



REPORT ON USE OF FORCE: Legal Analysis Surrounding the Death of Miguel Gallarzo on July 3, 2022.

I. INTRODUCTION

The Clark County District Attorney’s Office has completed its review of the July 3, 2022, death of Miguel Gallarzo (“Decedent”). It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Las Vegas Metropolitan Police Department (“LVMPD”) Officer Tate Nelson were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Nelson. 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 which was held on May 1, 2023.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer is 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.

II. INCIDENT DETAIL

On July 3, 2022, at about 11:19 p.m., LVMPD received two 911 calls asking that police and medical assistance come to 625 N. Bruce Street. The first caller, C.G., initially stated that his parents killed themselves but later clarified that his father, Decedent, had just killed his mother, D.L. When asked for further details, C.G. broke down and was unable to provide any additional information. At the same time, E.G. also called 911 to report that her father, Decedent, had killed himself with a knife. As a result of the calls, LVMPD patrol officers and medical personnel were dispatched to 625 N. Bruce Street.

Officer Brayden McMahon was the first officer to arrive at the residence. As Officer McMahon exited his patrol vehicle, distressed family members approached him and told him that their father had killed their mother and then killed himself. Officers Jordan Byers and McKenna Karaer arrived shortly after Officer McMahon. As the officers were preparing to enter the residence, family members told officers that C.G., the son of Decedent and D.L., was still inside the home.

Officers entered the home and announced their presence. Upon entering the home, officers noted apparent blood throughout the house. As officers approached the hallway leading towards the bedrooms, C.G. exited one of the bedrooms. Officers instructed C.G. to exit the residence, and C.G. complied. As he was leaving, C.G. told officers that his parents were inside the bedroom he had just left.

After C.G. left the hallway, officers reached the doorway to the bedroom and saw Decedent on the bed. Decedent was lying on the body of his wife, D.L., who was also on the bed, covered and surrounded by apparent blood.



Still Image from Officer McMahon's Body Worn Camera

Seeing this, Officer McMahon drew his firearm and repeatedly instructed Decedent to put his hands up. Decedent ignored the commands and instead threw an object at Officer McMahon that was later identified as a nylon sheath. Officer McMahon moved out of the doorway to avoid being struck.

As Officer McMahill moved out of the doorway, Officer Tate Nelson, armed with a shotgun, positioned himself in the hallway just outside the bedroom. Officer Nelson instructed Decedent to show his hands, and Decedent refused. Officer Nelson then instructed Decedent to get down on his stomach, and Decedent refused. Decedent then stood up from his crouched position beside the bed.

When Decedent stood up, Officer Nelson continuously instructed Decedent to put his hands up. Again, Decedent disregarded the instructions. Decedent then grabbed a multi-tool with an extended knife blade located on the bed next to his dead wife. After Decedent grabbed the weapon, he started walking towards the officers. While Officer Nelson was shouting instructions to Decedent, Officer Byers, who was standing to the rear right side of Officer Nelson, produced his taser.

After Decedent grabbed the multi-tool knife and started walking towards the officers, Officer Nelson yelled, "Drop the knife. Drop it!" Again, Decedent ignored Officer Nelson and continued to walk towards the officers with the weapon. At that point, Officer Byers fired his taser at Decedent.



Knife used by Decedent to kill D.L.



Knife Decedent held while approaching officers

Nearly simultaneous to the taser being discharged, Officer Nelson fired his shotgun two times, striking Decedent in the upper chest and abdomen. Decedent fell to the ground, and officers entered the bedroom to take him into custody. Officer Nicholas Gardner pulled Decedent's arms from under his body and removed the multi-tool knife from Decedent's hand. Decedent was then secured in handcuffs and medical personnel assessed both D.L. and Decedent. Both were declared deceased, and the officers secured the area as a crime scene.

In subsequent interviews, family members relayed that, two weeks prior to this incident, Decedent found out that his wife of 25 years, D.L., was having an affair with someone at her workplace. D.L. informed Decedent that she no longer wanted to be married and wanted to end the relationship. Decedent was upset and did not want a divorce. On the day of the incident, Decedent and D.L. were heard arguing about the future of their marriage.

Immediately prior to the calls to 911, B.G., one of Decedent's and D.L.'s daughters, heard her mother screaming, "No, Miguel! No, Miguel!" B.G. then yelled for her family members to come inside and help her mother. The family was outside the residence lighting fireworks.

When the family members went inside, toward the bedrooms, they noticed that Decedent's bedroom door was locked. J.H. kicked the door in and they saw Decedent stabbing himself in the neck with a larger butcher knife. They also saw that D.L. was lying on the bed motionless. D.G., B.G., and C.G. approached their father and tried to wrestle the butcher knife away from him. D.G. received a small laceration to her hand during the struggle.

C.G. was ultimately able to take the knife away from his father. The knife was placed in the knife drawer in the kitchen. The drawer was then removed from the kitchen and taken outside to the driveway to prevent Decedent from obtaining any other knives. Both C.G. and E.G. called 911 to report the incident.

III. INVESTIGATION

A. SCENE WALK THROUGH/PUBLIC SAFETY STATEMENT

Officer Tate Nelson

In his scene walk-through, Officer Nelson stated he was working as a single-man patrol unit and assigned himself to an attempted suicide call. He received details that a female was deceased inside of the room and the suspect had killed himself. Officer Nelson drove to the call with his emergency lights and sirens activated. Once he arrived, Officer Nelson said he took his shotgun and entered the home.

Officer Nelson joined three officers who had already arrived. As they were clearing the house, a male exited the bedroom. Officer Nelson announced to the other officers that he would act as lethal cover. When Officer Nelson looked into the bedroom, he saw a female lying on the bed in a pool of blood and a male was leaning over her body. Officer Nelson gave the male verbal commands, but the male refused to comply. The male then grabbed a knife from the bed.

Officer Nelson told the male to drop the knife several times and the male refused. Decedent then came toward the officers. Officer Nelson fired his shotgun two times because he was in fear of being stabbed and he was also in fear for the other officers. Officer Nelson added that he was in fear for the female victim as well because he was not sure if she was still alive.

B. SUMMARY OF VICTIM/WITNESS OFFICER INTERVIEWS

Officer Brayden McMahonill

Officer McMahonill was on duty, in uniform, in his patrol vehicle when he heard over dispatch that there was a suicide attempt. De-escalation protocols required three officers to respond to the call. Because only two officers were initially assigned, Officer McMahonill advised the dispatcher he would also respond. The person who called 911 advised the dispatcher their mother was killed by their father and their father attempted suicide with a knife.

Officer McMahonill responded with lights and sirens to the call. As Officer McMahonill arrived, he saw a female walking towards him in the street. While Officer McMahonill attempted to get information from the female, he noticed more people near the house. The female told Officer McMahonill that people were dead in the back room. Officer McMahonill advised dispatch that when another officer arrived, they would clear the house.

Officers Byers and Karaer arrived as a two-man unit. As the officers entered the house through the garage, Officer McMahonill noticed blood on the wall. When Officer McMahonill announced police presence inside the house, a male responded that he was in the back bedroom with his mother. The officers proceeded down a hallway through the house and a younger Hispanic male exited a bedroom with blood on his hands.

Officer McMahonill then looked into the bedroom and saw a female, who appeared deceased, lying on the bed. There was a male lying on top of the female with his eyes closed. Officer McMahonill identified himself as a police officer and gave the subject verbal commands. The male opened his eyes, tilted his head, looked at the officers, and then threw an object towards Officer McMahonill. Officer McMahonill moved to avoid being hit with the object. As Officer McMahonill moved, Officer Nelson moved into the doorway and took Officer McMahonill's original position. Officer McMahonill was unable to re-position himself at the doorway because Officer Nelson had taken his position while armed with a shotgun.

Officer McMahonill gave updates over the radio and Officer Nelson gave the male additional verbal commands. Officer Nelson fired two shots with the shotgun and Officer McMahonill advised that shots were fired on the radio. Officers entered the room and took the male into custody.

Due to Officer McMahonill's position, he was unable to see the suspect's actions when Officer Nelson discharged the shotgun.

Officer Jordan Byers

Officer Byers and his partner, Officer Karaer, were in the area of Bruce Street and Charleston Boulevard when an attempted suicide call was broadcast. The details obtained from the person reporting stated their father killed their mother and he was trying to kill himself. Officers Byers and Karaer responded to the call. Officer McMahill was the first officer to arrive, immediately followed by Officers Byers and Karaer.

Officer McMahill was the first officer to make entry into the residence and Officers Karaer and Byers entered right behind Officer McMahill. Officer McMahill announced the police presence and a male responded from the back of the house. A male subject came from the hallway towards the officers and Officer Byers instructed the male to go outside. At that point, Officer Nelson entered the house and joined the team of officers.

As the team of officers proceeded down the hallway, Officer McMahill looked into a bedroom, then moved further up the hallway. Officer Nelson advised he had lethal coverage on the male, so Officer Byers produced his taser. Officer Byers saw a male on the bed and a female who was covered in blood, laying on her back. The male grabbed a knife and moved around the side of the bed towards the officers. Officer Byers discharged his taser at the same time Officer Nelson discharged his shotgun.

Officer Byers felt he and the other officers were in danger. Officer Byers reasoning was that Decedent had already used the knife on the female, and it appeared to Officer Byers that Decedent was readying to use the knife again.

Officer McKenna Karaer

Officer Karaer and her partner, Officer Byers, were in the area of Bruce Street and Charleston Boulevard when they heard details of a call stating that a 14-year-old reported that his dad stabbed his mom and was killing himself. Officers Karaer and Byers self-dispatched to the call because they were just down the street. Officer Karaer stated that Officer McMahill was the first arriving officer and he advised over the radio that he was waiting for another unit to arrive prior to entering the residence. Officers Karaer and Byers arrived shortly after Officer McMahill. The three officers then entered the residence in a stack with Officer McMahill in the front, followed by Officer Karaer and Officer Byers.

The officers announced they were police officers as they entered. As the officers moved down the hallway, a male, who Officer Karaer believes was one of the sons of the female and Decedent, walked toward them from the back of the house and past them down the hallway.

As the officers approached the bedroom, Officer McMahill addressed the male who was lying on top of the female. Shortly thereafter, Officer Nelson approached the bedroom door with a shotgun and stated that he would take over lethal coverage. As that happened, Officer Karaer noticed that the room directly across the bedroom where the male suspect and the female victim was in had not yet been cleared. Officer Karaer then cleared that room, ensuring no one was inside.

Because she was in another room, Officer Karaer did not have any contact with Decedent or see Decedent's actions when shots were fired. After shots were fired, officers entered the room to take the male into custody and provide life saving measures. Officer Karaer kept the male at gunpoint because she could not see his hands. As she kept the male at gunpoint, two other officers took the male into custody.

Officer Nicholas Gardner

Officer Gardner stated he responded to a suicide attempt call where someone was being stabbed. When he arrived at the address, he knew other officers were already on scene and had made contact with the suspect. As Officer Gardner approached the front door, he heard two gunshots from inside the home. There was subsequent radio traffic that shots were fired.

When Officer Gardner entered the residence, he joined the action team that was formed inside. The team of officers entered the room and Officer Gardner saw Decedent face down on the floor with his arms underneath his body. Officer Gardner pulled Decedent's right arm out from under him and saw that Decedent was still holding a multi-tool with the blade out.

Officer Gardner, who was wearing surgical gloves, removed the multi-tool with the exposed blade and tossed it behind him. Decedent was then handcuffed. Officers attempted to roll Decedent over and render medical aid but ceased due to the extent of Decedent's injury.

C. BODY WORN CAMERA

Officer Tate Nelson

Officer Nelson's BWC footage began with him driving his patrol vehicle. Officer Nelson activated his emergency lights and sirens and arrived at the scene approximately three minutes later. He exited his patrol vehicle and armed himself with a shotgun. Officer Nelson quickly entered the residence and met with the other officers who were already inside. As Officer Nelson walked in, C.G. exited through the hallway and walked past Officer Nelson. Three officers were in front of Officer Nelson while in the hallway which led to the bedroom. Officer McMahill yelled, "Let me see your hands" while he was standing in the doorway to the bedroom.

Officer Nelson stated, "Let me go lethal, let me go lethal" and positioned himself in the doorway to the bedroom as the other officers moved out of his way. Officer Nelson aimed his shotgun at Decedent, who was laying on the bed. As Decedent moved his arms, Officer Nelson yelled, "Show me your hands, get on your stomach!" Decedent stood up but did not comply with Officer Nelson's commands. Officer Nelson commanded Decedent to put his hands up three times. As Officer Nelson was shouting commands at Decedent, Decedent reached for the multi-tool knife that was lying at the foot of the bed.

At that time, Officer Byers positioned his taser on the right side of Officer Nelson. Officer Nelson yelled, "Drop the knife! Drop it!" as Decedent walked towards officers while holding the knife. Officer Byers then discharged his taser, and Officer Nelson fired his shotgun two times immediately after the taser was fired. Decedent fell to the ground. Assisting officers entered the bedroom and secured him in handcuffs. Medical personnel entered the bedroom and evaluated the female victim, D.L., who was on the bed. They determined she was deceased. Officers stated the knife was still in Decedent's hand as they handcuffed him.

Officer Brayden McMahill

Officer McMahill's BWC footage began with him driving to the call while in his patrol vehicle. Approximately one minute later, Officer McMahill activated his lights and sirens. He was the first officer to arrive on the scene. Officer McMahill was met by family members on the street. A female yelled, "My dad killed my mom and killed himself!" Officer McMahill briefly spoke to other family members and then entered the house to clear the residence. While inside, Officer McMahill identified himself as a police officer and called out for any subjects inside to identify themselves. Officer McMahill, while in the hallway leading to the bedrooms, remarked that there was blood everywhere.

As Officer McMahill approached the bedrooms of the residence, C.G. exited his parents' bedroom. C.G. was instructed to exit the residence, and C.G. complied. Officer McMahill then continued walking towards the bedroom that C.G. just exited.

Officer McMahill stood at the doorway of the bedroom and saw Decedent on the bed lying over D.L. who was not moving. It appeared that both Decedent and D.L. were covered in blood. Officer McMahill drew his firearm and instructed Decedent to put his hands up several times. Decedent grabbed an item from the bed and threw it at Officer McMahill. Officer McMahill moved out of the way to avoid being struck by the item.

Officer Nelson then positioned himself at the doorway while armed with a shotgun. Officer McMahill positioned himself in a different bedroom and updated the dispatcher of the details via his radio. Officer Nelson was heard yelling verbal commands, "Drop the knife!" Two gunshots, along with a taser were also heard. Officer McMahill informed the dispatcher that shots were fired.

Officer McMahill was assigned as a monitoring officer for Officer Nelson. Officers Nelson and McMahill exited the residence and went to a patrol vehicle. Officer Nelson downloaded his shotgun and secured it in the patrol vehicle. Officer McMahill remained with Officer Nelson at the patrol vehicle.

Officer McKenna Karaer

Officer Karaer's BWC footage began with her and her partner, Officer Byers, in their patrol vehicle. They responded to the call with their emergency lights and sirens. Officers Karaer and Byers met with Officer McMahill and proceeded to enter the residence to clear it. The officers then made contact with C.G. who had just exited his parents' bedroom.

Officer Karaer instructed C.G. to walk outside. Officer Karaer then re-positioned herself from the hallway to another bedroom while other officers were heard yelling verbal commands. Officer Nelson was at the doorway armed with a shotgun and instructed Decedent to put his hands up. Another officer, who was positioned to the right of Officer Nelson, produced his taser. Officer Nelson yelled at Decedent to drop the knife and then two gunshots are heard. A taser was also fired into the bedroom.

Officer Karaer requested medical personnel via her radio. Officer Karaer entered the bedroom with other officers who secured Decedent in handcuffs. Officers also communicated that Decedent was still holding the knife. Officer Karaer then exited the residence and assisted other officers who were with distraught family members.

Officer Jordan Byers

Officer Byers' BWC footage began with him driving his patrol vehicle, along with his partner, Officer Karaer, to the call. Officers activated their emergency lights and sirens on their way to the scene and met with Officer McMahill who had arrived before them. Officer Byers then entered the residence with Officers McMahill and Karaer. The officers noted that there was blood throughout the residence. As officers entered the hallway leading towards the bedrooms, C.G. exited a bedroom and was instructed to go outside. C.G. complied as officers continued their way through the hallway and eventually arrived at the open bedroom door.

Officer Nelson positioned himself at the doorway, armed with a shotgun. At this point, Officer Byers' BWC was largely obscured due to Officer Byers' position behind Officer Nelson. But what was heard was that Officer Nelson instructed Decedent to move to his stomach and to put his hands up. Officer Byers produced his taser and had it positioned to the right of Officer Nelson as Officer Nelson continued to yell verbal commands to Decedent.

Officer Nelson gave Decedent verbal commands to drop the knife. Officer Byers' fired his taser just before Officer Nelson fired his shotgun two times. Once Decedent was secured in handcuffs, Officer Byers exited the residence as medical personnel arrived and assessed both Decedent and D.L. Officer Byers informed his sergeant that he discharged his taser. Officer Byers placed his taser on the bedroom floor and exited the residence.

Officer Nicholas Gardner

Officer Gardner's BWC footage began with him in his patrol vehicle. After receiving details of the call, Officer Gardner activated his emergency lights and sirens and responded to the residence. Approximately two and a half minutes later, he arrived and exited his patrol vehicle. Officer Gardner entered the residence and met with the other officers who were already inside. Officer Gardner then entered the bedroom and assisted with handcuffing Decedent who was lying face-down on the ground. Officers informed Officer Gardner that Decedent still had the knife.

Officer Gardner approached Decedent and removed the knife from under Decedent's body and secured him in handcuffs. Officer Gardner rolled Decedent to his side and informed the officers and medical personnel that Decedent slit his own throat. After both the female victim and Decedent were declared deceased, the officers exited the bedroom and secured the scene.

D. SUMMARY OF CIVILIAN WITNESS INTERVIEWS

D.G.

D.G. stated her parents had been arguing lately because her mother had been unfaithful. D.G.'s mother, D.L, informed her father, Decedent, that she no longer wanted to be with him.

The night of the incident, D.G. was outside her house with other members of her family when she heard her sister, B.G., scream that their mom, D.L., was yelling for help. She heard her mother screaming, "No Miguel, no!" The family members ran inside toward their parents' bedroom. The door was locked and another family member, J.H., kicked the door open. As soon as the door opened, D.G. witnessed her father, Decedent, stabbing his own throat with a kitchen knife. D.G. ran toward her father and tried to pull the knife away from him.

D.G. struggled to get the knife away from her father and told him the knife was cutting her. Her brother, C.G., entered the bedroom and helped her get that knife away from their father. C.G. took the knife with him, and they closed the door so no one would walk into the room. They put the knife in a drawer and took the drawer outside of the residence to keep their father from obtaining more knives.

D.G. said she did not see her father hurt her mother during the incident, but she knew her mother had been injured because she was lying on the bed and was covered in blood. D.G. did not see any of the events that occurred when the police had arrived because she exited the residence to look for her daughters.

C.G.

C.G. was outside of his residence with his family when he heard one of his sisters, B.G., screaming from inside the house. C.G. initially thought she was arguing with her boyfriend, so he went inside and knocked on the door to see what was going on. As he entered the room, he saw his sister, D.G., attempting to take a knife away from their father.

C.G. tried his best to take the knife from his father but was not successful at first as his father would not relinquish the knife. Ultimately, after punching and kicking his father C.G. was able to wrestle the knife away from his father. C.G. exited the room and gave the knife to B.G. C.G. went back inside the room and saw that his father obtained another knife and attempted to commit suicide with it by cutting at his own throat. C.G. then took this second knife from Decedent and called 911. When the police arrived, C.G. exited the bedroom and went outside.

C.G. stated his parents had marital issues due to his mother finding someone else at work. His father found out about the affair sometime between June 21st and 24th. At the time of the incident, C.G. heard his parents arguing about the affair.

E.G.

E.G. stated her siblings and family members were outside lighting fireworks when she heard her sister, B.G., screaming from inside the house. B.G. instructed her to call the ambulance and the police.

E.G. stated B.G. told her that she heard their mother, D.L., yelling from their bedroom. The door to their parents' bedroom was locked and had to be forced open by B.G.'s husband, J.H. When the door opened, E.G. saw their father, Decedent, shoving a knife into his own throat. E.G. stated her mother was on the bed with her legs hanging over the edge and her father was standing in front of her. She stated her father saw them open the door but did not say anything and just closed his eyes.

E.G. stated her parents were in the process of separating but that her father did not want the marriage to end. Her father told E.G. that he had been trying to work on the marriage, but her mother told her father that she no longer wanted to work on the marriage, and she did not love him anymore.

B.G.

B.G. was at work and then returned home at about 10:30 p.m. After coming home she got out of the shower and heard her mother, D.L., screaming, "No, Miguel! No Miguel!" B.G. was unable to open her parents' locked bedroom door, so she asked her husband, J.H., to kick the door open.

As the door was forced opened, B.G. saw her father, Decedent, stab himself in the throat. B.G. briefly walked away and screamed for her family members to call for an ambulance. When she returned to the bedroom, she noticed that her father still had the knife in his hand and her

brother, C.G., was attempting to take it away from him. B.G. believed her mother was already dead at that time.

B.G. stated her mother told her older sister that she had found someone else and no longer loved their father. B.G. stated she only found out about her parents' possible separation about a week before the incident.

B.G. also heard her father say to her mother, "If you die, I die!" B.G. believed her mother was her father's whole world. B.G. also knew her father was very heartbroken due to her mother's affair with a co-worker.

J.H.

J.H. stated he was playing video games in his bedroom when his wife, B.G., rushed in and screamed at him to kick his in-laws' bedroom door open due to her father doing something to her mother. J.H. also heard his mother-in-law screaming. After he kicked the door open, he observed his father-in-law stab himself in the throat while he was on the bed with his mother-in-law. J.H. stated his sister-in-law, D.G., along with his brother-in-law, C.G., were able to take the knife away from his father-in-law. J.H. stated he went outside while family members called for help.

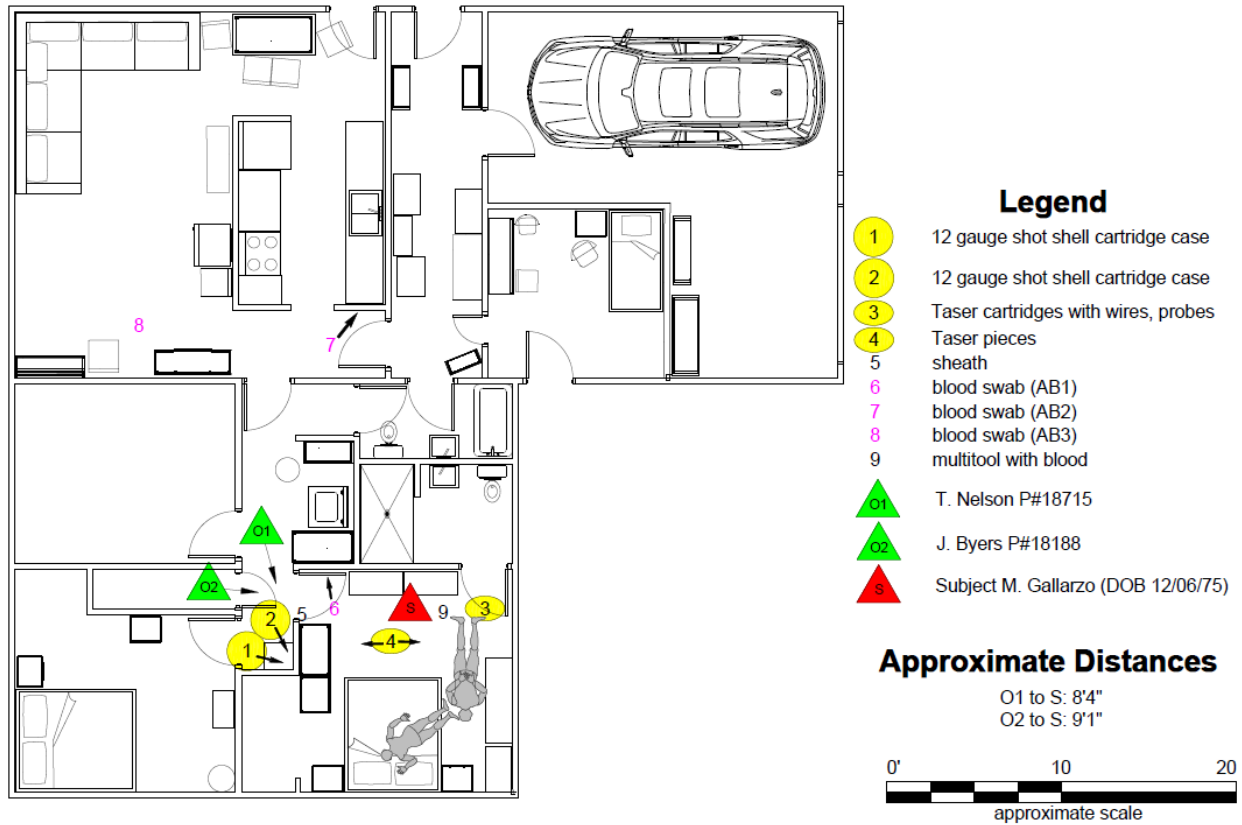
E. OFFICER COUNTDOWN

Officer Tate Nelson

Officer Nelson deployed his department issued Beretta 1301 Tactical shotgun. The countdown of Officer Nelson's shotgun confirmed that Officer Nelson fired a total of 2 rounds from his shotgun.



F. EVIDENCE RECOVERED



Crime Scene Diagram

The following items were recovered from the scene of the Officer Involved Shooting:

- Two (2) 12 gauge "Federal Premium Tactical Rifled Slug 2 ¾ 70 mm" fired shotshells [Items 1 and 2].
- Two (2) attached taser cartridges "X49206EHW 12 20013 REV A EXP: 06/24" and "X49206FEM 12 20013 REV A EXP: 06/24" with wires and three probes with apparent blood [Item 3].
- Two (2) yellow plastic taser pieces with apparent blood [Item 4].
- One (1) black "Leatherman" nylon-style sheath with apparent blood [Item 5].
- One (1) "Leatherman" multitool with a damaged knife blade and apparent blood (blade length approximately 2.5 Inches) [Item 6].
- One (1) white handled knife with apparent blood and a blade length of approximately 10 Inches [Item 10].¹

¹ This knife was removed from the home by family members and thus not reflected in the Crime Scene Diagram.

G. AUTOPSIES

D.L. (female victim)

On October July 5, 2022, Dr. Jan Gorniak performed an autopsy on the body of D.L. at the Clark County Office of the Coroner/Medical Examiner. Dr. Gorniak noted multiple stab wounds to D.L. that resulted in injuries to the heart, left ribs, liver and the 5th thoracic vertebra. Dr. Gorniak concluded that that D.L. died as a result of stab wounds to the chest and that the manner of death was homicide.

DECEDENT

On October July 5, 2022, Dr. Jan Gorniak performed an autopsy on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner. Dr. Gorniak noted that Decedent had shotgun wounds of the chest. Additionally, Decedent had sharp force injuries to his neck and left hand. Dr. Gorniak concluded that that Decedent died from shotgun wounds to the chest and the manner of death was homicide.

IV. 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 may have contributed to the cause of death of a person. Clark County Ordinance §2.14.010. 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.

A. THE USE OF DEADLY FORCE IN DEFENSE OF SELF OR 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.² NRS 200.120(1). Homicide is also lawful when committed:

² 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.

[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 in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* are as follows:

The killing of [a] person in 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 or cause great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in 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. 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 he 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 himself 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 of self-defense exists, the State must prove beyond a reasonable doubt that Decedent did not act in self-defense. *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 prove beyond a reasonable doubt that an individual did not act in self-defense.

The known facts and circumstances surrounding this incident indicate that Decedent posed an apparent imminent danger to Officer Tate Nelson and to Officer Jordan Byers. At the time that Officer Nelson shot Decedent, it was clear that Decedent had just severely injured and likely killed

D.L. with a knife. When the first arriving officer, Officer McMahill, made contact with Decedent, Decedent ignored Officer McMahill's commands and threw an item at Officer McMahill.

After Officer McMahill moved to avoid being hit by the object thrown by Decedent, Officer Nelson took Officer McMahill's position in the doorway. Just as Officer McMahill did moments earlier, Officer Nelson instructed Decedent to put his hands up. Rather than comply, Decedent instead reacted to the commands by grabbing a knife from the foot of the bed and approaching Officer Nelson and Officer Byers, who was also standing just outside the doorway of the bedroom. When Officer Nelson instructed Decedent to drop the knife, Decedent continued to approach officers with the knife. It was at that point, when Decedent was mere feet away approaching officers while holding a knife, that Officer Nelson discharged his shotgun. Thus, the deadly force used by Officer Nelson was justified under both the self-defense and defense-of-others doctrines, as Decedent posed an imminent threat to Officer Byers as well as Officer Nelson.

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, at the time Officer Nelson fired his weapon, the facts demonstrate he had probable cause to believe that Decedent posed a threat of serious physical harm to Officer Nelson and to Officer Byers. Officer Nelson was aware that Decedent had severely wounded his wife, D.L., as he could see that she was severely wounded on the bed in the bedroom. Rather than following lawful commands to put his hands in the air, Officer Nelson saw Decedent arm himself with a knife. After Decedent armed himself with a knife, Officer Nelson instructed Decedent to drop the knife at least twice. Decedent ignored Officer Nelson's commands and walked toward Officer Nelson and Byers with the knife.

Thus, when Officer Nelson fired his weapon, the facts demonstrate he had probable cause to believe that Decedent posed a threat of serious physical harm to Officer Byers and to Officer Nelson himself. The circumstances indicate that Officer Nelson had a reasonable belief that Decedent was an immediate threat, particularly since Officer Nelson had a reasonable belief that Decedent had just killed or severely injured D.L. with a knife. Accordingly, the deadly force used by Officer Nelson was legally justified and appropriate "in the discharge of a legal duty."

V. 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 Officer Tate Nelson was 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, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming against Officer Tate Nelson.