unresponsive at the scene when medical personnel arrived. Decedent was pronounced deceased at University Medical Center at approximately 12:54 a.m. by Trauma Surgeon Dr. Opert.

DESCRIPTION OF THE SCENE



Above: The orange marker on the bottom left is where Sergeant Kenton was standing at the time of the shooting, the orange marker on the top right was where Officer Gunn was standing.

EVIDENCE RECOVERED

The following items were recovered and impounded into evidence by Crime Scene Analyst Browning:

- Seven “SPEER 9mm Lugar + P” cartridge cases from the roadway, curb line, and rock landscaping east of the driveway in front of 5436 Tinker Toy Ave.
- One bullet from the rock landscaping in front of 5436 Tinker Toy Ave. west of the driveway
- One bullet from underneath the passenger front seat of vehicle 2
- One plastic object with taped black handle, approximately 22” in length bearing apparent blood from the curb line in front of 5436 Tinker Toy Ave.
- One pair of black sunglasses and one beige mesh baseball cap from the roadway in front of 5436 Tinker Toy Ave., north of Decedent
- One green backpack with defects containing personal belongings from roadway in front of 5436 Tinker Toy Ave. adjacent to the decedent
- Two bullet fragments from inside the baseball cap
- One swab of possible DNA from the surface of a bullet

At the autopsy the following items were recovered and impounded into evidence by CSA Vaandering:

- Buccal swab kit
- Pair of blue Chateauworks pants
- Long sleeve black Wrangler button up shirt
- Pair of black socks
- Pair of black Sketchers shoes
- One Outdoor-brand fanny pack
- Broken glass pipe with residue in a blue towel
- One kit containing a straw, plastic bags, and a plastic bag with an unknown white powdery substance in a Camel-brand tin
- Folded yellow paper containing unknown white powder
- Four pieces of paperwork and cardboard
- Piece of paper with a picture
- Two damaged black Samsung cell phones
- Four bullet fragments
- Two bullets

VIDEO EVIDENCE

Several officers who arrived to the incident activated their respective body worn cameras (BWCs); however, only Officer Gunn and Sergeant Kenton's BWCs captured the actual officer-involved shooting (OIS). The other officers who activated their BWCs did not witness the OIS. Below are brief descriptions of what was captured by Officer Gunn and Sergeant Kenton's respective BWCs.

Note: The time stamps on the BWC are depicted in Greenwich Mean Time which was seven hours ahead of Pacific Time at the time of the incident. The times have been converted to Pacific Time in this report for clarity's sake.

Officer Cameran Gunn

Officer Gunn's BWC was activated on October 27, 2018, at 12:22 a.m. and is 19 minutes and 26 seconds long. The camera footage depicts the following:

- 12:22:17Z Officer Gunn activates his BWC as he begins to respond to the call.
- 12:32:11Z Officer Gunn arrives on the call and drives into a gated neighborhood.
- 12:33:03Z Officer Gunn makes contact with one of the citizens who called 9-1-1. The citizen advises Officer Gunn of the subject's (Decedent) location.
- 12:33:58Z Officer Gunn locates Decedent standing in the driveway of 5436 Tinker Toy. Officer Gunn activates his overhead lights, exits his vehicle, and tells Decedent, "Put it on the ground. Drop it."
- 12:34:05Z Officer Gunn asks Decedent what he has in his hand.
- 12:34:45Z Officer Gunn requests a "Code Red" (Emergency exists - emergency radio traffic only) and tells Dispatch, "Subject is not following commands and says we are going to have to shoot him."
- 12:34:54Z Decedent walks to the middle of the street as Officer Gunn tells him repeatedly to drop what he is holding. (Decedent has an object in his right hand that is later discovered to be a homemade plastic sword.) Officer Gunn retreats to the rear of his patrol vehicle.
- 12:35:16Z Sergeant Kenton is heard in the background telling Decedent, "Dude just drop it. It's not worth it man."
- 12:35:20Z Officer Gunn sees a patrol vehicle arrive on Tinker Toy. The patrol vehicle then retreats off of Tinker Toy.
- 12:36:19Z Decedent raises his weapon up to the sky and walks toward Officer Gunn while saying, "Get out of here. Get out of here." Officer Gunn retreats to the passenger side of his vehicle as he tells Decedent, "Drop it."
- 12:37:10Z Officer Gunn is standing near the front passenger side of his patrol vehicle and tells Decedent, "If you take one more step I will shoot you." Decedent responds, "I know."
- 12:37:35Z Decedent says, "Get out of here."
- 12:38:21Z Officer Gunn takes a position of cover next to a vehicle that is parked in

- a driveway and tells Sergeant Kenton, “I gotcha covered if you want to move back.”
- 12:39:02Z Decedent walks toward Sergeant Kenton.
- 12:39:07Z Officer Gunn fires three (3) rounds from his handgun and Decedent falls to the ground.
- 12:39:23Z Sergeant Kenton orders arriving officers to approach Decedent and handcuff him.

Sergeant Buford Kenton

Sergeant Kenton’s BWC was activated on October 27, 2018, at 12:22 hours and is 19 minutes and 2 seconds long. The camera footage depicts the following:

- 12:22:45Z Sergeant Kenton activates his BWC and begins to respond to the call.
- 12:32:04Z Sergeant Kenton arrives with Officer Gunn in a separate vehicle and drives into the gated neighborhood.
- 12:34:04Z Officer Gunn locates Decedent standing in the driveway of 5436 Tinker Toy. Sergeant Kenton parks behind Officer Gunn and exits his vehicle.
- 12:34:18Z Sergeant Kenton asks Decedent what he has in his hand and tells him to put it on the ground. (Decedent has an object in his right hand that is later discovered to be a homemade plastic sword.)
- 12:34:31Z Sergeant Kenton tells Decedent to take his head phones out of his ears.
- 12:35:13Z Officer Gunn is now standing to the rear of his patrol vehicle. Decedent is in the middle of the street holding his sword. Sergeant Kenton tells Decedent, “Dude just drop it. It’s not worth it man.”
- 12:35:25Z Sergeant Kenton moves to the front passenger’s side quarter panel of Officer Gunn’s vehicle and tells Decedent, “Drop it.”
- 12:35:31Z Sergeant Kenton advises Dispatch that he is out with Officer Gunn and Decedent is not listening to verbal commands because he has head phones in his ears.
- 12:35:47Z Sergeant Kenton tells Decedent to drop the knife.
- 12:35:57Z Sergeant Kenton tells Decedent that he is not in any trouble and they can talk.
- 12:36:37Z Sergeant Kenton asks Decedent what his name is and Decedent does not answer.
- 12:36:50Z Sergeant Kenton asks over the radio for a unit with a bean bang shotgun, K-9, and for medical personnel to stand by.
- 12:37:00Z Decedent walks down the middle of the street toward Officer Gunn and Sergeant Kenton yells, “Hey! Drop it! Drop it! Drop it!”
- 12:37:09Z Decedent turns around and walks back toward Sergeant Kenton. Sergeant Kenton tells Decedent he is going to shoot him and Decedent says, “You have to.”
- 12:37:22Z Decedent tells Sergeant Kenton and Officer Gunn that he gave birth to them.
- 12:37:37Z Decedent tells Sergeant Kenton and Officer Gunn to get out of here.
- 12:38:34Z Sergeant Kenton tells Dispatch over the radio that he needs units to

- 12:39:00Z come to his rear if they are going to bring the shotgun. Sergeant Kenton tells Decedent, "Just drop it bud. I don't want to shoot you today."
- 12:39:04Z Decedent walks toward Sergeant Kenton and Sergeant Kenton tells him, "I'm going to shoot you. You come one more step and you're dead." Decedent responds, "I know."
- 12:39:08Z Sergeant Kenton fires four (4) rounds from his handgun at Decedent and Decedent falls to the ground.
- 12:39:40Z More officers arrive and take Decedent into custody.

LVMPD Air Unit

The video is approximately 28 minutes and 30 seconds in duration. The Air Unit arrived in the neighborhood approximately four and a half minutes into the video. The video captured Sergeant Kenton and Officer Gunn making contact with Decedent, the officer-involved shooting, medical personnel's arrival on scene, and the scene being secured.

5433 Tinker Toy Avenue

On the date and time of the incident, the owners of 5433 Tinker Toy were out of town; however, the neighbor across the street provided LVMPD detectives with a disk copy of the video surveillance footage from October 27, 2018. The disk contains six (6) separate video files. None of the video files contain a time stamp. Below is a list of the files, each file's duration, and a summary of whether or not the file contains valuable information.

- File 1: 31 minutes and 32 seconds in duration. The view from this camera captures the side of the house which points to the Tinker Toy. The file did not contain anything of value.
- File 2: 59 minutes and 35 seconds in duration. The view from this camera captures the side of the house which points to the Tinker Toy Avenue (same as file 1). This file did not contain anything of value.
- File 3: 31 minutes and 32 seconds in duration. The view from this camera captures Tinker Toy Ave. Approximately 31 minutes and 07 seconds into the video, Decedent is seen walking in the middle of the street, raising an object toward a house across the street from 5433 Tinker Toy, and eventually walking up the driveway of the same house.
- File 4: 59 minutes and 35 seconds in duration. The view from this camera captures Tinker Toy Ave. (same as file 3). Approximately 40 seconds into the video, Officer Gunn is seen arriving in his patrol vehicle making contact with Decedent. The video does not capture the officer-involved shooting.
- File 5: 31 minutes and 32 second in duration. The view from this camera captures the end of the driveway of 5433 Tinker Toy and the sidewalk directly in front of the driveway as well as a portion of the street. This file did not contain anything of value.

File 6: 59 minutes and 35 second in duration. The view from this camera captures the end of the driveway of 5433 Tinker Toy and the sidewalk directly in front of the driveway as well as a portion of the street (same as file 5). This file did not contain anything of value.

OFFICER WEAPON COUNTDOWNS

On October 27, 2018, Officer Gunn and Sergeant Kenton had their duty weapons counted down. Officer Gunn and Sergeant Kenton were photographed by Crime Scene Investigations personnel for appearance purposes and their weapons were photographed for identification purposes.

Officer Cameran Gunn

Prior to the countdown, Officer Gunn stated he carried 20 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (20+1, 21 total).

Make	Glock 19
Model	19 Gen4
Serial Number	BESR792
Caliber	9mm
Weapon Mounted Light	TRL 1
Ammunition	Speer Luger +P
Cartridge in Chamber	Yes
Magazine from Weapon	Capacity: 20 cartridges
	Countdown: 17 cartridges
Spare Magazine #1	Capacity: 18 cartridges
	Countdown: 18 cartridges
Spare Magazine #2	Capacity: 18 cartridges
	Countdown: 18 cartridges

At the completion of the countdown, it was determined Officer Gunn discharged his firearm three (3) times during this incident. When compared to evidence at the scene, detectives concluded Officer Gunn discharged his firearm three (3) times. Officer Gunn's firearm, magazines, and cartridges were photographed and impounded.

Sergeant Buford Kenton

Prior to the countdown, Sergeant Kenton stated he carried 15 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (15+1, 16 total).

Make	Glock
Model	19C
Serial Number	HKM269
Caliber	9mm
Weapon Mounted Light	Streamlight M3X
Ammunition	Speer Luger +P
Cartridge in Chamber	Yes
Magazine from Weapon	Capacity: 15 cartridges
	Countdown: 11 cartridges
Spare Magazine #1	Capacity: 16 cartridges
	Countdown: 16 cartridges
Spare Magazine #2	Capacity: 16 cartridges
	Countdown: 17 cartridges

At the completion of the countdown, it was determined Sergeant Kenton discharged his firearm four (4) times during this incident. When compared to evidence at the scene, detectives concluded Sergeant Kenton discharged his firearm four (4) times. During the countdown of Sergeant Kenton's spare magazine #2, it was determined there was one (1) extra round loaded into the magazine (spare magazine #2 was not used during the incident). Sergeant Kenton's firearm, magazines, and cartridges were photographed and impounded.

SUMMARY OF RELEVANT WITNESS STATEMENTS

A.B.

On October 27, 2018, at approximately 3:23 a.m., Detective Leavitt conducted an audio recorded interview with A.B.

A.B. stated that just after midnight on October 27, 2018, he exited his residence to walk his girlfriend to her vehicle. As he spoke with her through the driver's window, he observed a male (Decedent) near them standing by a minivan. Decedent appeared to be holding a "Slim Jim," and A.B. believed Decedent was breaking into vehicles. A.B. also believed Decedent was talking to the van.

At one point Decedent raised his fist in an angry fashion and A.B. believed he was going to hit the van. A.B. contacted LVMPD through the non-emergency line, 3-1-1, and reported the suspicious activity.

A.B. stayed outside and observed Decedent move away from the van, look into windows of his neighbor's houses, and attempt to gain entry into back yards. A.B. believed Decedent was going to break into his neighbor's homes or vehicles. A.B. again contacted 3-1-1 and

advised them of the updates. LVMPD Call Takers informed A.B. that officers were on their way.

A.B. followed Decedent through the neighborhood as he updated the Call Takers. Decedent looked at A.B. but continued on with his unusual behavior. A.B. eventually lost sight of Decedent and returned home. Once A.B. returned home he observed the LVMPD helicopter hovering over a single location, heard sirens, and believed Decedent had been located. A.B. did not witness the OIS.

D.P.

On October 27, 2018, at approximately 3:32 a.m., Detective Colon conducted an audio recorded interview with D.P.

D.P. stated that on October 26, 2018, at approximately 11:30 p.m., D.P. walked to the community mailbox in his housing complex. As D.P. approached his residence, he observed a suspicious male (Decedent) standing across the street at 5382 Floating Flower.

Decedent was holding what D.P. believed to be a machete in his hand and pointing it at the residence. D.P. ran into his house, then into his backyard to keep an eye on Decedent. D.P. lost sight of Decedent but heard a gate close and assumed Decedent entered the courtyard of his neighbor's residence.

D.P. ran to his front yard and hid behind his vehicle where he observed Decedent walk west on Floating Flower Avenue. Decedent stopped in front of various houses on the street and pointed his machete at them. D.P. called 9-1-1 and advised dispatch of Decedent's activities. Decedent continued to walk west on Floating Flower where he briefly walked into a neighboring residence's open garage. Decedent reappeared and continued to walk west down the street.

D.P. lost sight of Decedent so he drove his car through the neighborhood attempting to locate him. D.P. found Decedent standing on the south side of Floating Flower. D.P. did not stop but flagged down an arriving patrol vehicle and advised the officer of Decedent's location. D.P. returned to his residence and did not witness the OIS.

D.S.

On October 27, 2018, at approximately 1614 hours, Detectives Colon and Penny conducted an audio recorded interview with D.S.

D.S. and his wife were awoken by their dogs barking. D.S. looked out of his upstairs bedroom window and observed police cars with their lights on in front of his house. D.S. went outside and stood by this front gate and continued to watch. D.S. saw the suspect (Decedent) standing near one of the patrol cars holding a black stick which D.S. believed to be a baton. D.S. observed the officers tell Decedent several times to "drop it" but Decedent refused.

Decedent advanced toward the officers and the officers retreated. D.S. felt the officers took too much time talking to Decedent.

D.S.'s wife told him to come back inside as officers continued giving Decedent commands. Upon going inside and back upstairs, D.S. heard several gunshots. When he looked outside, D.S. no longer saw Decedent but saw several officers moving around.

Neither D.S. nor his wife witnessed the OIS.

Sergeant Dawid Chudoba

On October 27, 2018, at approximately 3:32 a.m., Detective Penny conducted an audio recorded interview with Sergeant Chudoba.

Sergeant Chudoba stated that he responded to a 413A call (Person with a Knife) to assist. Upon his arrival into the neighborhood, Sergeant Kenton broadcasted over the radio that the suspect, was not complying with their commands. Sergeant Chudoba turned onto Tinker Toy Ave. from Dancing Dolphin and saw Decedent on the street holding a long object in his hand. Sergeant Kenton and Officer Gunn were aiming their firearms at Decedent.

Sergeant Chudoba realized he was in a crossfire with Sergeant Kenton and Officer Gunn. Sergeant Chudoba moved his patrol vehicle to the corner of Dancing Dolphin and Tinker Toy Ave. to prevent any vehicles from driving towards Decedent. Sergeant Chudoba started to approach Decedent when he heard a request for a low lethal shotgun. He returned to his patrol vehicle and retrieved his low lethal shotgun with the intent of joining Sergeant Kenton and Officer Gunn.

As Sergeant Chudoba moved toward Decedent, he realized he was still in crossfire with Sergeant Kenton and Officer Gunn. Decedent was not complying with the officers' verbal commands and still had the long object in his hand. As Sergeant Chudoba moved from the north side of the street (Tinker Toy Ave.) to the south side, he saw Decedent advance towards Sergeant Kenton and Officer Gunn. Sergeant Chudoba then heard several gunshots.

Officer Todd Ellis

On October 27, 2018, at approximately 3:33 a.m., Detective Alsup conducted an audio recorded interview with Officer Ellis.

Officer Ellis stated that he heard an officer (Officer Gunn) ask for a "Code Red" over the radio. He assigned himself to Officer Gunn's call and responded to the location. Officer Ellis arrived on the call and as he parked his vehicle, he heard several gunshots. After the gunshots stopped, Officer Ellis exited his vehicle and walked in the direction of the gunshots he heard. Officer Ellis observed other officers standing near a person (Decedent) lying on the ground.

Officer Ellis approached and was instructed by a sergeant to handcuff Decedent. Officer Ellis observed one (1) handcuff was already placed on Decedent and a large, approximately 12 inch knife type object, laying on the ground near Decedent. Officer Ellis grabbed the object and immediately noticed it was made of plastic. Officer Ellis placed the object in a location Decedent would not be able to reach. Officer Ellis put on latex gloves and handcuffed Decedent. Officer Ellis noticed Decedent was shot and had a weak pulse.

As Officer Ellis placed the second handcuff on Decedent, he observed Decedent no longer had a pulse. Officer Ellis removed the handcuffs, asked for a trauma kit, and began first aid. Officer Ellis applied pressure to Decedent's wounds and began CPR until he was relieved by medical personnel.

Officer Josue Rivera

On October 27, 2018, at approximately 3:55 a.m., Detective Alsup conducted an audio recorded interview with Officer Rivera.

Officer Rivera stated he was inside Enterprise Area Command when he heard a patrol officer (Officer Gunn) ask for a "Code Red" over the radio. Officer Rivera got into Officer Ellis' vehicle and rode with him to Officer Gunn's location. As they arrived in the complex, Officer Rivera heard multiple gunshots. After the gunshots ended, Officer Rivera exited the vehicle and walked toward the location of the gunshots. Officer Rivera observed other uniformed patrol officers in various locations and a white male (Decedent) lying on the ground.

Officer Rivera heard an officer ask for a trauma kit and ran back to the patrol vehicle to retrieve one. After retrieving the trauma kit, Officer Rivera ran back to Decedent's location. Officer Rivera applied pressure to Decedent's wounds as another officer started CPR. Officer Rivera continued holding pressure until relieved by medical personnel.

AUTOPSY

On October 29, 2018, at approximately 7:20 a.m., an autopsy was performed on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner by Doctor Leonardo Roquero.

The following wounds/injuries were noted on Decedent's body by Doctor Roquero:

- 1) Gunshot wound to the head
- 2) Gunshot wound to the right chest
- 3) Gunshot wound to the left chest
- 4) Gunshot wound to the left chest
- 5) Gunshot wound to the abdomen

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

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

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Amphetamine	190	ng/mL	001 - Femoral Blood
Methamphetamine	1100	ng/mL	001 - Femoral Blood
Delta-9 Carboxy THC	30	ng/mL	001 - Femoral Blood
Delta-9 THC	4.8	ng/mL	001 - Femoral Blood

Under the Nevada Revised Statutes regarding driving while impaired, it is unlawful for any person to drive with the following levels of a prohibited substance in their blood: over 100 ng/mL of Amphetamine, 100 ng/mL of Methamphetamine, and/or 2 ng/mL of Delta-9 THC.

FORENSICS RESULTS

Firearms and Weapon Examination

On November 9, 2018, an LVMPD Forensic Laboratory Request was submitted by Detective Patton on Sergeant Kenton and Officer Gunn's firearms for a function test and ballistic comparison evidence.

On December 20, 2018, Forensic Scientist Glen Davis submitted the Report of Examination: Firearms & Toolmarks for Sergeant Kenton and Officer Gunn's firearms. The results verified that of the seven (7) cartridge casings found at the scene, four (4) of the casings were found to have been shot from Sergeant Kenton's firearm and three (3) of the casings were found to have been shot from Officer Gunn's firearm.

On November 9, 2018, Detective Patton also submitted a request for Decedent's homemade machete to be examined for overall length, total weight, and examination of what the weapon was made of. After testing and inspection, Decedent's weapon was found to be made up of eight thin plastic layers adhered together. It was 21 ³/₄ inches long, weighing 213.9 grams. There was a metal wire wrapped around the end and a yellow rope that passed through the handle. Both the metal wire and yellow rope were covered in black tape.

TIMELINE

The below timeline is a reconstruction of events which transpired on Saturday, October 27, 2018, in relation to the fatal OIS that occurred at 5436 Tinker Toy Ave.

Time (hours)	Description of Event/Action	Source
0017	P/R (person reporting) called Dispatch and reported a WMA (Decedent), 40's, 6', medium build, tan hat, dark clothing, and a back pack was walking around (5400 block of Tinker Toy Ave.) talking to himself and raising his fist at a vehicle.	Computer Aided Dispatch (CAD)
0019	Second P/R called and advised Decedent had a machete in his hand and walking door to door.	CAD
0020	Second P/R believed Decedent was a BMA in his early 50's, medium build, with a baseball cap, and backpack.	CAD
0022	Second P/R advised Decedent was going door to door and talking to himself.	CAD
0024	Decedent went into an open garage at 5451 Dancing Dolphin.	CAD
0028	First P/R advised Decedent was looking into neighbor's window and armed with a crowbar.	CAD
0031	Sergeant Kenton and Officer Gunn arrived on Floating Flower	CAD
0035	Officer Gunn requested a "Code Red" and advised Decedent was not obeying officers' commands. Decedent stated officers would have to shoot him.	CAD
0036	Sergeant Kenton advised Dispatch Decedent had head phones in his ears. AIR5 arrived on scene.	CAD
0037	Sergeant Kenton advised Dispatch that Decedent was not obeying commands and was walking around a patrol vehicle. AIR5 advised Decedent was holding a crow bar in his right hand.	CAD
0039	Shots fired. AIR5 advised Decedent was down and officers had him in custody.	Body Worn Camera, CAD
0040	Dispatch requested medical personnel.	CAD
0041	Officer on scene advised Decedent had a light pulse. Sergeant Kenton advised Decedent had a gunshot wound to the head and chest.	CAD
0049	Medical personnel arrived on scene.	CAD
0054	Decedent pronounced deceased on scene.	BWC

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 theories will be discussed below.

A. The Use of Deadly Force in Defense of Another

The authority to kill another in defense of others is contained in NRS 200.120 and 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

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.

fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

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

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

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

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

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

The known facts and circumstances surrounding this incident indicate that Decedent posed an apparent imminent danger to Officer Gunn and Sergeant Kenton. Prior to the shooting, Decedent had been acting in a strange manner according to calls in to 9-1-1, talking to himself, walking up to houses, looking into windows and checking car doors.

Upon arrival, Officer Gunn and Sergeant Kenton found Decedent in the road holding what looked to be a machete or sword. The officers repeatedly told Decedent to drop the weapon and comply with commands. Decedent repeatedly failed to follow officers' commands.

Prior to the shooting Decedent approached Officer Gunn and Sergeant Kenton causing them to retreat. Throughout the ordeal Decedent remained seemingly unfazed and unconcerned by the officers' commands. Decedent also failed to set down or put away the weapon that, especially at night, looked to be a machete or sword. Decedent's actions throughout appeared to have been deliberate, without any panic or confusion.

After five (5) minutes of attempting to speak with Decedent and get him to put down his weapon, Decedent began to walk directly at Sergeant Kenton while Decedent continued to hold the weapon by his side. Decedent was warned loudly not to keep approaching or he would be shot, but he ignored the command. If Decedent had suddenly moved quickly towards Sergeant Kenton, Decedent could have closed the distance and been within striking distance of both Sergeant Kenton and Officer Gunn.

It is reasonable to believe that a blow from a 22-inch sword or machete could cause substantial bodily harm or death, including harming Sergeant Kenton and giving Decedent

access to his weapon. Additionally, Officer Gunn could not have waited longer to fire or else Decedent would have been in an area where Sergeant Kenton would have been directly in Officer Gunn's line of fire.

Thus, the totality of the evidence, to include body worn camera footage and witness statements, illustrate that Officer Gunn and Sergeant Kenton were reasonable in believing that Decedent was in the position and had the mindset to cause great bodily harm or death to each of them and possibly to others in the surrounding area. Consequently, the shooting of Decedent is justifiable under this legal theory.

B. Justifiable Homicide by a Public Officer

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

In this case, the known evidence illustrates that Officer Gunn and Sergeant Kenton had probable cause to believe Decedent posed a threat of serious physical harm to both officers as well as to potentially others in the immediate area.

Here, Decedent was wandering a neighborhood with a seemingly large machete or sword while acting in a threatening manner. When confronted by Officer Gunn and Sergeant Kenton, Decedent continued to act in a threatening manner; failed to acknowledge officers' commands, failed to put down his weapon and continued to walk around the area, including towards officers, in a deliberate manner. Due to the apparent weapon Decedent was carrying and the fact that he was approaching Sergeant Kenton after having been explicitly and repeatedly commanded not to do so, Sergeant Kenton and Officer Gunn had a reasonable belief that Decedent could cause substantial bodily harm or death and to others in the immediate area. Thus, Officer Gunn and Sergeant Kenton's use of deadly force was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Officer Gunn and Sergeant Kenton 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.