



# OFFICE OF THE DISTRICT ATTORNEY

**STEVEN B. WOLFSON**

*District Attorney*

**CHRIS OWENS**

*Assistant District Attorney*

**TERESA M. LOWRY**

*Assistant District Attorney*

**MARY-ANNE MILLER**

*County Counsel*

April 6, 2012

## **DECISION REGARDING HPD EVENT OF OCTOBER 29, 2010**

Early in February, 2012, an incident came to light involving members of the Nevada Highway Patrol and the Henderson Police Department and their efforts to take a motorist into custody. This memorandum is intended to provide a transparent analysis into the charging decision with respect to police conduct during this event.

The incident was recorded on police video – which is, indeed, disturbing to watch – and has been broadcast throughout the valley by local media and via the internet countless times. It is now public knowledge that Adam Greene, the motorist depicted in the video, was not a criminal, but instead was suffering the effects of a diabetic reaction. However, the officers involved did not have the benefit of knowing this. They believed they were dealing with a person who had broken the law and was endangering the lives of others. More importantly, those officers also believed Mr. Greene was forcibly resisting their efforts to take him into custody.

### **The Underlying Facts of the Vehicle Pursuit and Stop**

On October 29, 2010, at approximately 4:04 a.m., the Nevada Highway Patrol began to follow a tan Honda Civic which was driving without its headlights on and failing to maintain its travel lane. An objective observer would believe that the driver of the vehicle was under the influence. The driver of the Civic refused to pull over when troopers activated their lights and sirens. Members of the Henderson Police Department joined the pursuit which, in total, lasted approximately fourteen minutes and coursed the distance of several miles. Eventually, the vehicle came to a stop in the middle travel lane of Lake Mead Parkway at Boulder Highway.

The driver of the Civic, Adam Greene, failed to comply with officers' demands. Mr. Greene, who stood 6'9" tall and weighed 270 pounds, struggled with members of law enforcement when they removed him from his vehicle. Mr. Greene resisted officers' efforts to place handcuffs on him. At various times, approximately six officers were involved in attempting to place Mr. Greene into handcuffs. During this process, Henderson Police Officers Douglas Lynaugh and Seth VanBeveren delivered multiple knee strikes to Mr. Greene's body in an attempt to get Mr. Greene to place his hands behind his back where they could be seen and so he could be handcuffed. Henderson Police Sergeant Brett Seekatz kicked Mr. Greene a total of five times in his shoulder, chest and head area. Mr. Greene continued to struggle. He was finally placed into handcuffs and all restraint efforts by members of law enforcement immediately ceased. Mr. Greene was helped to his feet by the officers.

Medical personnel were summoned and determined that Mr. Greene had suffered a diabetic reaction. This could not be determined until Mr. Greene had been handcuffed and searched. He was treated for the condition at the scene and released.

### **Working With the Evidence Immediately Available to Us**

Neither the Nevada Highway Patrol nor the Henderson Police Department submitted a "request for prosecution" related to the actions of law enforcement to the Clark County District Attorney's Office. Upon inquiry, we were initially informed by the Henderson Police Department that there were no police reports generated as a result of these events. After carefully reviewing the video of this incident, captured from a Nevada Highway Patrol dash-cam, it was determined that no criminal charges would be filed against any member of law enforcement involved in taking Mr. Greene into custody.

### **Looking Deeper Into the Matter and Finding More Information**

After this initial decision had been reached, it was learned that there were, in fact, police reports documenting the events of Mr. Greene's vehicle stop which had been prepared by both the Nevada Highway Patrol and the Henderson Police Department. In addition, the District Attorney's Office was informed of citizen complaints made against Sergeant Seekatz during this same time period. After investigation by the Internal Affairs Division of the Henderson Police Department, these complaints were found to be unsubstantiated. Nevertheless, these facts caused us to once again evaluate whether police conduct in restraining Mr. Greene was criminal.

For that review, we assembled ten attorneys, representing the Major Violators Unit, the Case Assessment Unit and the Administrative Division of the District Attorney's Office, including me. Several of these attorneys have actual trial experience litigating cases in

which police officers were prosecuted for engaging in the excessive use of force. The evaluation of evidence included numerous police reports, the Henderson Police Department Use of Force Policy, training materials, an interview containing Mr. Greene's account of the events, as well as the Nevada Highway Patrol video. These evaluators also took into consideration training provided by the Henderson Police Department to its officers.

Representatives of the District Attorney's Office contacted and interviewed Mr. Greene. His account of the events of October 29, 2010, is extremely limited due to the diabetic reaction he was suffering at the time. At the end of the interview, Mr. Greene made the comment to the District Attorney investigator, "I think it's important to note that we didn't contact you." He continued, "We're not pushing one way or the other and we'd be fine with whatever outcome you guys decide is the best."

The Henderson Police Department Use of Force Policy in existence at the time provides that "non-deadly force is restricted to ... actions taken to compel or constrain resistant/combatative subjects, or to take an offender into custody." Henderson Department Policies and Procedures – Use of Force 0650.03 (July 7, 2010). It does not specifically prohibit the use of kicking and places no limitation on how kicks are to be performed. In fact, its officers are specifically trained to use kicks in use of force situations.

### **The Legal Analysis of Whether to File a Criminal Charge**

The primary question analyzed by the evaluators was whether any of the officers involved in taking Mr. Greene into custody could be charged with the felony offense of Oppression Under Color of Office. That offense is defined as follows:

An officer ... who *unlawfully and maliciously*, under pretense or color of official authority ... [d]oes any act whereby the person, property or rights of another person are injured, commits oppression. An officer ... committing oppression shall be punished ... [w]here physical force or the immediate threat of physical force is used, for a category D felony ....

NRS 197.200 (emphasis added). The central inquiry was whether officers' actions constituted an unlawful and malicious use of force. Malice is specifically defined by Nevada statute:

“Malice” and “maliciously” import an evil intent, wish or design to vex, annoy or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

NRS 193.0175.

When considering whether the officers’ actions were unlawful and malicious, precedent from the United States Supreme Court required an analysis from the point of view of a reasonable officer at the scene:

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. ... With respect to a claim of excessive force ... “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers” violates the Fourth Amendment. The calculus of reasonableness must embody allowance 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.

*Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (internal citations omitted).

Although it is certainly true that the video of this incident is offensive to watch, careful review of the information gathered, particularly the Henderson Police Department Use of Force Policy and the materials used to train its officers, lead all ten evaluators to conclude that the conduct in this case did not rise to the level of a criminal offense which could be successfully prosecuted.

None of the officers acted maliciously. After kicking Mr. Greene approximately five times, Sergeant Seekatz seemed to realize that his actions were not helping to overcome Mr. Greene’s apparently confrontational behavior. Similarly, Officers Lynaugh and VanBeveren stopped administering knee strikes after Mr. Greene’s resistant behavior subsided. Moreover, it cannot be said that any of the officers acted maliciously when they utilized the very techniques they were trained and instructed to use when confronted with resistant behavior.

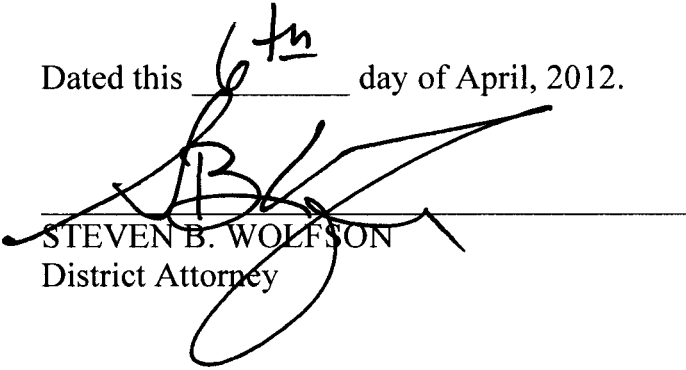
Many times in oppression cases, those accused of the excessive use of force author reports designed to minimize their actions or, in egregious cases, to mislead others about what occurred. Here, the reports written by officers were entirely accurate, fully articulating the force used against Mr. Greene and the reasons for using the force. In addition, the force used by officers in this case appears not to be in conflict with the use of force policy in place at the time. When force was used, Mr. Greene was actively

resisting officers' efforts to place him into handcuffs. Once that goal was accomplished, all use of force stopped and Mr. Greene was helped to his feet. This is entirely inconsistent with malicious conduct.

Based upon the foregoing, no charges will be filed.

This memorandum is in keeping with my pledge to provide more open and transparent decisions within the District Attorney's Office, particularly regarding the conduct of police officers. We will continue to meet with members of law enforcement and community interest groups to discuss and analyze the important issues that affect our community, with an eye toward establishing more confidence in the criminal justice system.

Dated this 6<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
STEVEN B. WOLFSON  
District Attorney