

**OFFICE OF THE WASHOE COUNTY
DISTRICT ATTORNEY**

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REPORT ON THE AUGUST 13, 2015, OFFICER INVOLVED
SHOOTING OF RUSSELL ROBERTS

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INTRODUCTION

In the early morning hours of August 13, 2015, Reno Police Department (RPD) officers were dispatched to the Imperial Bar & Lounge in downtown Reno. Fully uniformed RPD Officer Chris Johnson was the first to arrive. He was directed to Russell Roberts by a witness who complained that Roberts was in possession of a firearm and had just pointed it at him and other people. As Officer Johnson began to approach him, Roberts walked to a black Mercedes in the parking lot. Officer Johnson shined his flashlight at him and repeatedly advised him to stop. Roberts refused and placed his hand in his waistband area leading the officer to believe he was reaching for a gun.

Officer Johnson drew his firearm and again advised him that he was the police and to stop at which time Roberts entered the driver's side of the Mercedes and began to reverse out of his parking spot to exit the lot. Officer Johnson positioned himself in front of the vehicle and again ordered him to stop and get out. He refused.

Roberts then struck Officer Johnson with the vehicle causing him to land on the hood. After sliding off the hood, the officer landed on his feet directly in the path of the vehicle. The Mercedes then struck him again causing Officer Johnson to fall on his back with his legs under the car. Roberts then drove over the officer with his front tires. Officer Johnson fired his gun from the ground into the vehicle. Nevertheless, Roberts exited the parking lot and escaped at a high rate of speed.

Great efforts were employed to locate Roberts. On August 14, 2015, the black Mercedes was located. It was unoccupied. It had four bullet holes and blood on the driver's seat. A VIN check of the car revealed it belonged to Roberts.

On August 15, 2015, Roberts was located at a downtown Reno motel. He had gunshot wounds to his left and right leg and was transported to Renown. Upon release, he was arrested. Roberts subsequently pled guilty to Battery with a Deadly Weapon for his attack on Officer Johnson and was sentenced to 10 years in prison.

Consistent with the regionally-adopted Officer Involved Shooting (OIS) Protocol, the Washoe County Sheriff's Office (WCSO) led the investigation into the shooting of Roberts. Sparks Police Department (SPD) provided secondary investigative support, RPD provided further needed support, and the Washoe County Crime Laboratory (WCCL) provided forensic services. The Washoe County District Attorney's Office provided oversight and assistance in obtaining search warrants.

The investigation included interviewing witnesses, collecting physical evidence, obtaining search warrants, photographing various scenes relevant to the incident, forensically testing collected evidence, obtaining relevant surveillance video and interviewing the officer involved in the shooting.

All investigation reports along with WCCL forensic reports, photographs, surveillance video and recorded interviews were then submitted to the Washoe County District Attorney's Office in February of 2016, for a determination of whether the shooting of Roberts was legally justified. No criminal charges were recommended by WCSO.

The District Attorney's evaluation included reviewing approximately 600 pages of reports and documents including witness accounts. It further included the review of photographs, diagrams, video, recordings of radio transmissions, and examination of the scene of the shooting. This report follows.

Based on the available evidence and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Russell Roberts by RPD Officer Chris Johnson is legally justified.

I. STATEMENT OF FACTS¹

On August 13, 2015, at 1:22 a.m. an emergency call was received from the Imperial Bar & Lounge located at 150 North Arlington Avenue regarding a patron refusing to pay his bill resulting in a physical altercation with a security guard. RPD Officer Johnson was dispatched to the call and arrived on-scene at 1:29

¹ The Statement of Facts is synopsised from witness interviews, videos, and police reports.

a.m. He parked his patrol vehicle in front of the parking lot at 150 North Arlington Avenue just north of the Imperial Lounge.

A. Witness Accounts

1. Reno Police Department Officer Chris Johnson

Officer Johnson was interviewed at the Reno Police Department on August 17, 2015, at 12:00 p.m. by WCSO Detective West Urban and SPD detective John Vasquez. He has been employed by RPD since October of 2012.

On August 13, 2015, he was working the graveyard shift which usually starts at 9:00 p.m. and ends at 7:00 a.m. He was dressed in his blue RPD uniform that exhibits Reno Police patches on both shoulders. He also wore his badge on his chest as well as his duty belt. He was driving a Ford Explorer patrol vehicle marked with police colors and emergency lights.

Officer Johnson was in the downtown Reno area when he was dispatched to the Imperial Bar & Lounge regarding the aforementioned call. Upon his arrival while driving southbound on North Arlington Avenue, he drove past the Imperial Bar & Lounge to see if security was still out front as usual. Seeing none, he executed a U-turn and parked his vehicle.

After parking, he looked to his right into the parking lot and saw a group of approximately 15 or 20 people gathering together. Officer Johnson exited his vehicle and walked in that direction to see if the group was involved in the reported incident. As he approached, it became apparent to him that the group was "throwing words back and forth" and "trying to get tough with each other". When the group saw Officer Johnson approaching someone stated "it's the cops" and the group began to scatter.

However, one unknown male witness approached the officer and stated "that guy's got a gun" and pointed at a man. The man, later identified as Roberts, was walking away from the area. The unknown individual continued with "that guy just pointed a gun at me and some other people".

Officer Johnson began to walk after Roberts who was approximately 30 feet away. To Officer Johnson, Roberts did not appear to know he was following him. He stopped at the driver's

side of a black Mercedes parked in the parking lot. At approximately 15 feet away, Officer Johnson illuminated his flashlight on Roberts and stated "Hey police, I need you to come here and talk to me".

At that point, Roberts put his hand in his waistband and began quickly moving closer to the Mercedes. Based on the report that Roberts had a gun and had recently pointed it at other people, Officer Johnson removed his firearm and pointed it at Roberts who then got into the driver's side of the car.

Officer Johnson positioned himself at the front of the Mercedes and ordered Roberts numerous times to "Get out of the car, Police, get out of the car!" After staring at Officer Johnson for a moment, Roberts then began to reverse out of the parking spot in order to exit the parking lot. Officer Johnson followed maintaining his position of only a few feet away from the hood of the car and again ordered him to stop and get out.

Roberts stopped the vehicle and then charged the vehicle forward at the officer causing him to fall on the hood. After sliding off the hood of the vehicle and landing in front of the driver's side, Officer Johnson realized that Roberts was trying to run him over. He attempted to move away from the front of the vehicle. Roberts turned the steering wheel in his direction and again charged forward.

Officer Johnson was pulled under the vehicle onto his back. He attempted to roll out of its path but his right leg was run over by the front driver's side tire of the Mercedes. As the rear tires were approaching him, Officer Johnson feared for his life and personal safety as well as the safety of citizens in the area. Consequently, he fired into the driver's door of the vehicle as it was passing by him. Officer Johnson was able to remove both legs from the undercarriage of the vehicle to avoid being run over by the back tire. Roberts then fled the parking lot at a high rate of speed nearly hitting a group of people in the crosswalk.

Officer Johnson relayed a description of Roberts and his vehicle to responding officers. He also asked witnesses to remain and provide statements. He was treated by REMSA and taken to Renown Hospital. He sustained minor injuries in the attack.

2. David Lemke

Lemke advised that on August 13, 2015, he was pulling into the parking lot at 150 North Arlington Avenue when he saw the black Mercedes backing out of a parking space.

Lemke heard Officer Johnson yelling "stop" and saw Roberts drive the Mercedes into Officer Johnson and over his leg. He also saw the officer fire rounds into the driver's side door estimating that 4 shots were fired.

Lemke believed Roberts was "trying to take out the officer" and that Officer Johnson "defended himself". He further saw Roberts speed away from the parking lot nearly hitting other vehicles and pedestrians.

3. James Audas

Audas, who had just exited the Imperial Lounge, saw the black Mercedes pulling out of the parking lot and heard Officer Johnson yelling "stop". It appeared to Audas that the officer was run over by the vehicle because he went down as the vehicle passed him. At that point, he heard the officer fire 3 or 4 shots and then saw the Mercedes leave the parking lot. He observed Officer Johnson get up off the ground and limp as he walked.

4. John Andruess

Andruess is the door manager for the El Cortez Lounge which is located directly north of the 150 North Arlington parking lot across West 2nd Street. He was working in the early morning hours of August 13, 2015.

At the time of this incident, Andruess had just stepped outside the front door of the lounge to take a break. He looked across the street and saw a small black vehicle in the parking lot approaching an officer with its headlights off. He saw Officer Johnson put his hand up toward the vehicle and saw the vehicle accelerate into him knocking him to the ground on the driver's side. He then saw Officer Johnson fire his gun into the driver's side door.

5. Darian Gentile

Gentile had been at the Imperial Lounge prior to this incident and was standing outside of Noble Pie Pizza Parlor when it occurred. Noble Pie is next to the El Cortez Lounge. Gentile looked across the street and saw Officer Johnson trying to stop the Mercedes. He heard the engine of the Mercedes accelerate and then saw it speed forward and strike the officer causing him to land on the ground. He then saw Officer Johnson fire shots into the driver's door.

6. Richard Fimby

On August 13, 2015, at 12:00 a.m. Fimby started his shift as a "door man" at the Tonic Lounge. The Tonic Lounge is located on West 2nd Street immediately east of the El Cortez Lounge. It also is due north of the parking lot located at 150 North Arlington Avenue.

At approximately, 1:30 a.m. Fimby saw Roberts and a friend of Roberts "bickering" with two unknown males on the sidewalk area outside the Tonic Lounge. He recognized Roberts because he was a previous patron of the Tonic Lounge who had recently been "86'd" or denied customer service at the establishment. He then observed the 4 men cross the street towards the parking lot. He lost sight of them for about five minutes and then saw Roberts walking towards his black Mercedes being followed by Officer Johnson.

To Fimby, it seemed Roberts knew Officer Johnson was following him because his walk was "swift, like when you're trying to get away" and "not make a scene". Fimby observed Roberts get into his car and began to back out of the parking space while Officer Johnson pulled his gun and pointed it towards the windshield.

He then saw Officer Johnson fall off the hood of Roberts' vehicle and saw the vehicle run over one of the officer's legs. He then heard Officer Johnson fire his gun approximately 3 times which was followed by Roberts fleeing in his vehicle.

B. Countdown of Officer Johnson's Firearm

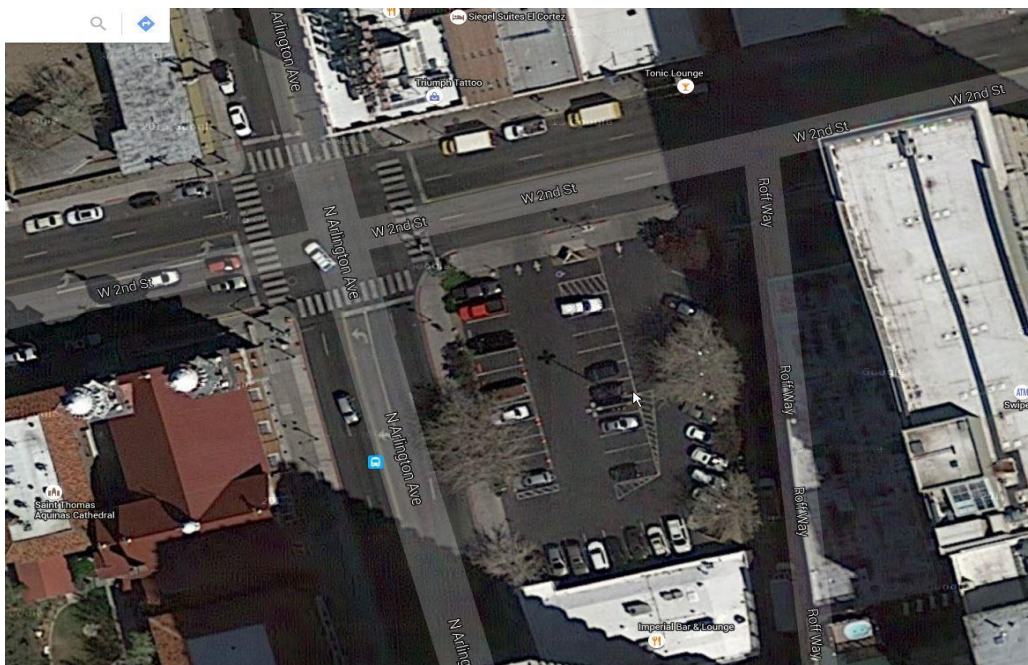
Officer Johnson's primary weapon on August 13, 2015, was a "Glock 22 Gen 4" 40 caliber pistol. The carrying capacity of the magazine used in his firearm was 15 rounds. Officer Johnson relayed to investigators that he carries all of his magazines to full capacity.

A countdown of his firearm after the shooting revealed 11 rounds of "WIN 40 S&W". One round was in the chamber of the firearm and 10 rounds remained in the magazine.

C. West 2nd Street and North Arlington Avenue Area

Several hospitality establishments are located on the corner of North Arlington Avenue and West 2nd Street. The Imperial Bar & Lounge, Noble Pie Pizza, El Cortez Lounge and Tonic Lounge Nightclub are all located in that area and host nightly drink and food specials. Due to the close proximity of the establishments to each other, the area is often heavily populated at night with bar and restaurant patrons.

Video and witness account reveal that on August 13, 2015, during the time of the shooting, there were large amounts of people in the establishments, on the sidewalks, in the parking lot, and moving from one establishment to the other.



D. Location of Black Mercedes

On August 14, 2015 a black Mercedes registered to Roberts was located abandoned in the Caughlin Ranch area in Reno. An inspection and search of the vehicle revealed 4 bullet holes in the driver's side door, evidence consistent with someone being struck by the vehicle including marks in the dust on the hood and damage to the front bumper on the driver's side. It also revealed evidence that at least one bullet traveled through the door and blood on the driver's seat.







E. Location of Russell Roberts

In the early morning hours of August 15, 2015, Roberts was located in room #234 at the Desert Rose Inn Motel located at 655 West 4th Street by RPD and WCSO. At that time he surrendered to police and was taken into custody. He had a gunshot wound. The bullet entered the outer part of his left thigh, exited the inner part of his left thigh, and grazed the inside of his right thigh. He was taken to Renown Hospital by WCSO.

The room where Roberts was found was rented to a female. She partook in an interview with detectives. She stated that she had known Roberts for about a week and a half and that they had spent some time together off and on during that time. She said that he showed up at her room on August 14, 2015 at approximately 11:00 p.m.

Roberts was obviously injured and told her that he had accidentally shot himself. She stated that he had a gun with him every time she had seen him before that night but did not have it at that time. She stated that she tried to ask him more about his injury and how it happened to which he stated "The less you know the better for you".

F. Roberts Plea and Sentence

Based on his actions on August 13, 2015, Roberts was charged with Battery with a Deadly Weapon, a felony, where it was alleged that he willfully and unlawfully used force or violence upon the person of Officer Johnson, with a deadly weapon (his Mercedes Benz) when he struck him with the vehicle.

On December 15, 2015, he pled guilty to the charge. On February 4, 2016, he was sentenced by the Honorable Elliott Sattler to 10 years in prison with parole eligibility after 4 years have been served. Roberts was also sentenced to 4 years in prison with parole eligibility after 19 months have been served on a previous felony Possession of a Controlled Substance for the Purpose of Sale charge.

Significantly, Roberts had an active failure to appear warrant for his arrest on the drug charge at the time of his attack on Officer Johnson. The sentences given on February 4, 2016, were run consecutively.

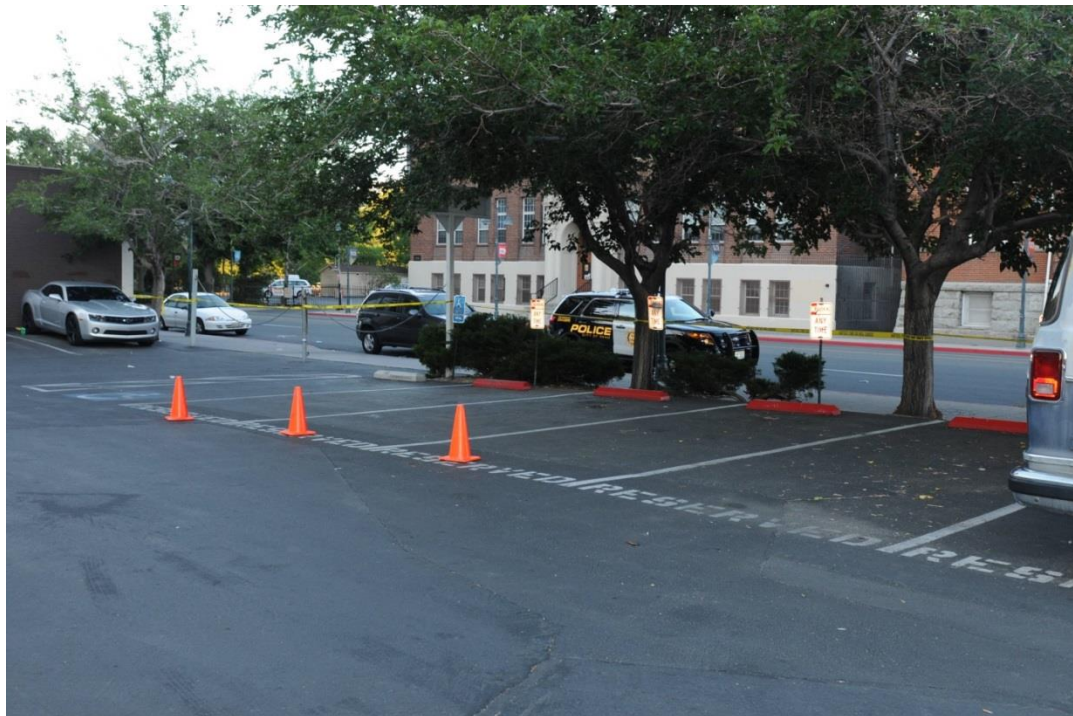
II. SHOOTING SCENE

The parking lot located at 150 North Arlington Avenue is a multi-space lot that is enclosed by North Arlington to the west, West 2nd Street to the North, and Roff Way to the East. Directly south of the lot is the Imperial Bar & Lounge.

The parking lot has an entrance on the northeast side of the lot from West 2nd Street and an exit onto West 2nd Street due west of the entrance. There is another entrance to the lot on the southwest side of the lot that is chained off.

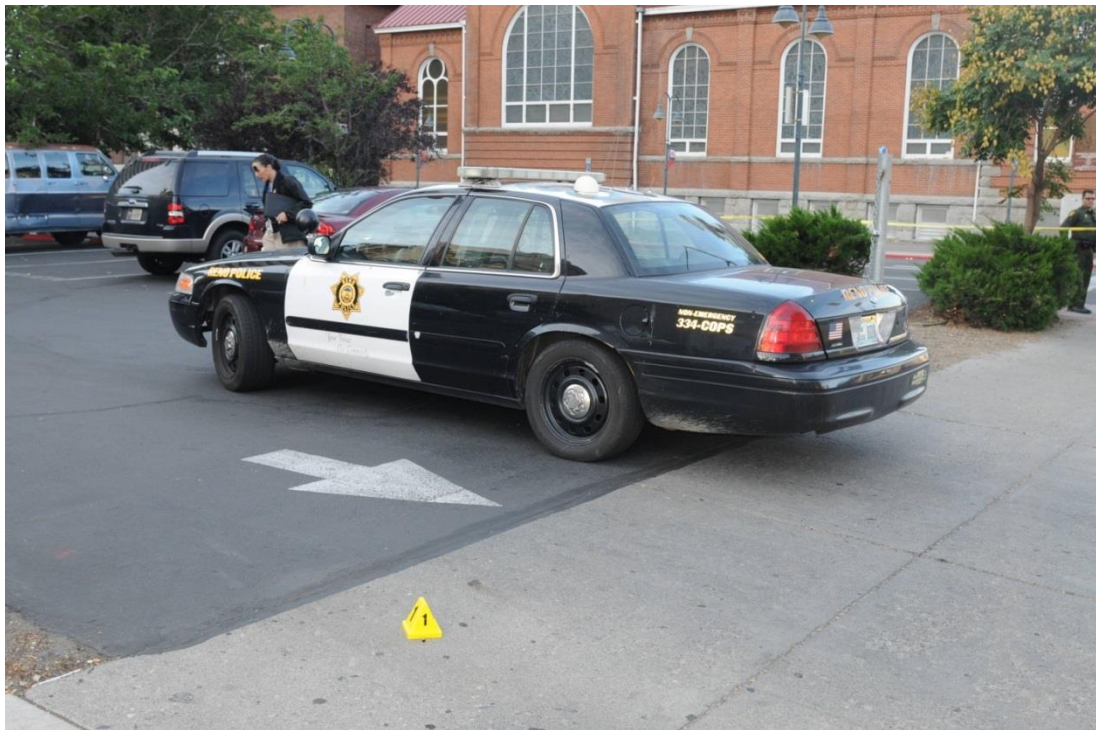


Officer Johnson's marked Ford Explorer patrol unit was parked facing northbound on North Arlington Avenue immediately north of the chained-off entrance to the parking lot located at 150 North Arlington Avenue.



The shooting in the parking lot occurred near the exit onto West 2nd Street. An RPD Officer responding in an emergency capacity to the location after hearing Officer Johnson's radio traffic involving his contact with Roberts, parked his patrol vehicle sedan in the exit way of the parking lot. After locating Officer Johnson and receiving information about the incident, he realized that he had parked his vehicle in the area where the shooting occurred. As to not disturb the scene, the vehicle was left as parked.

Located in that parking lot area were 4 bullet casings that were marked by WCSO Forensic Investigative Services Investigators with placards numbered 1-4. The casings were "WIN 40 S&W".





III. LEGAL PRINCIPLES

The Washoe County District Attorney's Office is tasked with assessing the conduct of the officer involved and determining whether any criminality on his part existed at the time of the shooting. Although Roberts survived this officer involved shooting, in order to conduct the appropriate assessment the District Attorney's review is controlled by the relevant legal authority pertaining to justifiable homicides. This is because the analysis rests upon the decision to use deadly force, not the result.

In Nevada, there are a variety of statutes that define justifiable homicide. (see NRS 200.120, 200.140, and 200.160) There is also a statute that defines excusable homicide and one that provides for the use of deadly force to effect arrest. (see NRS 200.180 and NRS 171.1455) Moreover, there is case law authority interpreting justifiable self-defense and defense of others. All of the aforementioned authority is intertwined and requires further in depth explanation:

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

NRS 200.120 provides in relevant part that "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 200.160 further provides in relevant part that "Homicide is also justifiable when committed... in the lawful defense of the slayer... or 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".

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). In Runion, the Court set forth sample legal instructions for consideration in reviewing self-defense cases as follows:

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

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, 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 self-defense. 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 is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable

doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

Id. 1051-52.

B. Justifiable Homicide by Public Officer

NRS 200.140 provides in relevant part that "Homicide is justifiable when committed by a public officer... when 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" and "When necessary... in attempting, by lawful ways or means, to apprehend or arrest a person" and/or "in protecting against an imminent threat to the life of a person".²

C. Use of Deadly Force to Effect Arrest

NRS 171.1455 provides in relevant part "If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person... Poses a threat of serious bodily harm to the officer or to others.

IV. ANALYSIS

On the morning of August 13, 2015, RPD Officer Chris Johnson confronted a harrowing experience. Dispatched to a reported theft and affray at the Imperial Bar & Lounge, his investigation transformed and escalated quickly when confronted with a large, potentially unruly, crowd in the parking lot and a complaint of a man brandishing a firearm. That man was Roberts.

Accordingly, Officer Johnson ordered him to stop numerous times. Roberts did not. Rather, Roberts reached into his waistband and continued toward his vehicle. These acts further escalated the situation forcing Officer Johnson to remove his firearm for the safety of himself and the citizens in the area.

² A 1985 Nevada Attorney General Opinion limited the interpretation of NRS 200.140 to situations where the officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or to others.

When now confronted with Officer Johnson's demands and firearm, Roberts again escalated the situation by entering his vehicle and reversing it from its parking spot in an effort to flee the scene. At that point Officer Johnson rightly persisted and followed the reversing vehicle on foot.

Roberts then willfully and alarmingly put his vehicle in drive and accelerated towards Officer Johnson striking him and causing him to land on the hood of the vehicle. Moreover, after he slid from the hood and tried to evade further attack, Roberts deliberately turned the wheels toward him and accelerated again. Officer Johnson was pulled under the vehicle and run over by the front left tire. As the rear tires approached, he was faced with a dire situation. He was about to potentially be run over again and still had reason to believe Roberts possessed a firearm that, in light of the circumstances, could be fired at him by Roberts as he drove by.

In that instant, Officer Johnson reasonably believed that he, and the citizens in the area, were in imminent danger of death or great bodily injury. It was absolutely necessary for him to use deadly force. These acts by Roberts posed an immediate threat to Officer Johnson and the nearby public at large.

In short, Officer Johnson had the right under Nevada law to use deadly force against Roberts both in defense of himself and others and in the discharge of a legal duty.

V. CONCLUSION

Based on the review of the entire investigation presented and the application of Nevada law to the known facts and circumstances surrounding the August 13, 2015, officer involved shooting of Roberts, the actions of Officer Chris Johnson are warranted under Nevada law. Unless new circumstances come to light which contradict the factual foundation upon which this decision is made, the District Attorney's review of this case is officially closed.