



# REPORT ON USE OF FORCE:

## Legal Analysis Surrounding the Death of Gabriel Charles on September 10, 2022

### I. INTRODUCTION

On September 10, 2022, at approximately 1:12 A.M., Officers Tierney Tomburo and Adrian Duenas of the Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) stopped a Buick Rendezvous near Flamingo and University Center Drive. Officer Tomburo drove her marked patrol vehicle while Officer Duenas sat in the passenger seat. In the Buick were three people: DT, the driver; DN, the rear seat passenger; and Gabriel Charles (hereinafter referred to as “Decedent”), the front seat passenger. DT pulled the Buick into the University Garden Apartments, between buildings A and T. Officers Tomburo and Duenas exited their patrol vehicle and activated their Body Worn Cameras (“BWC”).

Officer Tomburo approached DT at the driver side window and asked him for his license. DT did not have a license on him. Officer Tomburo asked DT to exit the Buick and walk toward the front of her patrol vehicle. Once at the front of the patrol vehicle, Officer Duenas put DT in handcuffs. Officer Tomburo walked to the passenger side of the Buick. She asked the two other occupants in the Buick to exit and go toward the front of the patrol vehicle. DN exited the Buick and walked to the front of the patrol vehicle. Decedent exited the Buick and initially walked toward the front of the patrol vehicle. Once Decedent neared the front of the patrol vehicle, he ran northbound. Officer Tomburo ran after Decedent.

As Officer Tomburo ran after Decedent, he produced a 9mm firearm. Decedent turned toward Officer Tomburo and fired one round at her. The projectile struck Officer Tomburo in her upper left leg. Officer Tomburo fell to the ground, pulled her firearm out and fired four rounds at Decedent. One of the projectiles struck Decedent on the bottom of his right foot. A second projectile struck Decedent on the left side of his back. Decedent fell to the ground approximately 44 feet north from where Officer Tomburo lay on the ground.

Officer Duenas remained with DT and DN at the front of the patrol vehicle during the foot pursuit. Officer Duenas heard several gunshots and eventually ran towards Officer

Tomburo. Officer Duenas applied a tourniquet to Officer Tomburo's upper left leg. Officer Tomburo was placed into a patrol vehicle and later transported to University Medical Center ("UMC") Trauma.

Arriving officers secured Decedent in handcuffs. They attempted life-saving measures until American Medical Response ("AMR") personnel arrived on scene. AMR personnel continued life-saving measures on Decedent and transported him to Sunrise Hospital where he succumbed to his injuries. DT, the driver of the Buick, was also transported to UMC. He complained of chest pain and had an elevated blood pressure.



View of vehicles during traffic stop.

Due to the nature of the call, detectives from the LVMPD Force Investigation Team ("FIT") were notified and responded to the scene to assume responsibility over the investigation. Detective Valenzuela was assigned as the lead case agent. FIT Detectives conducted witness interviews and canvassed the area for video surveillance cameras. Body worn cameras from Officer Tomburo and witness officers were viewed. FIT detectives also gathered additional information. The apartment complex had no cameras which captured the officer involved shooting ("OIS").

Crime scene analysts ("CSAs") and detectives documented and processed the crime scene. The Buick was in front of the patrol cruiser just west of the entrance of the University Garden Apartments. Officer Tomburo's firearm was located on the ground approximately 150 feet north of the front of her patrol cruiser. There was blood on the ground east of the firearm. Four cartridge cases were located to the east and south of the firearm. A Sig Sauer magazine was also located to the east of Tomburo's firearm. Further east of the magazine was Officer Tomburo's handheld flashlight.

Approximately 44 feet north of this location, a Smith & Wesson 9mm firearm was located. The firearm had a 9mm cartridge case stove-piped in the ejection port. A stove-pipe is caused when a spent cartridge case is not ejected far enough to leave the firearm's ejection port. This failure causes the firearm to malfunction, and the user is unable to fire any additional rounds until the malfunction is cleared.

A few feet north of the firearm, there was blood on the ground along with a medical bag and medical intervention equipment. There were several other items located, to include a black cellular phone, keychain, lanyard, earbuds in a case, wallet, articles of clothing, a Wells Fargo debit card bearing the name of Decedent, lighter, folding knife, handcuffs, and a handcuff key.

Detective Justen Peters completed a forensic examination of the cellular phone that was recovered on scene. The cellular phone contained multiple photographs and a video that showed Decedent holding firearms. The photographs were dated March 13, 2022, and March 19, 2022. The video was dated June 11, 2022.

The Clark County District Attorney's Office has completed its review of the September 10, 2022, death of 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 Officer Tomburo were not criminal. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Tomburo. 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 31, 2023. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Tomburo 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.

## II. INVESTIGATION

### DESCRIPTION OF SCENE AND VISIBLE EVIDENCE



Overall view of 3955 University Center Drive, OIS Location

On September 10, 2022, at approximately 2:18 A.M., Senior CSA (hereinafter SCSA) Vaandering responded to 3955 University Center Drive to photograph evidence and document the scene. CSA Peterson responded to collect evidence.





Street view of crime scene, northbound.

## **INTERVIEWS OF OFFICERS AND WITNESSES**

### **Subject Officer**

#### **Officer Tierney Tomburo**

On September 10, 2022, at approximately 4:20 A.M., Detective Ubbens contacted Officer Tomburo and asked if she would provide a voluntary statement to FIT investigators; Officer Tomburo declined to give a statement.

### **Witness Officers**

#### **Officer Tyler Cooney**

On September 10, 2022, at approximately 3:46 A.M., Detective Ubbens conducted an audio-recorded interview with Officer Cooney at University Medical Center.

Officer Cooney responded to the 444 (officer needs help-emergency) call as soon as he heard the broadcast on the radio. When Officer Cooney arrived, he observed Decedent on the ground as he was being taken into custody by other officers. Officer Cooney learned that Officer Tomburo had been placed in the back seat of a patrol vehicle. She was waiting to be transported to UMC. Officer Cooney located the patrol vehicle Officer Tomburo was in and got into the back seat with her. While on the way to the hospital, Officer Cooney and Officer Tomburo spoke about the events leading up to shooting and the shooting itself.

Officer Tomburo told Officer Cooney she stopped the vehicle because the driver was possibly drunk. She could not understand why the suspect would flee and then shoot at her. Officer Cooney held Tomburo's hand to keep her awake. He also checked Officer Tomburo for additional injuries and made sure the tourniquet was properly placed.

### **Officer Adrian Duenas**

On September 10, 2022, at approximately 4:00 A.M., Detective Mendoza conducted an audio-recorded interview with Officer Duenas at University Garden Apartments.

Officer Duenas worked as a two-man patrol unit in the area of Twain Avenue and University Center Drive. Officer Duenas and his partner, Officer Tomburo, saw a vehicle fail to yield for a red light at the intersection of Twain Avenue and University Center. Officers Duenas and Tomburo followed the vehicle into the University Gardens Apartments located at 3955 University Center Drive. Officers conducted a vehicle stop and approached the vehicle. Due to the driver not having a license, Officer Tomburo asked DT, the driver, to exit the vehicle. Officer Duenas then placed DT in handcuffs. Officer Tomburo asked the other passengers in the Buick to exit the vehicle. Officer Duenas conversed with one of the male adults who was in the Buick. He believed it was the front passenger.

Officer Duenas saw Officer Tomburo run after Decedent who fled on foot and continued northbound through the complex. Officer Duenas remained with DT and DN by the patrol vehicle. Approximately 30 seconds later, Officer Duenas heard four to six gunshots. Officer Duenas heard no further updates from Officer Tomburo, nor did he know who fired the gunshots. Officer Duenas also did not know the status of Officer Tomburo. Officer Duenas then heard Officer Tomburo scream for help. Officer Duenas instructed DT and DN to remain at the front of the patrol vehicle.

Officer Duenas ran toward Officer Tomburo and located her on the ground. Officer Duenas observed Decedent on the ground just north of Officer Tomburo. He observed Officer Tomburo had been shot, and he applied a tourniquet to her leg.

### **Officer Christian Maupin**

On September 10, 2022, at approximately 4:37 A.M., Detective Penny conducted an audio-recorded interview with Officer Maupin in the 3900 block of University Center Drive.

Officer Maupin was at Sunrise Hospital when he heard another patrol unit conduct a traffic stop over the radio. He heard some muffled radio traffic and then a call out about a foot pursuit. After a short time, he heard a request for units to expedite and that an officer was down. Officer Maupin immediately left Sunrise Hospital and responded to the location.

As he drove to the scene, Officer Maupin heard more information through radio traffic. He heard shots were fired, and a tourniquet had been applied on the leg of an officer. Upon his arrival, he saw DT and DN detained. Officer Maupin looked for Officer Tomburo. He observed

Officer Tomburo being loaded into a patrol vehicle and knew she was being taken care of. Officer Maupin then saw Decedent on the ground. Officer Soto had Decedent at gunpoint.

Officers Soto, Lopez, and Maupin then formed an arrest team and approached Decedent. Officer Maupin saw a firearm near Decedent. He also saw that Decedent was unresponsive as he bled. The officers put Decedent into handcuffs and rendered aid. Officer Maupin started CPR on Decedent until medical personnel arrived.

### **Officer Abraham Soto**

On September 10, 2022, at approximately 4:45 A.M., Detectives Colon and Chavez conducted an audio-recorded interview with Officer Soto at 3955 University Center Drive.

Officer Soto worked as a single officer patrol unit when he heard a broadcast of a foot pursuit at 3955 University Center Drive. Officer Soto drove toward 3955 University Center Drive. While enroute he heard "shots fired" broadcasted. As Officer Soto arrived, he saw medical units staged outside the University Garden apartments. Once at the complex, Officer Soto observed Decedent on the ground. Officer Soto organized an arrest team with three additional officers and approached Decedent. As he approached Decedent, he yelled commands. Officer Soto observed a firearm on the ground near Decedent as he put handcuffs on him.

### **Civilian Witnesses**

#### **JAH**

On September 10, 2022, at approximately 4:11 A.M., Detectives Colon and Chavez conducted an audio recorded interview with JAH at 3955 University Center Drive.

JAH worked as a rideshare driver and was in the area of 3955 University Center Drive to drop off a fare. JAH pulled into the apartment complex. As he did so, he saw that officers had pulled over a vehicle. From the entrance of the complex, JAH turned north and then went west to drop off his fare.

After he dropped off his fare, JAH drove toward the exit and observed Officer Tomburo as she ran after Decedent. JAH was on the southbound travel lane and had his driver's side window down. JAH observed Decedent pull a gun from his waistband area, turn around toward Officer Tomburo and shoot at her. Officer Tomburo immediately fell to the ground and started to scream. JAH continued south and heard additional shots being fired. JAH then drove past Officer Duenas as he stood outside the patrol vehicle with DT and DN. JAH drove onto University Center Drive and stopped in the middle of the street. JAH exited his vehicle and retrieved a firearm from his trunk.

JAH was concerned for Officer Tomburo and believed she was in danger. He was also concerned Decedent would continue to shoot or get away. JAH called 911 and located

Officer Tomburo. JAH observed Decedent on the ground and assisted officers as they loaded Officer Tomburo into the back of the patrol vehicle.

## **DN**

On September 10, 2022, at approximately 3:52 A.M., Detectives Colon and Chavez conducted an audio-recorded interview with DN at 3955 University Center Drive.

DN left his apartment and walked toward the convenience store to buy cigarettes. As he walked, DT pulled up next to him asked if he wanted a ride. DN got into the vehicle and sat in the rear passenger seat. DN did not know Decedent, who sat in the front passenger seat. Once at the store, DN bought two more packs of cigarettes. DT and Decedent bought beer. The three of them left the store, and DT drove south on University Center Drive.

As DT drove, DN noticed a patrol vehicle behind them. The patrol vehicle activated its lights. DT pulled into 3955 University Center Drive. During this time, neither DN, DT nor Decedent spoke to each other. Officer Tomburo came to the driver's side window and spoke to DT.

Officer Tomburo informed DT that his front headlight was out. Officer Tomburo asked DN, DT, and Decedent to exit the vehicle. DT got out of the vehicle and walked toward the patrol vehicle. DN also got out of the vehicle and walked toward the patrol vehicle. As DN stood at the patrol vehicle, he saw Decedent run northbound. Officer Tomburo ran after Decedent.

A short time later, DN heard two sets of gunshots. DN initially heard two gunshots followed by a few more. Officer Tomburo began to scream in pain, and DN told Officer Duenas to check on his partner. Officer Duenas froze. DN laid on the ground with his hands on his head and convinced Officer Duenas to check on his partner. Other patrol officers arrived a short time later and placed DN in the back of a patrol vehicle.

## **DT**

On September 10, 2022, at approximately 2:46 A.M., Detectives Ubbens and Fasulo conducted an audio-recorded interview with DT at University Medical Center.

Detective Ubbens advised DT of his Miranda Rights. DT responded "yes" when asked if he understood his rights. DT explained that, earlier in the evening, he drank some alcohol. Decedent and DN wanted to go to the store to get more beer, so he drove them to the store. On the way back to the house, DT was pulled over by the police. The vehicle DT drove belonged to his girlfriend.

After he pulled over, Officer Tomburo explained she stopped DT because his front headlight was out. DT believed he was asked to step out of the car because he did not have his license on him. As DT stood outside of the vehicle, he saw Decedent run and



Officer Tomburo run after Decedent. A short time later, he heard gunshots. DT told Officer Duenas to go check on his partner. DT did not observe any portion of the shooting and only heard the gunshots. DT never observed Decedent or DN with a firearm while inside the vehicle. He was later arrested for driving under the influence (DUI), improperly mounted headlamps, and failure to maintain lane/improper lane change.

## **PUBLIC SAFETY STATEMENT**

### **Officer Tomburo**

Officer Tomburo was immediately transported to University Medical Center. On September 10, 2022, she gave a Public Safety Statement. In her statement, she acknowledged she discharged her weapon after the Decedent shot at her. She did not remember how many shots she fired. Both she and Decedent were injured. Her weapon and Decedent's weapon were left on scene. She remembered the Decedent shot at least once toward her and he was at least ten yards away from her at the time.



BWC of Officer Tomburo

## HOSPITAL

### UNIVERSITY MEDICAL CENTER (UMC)

On September 10, 2022, at approximately 1:50 A.M., CSA Carmen Truesdale responded to Universal Medical Center Trauma Unit to photograph and document Officer Tomburo's injuries, as well as to photograph and collect evidence.



Officer Tomburo's uniform shirt. The arrow indicates a bullet defect.



Officer Tomburo's uniform pants. The arrow indicates a bullet defect.

Officer Tomburo sustained a gunshot wound to her pelvis and a pelvic fracture. Doctors were unable to remove the bullet from the area at that time. Officer Tomburo's injuries were photographed and documented at UMC. Officer Tomburo's black duty belt was located inside the transporting patrol vehicle's rear passenger-side floorboard. Officer Tomburo's spare firearm magazine was missing from the holster, and the missing magazine was located next to her firearm on scene at 3955 University Center Drive. On September 12, 2022, Officer Tomburo was released from UMC.

## SUNRISE HOSPITAL

On September 10, 2022, at approximately 2:22 A.M., SCSA Kristina Thomas responded to Sunrise Hospital to photograph and document the body of Decedent. She also photographed and collected evidence.



Injury to bottom of Decedent's right foot.



Bullet impact to Decedent's shoe.

Decedent was transported to Sunrise Hospital and succumbed to his injuries. Decedent sustained several wounds. The first gunshot wound was to the bottom of his right foot. The bullet remained lodged in Decedent's foot. A second gunshot wound was located on the left side of Decedent's back. The bullet traveled through Decedent's heart and lung. The bullet remained lodged in his breast plate area.

### **SCENE WALK-THROUGH**

Officer Tomburo was unable to conduct a scene walk-through because she was transported to UMC Trauma.

### **OFFICER WEAPON COUNTDOWNS**

On September 10, 2022, at approximately 6:20 A.M., Officer Tomburo had her duty weapon counted down at 3955 University Center Drive to determine the number of rounds she fired during the incident. Officer Tomburo and witness officers were photographed by CSA personnel for appearance purposes. Their weapons were photographed for identification purposes. The firearm and magazine were located on scene. Officer Tomburo's spare magazines were in her black duty belt at UMC.

Officer Tomburo was dressed in a standard LVMPD long sleeve utility uniform. She wore LVMPD patches on each shoulder and an LVMPD badge over her left breast. Officer Tomburo wore a black duty belt with attached tools and equipment. Officer Tomburo was not present for the countdown of her weapon. She had been transported to UMC.

Prior to countdown Officer Tomburo stated she carried 17 cartridges in the magazine loaded in her firearm and one cartridge in the chamber (17+1, 18 total).

<b>Make</b>	Sig Sauer
<b>Model</b>	P320
<b>Serial Number</b>	58H237589
<b>Caliber</b>	9mm
<b>Weapon Mounted Light</b>	Yes
<b>Ammunition</b>	Speer 9mm Luger +P
<b>Cartridge in Chamber</b>	1
<b>Magazine from Weapon</b>	Capacity: 17 cartridges
	Countdown: 13 cartridges
<b>Spare Magazine #1</b>	Capacity: 21 cartridges
	Countdown: 21 cartridges
<b>Spare Magazine #2</b>	Capacity: 21 cartridges
	Countdown: 21 cartridges
<b>Spare Magazine #3</b>	Capacity: 21 cartridges
	Countdown: 21 cartridges

At the completion of the countdown, it was determined Officer Tomburo discharged her firearm four times during this incident. Officer Tomburo's firearm, magazines and cartridges used during the OIS were photographed by SCSA Vaandering and impounded by CSA Peterson.

### **BODY WORN CAMERA (BWC)**

The Axon Flex body-worn camera (BWC) time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero degrees longitude and passes through Greenwich, England.

Officers activated their BWCs at different times during the incident. There is a seven-hour negative difference between the event time and displayed Zulu Time. Axon BWCs also has a "time drift" where the camera's internal clock drifts from actual time based on when the cameras are synced when the camera is docked. Each BWC can display a different time based on a time drift.

#### **Officer Duenas**

Officer Duenas wore a BWC at the time of the incident and the camera was activated. The camera was collected by Sergeant Iacullo and secured. The video footage captured was later viewed by FIT Detectives on September 10, 2022, at 2:40 A.M.

Officer Duenas was in the passenger seat of the patrol vehicle as they drove south on University Center Drive, behind the Buick. The patrol vehicle's emergency lights were on when the BWC footage began. The Buick turned west into the University Garden Apartments followed by the officers in the patrol vehicle. Officer Duenas exited the passenger seat and approached the Buick, while holding his flashlight with his left hand.

As Officer Duenas reached the rear passenger quarter panel of the Buick, Officer Tomburo asked the driver, DT, to lower his back window. A minute and five seconds into the footage, Officer Tomburo spoke to Officer Duenas, but it was unintelligible. Officer Duenas acknowledged and began to walk back toward the patrol vehicle. DT exited the Buick and walked back to the patrol vehicle where Officer Duenas asked for his identification. DT told Officer Duenas he did not have any identification and Officer Duenas placed DT in handcuffs.

A minute and 18 seconds into the footage, as Officer Duenas explained to DT why he placed him in handcuffs, Officer Tomburo yelled, "Hey, hey." Officer Duenas's BWC then showed Officer Tomburo as she ran northbound away from the patrol vehicle.

Officer Duenas remained behind DT, who was on the front driver's side of the patrol vehicle. DN remained on the passenger side of the patrol vehicle.

A minute and 38 seconds into the recording, a gunshot was heard followed by Officer Tomburo screams. Then four additional gunshots were heard.

At the two-minute mark of the footage, Officer Tomburo screamed in pain and DN told Officer Duenas, "Bro, make sure she's cool." Officer Duenas then stated, "What the fuck happened?" Officer Duenas then walked to the passenger side of the patrol vehicle and behind DN.

At the three-minute mark of the footage, Officer Duenas yelled to Officer Tomburo and asked her if she was good. Officer Tomburo yelled "no, I need a tourniquet." DN put his hands on his head and then kneeled on the ground. Officer Duenas ran northbound toward Officer Tomburo at the three minute and 13 second mark. At the three minute and 27 seconds mark, Officer Duenas found Officer Tomburo and placed a tourniquet on her left leg.

At the five minute and 20 second mark, JAH walked over to Officers Duenas and Tomburo as other officers arrived to assist. Officer Duenas helped to carry Officer Tomburo into a patrol vehicle.

### **Officer Tomburo**

Officer Tomburo was wearing a BWC at the time of the incident and the camera was activated. The camera was collected by Sergeant Iacullo and secured. The video footage captured was later viewed by FIT Detectives on September 10, 2022, at 2:30 A.M.

Officer Tomburo contacted DT at the drivers' side window. Twelve seconds later, DT opened his driver's side door, exited the vehicle, and walked back towards the police vehicle. Officer Tomburo flashed her flashlight towards Decedent, as he sat in the front passenger seat. The BWC showed Decedent looked at the home screen of his cellular phone. Officer Tomburo walked back to the rear of the Buick and in front of the patrol vehicle. DN exited the rear passenger door and walked toward the front of the patrol vehicle.





Decedent in the front seat of the Buick.

Decedent followed DN and walked past Officer Tomburo and toward the front of the patrol vehicle. Officer Tomburo asked DT, DN and Decedent, “Anyone got weapons or anything I need to know about, ok?” Officer Tomburo then placed her left hand on Decedent’s left shoulder, and immediately Decedent ran northbound. Officer Tomburo ran after him. JAH’s vehicle is seen on the BWC as Decedent and Officer Tomburo ran past his driver’s side door. Officer Tomburo yelled “Hey, hey, hey, don’t fuckin” to Decedent.

Approximately 48 seconds into the footage, Decedent turned his body toward Officer Tomburo, pointed his firearm at her and fired one round toward her. A muzzle flash was seen when Decedent discharged his weapon (see p. 9). After Decedent fired toward Officer Tomburo, she fell to the ground. After she fell to the ground, four additional gunshots are heard. Officer Tomburo advised shots were fired and gave her location. BWC showed her firearm was off to her right. Decedent could be heard moaning in the background. Officer Tomburo yelled in pain and again advised dispatch that shots were fired. Officer Tomburo looked up and footage showed Decedent on the ground north of her location.

Officer Tomburo again advised dispatch that shots were fired, to roll medical and that a Hispanic male wearing a blue shirt was down. Officer Tomburo then yelled for her partner, Officer Duenas, to bring her a tourniquet. Officer Duenas arrived at Officer Tomburo’s location and began placing his tourniquet on her leg. Officer Tomburo then advised dispatch that she was shot on her left leg. Other officers arrived to assist Officer Duenas and helped place Officer Tomburo in the rear seat of a patrol vehicle. Officer Cooney gave Officer Tomburo instructions and engaged her in conversation as they drove to UMC.

## **THIRD-PARTY VIDEO AND PHOTOGRAPHIC EVIDENCE**

### **Regional transportation Commission (RTC) of Southern Nevada Camera**

Video was obtained from the Southern Nevada Counter Terrorism Center Fusion Watch. Detectives learned that there was an LVMPD Fusion Watch camera located at the intersection of University Center Drive and Twain Avenue. The camera was located on a light pole on the northeast corner and the camera captured footage of traffic in a south and west direction. The footage obtained was approximately 2 minutes and 9 seconds long. The footage did not capture any portion of the OIS but did capture the Buick as it drove south on University Center Drive. The Buick continued southbound and had a green light as the vehicle passed Twain Avenue. An LVMPD patrol vehicle exited a complex on the east side of the street and drove in a northbound direction onto University Center Drive.

The Buick drove in the first travel lane, failed to maintain its lane, and merged into the second travel lane. The patrol vehicle conducted a U-turn as soon as the Buick passed it. The patrol vehicle drove southbound behind the Buick, and the patrol overhead lights were then activated. Both vehicles then pulled into the University Garden Apartments and out of camera view.

## **AUTOPSY**

On September 10, 2022, at approximately 9:53 A.M., an autopsy was performed on the body of Decedent by Doctor Nathan Shaller.

Doctor Shaller noted several injuries to Decedent: a gunshot wound on the bottom of his right foot; a gunshot wound to the left upper back; and abrasions to his forehead, nose, chin, right cheek, right hip, left elbow, right knee, and lower leg. The toxicology results showed Decedent had ethanol in his system with a blood alcohol content of .272.

On November 18, 2022, after a thorough review of facts and circumstances and a complete autopsy, Doctor Nathan Shaller opined Decedent died as a result of a gunshot wound of torso. The manner of death was homicide.

## **FORENSICS REQUESTS/RESULTS**

### **Biology/DNA Examination**

On September 14, 2022, an LVMPD Forensic Laboratory Request was submitted by Detective Valenzuela for biology/DNA analysis. On September 28, 2022, Forensic Scientist Kimberly Dannenberger determined that the firearm used by Decedent, the Smith and Wesson model SD9VE 9 mm Luger pistol, had Decedent's DNA on it as well as the magazine.

## **Firearm Examinations**

### **National Integrated Ballistic Information Network (NIBIN)**

On September 12, 2022, an LVMPD Forensic Laboratory Request was submitted and completed by NIBIN Technician Steven Hough, on the Smith & Wesson for NIBIN comparison. The results showed the stove-piped cartridge case was associated with Decedent's Smith and Wesson model SD9VE 9mm Luger pistol.

### **Function Testing and Ballistic Comparison Evidence**

On September 14, 2022, an LVMPD Forensic Laboratory Request was submitted by Detective Valenzuela on Officer Tomburo's and Decedent's firearms for a function test and ballistic comparison evidence. Officer Tomburo's Sig Sauer was operational with no noted malfunctions. Decedent's Smith and Wesson model SD9VE 9mm Luger pistol was also operational with no noted malfunctions.

## **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.

### **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.<sup>1</sup> NRS 200.120(1). Homicide is also lawful when committed:

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<sup>1</sup> NRS 200.120(3)(a) defines a crime of violence:

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

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“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.

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

In this case, Decedent posed an actual and imminent danger to Officer Tomburo. Decedent made the choice to run from Officer Tomburo after a routine traffic stop. As he ran from her, her BWC showed he pulled a firearm from his waistband, turned toward her, and fired a shot at her. Additionally, JAH was in his vehicle after he dropped off a fare. He drove past Decedent and Officer Tomburo as Decedent ran from Officer Tomburo. JAH saw Decedent retrieve a firearm from his waist band, turn toward Officer Tomburo and shoot at her. JAH observed Officer Tomburo fall to the ground. Once on the ground, JAH heard as Officer Tomburo screamed for help. JAH then heard additional shots being fired. JAH was so concerned for the safety of Office Tomburo, he stopped his car in the middle of University Center Drive, retrieved his gun and found Officer Tomburo. Not only were the shots fired by Decedent a danger to Officer Tomburo, but also to JAH. Additionally, the residents of the University Garden apartments were in danger.

Thus, Officers Tomburo was confronted by actual and imminent danger, which created in her mind an honest belief and fear that she was going to be killed or suffer great bodily injury. Accordingly, Officer Tomburo was justified in acting upon those appearances, fears, and actual beliefs.

## **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 demonstrated Officer Tomburo had probable cause to believe Decedent posed a threat of serious physical harm to herself and others. This probable cause became evident after Officer Tomburo saw Decedent retrieve his gun, turn toward her, and shoot toward her. Once Decedent retrieved his gun and shot Officer Tomburo, it was he who posed a threat of serious physical harm to Officer Tomburo and others in the apartment complex. Thus, Officer Tomburo had a reasonable belief that Decedent was a threat to her life and the lives of others in the apartment complex. For these reasons, Officer Tomburo was justified in using deadly force.

In light of this evidence, the actions of the officer were legally 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 Officer Tomburo 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, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Because the conduct of Officer Tomburo was legal, her conduct does not fall within the state criminal statutes and, therefore, does not support the District Attorney’s Office charging her with a crime.