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May 7, 2012

Sheriff Douglas C. Gillespie
Las Vegas Metropolitan Police Department
400 Martin Luther King Blvd
Las Vegas, NV 89106

Re: Officer Involved Death of Anthony Jones which occurred on December 11, 2010, and is referenced as 101211-0227.

Dear Sheriff Gillespie:

The District Attorney's Office has completed its review of the December 11, 2010, death of Anthony Jones, hereinafter referred to as the Decedent, which involved Officers Mark Hatten, Timothy English, Richard Fonbuena, and Steven Skenandore. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, that the actions of these officers were not criminal in nature. It should be noted that this review was made based on all the evidence currently available but without the benefit of an inquest proceeding or taped transcribed statements from the officers as they did not provide them.

Additionally, this letter is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. This letter is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the involved officers was not criminal. This decision, premised upon criminal law standards, is not meant to limit administrative action by the Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions where less stringent laws and burdens of proof apply.

FACTUAL SUMMARY

Background

Early in the morning of December 11, 2010, at around 1:07 AM, Officer Hatten observed a 4-door Lexus driving without headlights in the area of Martin Luther King and Lake Mead Boulevards. Officer Hatten, who is approximately 5' 7" and 170 pounds, stopped the Lexus and spoke to the driver who was identified as Anthony Jones, who was approximately 6' 1" and 236 pounds. During the car stop, the Decedent acted erratically and Officer Hatten had the Decedent exit the car. An altercation between the two men ensued, at which time Officer Hatten drew his firearm and pointed it at the Decedent. The Decedent then ran away from the car stop through a dirt lot and fell to the ground. After the Decedent fell to the ground, Officer Hatten jumped on the Decedent's back and the two men fought, as Officer Hatten tried to take the Decedent into custody. Officer Hatten then broke off from the fight and pulled his electronic control device, hereinafter referred to as a taser.

Officer Hatten ordered the Decedent to stop resisting and to get on the ground. The Decedent did not comply. Officer Hatten discharged his taser, hitting the Decedent, but it had no effect. Officer Hatten then touch stunned the Decedent nine separate times. Officer English arrived on the scene and pulled his taser out and touch stunned the Decedent two times. Other officers arrived, including Officers Fonbuena and Skenadore, who assisted in placing the Decedent in handcuffs. After the Decedent was handcuffed, officers noticed he was not breathing. Sergeant Newberry administered CPR until medical personnel arrived and took the Decedent to the hospital. Decedent was pronounced dead upon arrival at Valley Hospital by Dr. Lindsey at 1:59 AM.

Police later learned that the Decedent was a registered sex offender for two counts of Sexual Assault and he had served a lengthy prison sentence. Additionally, the Decedent had been in and out of custody on the charges as he had been paroled six times for those charges from 1997 to his latest parole date of June 18, 2010.

Contact with Law Enforcement

Officer Hatten gave a verbal statement at about 2:00 AM to detectives during a walkthrough of the scene. Present during the statement with Officer Hatten was Police Protective Agency Attorney John Harper. At approximately 4:15 AM, detectives asked Officers Mark Hatten, Timothy English, Richard Fonbuena, Steven Skenadore, and Michael Johnson to give taped statements regarding what had happened. Under advice of Police Protective Agency Attorney John Harper, all of the officers declined to give a taped statement. Officers Hatten and English gave investigators their tasers.

Detectives contacted K-9 Sergeant Dan Newberry and he agreed to provide a taped statement. In his statement, Sergeant Dan Newberry explained that he arrived to the scene shortly after the incident had ended. Sergeant Newberry observed a group of officers huddled around the Decedent. The Decedent was on his back on the ground in handcuffs. Sergeant Newberry described the Decedent as being fairly big. Per Sergeant Newberry's observations, the Decedent was not moving and nobody was holding him down. The only officer touching the Decedent was Officer Johnson, who was trying to open the Decedent's airway. Sergeant Newberry asked if anybody had checked for a pulse. He was told that they had checked but that they were unable to find one. Sergeant Newberry is a CPR instructor so he went to the ground and checked for a pulse. He did not find one. Sergeant Newberry then opened the Decedent's shirts and began chest compressions for about four minutes with the assistance of Officer Johnson. During compressions, Sergeant Newberry noted that the Decedent had a minimal pulse of 30 or below beats per minute. Emergency Medical Technicians arrived and asked that Sergeant Newberry continue with compressions, which he did. An EMT then said she would relieve Sergeant Newberry and when she did, the Decedent no longer had any beats on the monitor. Medical personnel then loaded the Decedent into an ambulance.

Contact with Private Citizens

Police spoke with the Decedent's father on December 11, 2010. At that time, he gave a taped statement to police. In that statement, he explained that his son had been living with him since he was paroled in April of 2010. The father explained on the night of December 10, 2010, the Decedent left their house at about 11:00 PM driving his black Lexus. The Decedent had a beer before he left. According to the father the Decedent complained daily about chest pains and problems with digestion. Also, the Decedent told his father that he needed some "bulbs" for his car lights.

On December 12, 2010, police canvassed the neighborhood of the incident and spoke to a citizen. The citizen did not give a tape recorded statement, but he told police that at about 1:20 AM he heard yelling coming from outside his house. He went outside and heard police yelling, "Put your hands up." He did not actually see police at that time. However, after a few minutes several police and fire department vehicles arrived to the area and he went back inside his house.

On that same day, police spoke with another citizen. This individual lived in a home near where this incident took place. At about 1:05 AM the citizen's dog was barking and the citizen heard sirens so the citizen got up and looked outside his window. He saw what he described as a "commotion" and "wrestling." Specifically, he said he saw a man leaning over and three police officers that seemed to be trying to detain the man and then seemed like they were trying to help the man. Later he saw medical personnel take the man away. He was not able to get a good look at the man that was

treated and driven away in the ambulance but he described the man as “a fairly big guy.” He told the investigators that he did not see the police hit the Decedent.

Opinions of Private Citizens and Officers

The citizen interviewed by the police who saw the “commotion” and “wrestling” told police that he did not think that the police had done anything unreasonable.

FORENSIC REPORTS

Findings from the Scene

On December 11, 2010, the Decedent was transported to Valley Hospital prior to the arrival of homicide detectives. Investigator Dan Daniels of the Clark County Coroner’s Office examined the body of the Decedent and noticed an apparent taser probe lodged in the top of the Decedent’ left hand. Abrasions were noted on the Decedent’s knees and the center of his chest.

Findings from the Autopsy

On December 11, 2010, Dr. Lisa Gavin of the Clark County Coroner’s Office conducted an autopsy on the body of the Decedent. Dr. Gavin performed an external and internal exam and ordered a toxicological examination of the body of the Decedent. The toxicology report revealed the presence of cocaine and its metabolites at toxic/lethal levels. The toxicology report also revealed ethanol in the Decedent’s body. Additionally, a piece of folded tin foil was recovered from between the Decedent’s buttocks. The tin foil was impounded as evidence and later tested positive for the presence of cocaine. Dr. Gavin indicated that Mr. Decedent was mildly obese and suffered from cardiomegaly (enlarged heart) and hepatomegaly (enlarged liver). Additionally, Doctor Gavin noted mild arteriolonephrosclerosis, which is scarring of the liver due to chronic hypertension.

Dr. Gavin noted blunt force injury of the torso in the form of abrasions on the left lower chest, contusions on the left upper quadrant of the abdomen, and a contusion on the left flank. Additionally, there was blunt force injury of the extremities of the wrists, forearms, and the left thigh. There was an abrasion to the left hand where the taser probe had lodged. The doctor noted injuries caused by resuscitative measures: including fractures of the left anterior ribs #3 and #4 and right anterior ribs #5 and #6. Dr. Gavin also indicated that the Decedent had mild emphysema and mild degenerative changes of the mitral valve of his heart.

Opinions from the Autopsy

Cause of Death: Dr. Gavin ruled that the cause of death of the 44 –year-old Decedent was determined to be from cocaine and ethanol intoxication. Other significant contributing conditions included cardiomegaly due to obesity and mild hypertension and police restraining procedure.

Taser Report

On January 5, 2011, detectives brought the two tasers from this incident to Taser International in Scottsdale, Arizona where the Director of Technical Programs downloaded the information from the tasers. The data was reviewed and it was determined that only one of the two probes had actually made contact with the Decedent. The probe that connected with the Decedent completed the circuit for more than (2) seconds but less than (5) seconds. The data also revealed the following with regard to Officer Hatten's taser:

- 1st Discharge was for seven seconds.
- 2nd Discharge was twelve seconds later, for eleven seconds.
- 3rd Discharge was fourteen seconds later, for thirteen seconds.
- 4th Discharge was nine seconds later, for eight seconds.
- 5th Discharge was seven seconds later, for six seconds.
- 6th Discharge was six seconds later, for five seconds.
- 7th Discharge was eight seconds later, for five seconds.
- 8th Discharge was twenty-two seconds later, for thirteen seconds.
- 9th Discharge was six second later, for five seconds.
- 10th Discharge was twenty-three seconds later, for nineteen seconds.

The time frame, from beginning to end, was approximately two minutes and five seconds. Within that time frame, the time of discharge of the taser was approximately (92) seconds.

The data revealed the following in regards to Officer English's taser:

- 1st Discharge was for five seconds.
- 2nd Discharge was fourteen seconds later, for five seconds.

The time frame, from beginning to end, was approximately nineteen seconds. Within that time frame, the time of discharge of the taser was approximately (10) seconds. The time of discharge of the taser does not necessarily equate to the same amount of time the electrical current flowed through the body of the Decedent from either taser.

LEGAL ANALYSIS

The District Attorney's Office has assumed the task of assessing the conduct of officers involved in any killing 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 killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

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). In reviewing the various species of justifiable homicide within the framework of the facts of this case, it is clear that the relevant statute for our consideration is NRS 200.140, which states:

Homicide is justifiable when committed by a public officer, or person acting under the command and in the aid of the public officer, in the following cases:

1. In obedience to the judgment of a competent court.
2. When 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.
3. When necessary:
 - (a) In retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony;
 - (b) In attempting, by lawful ways or means, to apprehend or arrest a person; or
 - (c) In lawfully suppressing a riot or preserving the peace.

(NRS 200.140).

Police officers are public officers under the statutes of the State of Nevada (NRS 169.164; AGO NO. 1985-11) and they are given authority to make arrests and where a person "either flees or forcibly resists, the officer may . . . use all necessary means to effect the arrest." (NRS 171.122).

According to the initial statement provided by Officer Hatten to detectives at the scene, he observed the Decedent's car driving in the area of Martin Luther King and Lake Mead Boulevards. At the time Officer Hatten first observed the Decedent's vehicle, the headlights were not on. Officer Hatten initiated a traffic stop. By the time the Decedent pulled his car over to the side of the road, the two cars were on Lake Mead to the east of

the intersection of Lake Mead and J Street. The Decedent turned his headlights on somewhere between where Officer Hatten first observed him and where the traffic stop actually occurred. This fact is evidenced by video recovered from a surveillance camera located on a building at the location where the cars pulled over. That video showed that the Decedent's lights were on at the time he pulled to the side of the road on Lake Mead, just past J Street. As the video came from a camera mounted on a building at the spot of the cars pulling over, it does not show the cars in the area where Officer Hatten first observed the Decedent's vehicle. Detectives obtained this video after Officer Hatten had provided his initial statement at the scene. Detectives were not able to follow up with Officer Hatten about the video because by that point Officer Hatten was following the advice of his attorney not to speak with the detectives.

However, the video does show that the car was stopped and the Decedent was ordered out of the car. Per Officer Hatten's statement to police an altercation occurred and Officer Hatten drew his firearm. The Decedent then fled the scene, running through a field and then through a hole in a fence, where he eventually fell to the ground. Officer Hatten then tried to take the Decedent into custody as he had fled from the traffic stop and failed to obey the lawful orders of Officer Hatten to stop. When the Decedent failed to obey orders to stop resisting and to get on the ground and when Officer Hatten was unable to take the Decedent into custody, Officer Hatten retrieved his taser. Officer Hatten continued to order the Decedent to stop resisting and to get on the ground. The Decedent refused to comply and Officer Hatten discharged his taser. Only one of the probes stayed in the Decedent, thus preventing the effect of the charge. Consequently, Officer Hatten then touch stunned the Decedent with the taser. Officer Hatten was still not able to get the Decedent into custody. Officer English arrived to assist Officer Hatten. Officer English also touch stunned the Decedent and eventually, with the assistance of other officers, they were able to handcuff the Decedent.

Video and audio were recovered from the tasers. The quality of the video and audio makes it difficult to ascertain exactly what occurred. However, the video and audio do reflect Officer Hatten ordering the Decedent to the ground and the Decedent asking what he had done. When the Decedent did not get to the ground, Officer Hatten discharged his taser. After the taser was discharged, Officer Hatten repeatedly ordered the Decedent to put his arms behind his back. The Decedent can be heard saying that he cannot move and to stop tasing him. Police can also be heard saying that the Decedent's arms were underneath him and that he had something in his hands. The video and audio come directly from the taser so the contact of the taser to the Decedent's body affected the perspective of the video, making it difficult to see and hear. The video and audio only captured the portion where the tasers were fired. In fact, after the Decedent was in custody, the officers determined that the Decedent was not breathing and began CPR. The Decedent was eventually taken to the hospital where he was pronounced dead.

A review of the instant case does not indicate that the officers engaged in the gratuitous use of force in effectuating the attempt to disarm and/or arrest the Decedent. The United States Supreme Court has given some guidance in the area of what constitutes the reasonable use of force:

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation omitted]. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, [Citation omitted], nor by the mistaken execution of a valid search warrant on the wrong premises. [Citation omitted]. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” [Citation omitted], violates the Fourth Amendment. The calculus of reasonableness must embody allowances for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. [Citation omitted].

Graham v. Connor, 490 U.S. 386, 396-397, 109 S. Ct. 1865, 1872 (1989). Under the reported circumstances of the instant case it appears that the officers’ actions were objectively reasonable.

It light of all the evidence reviewed to date, the State would be unable to prove that the force used was in fact unjustified “in attempting to, by lawful means, apprehend or arrest a person.”

CONCLUSION

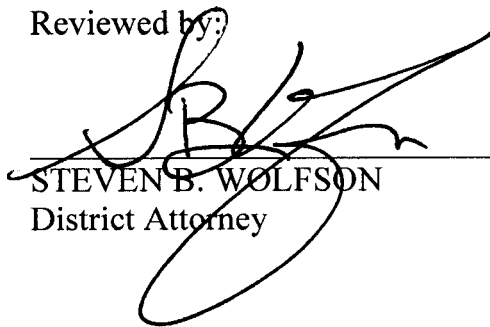
Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the death of Anthony Jones, it has been determined that the actions of Officers Hatten, English, Fonbuena, and Skenandore were lawfully. There is no evidence that the officers acted unlawfully or with malice aforethought.

The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190) “The homicide appearing to be justifiable or excusable, the person indicted shall, upon trial, be fully acquitted and discharged.” (NRS 200.190) As there is no factual or legal basis upon which to charge Officers Hatten, English, Fonbuena, and Skenandore based on the totality of the circumstances, and unless new facts come to light which contradict these findings, no charges will be forthcoming.



GIANCARLO PESCI
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney