

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Officer Involved Shooting of Antoine Hodges on October 21, 2013

### **Introduction**

On Monday, October 21, 2013, at approximately 2230 hours, uniform Patrol Officer Jason Evans saw a male adult enter the 7-Eleven Store located at 301 N. Nellis Boulevard, Las Vegas, Nevada. A double homicide had occurred the night before at a nearby location and Officer Evans believed this male resembled the suspect as described by witnesses.

Officer Evans parked his patrol vehicle north of the business and approached the front doors on foot. The male, later identified as Antoine Hodges, was exiting the store just as Officer Evans approached the same entry doors. Upon seeing the officer, Hodges retreated back inside the business. Officer Evans commanded Hodges to show his hands and freeze more than once, but Hodges did not comply. Officer Evans drew his duty weapon and opened the door while standing at the threshold. Hodges turned his body toward the right and put his right hand behind his back. Fearing for his life, Officer Evans fired one shot at Hodges, striking him in the abdomen.

The bullet passed through him and lodged in a candy display case behind where he was standing. Hodges was transported to the hospital where he underwent surgery and survived his injury. No charges were ever filed against Hodges. He was subsequently released from the hospital.

The District Attorney's Office has completed its review of the October 21, 2013, shooting of Hodges. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officer were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. 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 or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

A Police Fatality Public Fact-finding Review was not conducted in this case. Clark County Code 2.14 mandates such a review when a police-involved death occurs, and the prosecutor preliminarily determines that no criminal prosecution of the officer is appropriate. There was no death in this case; therefore, Clark County Code 2.14 does not apply.

## The Events at 301 North Nellis on October 21, 2013

### Officer Jacinto Rivera

Detectives Dean Raetz and Matt Gillis conducted a taped interview with Officer Rivera at the LVMPD Headquarters on October 22, 2013. Officer Rivera stated on October 21, 2013, all Northeast Area Command swing shift patrol officers were briefed in reference to a double homicide which occurred the previous night under event #131020-3883. The briefing included a physical description of the possible suspect who was still at large. Officer Rivera was across the street from the 7-Eleven Store when he heard Officer Evans advise over the radio he was about to contact a person who matched the description of the homicide suspect from the night before. Officer Rivera pulled into the parking lot on the south side of the store, with the intention of taking up a position there and either waiting for the male to come outside, or verbally commanding him to exit the store.

Officer Rivera saw Officer Evans in front of the entry doors when Officer Rivera pulled his vehicle onto the property. It appeared Officer Evans just made contact with the male. This immediately altered Officer Rivera's plan to take a position outside of the store. Officer Rivera pulled his patrol car up to the door to ensure anyone in the store could see there was a police presence, to provide Officer Evans with cover, and to be in a position to drive through the doors if a shooting occurred inside the store. Officer Rivera saw Officer Evans open the door to the store and take one step inside. Officer Rivera's view

into the store was partially obscured; however, he could see the forehead of a dark-skinned male with black dreadlocks take a step backward further into the store. Since Officer Rivera's patrol vehicle windows were rolled up he could not hear anyone talking.



*Officer Rivera's vehicle outside the 7-Eleven store.*

Officer Rivera opened his car door and started to exit when he heard Officer Evans fire a single gunshot. Officer Rivera entered the store and saw a black male lying on the floor in front of the slot machines. Officer Rivera told Officer Evans to put handcuffs on the subject and started to search him. Officer Rivera could smell the odor of marijuana and found a baggie of a green leafy substance in Hodges's left front pocket. The male complained of not being able to breathe so his shirt was lifted, revealing a gunshot wound to the abdomen. Officer Rivera went to his patrol vehicle, retrieved a trauma kit, and returned to provide medical help. Officer Rivera heard the male say, "[w]hy did you shoot me, I just had marijuana?"

Officer Rivera stated he drew his weapon during the incident but he did not fire it.

### Sergeant Melanie O'Daniel

Sergeant O'Daniel obtained a Public Safety Statement from Officer Evans, having read the questions from a prepared LVMPD Public Safety Card. Sergeant O'Daniel wrote down the answers of Evans to the questions as follows:

1. Is anyone injured?  
Response: "Only the suspect."
2. Are there any outstanding suspects?  
Response: "No."
3. For what crimes are they wanted?  
Response: "A double homicide that occurred last night."
4. Were there any other officers involved in the shooting?  
Response: "No."
5. Where were you when you fired your weapon?  
Response: "I was in the front entryway."
6. How many rounds did you fire, and in what direction did you shoot?  
Response: "One round in a northwest direction."
7. Is it possible the suspect fired at you?  
Response: "No."
8. Are there any weapons or evidence we should secure?  
Response: "No. I fired one time and there was a shell casing on the ground."
9. Are you aware of any witnesses? If so, where are they located?  
Response: "The store clerk but I don't know where he was. I was focused on the male."

### Officer Krista Bullard

On Tuesday, October 22, 2013, at approximately 0050 hours, Detective Tod Williams contacted and conducted a taped interview with Officer Bullard at University Medical Center. According to Officer Bullard, Officer Evans broadcasted that he was initiating a person stop on a black male who fit the description of a double homicide suspect from the previous day. While Officer Bullard was en route to the location, officers announced there were shots fired. Once Officer Bullard arrived at the 7-Eleven store, she entered the business and saw Officers Evans and Rivera administering first aid to Hodges. Officer Bullard relieved Officer Evans who was removed from the scene.

Once paramedics responded, Hodges was placed on a gurney for transport to the hospital. Officer Bullard searched his front pants pockets and found a baggie of a green leafy substance and a \$20 bill. Officer Bullard rode in the ambulance and Hodges asked why he was shot. Hodges stated he was inside the store paying for gas as an officer walked inside with his handgun drawn. Hodges said he put his hands up and asked, "[w]hat's going on?"

Hodges said he was holding a cellphone in his right hand, and, as he was reaching to put it in his back pocket, he was shot in the chest. Hospital medical staff located another bag of a green leafy substance between Hodges's buttocks. Officer Bullard later tested both items, which revealed a positive result for marijuana.



*Items recovered from Hodges.*

### Officer Jason Evans

On the morning of Friday, October 25, 2013, through his attorney, David Roger, Officer Evans advised that he would participate in an interview with investigators. Arrangements were made to meet with him and his attorney early the following week.

Against the advice of the Office of the District Attorney,<sup>1</sup> LVMPD decided Officer Evans and Attorney Roger could view the videos from the 7-Eleven Store prior to the start of the interview.

On Monday, October 28, 2013, at approximately 0945 hours, Detectives Raetz and Robert Rogers conducted a taped interview with Officer Evans at the detective bureau. Also present were Sergeant Annette Darr and Attorney Roger. Prior to going on tape,

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<sup>1</sup> The fact that Officer Evans viewed the surveillance tape of the incident prior to detailing his version of events is a circumstance that must be considered when assessing the officer's statement. In this particular case, however, because of the radio traffic information, video depiction of the actions of Hodges, and percipient witness statements, the legality of Officer Evans's actions can be evaluated without reliance on his statement.

Officer Evans and Attorney Roger reviewed the video from the 7-Eleven Store on a laptop computer.

Officer Evans stated he responded to a double homicide at Nellis Boulevard and Sahara Avenue on the evening of October 20, 2013. While there, he spoke with a witness who described the suspect as a black male adult with shoulder length dreadlocks. Officer Evans later cleared from the call without the suspect being apprehended. The following night, Officer Evans was driving by the 7-Eleven Store at Nellis Boulevard and Stewart Avenue, which was less than two miles from the murder scene. Officer Evans saw a male, who fit the description of the homicide suspect, enter the business. He broadcasted this information over the radio. Officer Evans pulled into the parking lot and drove past the gas pumps as the male looked back at him several times. Officer Evans parked his patrol vehicle north of the store in an assigned space.

Officer Evans exited his patrol vehicle and walked to the corner of the store so he could look inside through the glass windows. Officer Evans knew, at the time, there was a clerk behind the counter. After viewing the video, he realized there were two customers in the store as well. Officer Evans saw the black male about to exit the store and decided to contact him. Officer Evans drew his duty weapon and approached the entry doors just as the male was walking outside. Upon seeing him, the male backed away and retreated into the store. Officer Evans opened the doors and aimed his weapon at the male, telling him to show his hands.



*View from the 7-Eleven store's cash register toward the back of the store. At the time of the incident, Hodges was standing in the aisle nearest to the slot machines, facing the cash register.*

The male turned his body to the right and reached behind his back with his right hand. Officer Evans was not certain if the male was holding anything in his left hand. He continued to command the male to show his hands, but he did not comply and continued to back up. Officer Evans thought the male was reaching for a gun from his pants, and, out of fear for his safety, fired one round at the male's body. The male fell down on the ground and was attended to by responding Officer Rivera. The male was searched for weapons and handcuffed. When asked why he did not show his hands, the male replied he did not know, but did ask why he was shot.

### Antoine Hodges<sup>2</sup>

On Tuesday, October 22, 2013, at approximately 0105 hours, Detective Williams contacted and conducted a taped interview with Antoine Hodges at University Medical Center. Hodges stated he went to the 7-Eleven to get gas for his vehicle. He saw a patrol vehicle drive into the parking lot, but paid it no attention and walked into the store. As Hodges was walking away from the register, he saw a police officer approaching the front door with his handgun drawn. Hodges stated he put his hands up and asked, "[w]hoa. What are you pulling your gun on me for? What's going on? What are you looking for?" Hodges backed up and, while in the process of putting his cellphone and keys in his back pocket with his right hand, he was shot. Hodges stated he heard the officer say, "[f]reeze. Don't move." Hodges admitted he had marijuana on his person, but denied having any weapons.

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<sup>2</sup> Prior to issuing this report, the Office of the District Attorney contacted Antoine Hodges's attorney and inquired whether the attorney or Hodges wished to provide information about the incident. Hodges's attorney declined for both.



*View of 7-Eleven store from the back of the store toward the cash register.*

After the interview, Detective Williams was advised the store surveillance video showed Hodges may have been holding a cellphone and keys in his left hand, while placing his right hand behind his back. Detective Williams relayed this to Hodges and asked if he was trying to hide the marijuana in his pants with his right hand when the shooting took place. Hodges stated he could not remember what he was trying to put in his pocket with his right hand when he was shot. He denied he was hiding the marijuana in his pants, because he had hidden the marijuana in his pants prior to being confronted by the officer. Hodges stated he understood why the officer could have believed he had a weapon from what he was doing with his right hand and because he was not following the officer's commands. He said he failed to comply because, "I hadn't done anything wrong." Hodges denied hearing the officer order him to show his hands, but did acknowledge the officer was giving him commands.

## Civilian Witnesses

On Tuesday, October 22, 2013, at approximately 0040 hours, Detective Raetz contacted and conducted a taped interview with the store clerk at the scene. The store clerk was employed at the 7-Eleven store located at 301 N. Nellis Boulevard and was working swing shift the previous evening. The store clerk saw a black male adult, whom he recognized as a semi-regular customer, enter the store, but did not see how he arrived. The male was in the store a few minutes and made a purchase. He had a strong odor of marijuana



coming from his person. The male walked toward the exit as a police officer approached the front doors with his handgun drawn from outside the business.

The store clerk heard the officer tell the black male to exit the store. The male replied he had not done anything, and stepped back further into the store while reaching his right hand into a pants pocket. The officer told the male to take his hand out of his pocket but he did not comply, stepping behind a merchandise rack which obscured the store clerk's view. The store clerk heard the officer tell the male at least three times to take his hand out of his pocket and show his hands, but the male never complied. The store clerk saw the officer fire his handgun one time and the male fell to the floor, screaming, "[y]ou shot me!" The store clerk stated he did not remember seeing anything in the black male's hand.



*Cash register area of the 7-Eleven store.*

On Tuesday, October 22, 2013, at approximately 0045 hours, Detective Gillis contacted and conducted a taped interview with Customer 1, at the scene, with the assistance of Spanish speaking Officer Larson. Customer 1 and her sister-in-law, Customer 2, drove to the 7-Eleven to purchase beer. They parked to the right side of the front doors. As Customer 1 was entering the store, she noticed a police vehicle pulling into the parking lot. The women entered the store and walked to the back, near the beer coolers. While walking to the counter, Customer 1 saw a black male at the register. Customer 1 then saw a police officer enter the store with his gun drawn. Due to her limited English, Customer 1 could not tell what was being said between the officer and the black male; however,

the male was yelling more than the officer, as he was walking backwards. Customer 1 said she saw the male put his hands up but saw nothing in his hands.

Customer 1 stated she was grabbed by her sister-in-law, Customer 2, and pulled to the ground on the side of the counter after seeing the officer with his handgun drawn. Customer 1 then heard one gunshot, but did not see the shooting from her location. After the shooting, Customer 1 observed that a second officer had entered the store and one officer was rendering aid to the black male. Customer 1, along with her sister-in-law, then exited the store past the male on the ground.

On Tuesday, October 22, 2013, at approximately 0050 hours, Detective Fred Merrick contacted and conducted a taped interview with Customer 2 at the scene. Customer 2 drove to the 7-Eleven Store to buy beer with Customer 1. Customer 2 parked in front of the store and the two walked inside to the cooler section, as a black male adult entered the store behind them. Customer 2 saw a police car pull into the parking lot and later an officer entered the store with his gun drawn and pointing at the black male adult. Customer 2 said that the police officer was yelling at the man, but she did not understand what he was saying. Customer 2 grabbed Customer 1 and pulled her to the ground behind the cash register. Customer 2 then heard one gunshot but she did not see who fired the shot because she was face down on the ground.

### Description of the Scene

The shooting scene was located just inside the 7-Eleven Store, located on the northwest corner of Stewart Road and Nellis Boulevard. There were two video cameras mounted on the front of the store that faced eastbound toward four gas pump stations in two rows, directly across from the entry doors to the business. Each station had a gas pump on both the east and west sides of the structure.

A 2004 Chevrolet Tahoe bearing Nevada license plate 437LGN was parked facing northbound, adjacent to the northern most gas pumps. This was the vehicle driven to the store by Antoine Hodges. A green leafy substance, believed to be marijuana, was located on the center arm rest between both front seats.



Vehicle that Hodges drove to the 7-Eleven.



Center console area of vehicle.

There was a sidewalk on the exterior, east side of the business that extended from a south parking lot, in front of the entry doors, and continued to additional parking spaces to the

north. Glass windows and doors with various signs were situated along the entire east side of the store providing a somewhat obstructed view of the store's interior. A 9mm cartridge case with a headstamp "SPEER 9mm LUGER +P" was on the ground just outside the front entry doors. A marked LVMPD vehicle, driven there by Officer Rivera, was parked directly in front of the entry doors. Officer Evans's patrol vehicle was parked to the north of this vehicle and was adjacent to other marked parking stalls. Both vehicles were running and their headlights were turned on.

The interior of the business had a typical convenience store layout, consisting of registers, video gaming machines, rows of shelving for product placement, coolers built into the walls, a self-serve drink station, and a back room for management. There was a bank of four multi-game machines against the east wall directly north of the entry doors. Four black bar stools associated with the gaming machines had been apparently moved away. On the floor in front of these machines were a grey t-shirt and a white tank top, both with apparent blood and holes, a black Kyocera cellular telephone, a plastic lighter, two \$5 bills, apparent blood, and a key ring with several keys. To the northwest, a bullet with a copper jacket was discovered inside a candy bar box. (Note: *The key ring and attached keys were later returned to the registered owner of the Chevrolet Tahoe, a friend of Hodges's.*)

The store's interior was well illuminated by overhead lighting, with several video cameras mounted in various locations inside the store. Photo/Video Technician Erik Tufteland responded to the scene and reviewed the video surveillance system in a back room office; Technician Tufteland subsequently made copies of the video on compact discs. The video clearly showed the interaction between Officer Evans and Antoine Hodges leading up to, and at the time of, the shooting.

## Transport of Hodges

Antoine Hodges was transported to University Medical Center Trauma, where he was treated for a gunshot wound to the abdomen, with a corresponding exit gunshot wound on his right side. The medical staff stated that Hodges's injuries were non-life threatening, and he was expected to be released from the hospital later that morning.

Patrol Officer Bullard had collected two baggies containing a green leafy substance and a \$20 bill from Hodges's person. Both samples were later tested, which revealed a positive result for marijuana at a total gross weight of 12.2 grams.

Crime Scene Analyst Ebony McGee responded and took overall photos of Hodges to include his injuries.

## Weapon Countdown

On Tuesday, October 22, 2013, at approximately 0230 hours, a countdown was conducted on Officer Evans's Glock 9mm handgun at the LVMPD Headquarters. At the conclusion of the countdown, it was determined that Officer Evans fired one round from his handgun.

CSA McGhee took digital images of Officer Evans dressed in his summer uniform, his firearm, and the equipment on his duty belt for documentation purposes. The handgun, its magazine, and a total of 18-9mm cartridges were impounded into evidence. At the conclusion of the countdown, Officer Evans elected to not provide a statement and he did not request issuance of a loaner handgun.

On Tuesday, October 22, 2013, at approximately 0300 hours, a countdown was conducted on Officer Rivera's Glock 9mm handgun at the LVMPD Headquarters. At the conclusion of the countdown, it was determined Officer Rivera fired no rounds from his handgun. CSA McGhee took digital images of Officer Rivera, his firearm, his clothing, and his equipment for documentation purposes.

## Forensic Exam of Firearm

On January 3, 2014, Forensic Scientist Angel Moses issued an LVMPD Firearms and Toolmarks Report that reported the following results:

The Glock pistol was examined, test fired, and found to be in normal operating conditions with no noted malfunctions. This pistol has an overall length of approximately 8 inches, a barrel length of approximate (sic) 4 ½ inches and a trigger pull of 6 ½ to 6 ¾ pounds. The pistol and magazine have a maximum capacity of 18 cartridges.

Test bullets and cartridge cases from the Glock pistol were microscopically examined in conjunction with the evidence. Based on these comparative examinations, the following was determined:

The evidence bullet bears the same general rifling characteristics as the test fired bullets. However, there are insufficient microscopic details for a conclusive identification. The bullet could not be identified nor eliminated as having been fired from the Glock pistol. The evidence cartridge case was determined to have been fired by the Glock pistol. The evidence was returned to secure storage.

## Video Surveillance

On Tuesday, October 22, 2013, at approximately 0330 hours, Photo/Video Technician Tufteland accessed the 7-Eleven Store's video surveillance system via two digital video

recorders in a back office. There were a total of eleven interior and three exterior cameras displayed on two different monitors. The video was viewed by Detective Rogers and other members of Force Investigation Team, Criminalistics, and the District Attorney's Office. After reviewing the video, it showed the interaction between Officer Evans and Antoine Hodges leading up to and including the shooting, as well as subsequent actions.

Camera #1 was mounted behind the counter and showed Hodges walking backward away from the entry doors. He appeared to have an object in his left hand and, while turning sideways, Hodges reached behind his back with his right hand. Shortly afterward, Hodges was shot and he fell to the floor as Officers Evans and Rivera entered into the frame.

Camera #2 was also behind the counter and faced the entry doors. It showed Hodges momentarily exit the store but immediately walk back inside and out of the frame. Officer Evans was seen outside the store with his handgun drawn as he approached the entrance. Officer Evans opened the north entry door where he apparently fired his handgun. Both cameras showed the store clerk standing behind the register and witnessing the shooting.

Camera #4 faced the entry doors from an ideal perspective, but due to irregularities with the system, several minutes around the time of the shooting were missing. The only scene captured was Officers Evans and Rivera attending to Hodges on the floor. Video Technician Tufteland explained this was not an uncommon problem concerning recording systems. Camera #7 was mounted in a far corner of the business and only showed some of the shooting from a distance; however, it did capture the two female customers hiding behind the counter. Camera #8 faced the register from the customer's side and depicted Hodges making a purchase. He then walked to the entry doors but backed away out of the frame as Officer Evans entered the store. Due to the angle of the camera, Officer Evans was only seen from the shoulder down during the shooting. Camera #9 was the sole outside camera but nothing was visible. None of the other interior cameras captured the shooting but rather other uninvolved areas of the 7-Eleven Store.

The other surveillance monitor depicted three interior and two exterior cameras. Camera #1 was inside and faced the entry doors, but due to its downward angle, Officer Evans and Hodges were only seen from the waist down at the time of the shooting until the officers entered the business. Both inside cameras #4 and #5 were "fisheye" camera, meaning they depicted a somewhat distorted view of the area directly above the register and front entrance. However, camera #5 clearly showed Hodges walking backward from the entry door while holding an object (believed to be keys and/or a cellphone) in his left hand and turning his body to the right. Moments later Hodges fell to the floor and Officer Evans walked inside.

Outside camera #2 showed the Chevrolet Tahoe pull up to the gas pumps and Hodges exit the vehicle. Hodges appeared to look back while walking toward the entrance to the 7-Eleven Store as Officer Evans drove by in his patrol vehicle.

Exterior camera #3 merely showed both vehicles pass by the southernmost gas pumps and then out of the frame. It should be noted that none of the outside cameras showed the front of the 7-Eleven Store, and therefore the shooting was not captured.

On Monday, October 28, 2013, at approximately 0900 hours, Detective Gillis and Video Technician Tufteland returned to the 7-Eleven Store where they met with the store manager. The manager allowed them access to the surveillance system so that additional copies of the same video depicting the incident could be captured. A subsequent review of both copies of the video revealed they were identical, and there were no images missing.

Crime Scene Analysts Kristin Grammas and Shelly Shrum processed the crime scene and the collection of the evidence. Detailed measurements were taken to approximate distances from known reference points. These were later incorporated into crime scene diagrams depicting the location of all relevant items. Although Officer Evans declined to provide a statement or participate in a walk through at the scene on the 21st, from the video surveillance, he appeared to be in the vicinity of 7'6" away from Antoine Hodges where he fired his weapon. At the conclusion of the scene investigation, the crime scene tape surrounding the 7-Eleven store was removed and the business was reopened.

## **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.

While there was no death in this case, the Nevada statutes pertaining to justifiable homicide dictate whether there was criminality on the part of Officer Evans when he shot Hodges. Those statutes delineate when deadly force maybe be lawfully used. 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 Hodges was justifiable under two theories related to the concept of self-defense: (1) The use of deadly force or killing of a human being in self-defense/defense of others; and (2) the use of deadly force or justifiable homicide by a public officer. Both of these 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, by violence

or surprise, to commit a felony ..." against the other person. 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. 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 the defendant did not act in [defense of another].

*Id.* at 1051-52.

On the night of October 20, 2013, Officer Evans responded to the scene of a double homicide at the Pacific Harbor Apartments located 5150 E. Sahara Avenue. A witness described the suspect as a black male adult with shoulder length dreadlocks.

The following night while patrolling in the same area, Officer Evans happened to be driving by the 7-Eleven Store at 301 N. Nellis Boulevard, which was approximately one mile away from the murder scene. At that same time, Antoine Hodges was exiting his vehicle and walked toward the entrance to the business. Hodges was later described as a 30 year-old black male adult with long braided hair. Due to the proximity of the murder and his appearance, Officer Evans thought Hodges may have been involved in the recent double homicide.

In this case, Hodges posed an objectively reasonable imminent danger to Officer Evans and citizens in the area. Hodges had refused commands by Officer Evans to freeze multiple times even though Officer Evans clearly had a weapon and was in uniform. Moreover, Hodges reached toward his back, a likely location for a weapon just before Officer Evans fired. At the time he fired, Officer Evans had an objectively reasonable belief that Hodges posed an imminent danger, which created an honest belief that either he or another individual were about to be killed or suffer serious bodily injury. Accordingly, Officer Evans was justified in acting upon those appearances, fears and actual beliefs.

## 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, Officer Evans had probable cause to believe that Hodges posed a threat of serious physical harm either to himself or other persons. Officer Evans was aware there

was a clerk working in the 7-Eleven at the time. At the time he fired, Officer Evans was dealing with an individual matching the description of a double homicide suspect. The individual repeatedly refused to comply with the officer's commands and then appeared to be reaching to an area on his person which was a likely location for a weapon.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officer Hodges were in fact unjustified "in the discharge of a legal duty." Hodges's actions leading up to the shooting led Officer Evans to reasonably believe that Hodges may be in possession of a weapon and would use it.

## **Conclusion**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Officer Evans were reasonable and legally justified. Officer Evans had the right to employ deadly force as he reasonably believed that Hodges posed an imminent threat to himself or other persons.

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

Submitted MAY 21, 2014

STEVEN B. WOLFSON  
District Attorney

By

PAMELA WECKERLY  
Chief Deputy District Attorney