

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Ronald Morrison on October 29, 2012

INTRODUCTION

On Monday, October 29, 2012, at approximately 1453 hours, Jeremy Moen, who works for Ross Dress For Less, called 911 to report a person had been shot. Las Vegas Metropolitan Police Department patrol officers were dispatched to Ross Dress For Less at 2420 E. Desert Inn Rd., Las Vegas, Nevada. The first responding officers contacted Jason Harnisch in the parking lot southwest of Ross Dress For Less. Harnisch had been shot in the hand. Patrol officers rendered aid until Clark County Fire Department rescue units arrived. Patrol officers were able to get a physical description of the suspect from Harnisch. The description was broadcasted over the police radio. Cadet Vincent Diasparra arrived on the scene and was instructed to search for the crime scene where Harnisch had been shot. Cadet Diasparra went to the north of the Ross Dress For Less. At that location, Cadet Diasparra observed a subject matching the description of the shooting suspect sitting against a wall at the rear loading dock ramp. Cadet Diasparra broadcast that information over the radio. Patrol officers were in the area and responded to that location. Officer Samantha Wimmer was the first to make contact with the suspect, later identified as Ronald James Morrison, who stood up and began to approach her on foot. Officer Wimmer gave verbal commands to Morrison to show his hands. Officer Wimmer was joined by Officers Michael Henry and Michelle Iacullo. Morrison had a gun in his right hand. Morrison did not comply with the officers' commands. In fact, Morrison pointed his gun at the officers. The three officers discharged their handguns, striking Morrison, who fell to the ground. Officers handcuffed Morrison and secured the area of the shooting with crime scene tape. Clark

County Fire Department paramedics on scene attempted to render medical aid; however, Morrison died as a result of his injuries and was not transported to the hospital. A black Smith & Wesson, .38 caliber, hammerless five shot revolver was found at the feet of Morrison, hereinafter referred to as Decedent. The revolver cylinder was loaded with five fired cartridge cases. The Decedent was the registered owner of the gun.

The District Attorney's Office has completed its review of the October 29, 2012, death of Decedent. 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 officers were not criminal in nature. This review was based on all the evidence currently available.

This report explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review held on August 14, 2013. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the LVMPD or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

INTERVIEWS OF INDIVIDUALS FROM THE PRIOR SHOOTING

Victim Jason Harnisch

On October 29, 2012, at approximately 1806 hours, Detective Embrey conducted a recorded interview with Jason Harnisch inside Sunrise Medical Center ER. Harnisch said he was currently homeless and had been living in Las Vegas for approximately one year. Harnisch went to the Smoke Shop located in the strip mall east of Ross Dress For Less, where he paid the clerk a dollar which was owed. Harnisch walked back to the dumpster area located behind the Ross Dress For Less where he smoked some marijuana. About 30 minutes later, a white male adult approached Harnisch and asked if he wanted to eat some chicken. Harnisch initially told the man he would, so he sat down. The man immediately started asking him numerous questions and began scooting closer. Harnisch felt the man was some type of child molester. Harnisch told the man to get away from him but the man kept following him and asking questions. Since the man would not leave him alone, Harnisch punched the man in the mouth. The man walked away north bound behind the old restaurant. Harnisch walked to the breezeway which was located to the east of Ross Dress For Less.

Harnisch was in the breezeway when he realized the man was back. The man started shooting a handgun at Harnisch. Harnisch believed the man shot at him three times and one of those rounds struck him in the right hand. After he was shot, Harnisch charged at the man and was able to get the handgun away. Harnisch explained since he did not want the police to see him with the handgun he placed the handgun down on the ground and ran off south through the parking lot where he was contacted by police and later taken to the hospital. Harnisch said he did not know where the man went after the shooting. Harnisch had never seen the man before this incident.



Injury to Harnisch's right hand.

Witness #1

On October 31, 2012, at approximately 1416 hours, Det. S. Smith and Det. R. Wilson conducted an interview with Witness #1. Witness #1 was a volunteer at the re-elect Obama-Biden campaign headquarters which was located east of the Ross Dress For Less. Witness #1 was a witness to the attempt murder. Before the interview, Det. Smith showed Witness #1 a photograph of Jason Harnisch and the Decedent. Witness #1 positively identified Harnisch as the victim of the shooting and the Decedent as the suspect. Witness #1 did not witness the Officer Involved Shooting (OIS.) On October 29, 2012, at approximately 1445 hours, Witness #1 was standing on the sidewalk, with his wife, outside of the campaign headquarters. Witness #1 saw Harnisch walking in the area. He had met Harnisch on a previous occasion.

Shortly after seeing Harnisch, Witness #1 heard gunshots coming from the area between the Ross Dress For Less and the campaign headquarters. He thought it was between three and four shots. He went inside of the headquarters with his wife. He instructed the workers to stay inside of the building. Witness #1 went outside to investigate. He saw Harnisch who appeared to be bloody and holding his side. Witness #1 walked to the breezeway where he thought the gunshots were fired. He looked in the breezeway and saw the Decedent. Witness #1 looked in a rectangle dirt area and saw a revolver. Witness #1 saw the Decedent pick up the revolver and put it in his belt. He then saw the Decedent walk north toward the rear of Ross Dress For Less. Witness #1 saw Harnisch walking south toward the Starbucks. Witness #1 yelled, "Stop", at the Decedent, who continued walking north bound. Witness #1 followed the Decedent but lost sight of him. Witness #1 then saw Harnisch with Officer Iacullo. Witness #1 went to their location and gave Officer Iacullo information about the shooting. Witness #1 completed a written voluntary statement at that time.

INTERVIEWS OF OFFICERS AT THE SCENE OF THE SHOOTING

Sgt. Herring

On October 29, 2012, at approximately 1759 hours, Detective C. Mogg interviewed Sgt. Joey Herring. Sgt. Herring said Officer M. Henry was riding with him, and while patrolling on Desert Inn Road he heard a radio broadcast of a shooting at the Ross Dress For Less at Desert Inn Road and Eastern. They arrived and Sgt. Herring saw Officer Iacullo attending to a white male who was lying in the southwest corner of the Ross Dress For Less parking lot. It appeared the male had been shot in his right hand. Sgt. Herring overheard the victim tell Officer Iacullo that he was behind the Ross Dress For Less, and was asking someone for a “blunt” when he was shot by that person. The victim described his attacker as a white or Hispanic male with dark clothing, last seen running north on Eastern. According to Sgt. Herring, Officer Iacullo broadcast the description of the suspect over the radio. Sgt. Herring said the fire department treated the victim, and Medic West Ambulance transported the victim to Sunrise Hospital.

Sgt. Herring saw Officer Wimmer was near the Ross Dress For Less, and Officer Iacullo was putting up crime scene tape when he heard Cadet Diasparra call out over the radio that he had a possible suspect at the loading dock at the rear of the Ross Dress For Less. After hearing the broadcast, Sgt. Herring saw Officer Wimmer walking toward the loading dock, and he sent Officers Henry and Iacullo to assist Officer Wimmer. The officers went around the corner of the store toward the loading dock.



Loading dock area behind Ross Dress For Less where the shooting occurred.

Moments after the officers went around the corner of the store, Sgt. Herring heard Officer Henry broadcast that shots had been fired. Sgt. Herring did not hear the shots, and estimated that less than a minute had passed between the time the officers walked around the corner and the shots fired call was broadcast. Sgt. Herring notified the fire department paramedics, who were still on scene, that officers had been involved in a shooting behind the Ross Dress For Less, and then he drove to the rear of the store. When Sgt. Herring arrived at the loading dock, he saw Officers Iacullo, Henry, and Wimmer standing in the loading dock area in a semi-circle around the suspect. Sgt. Herring said he jumped over a wall into the loading dock area and saw the suspect lying face up on the ground. A small black .38 revolver was on the ground near the suspect. Sgt. Herring directed the officers to handcuff the suspect, and then he called for medical to come in. Sgt. Herring did not hear the suspect say anything. Sgt. Herring said at the time the description of the suspect was broadcast, the suspect was wanted for the felony crime of Battery with a Deadly Weapon or Attempted Murder depending on the victim's statements.



Decedent's revolver recovered next to his body.

Cadet Vincent Diasparra

On October 29, 2012, at approximately 1850 hours, Detective C. Mogg interviewed Cadet Vincent Diasparra. During the interview, Cadet Diasparra said he was dispatched on the original event of a person shot. When he arrived in the parking lot on the southwest corner of the Ross Dress For Less he saw the victim, who was shot in the hand, lying on the ground. The fire department was already on scene. Cadet Diasparra was directed to the southwest corner of the Ross Dress For Less to help Officer Wimmer, but Officer Iacullo asked him to start a Major Incident Log. Cadet Diasparra remembered hearing about a crime scene on the northwest corner of the Ross Dress For Less, so he went to that location to start his incident log.

When Cadet Diasparra arrived at the northwest corner of the Ross Dress For Less, he saw a male sitting on the curb in the northeast corner of the loading dock. Cadet Diasparra described the male as either white or Hispanic, wearing a black t-shirt and blue jeans. The male was sitting on the north curb facing west with his feet stretched out in front of him and his back against the wall. As Cadet Diasparra was looking at the male, he heard the description of the suspect in the shooting broadcast over the radio and realized that the person he was looking at could be the suspect. Cadet Diasparra got on his radio and broadcast that he had a person who matched the suspect's description

in the loading dock area of the Ross Dress For Less. Cadet Diasparra thought this could be the suspect who shot the victim, and that the suspect could be dangerous. After he broadcast the suspect's location, Cadet Diasparra saw Officer Wimmer walking north along the west side of the Ross Dress For Less toward the loading dock. Cadet Diasparra got back on the radio and advised Officer Wimmer when she turned the corner the suspect was going to be on the east end of the loading dock. Cadet Diasparra got out of his car and watched as Officer Wimmer walked east down the loading dock toward the suspect. Cadet Diasparra said he heard people talking with raised voices, but couldn't determine what was being said.

When Officer Wimmer began talking to the suspect, he was originally seated, but then got up and began walking toward Officer Wimmer. According to Cadet Diasparra, Officer Wimmer was approximately halfway down the ramp when the suspect got up and began walking toward her location. As Officer Wimmer continued talking with the suspect, Cadet Diasparra heard footsteps and saw Officers Iacullo and Henry running down the loading dock ramp toward Officer Wimmer. All three officers had their pistols drawn as they continued talking to the suspect, and as the suspect continued to advance. The suspect was 10 to 15 feet away from the officers when he pulled something dark out of his right pocket or right waistband and began to raise it in the direction of the officers. Due to the circumstances of the call and the fact the suspect was not complying with the officer's commands, Cadet Diasparra felt the suspect had a gun. As the suspect began to point the item in his hand toward the officers, Cadet Diasparra heard multiple gunshots, and realized the officers had fired at the suspect. The officers stopped firing as soon as the suspect fell to the ground. After the suspect was on the ground, the officers advanced toward the suspect and placed him in handcuffs. Cadet Diasparra believed the officers had nowhere to retreat to, and if they had not acted the suspect posed an immediate threat to civilians who were in the area.

PUBLIC SAFETY STATEMENT OF OFFICERS INVOLVED IN THE SHOOTING

Officer Wimmer:

On October 29, 2012, at approximately 1635 hours, Detective Embrey conducted a recorded interview with Sergeant Todd Mueller P# 6489 inside his unmarked police vehicle at 2420 East Desert Inn Road. Sgt. Mueller obtained a recorded Public Safety Statement from Officer Wimmer P# 9498 following the shooting. Sgt. Mueller asked Officer Wimmer questions off of the Public Safety Statement card. Sgt. Mueller provided Officer Wimmer's responses.

1. Is anyone injured? If so, where is the person located? Officer Wimmer replied "The suspect only was injured and the suspect is located to the rear of the Ross Dress For Less."
2. Are there any outstanding suspects? If so, what are their description, direction and mode of travel? How long have they been gone? Officer Wimmer replied "None."
3. For what crime(s) are they wanted? What type of weapons did they possess? Officer Wimmer replied "415A, weapon possessed was a handgun."
4. Were you or another officer involved in a shooting? Officer Wimmer replied "Yes, herself and two other officers."
5. Where were you when you fired your weapon? Officer Wimmer replied "I was backing away westbound from the suspect, ten to fifteen feet when I shot."
6. How many rounds did you fire and which direction did you shoot your firearm? Officer Wimmer replied "Fired two rounds east from her location."
7. Is it possible the suspect fired at you? If so, which direction did the suspect fire his weapon? Officer Wimmer replied "I don't know if he fired, but he was pointing at me."
8. Are there any weapons or evidence that we should secure? If so, where are they located? Officer Wimmer replied "the suspect's handgun, which should be next to him."
9. Are you aware of any witnesses to the event? If so, where are they located? Officer Wimmer replied "She was unaware of any outside witnesses, only officers."

Officer Henry:

On October 29, 2012, at approximately 1644 hours, Detective Embrey conducted a recorded interview with Sergeant Jeff Hewes P# 6797 inside his unmarked police vehicle at 2420 East Desert Inn Road. Sgt. Hewes obtained a recorded Public Safety Statement from Officer Henry P# 8077 following the shooting. Sgt. Hewes asked Officer Henry questions off of the Public Safety Statement card. Sgt. Hewes provided Officer Henry's responses.

1. Is anyone injured? If so, where is the person located? Officer Henry replied "Just the suspect."
2. Are there any outstanding suspects? If so, what are their description, direction and mode of travel? How long have they been gone? Officer Henry replied "No outstanding that I know of."
3. For what crime(s) are they wanted? What type of weapons did they possess? Officer Henry replied "Not applicable."

4. Were you or another officer involved in a shooting? (This question was not asked)
5. Where were you when you fired your weapon? Officer Henry replied "Loading ramp behind Ross."
6. How many rounds did you fire and which direction did you shoot your firearm? Officer Henry replied "Five to six to the east."
7. Is it possible the suspect fired at you? If so, which direction did the suspect fire his weapon? Officer Henry replied "No."
8. Are there any weapons or evidence that we should secure? If so, where are they located? Officer Henry replied "A black revolver, I pushed it to about his feet."
9. Are you aware of any witnesses to the event? If so, where are they located? "Just officers that I'm aware of."

Officer Iacullo:

Sgt. Hewes obtained a recorded Public Safety Statement from Officer Iacullo P# 7857 following the shooting. Sgt. Hewes asked Officer Iacullo questions off of the Public Safety Statement card. Sgt. Hewes provided Officer Iacullo's responses.

1. Is anyone injured? If so, where is the person located? Officer Iacullo replied "Yes, victim in the 415A and person we shot, victim's at the hospital, unknown what hospital and the suspect's in the alley way by Ross."
2. Are there any outstanding suspects? If so, what are their description, direction and mode of travel? How long have they been gone? Officer Iacullo replied "No."
3. For what crime(s) are they wanted? What type of weapons did they possess? Officer Iacullo replied "Not applicable for what crime they'd be wanted for."
4. Were you or another officer involved in a shooting? Officer Iacullo replied "Yes."
5. Where were you when you fired your weapon? Officer Iacullo replied "In the loading area in the alley way."
6. How many rounds did you fire and which direction did you shoot your firearm? Officer Iacullo replied "One round to the east."
7. Is it possible the suspect fired at you? If so, which direction did the suspect fire his weapon? Officer Iacullo replied "No"
8. Are there any weapons or evidence that we should secure? If so, where are they located? Officer Iacullo replied "A gun, in between his legs."
9. Are you aware of any witnesses to the event? If so, where are they located? Officer Iacullo replied "Ah, just Vinnie that I know of, the Metro Cadet."

INTERVIEWS OF LAY WITNESSES AT THE SCENE

Witness # 2

On October 29, 2012, at approximately 1630 hours, Detectives Merrick and DePalma conducted a recorded interview with Witness # 2. She works at Medical Reducing, which is located at 2466 E. Desert Inn Road, Suite "C" (east of Ross Dress For Less). At approximately 1450 hours, Witness # 2 heard four loud bangs in rapid succession, come from the rear of Medical Reducing suite. Witness #2 thought it was possibly construction and continued working. At approximately 1500 hours, Witness #2 left work to go walk as she does every day. Witness # 2 saw several police cars and an ambulance by the Starbucks, which is south of Ross Dress For Less. Witness # 2 saw a male, who she recognized as a homeless man that frequents the area, being loaded into an ambulance.

Witness #2 walked north towards the rear of Ross Dress For Less and was standing by the trunk on the driver's side of LVMPD unmarked vehicle #4305 when she saw a white female officer approach a white male with her firearm drawn. Witness # 2 said the officer was dressed in a tan Metro uniform and had her firearm pointed at the white male, who was at the end of the loading dock area of Ross Dress For Less. The white male had his hands down at his side and Witness #2 could not see what, if anything, was in his hands. Witness #2 was 25 to 35 yards away from the white male and the police officer. Witness #2 was looking also through or over vehicles.

Witness #2 said three more police officers, wearing the same uniform as the first officer, ran towards the loading dock area. They rounded the corner of the building. They all drew their firearms and pointed them at the white male, who was now approaching the female officer. Witness #2 did not hear any conversation between the officers and the suspect. Witness #2 heard seven shots in rapid succession. She screamed and ran south towards the front of Ross Dress For Less.

Witness #3

On October 29, 2012, at approximately 1645 hours, Detectives Merrick and DePalma conducted a recorded voluntary interview with Witness #3 while inside Las Vegas Metro vehicle #3913. Witness # 3 arrived at the Ross Dress For Less parking lot located at 2420 E. Desert Inn Rd., in order to check his mail at the UPS store. Witness #3 has been going to the same mail store for approximately twelve years. Witness #3 pulled into the Coachman's parking lot, which is north of Ross, and observed numerous police cars and

ambulance personnel attending to a male near the Starbucks coffee shop. Witness # 3 realized the male had just been shot. While watching emergency personnel attend to the individual, Witness #3 observed a female officer break away from the group and approach an unknown male by the loading dock located in back of the Ross Dress For Less. Witness #3 observed several other Officers running towards the rear of Ross also approaching the individual. Witness #3 said all of the Officers approaching the individual in back of the Ross Dress For Less were dressed in tan Metro police uniforms and giving the individual verbal commands. Witness # 3 said he was approximately 75 feet away from the Officers and positioned at the northeast corner of the Ross building. Witness #3 was watching the Officers and listening to them give the individual commands. Witness #3 stated the Officers did everything they could to make the individual comply. However, the individual seemed to have something either in his hand or in his waistband. Witness #3 saw the individual make some sort of movement and heard gunshots but did not see who fired. Witness #3 then fell to the ground as to take cover.

Decedent's Girlfriend

On October 29, 2012, at approximately 2200 hours, Detectives R. Wilson and B. Embrey went to the address listed for Decedent and obtained a recorded statement from the Decedent's girlfriend at her residence. Decedent's girlfriend has known the Decedent for approximately 30 years. They have been boyfriend and girlfriend for the last ten years and lived together at that same address for all ten of those years. Decedent's girlfriend described Decedent as a great person who suffered from alcoholism. Decedent's girlfriend stated that Decedent would do great for two years then fall off the wagon and his life would spiral out of control until he hit bottom. He would turn it around and be sober for another two years. According to Decedent's girlfriend, this had been going on for many years. Most recently Decedent had failed to show up for work at the My Place Casino and lost his job last Wednesday (October 24, 2012).

According to Decedent's girlfriend, Decedent would get up each day and do his chores around the house. He would go to CVS Pharmacy and buy a big bottle of wine. He would bring it home then go to the Inn Zone bar and get drunk. He would come home and hang out and drink wine. Decedent would go back to the Inn Zone and drink some more. He would return home and drink more wine until he fell asleep. He would wake up the next day and do the same thing all over again.

On October 29, 2012, Decedent left the residence at approximately 1330 hours to go to the bar. She never saw him again. Sometime later, she heard some sirens and the police helicopter overhead. She, along with several of her neighbors came outside to see what was happening. Decedent's girlfriend was in a crowd of people who were standing in front of the Coachman Inn restaurant just north of the back side of the Ross Dress For Less. While they were there, Decedent's girlfriend saw a handful of police officers run

east around the northwest corner of the Ross Dress For Less. She heard the officers yelling commands like “stop” and “halt.” She saw the officers take up a shooting position, pointing their gun toward the east and holding them with both hands. She heard several shots and all of the bystanders ran from the area. She guessed that there were approximately seven shots fired. She did not see who or what the officers had shot.

THE COUNTDOWN OF OFFICERS’ WEAPONS

Patrol Officer M. Henry carried a Glock 34, 9mm, semiautomatic handgun. The firearm normally carried one (1) round chambered and seventeen (17) rounds in the magazine. The countdown of the firearm revealed one (1) round chambered and thirteen (13) rounds in a seventeen (17) round capacity magazine. Officer Henry had two (2) spare magazines that each contained seventeen (17) rounds in a seventeen (17) round capacity magazine. Officer Henry did not carry a backup firearm. The countdown revealed that four rounds were fired by Officer Henry’s firearm.

Patrol Officer S. Wimmer carried a Glock 19/9mm, semiautomatic handgun. The firearm normally carried one (1) round chambered and fifteen (15) rounds in the magazine. The countdown of the firearm revealed one (1) round chambered and twelve (12) rounds in a fifteen (15) round capacity magazine. Officer Wimmer had two (2) spare magazines that each contained fifteen (15) rounds in a fifteen (15) round capacity magazine. Officer Wimmer did not carry a backup firearm. The countdown revealed that three rounds were fired by Officer Wimmer’s firearm.

Patrol Officer M. Iacullo carried a Glock 19/9mm, semiautomatic handgun. The firearm normally carried one (1) round chambered and fifteen (15) rounds in the magazine. The countdown of the firearm revealed no rounds chambered and fifteen (15) rounds in the fifteen (15) round capacity magazine. Officer Iacullo had four (4) spare magazines that each contained fifteen (15) rounds in a fifteen (15) round capacity magazine. Officer Iacullo did not carry a backup firearm. The countdown revealed that one round was fired by Officer Iacullo’s firearm.

FIREARM EXAMINATION

All of the bullets recovered in this incident were fragments. The fragments could not be compared because of their physical condition. However, a comparison of the cartridge cases found at the scene was done with the individual officers’ firearms. The comparison determined that four of the cartridge cases were fired by Officer Henry’s firearm, 3 of the cartridge cases were fired by Officer Wimmer’s firearm, and 1 cartridge case was fired by Officer Iacullo’s firearm.

THE AUTOPSY OF DECEDENT

On October 30, 2012, at approximately 0730 hours, an autopsy was completed on the body of the Decedent at the Clark County Coroner's Office by Doctor Lisa Gavin. The Coroner's Office event number was # 12-09858. During the course of the autopsy, the following injuries were noted: 1) one gunshot wound to the left bicep/elbow; 2) one gunshot wound to the left clavicle/upper left chest; 3) laceration located upper left area of the back of the head; 4) abrasion above left eye; and 5) abrasion on the right cheek below the right eye.

At the conclusion of the autopsy conducted by Dr. Lisa Gavin, it was determined the cause of death was a gunshot wound to the upper left chest and the manner of death was homicide. The toxicology report for Decedent revealed that his blood alcohol concentration was 0.324. The legal limit to operate a vehicle in Nevada is .08. Decedent was over four times the legal limit to drive.

LEGAL ANALYSIS

The District Attorney's Office is tasked with 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 this case, the shooting of Decedent by the officers was not criminal due to the officers' right of self-defense and defense of others.

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 was justifiable under two theories: (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.

A. The Use of Deadly Force in Self-Defense/Defense of Another

The authority to kill another in self-defense and 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.

In this case, the Decedent posed an imminent danger to the patrol officers as well as to the patrons and residents in the area of the shooting. Decedent, while armed with a gun, and after having previously shot a man, advanced towards officers after he had been told to stop and to get on the ground. The Decedent did not comply with the orders and continued to advance at police and then pointed a gun at the officers. At this point, the officers fired at the Decedent. Considering these facts and the actions of the Decedent, the police officers were confronted by the appearance of imminent danger which created in their minds an honest belief and fear that they, or others, were about to be killed or suffer great bodily injury. Accordingly, the officers were 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, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm based on the Decedent’s earlier shooting of a man. Additionally, in trying to take the Decedent into custody for that

earlier shooting, the officers had probable cause to believe that the Decedent posed a threat of serious physical harm either to the officers themselves or other persons in the area based on him being armed and pointing the gun at the officers. These circumstances created probable cause in the officers' minds that the Decedent posed a threat of serious physical harm either to the officers or others.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* "in the discharge of a legal duty." A countdown of the officers' weapons, as well as Cadet Diasparra's account of the events, corroborates that the officers stopped firing once the threat ceased to exist. None of the weapons fired by the officers was "emptied"; rather, each weapon contained unfired cartridges. This fact also illustrates the restraint exercised by the officers - - when Decedent no longer posed a threat to officers or civilians, no additional shots were fired.

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 Henry, Officer Wimmer, and Officer Iacullo were reasonable and 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 the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED: October 2, 2013

STEVEN B. WOLFSON
District Attorney

By

GIANCARLO PESCI
Chief Deputy District Attorney