

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Abel Correa on August 7, 2015

INTRODUCTION

On August 7, 2015, Las Vegas Metropolitan Police Department Officers Eli Prunchak and Glen Taylor responded to 6980 Berkshire Place, Las Vegas, Nevada, to investigate an act of vandalism, allegedly perpetrated by Abel Correa, ID#2780029 (hereinafter, "Decedent"). During the investigation, a neighbor told the officers that, after committing the act of vandalism, Decedent entered Decedent's mother's residence at 6990 Berkshire, despite an active protective order prohibiting him from doing so. With permission from Decedent's mother and brother, the officers entered 6990 Berkshire Place to locate Decedent; while searching, Decedent's brother motioned to Officer Prunchak that Decedent was hiding in the closet immediately inside the front door. According to Officer Prunchak, when police opened the closet door, Decedent charged at Officer Prunchak while armed with a screwdriver and wrench. Officers Prunchak and Taylor discharged their firearms, striking Decedent. Decedent was pronounced dead at University Medical Center at 9:49 A.M. After a complete autopsy on August 8, 2015, forensic pathologist Dr. Lisa Gavin opined that Decedent died as a result of multiple gunshot wounds.

INCIDENT DETAILS

On August 7, 2015, at 6:16 AM, Witness #1 phoned police to report that his neighbor, Decedent, broke the front window of Witness #1's residence located at 6980 Berkshire Place. Witness #1 had a surveillance system installed on his residence, and the system captured Decedent throwing a ball hitch while standing next to the front door of 6990

Berkshire Place at 6:11 A.M. that morning. The ball hitch struck one of Witness #1's windows, causing it to break. The ball hitch travelled through the window and landed in a chair inside the house.



Figure 1. Video surveillance captured Decedent exiting 6990 Berkshire Place and throwing the ball hitch through the window of the neighboring residence.

After throwing the ball hitch, Decedent entered 6990 Berkshire Place, the residence neighboring 6980 Berkshire Place.



Figure 2. The ball hitch traveled through the window closest to 6990 Berkshire Place, the neighboring house.

During this 911 call, Witness #1 reported that Decedent's mother, Witness #2, resided at 6990 Berkshire Place and may have an active temporary restraining order against Decedent. Witness #1 also indicated that Decedent may be using methamphetamine. Decedent's possible drug use was relayed to officers via computer-aided dispatch; however, no officers were available to be dispatched to 6980 Berkshire Place at that time.

At 7:52 AM, Witness #1 called 911 for the second time, inquiring whether officers were coming to investigate. During this second call, Witness #1 reported that Decedent had not left 6990 Berkshire, and that Witness #2, Decedent's mother, was sitting outside the house. He again reiterated that Witness #2 has a restraining order against Decedent. During this second call, the existence of the restraining order was relayed to officers via computer-aided dispatch.

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06:17:32 EU          INITIATED BY      FRM-          TO-LV7682
06:17:32 CM          Operator LV/7682  Overrode Priority 2 with 0 Priority
06:17:32 CM          TL 6 .. PR HAS VIDEO OF NGHBR BRKG HOUSE WINDOW
06:17:32 CM          Primary Event: MAIN Opened: 15/08/07 06:17
06:18:05 CM          BC NO AVAIL UNITS 0618H RS
06:18:42 CM          NGHBR IS ADEL CORREA, HMA, 25YO, 5'10, MED BLD, WHT TSHIRT, BLU JNS ..
06:18:42 CM          0618HRS
06:20:09 CM          MALE POSS BACK INTO 6990 BERKSHIRE PL/TO LEFT OR ABV WHEN FACING .. NEG
06:20:09 CM          WPNS .. MALE IS ON 446/METH .. 0620HRS
06:21:09 CM          NO LONGER LL W/PR .. 0621HRS
06:27:33 EU          LLV150807000747 timed out queue updated
06:29:12 EU          T      FRM-441          TO-416B
06:29:12 EU          P      FRM-0            TO-1
06:59:17 EU          LLV150807000747 timed out queue updated
07:52:49 CM          50 RECALL FROM LESLIE HILDRETH 702-908-4724 NBR SUSPECT STILL @
07:52:49 CM          6990 BERKSHIRE PL NEG WEAPS SEEN // NBRS MOTHER HAS RESTRAINING ORDER
07:52:49 CM          AGAINST THE SON & IS WAITING OUTSIDE HER RES ALSO 0752
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Figure 3. The computer-aided dispatch log documented that Decedent's possible methamphetamine use and the existence of a restraining order were communicated to officers.

At 8:49 A.M., Las Vegas Metropolitan Police Department ("LVMPD") Officers Eli Prunchak and Glen Taylor were assigned to respond to 6980 Berkshire Place. Officer Taylor activated his department-issued body camera prior to his arrival. The video recorded the events leading to and including the shooting of Decedent, and subsequent events.

Taylor's body camera video reveals that, upon his arrival at the Berkshire address at 8:55 AM, Witness #1 immediately informed Officer Taylor of the restraining order against Decedent, that Decedent uses methamphetamine, and that Decedent had thrown a towing hitch through Witness #1's window that morning. Witness #1 also informed Officer Taylor that Decedent returned to 6990 Berkshire Place after throwing the ball hitch. Officers

Prunchak and Taylor then reviewed the video captured by Witness #1's surveillance system and confirmed the information conveyed by Witness #1.

After viewing the surveillance video, at 9:00 A.M., the officers attempted to contact Decedent next door at 6990 Berkshire Place. Sitting on a chair outside the front door of 6990 Berkshire was Witness #2, Decedent's mother. Officers Prunchak and Taylor asked Witness #2 for permission to enter the house. Witness #2 did not have keys to her residence on her person, so she phoned her youngest son, Witness #3, inside the residence and asked him to open the front door. Witness #3 then allowed the officers into the residence.

Both officers searched the residence for Decedent. While the officers were in the kitchen area of the home, Witness #3 opened the closet door immediately inside the front door and observed Decedent hiding there, holding a screwdriver. When Officer Prunchak returned to the living room area, Witness #3 informed Officer Prunchak of Decedent's location. Officer Prunchak then drew his firearm and nonverbally communicated to Officer Taylor that Decedent was hiding in the closet.

As Witness #3 exited through the front door of the residence, and while Witness #2 stood out of sight in the kitchen area, Officer Prunchak took a position just inside the closed front door. He stood approximately 3'11" from the closet, inside a corner formed by the intersection of the front door to his left and a love seat to his rear.

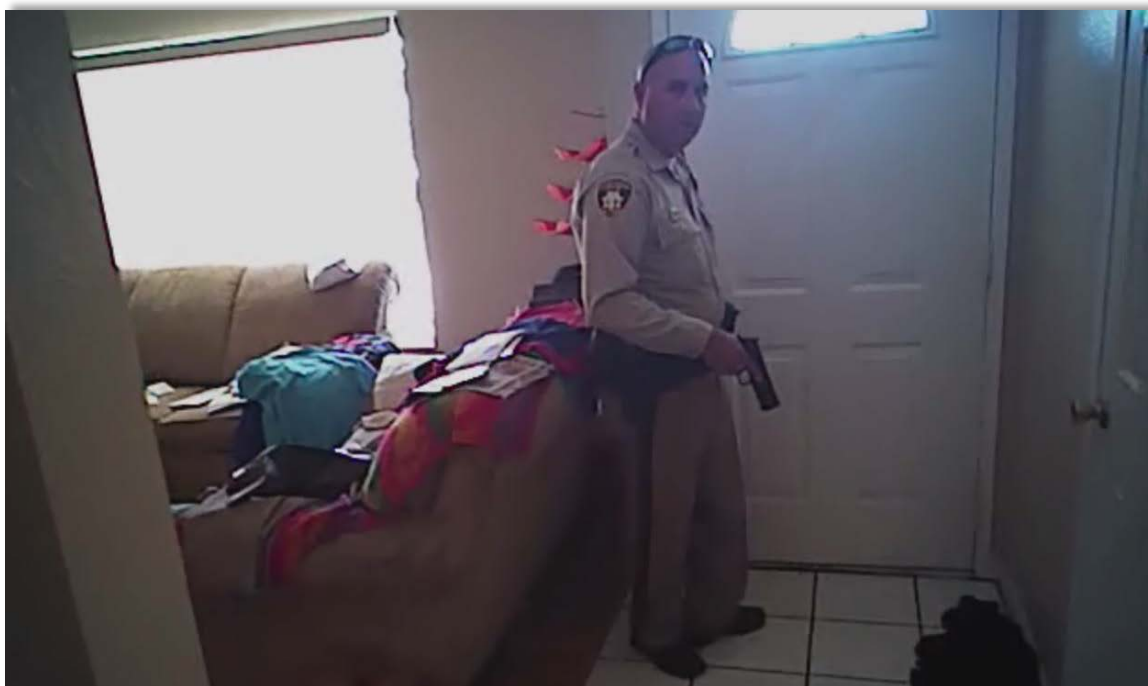


Figure 4. Officer Prunchak positioning himself inside with the front door to his left and a love seat to his rear.

Officer Taylor drew his weapon and positioned himself close to the closet door, opposite Officer Prunchak. When Officer Taylor opened the closet door, Decedent, who was armed with a screwdriver and wrench, emerged from the closet. With his firearm raised, Prunchak commanded Decedent to put his arms up as the officer retreated back into the corner formed by the love seat and the front door to the residence.



Figure 5. Officer Prunchak retreated into the corner formed by the love seat and the front door to the residence, as he commanded Decedent to put his arms up.

According to Officer Taylor, immediately upon opening the closet door, Decedent lunged out of the closet at Officer Prunchak. He described Decedent as taking an “attack stance” by raising his arms to his ears while holding what Officer Taylor believed to be a knife in his right hand and a metal object in his left.¹ Officer Taylor saw Officer Prunchak retreat backwards from Decedent as far as possible before becoming pinned in by the closed front

¹ Officer Taylor’s position and the angle of his body camera inhibited a direct recorded view of Officer Prunchak and Decedent as Decedent first exited the closet.

door to his left and the couch to his rear. At this point, Officer Taylor thought Decedent was going to stab Officer Prunchak, so Taylor discharged his firearm two (2) times at Decedent in an attempt to prevent Decedent from stabbing Officer Prunchak. Officer Taylor only saw that Decedent was armed with a screwdriver and a wrench after Decedent fell to the ground and dropped the objects.

Officer Prunchak described the shooting similarly. He told investigators that, as the closet door swung open, Decedent lunged out of the closet. Decedent had his hands raised up by his ears, holding a screwdriver in one hand and a wrench in the other, in an aggressive manner. Only when Officer Prunchak became blocked by the couch and the front door did he discharge his firearm three (3) or four (4) times to incapacitate Decedent.

The shooting occurred at 9:06 A.M., six (6) minutes after Officers Prunchak and Taylor entered the residence.

After the shooting, medical attention was immediately summoned. Officer Taylor reported that while medical personnel were performing lifesaving techniques on Decedent, more screwdrivers fell from Decedent's clothing. Decedent was transported to UMC and pronounced dead there at 9:49 A.M.

Subsequent to the initial investigation, countdowns confirmed that Officer Prunchak fired his weapon four (4) times and Officer Taylor fired his weapon two (2) times. Investigators also requested DNA testing on an orange-handled screwdriver recovered from the living room floor just east of the coat closet. The screwdriver was located adjacent to a crescent wrench (which was covered in apparent blood and not tested for DNA). A forensic scientist conducted a presumptive test for blood on both the handle and shaft of the screwdriver with negative results; however, the scientist was able to recover a partial DNA profile from both the handle and the shaft. While no conclusions could be drawn from the DNA profile recovered from the shaft, the profile recovered from the handle of the orange-handled screwdriver was found to be consistent with Decedent.

SCENE INVESTIGATION

The shooting took place inside the living room of the single family residence located at 6990 Berkshire Place, Las Vegas, Clark County, Nevada.

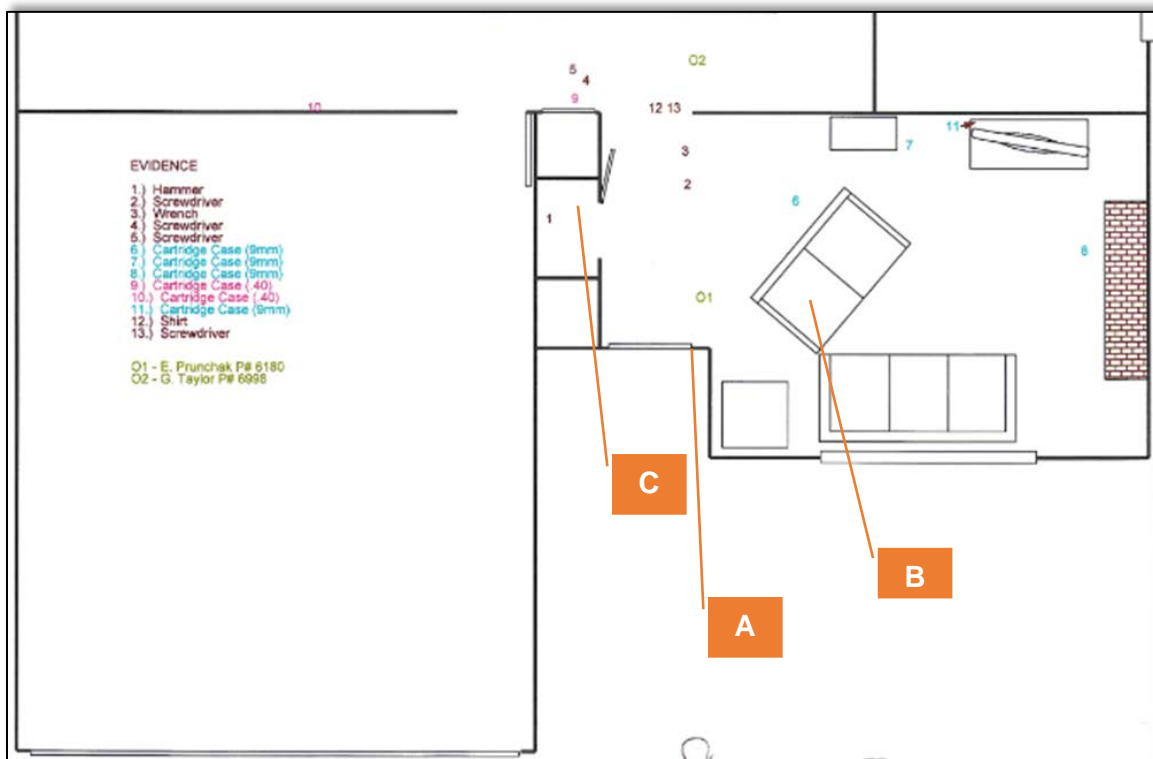


Figure 6. Diagram of the residence located at 6990 Berkshire Place.

The front door of the residence (A) opened inward and to the left and gave entrance into the living room at the southwest corner.

A tiled entryway extended north from the front door and terminated in the northwest corner of the living room with an east/west running hallway providing access to the rest of the residence. The entryway was on the west side of the living room. A love seat (B) was situated facing east and extended from the north side of a side table. The love seat was turned and was facing southeast.² A coat closet (C) was on the west wall of the entryway with the door to the closet opening out and to the right.

² The location of the love seat at the time of the scene investigation differs from its location at the time of the shooting, as revealed by Officer Taylor's body camera video.

The coat closet door was in the open position and multiple hand tools were located on the entryway floor. One (1) True Temper hammer was on top of a shopping bag inside the closet against the back (west) wall; one (1) Phillips-head screwdriver and one (1) Crescent wrench with apparent blood were on the entryway/living room floor just northeast of the open closet door; and one (1) red tank top with apparent blood and multiple holes in the fabric was on the floor with one (1) flathead screwdriver beneath it. The tank top and flathead screwdriver were located near the northwest corner of the living room and adjacent to the east/west running hallway. One (1) Craftsman flathead screwdriver and one (1) Great Neck USA screwdriver were on the floor near the entrance to the kitchen.

A total of four (4) cartridge cases bearing the headstamp “SPEER 9MM LUGER +P” were found at the residence. One (1) such cartridge case was on the entryway/living room floor just east of the open hall closet door. The remaining cartridge cases with the same headstamp were located in the following locations in the living room: one (1) on the floor between the television cabinets on the north wall of the room, one (1) on the floor in front of the fireplace on the east wall, and one (1) on the floor underneath the northwest corner of the east television cabinet on the north wall.

Two (2) cartridge cases bearing the headstamp “SPEER 40 S&W” were found at the residence. One (1) cartridge case was on the floor near the south wall of the hallway near the entrance to the kitchen. The second cartridge case was on the floor near the south wall of the room and adjacent to the southeast corner.

One (1) bullet hole was located in the west (back) wall of the hall closet. The hole was located 3’1” up from the floor and 1’ south of the north wall of the closet. The bullet perforated the west closet wall, exited the east wall of the garage, perforated the leading edge of the garage door into the residence, perforated the east wall of an entertainment center on the north wall of the garage, and impacted the opposite wall of the entertainment center shelf. A search was conducted of the garage for the bullet/fragments and none were located.

FORENSIC TESTING

I. FIREARMS AND BALLISTICS TESTING

A forensic scientist examined the four (4) 9mm cartridge cases and (2) .40 caliber cartridge cases found at the residence; a Glock .40 semiautomatic pistol recovered from Officer Taylor; a Sig Sauer 9mm semiautomatic pistol recovered from Officer Prunchak; and five (5) bullets recovered from Decedent’s body at autopsy.

Testing revealed that both firearms were in normal operating condition with no noted malfunctions.

The bullets and cartridge cases were microscopically examined and compared to test-fired bullets and cartridge cases from the pistols. That testing showed that the four (4) 9mm cartridge cases had all been fired from Officer Prunchak's Sig Sauer pistol, and the remaining two (2) .40 caliber cartridge cases had been fired by Officer Taylor's Glock pistol. Three (3) of the (5) bullets recovered from Decedent's body were matched to Officer Prunchak's Sig Sauer pistol. There was insufficient microscopic detail to conclusively identify which firearm fired the remaining two (2) bullets; however, these bullets bore the same overall characteristics as the test bullets from the Officer Taylor's Glock pistol.

II. BIOLOGY/DNA TESTING

DNA testing was performed on two (2) items recovered by a crime scene analyst at the residence: the orange-handled screwdriver found in the living room floor just east of the coat closet and adjacent to a crescent wrench, and the Craftsman-brand flathead screwdriver found on the hallway floor on the east side of the kitchen.

Presumptive testing for the presence of blood³ on the orange-handled screwdriver met with negative results. However, the forensic scientist recovered a partial DNA profile from both the handle and the shaft of the screwdriver. No conclusions could be drawn from the DNA profile recovered from the shaft, but the profile recovered from the handle of the screwdriver was found to be consistent with Decedent. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial DNA profile obtained from the handle of the orange-handled screwdriver is approximately 1 in 685 quadrillion.

Presumptive testing for the presence of blood on the Craftsman-brand screwdriver met with positive results on the handle of the screwdriver, from a stain on the shaft of the screwdriver, and on the remaining non-stained surfaces of the shaft. The full DNA profiles recovered from all three locations were consistent with Decedent. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profiles obtained from all three locations on the Craftsman-brand screwdriver is approximately 1 in 1.17 sextillion.

³ A presumptive test is an indication, but not confirmation, of the identity of a body fluid.

AUTOPSY

On August 8, 2015, Dr. Lisa Gavin performed an autopsy on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner. Dr. Gavin noted five (5) gunshot wounds on Decedent's body:

1. Gunshot wound of left upper chest
2. Gunshot wound to the left flank
3. Gunshot wound to the left hip overlying left iliac crest
4. Gunshot wound of the right mid-lateral back
5. Gunshot wound to the near center of the back.

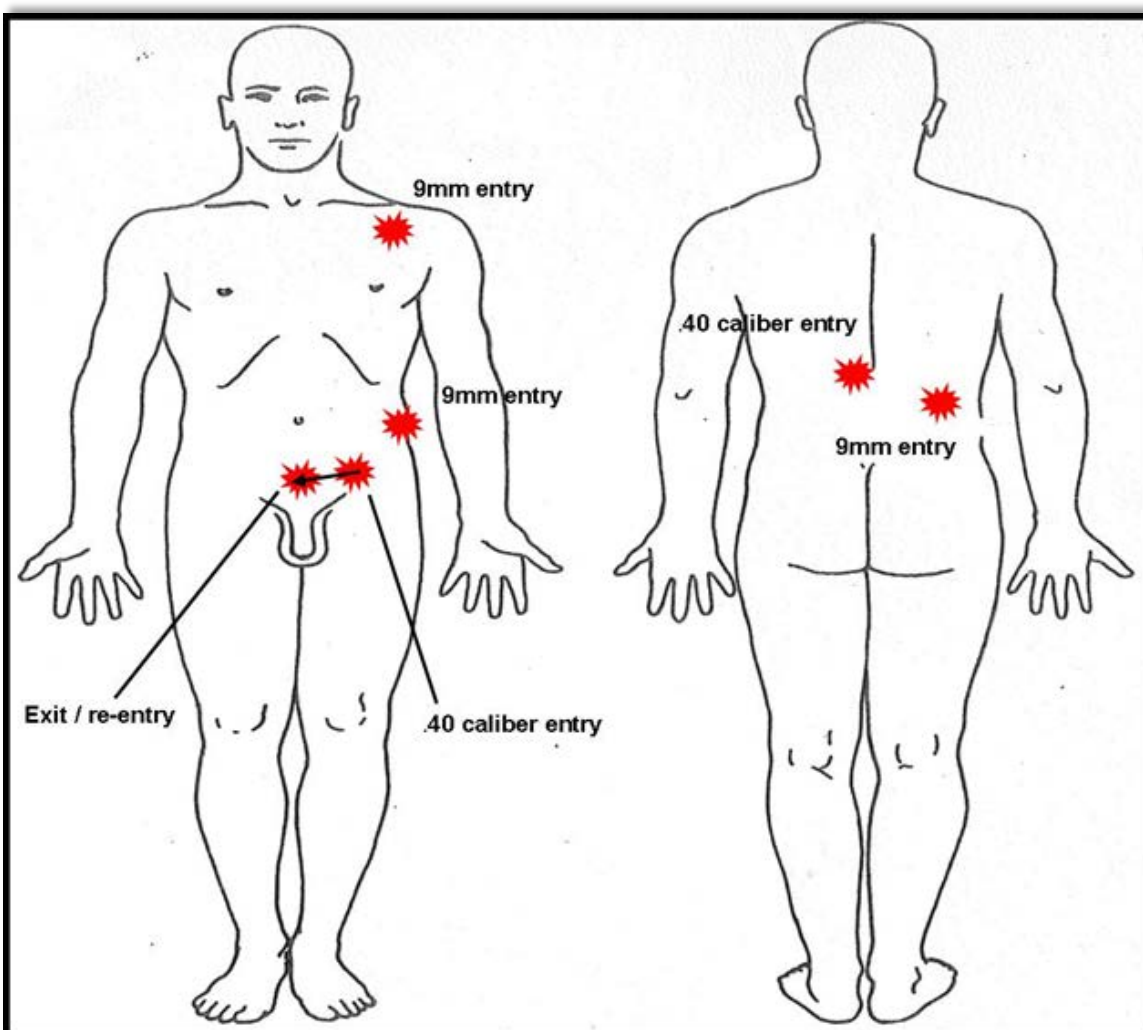


Figure 7. Dr. Gavin noted five (5) gunshot wounds on Decedent's body.

Dr. Gavin concluded that the cause of death was the result of multiple gunshot wounds.

A toxicology report of the specimens collected at autopsy reflected positive findings for narcotics at the time of Decedent's death. His blood contained 550 ng/mL of Methamphetamine and 65 ng/mL of amphetamine (a methamphetamine metabolite). As indicated on the toxicology report, "[b]lood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior."

Decedent's blood also revealed the presence of 2.0 ng/mL of Delta-9 THC and 12 ng/mL of Delta-9 Carboxy THC (the inactive metabolite of Delta-9 THC), which indicates that Decedent likely consumed marijuana several hours prior to the shooting.⁴

HISTORY OF DECEDENT

According to court papers, police reports, and witness interviews, Decedent had a recent history of violence and drug abuse, and was involuntarily committed one (1) time approximately 45 days prior to his death. This information provides some insight into Decedent's behavior before and during this incident.

On June 18, a domestic dispute occurred between Decedent and his mother, Witness #2. During the incident Decedent had locked himself in his mother's bedroom and started destroying items. Responding police officers instructed Witness #2 on the steps needed to obtain a Temporary Protection Order ("TPO") against domestic violence against Decedent. The officers' investigation revealed that no battery had occurred and the call was cleared.

The following day, Witness #2 filed for the TPO, which was granted on June 22. Witness #2 wrote in her application for the protective order that Decedent abused her on several occasions, threatened her and her younger son, and insulted her. She claimed Decedent "wants to take [her] out." She felt that "there is no peace at home but fear[;] we cannot sleep out of fear the he might do something to us..." In conclusion, she stated that "we cannot control him[,] we are terrorized."

Decedent also had conflict with the neighbors living at 6980 Berkshire Place during this same period. One of the residents of that home informed investigators that tires were slashed on some of the family vehicles on June 20, 2015, and that the side of their house had been egged. After having the tires repaired, tires on two (2) vehicles were slashed again

⁴ The toxicology report referenced that "peak THC concentrations in serum after smoking 1.75% or 3.44% THC marijuana cigarettes are 50-270 ng/mL after beginning of smoking, decreasing to less than 5 ng/mL by 2 hrs. Corresponding delta-0-carboxy-THC concentrations range from 10-101 ng/mL about 32-240 minutes after the beginning of smoking and decline slowly."

on June 22. At that time, Decedent approached the neighbor while he was working in the yard and asked, "You, you all, what type of witchcraft do you do?" Another resident of 6980 Berkshire Place told investigators that, when confronted about the vandalism on June 20 and June 22, Decedent stated that he "did that because you guys are doing witchcraft."

Believing Decedent was responsible for slashing their tires, the residents of 6980 Berkshire Place called police on June 22.⁵ Decedent was reported to be carrying a hammer at that time, and when he refused to show his hands to responding officers, he was taken down with an arm bar and taken into custody. Decedent was issued a citation for Obstructing a Public Officer and transported for psychiatric evaluation and hold.

Meanwhile, due to the trouble with Decedent, the neighbor's family installed surveillance cameras: two (2) cameras facing the driveway and one (1) watching their front door pointed towards Decedent's residence.

On July 7, another domestic dispute occurred between Decedent and Witness #2. While waiting for police, Decedent slashed the tires of Witness #2's pickup truck. Witness #2 refused to file charges against Decedent. Decedent was served the TPO by responding officers. The officers' investigation revealed no battery occurred and the call was cleared.

Due to all the problems Decedent had caused, Witness #2 told Witness #3, Decedent's brother, not to allow Decedent inside the house. It had been over a month since Decedent had been inside the house, and Witness #2 did not know how Decedent gained entry to the house on August 7, 2015.

Decedent's brother, Witness #3, corroborated much of what Witness #2 and the residents of 6980 Berkshire Place told investigators. Witness #3 stated that Decedent had been using drugs and when he was on drugs he would have problems with the family. Witness #3 also corroborated that Decedent would argue and fight with the police when they would come to the residence.

⁵ Decedent was not served with the TPO at this time because the Order was not inputted into the computer database until June 23, 2015.

INFORMATION FROM WITNESSES

I. CIVILIAN WITNESSES

Seven (7) civilian witnesses were interviewed during the investigation. No civilian witness observed the shooting inside the residence, although several heard the gunshots.

Witness #3, Decedent's brother, provided pertinent information when he told investigators in a recorded interview that, prior to the shooting, he

looked inside the closet and [Decedent] was in there...And he had - he - he had a screwdriver and so when the cop came back I told 'em that he was in there.

However, Witness #3 did not tell either Officer that he had seen Decedent armed with a screwdriver.

Witness #3 also informed investigators that he did not hear the officers say anything to Decedent before hearing the shots fired.

II. POLICE OFFICERS

A. Officer Eli Prunchak

Officer Prunchak conducted an unrecorded walk-through of the scene with investigators, and provided an unrecorded Public Safety Statement to Sergeant Robert Bohanon.

During the walk through and in his Public Safety Statement, Prunchak told investigators that he was standing on the west side of the closet door and motioned to Officer Taylor to open the closet door. Officer Taylor stood on the east side of the door and swung it open. As the door was opening, Decedent lunged out of the closet at Officer Prunchak. Decedent was holding a screwdriver in one hand and a wrench in the other. Decedent had his hands raised up by his ears in an aggressive manner. Officer Prunchak attempted to back away from Decedent but was blocked by a couch in the entryway to the house. Officer Prunchak then discharged his firearm three (3) or four (4) times at Decedent to stop him. Officer Taylor, who was standing a little bit further inside the house and opening up the closet door at the time of the shooting, also discharged his firearm.

At the conclusion of the walk-through, Officer Prunchak placed an orange traffic cone on the ground where he believed he was standing when he discharged his firearm.

B. Officer Glen Taylor

Officer Taylor conducted an unrecorded walk-through of the scene with investigators, and provided an unrecorded Public Safety Statement to Sergeant Robert Bohanon.

During the walk through and in his Public Safety Statement, Taylor told investigators that Officer Prunchak stood on the west side of the closet door while Officer Taylor stood on the east side. Immediately upon Officer Taylor opening the closet door, Decedent lunged out of the closet at Officer Prunchak. Decedent was holding what Officer Taylor thought was a knife in his right hand and a metal object in his left hand. Decedent was holding his hands up by his ears in an “attack stance.” Officer Taylor saw Officer Prunchak retreat backwards from Decedent, but was pinned in by the closed front door and a couch. Officer Taylor thought Decedent was going to stab Officer Prunchak, so he discharged his firearm two (2) times at Decedent in an attempt to prevent Decedent from stabbing Officer Prunchak. After Decedent was shot, he fell to the ground and dropped the objects in his hands. After Decedent dropped the objects, Officer Taylor could see Decedent was armed with a screwdriver and a wrench, not a knife. While medical personnel were performing lifesaving techniques on Decedent, more screwdrivers fell from his clothing. Officer Taylor identified the screwdriver and the wrench lying next to Decedent’s body as Decedent’s weapons.

At the conclusion of the walk-through, Officer Taylor placed an orange traffic cone on the ground where he believed he was standing when he discharged his firearm.

III. DISTANCE OF OFFICERS AT THE SCENE

From all the physical evidence, forensic analysis and interviews, investigators were able to determine the approximate distances from the involved officers to Decedent at the scene:

Officer Prunchak..... 3’11”
Officer Taylor..... 6’11”

Measurements also established that Officer Prunchak stood approximately 8’8” from Officer Taylor.

LEGAL ANALYSIS

The District Attorney’s Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes

determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

I. THE USE OF DEADLY FORCE IN DEFENSE OF 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.⁶ 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

⁶ 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.

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 Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must disprove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an apparent imminent danger to Officers Prunchak and Taylor. By concealing himself in a closet, and then holding up a wrench and screwdriver in an “attack stance” when discovered, Decedent naturally appeared to pose an imminent danger to Officers Prunchak and Taylor. Indeed, Officer Taylor believed the screwdriver to be a knife and that Decedent was going to stab Officer Prunchak. Thus, when Decedent confronted the officers in this manner in the close quarters of the entryway, the officers had a duty to respond and a right to utilize deadly force. Therefore, Officers Prunchak and

Taylor acted in reasonable fear of a threat to their lives and the lives of each other at the time each fired.

II. JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

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

In this case, the facts illustrate that Officers Prunchak and Taylor were reasonable in their belief that Decedent posed a serious threat to the safety of the officers as well as Decedent’s family. At the time they entered the residence, the officers were investigating the act of vandalism Decedent had allegedly committed earlier that morning, and investigating Decedent’s violation of the active TPO for domestic violence. During that investigation, as aforementioned, both officers saw what they perceived to be weapons in the hands of Decedent when Officer Taylor opened the closet door. Decedent’s threatening posture confirmed the officers’ fears for their safety and the safety of Decedent’s family, and their discharge of their weapons to end the threat posed to them was lawful.

These circumstances created probable cause in the minds of Officers Prunchak and Taylor that Decedent posed a threat of serious physical harm either to them and/or each other and/or Decedent’s family. The Officers overcame that threat by firing their weapons into Decedent’s body.

In light of all the evidence reviewed to date, the actions of Officers Prunchak and Taylor were justified and appropriate “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Las Vegas Metropolitan Police Department Officers Eli Prunchak and Glen Taylor 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 Officers Prunchak or Taylor, and, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.