

**OFFICE OF THE WASHOE COUNTY  
DISTRICT ATTORNEY**

November 7, 2023



REPORT ON THE NOVEMBER 5, 2021, OFFICER INVOLVED  
SHOOTING OF ISAIAH HERNDON

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**WASHOE COUNTY DISTRICT ATTORNEY**

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## INTRODUCTION<sup>1</sup>

On November 5, 2021, two Reno Police Department (hereinafter "RPD") officers, Casey Thomas (hereinafter "Officer Thomas") and Steve Welin (hereinafter "Officer Welin"), responded to a call at an apartment complex on 197 E. Grove Street at approximately 10:44 p.m. The officers received information from dispatch about a 911 call regarding a family disturbance, wherein the caller reported hearing screaming and pounding on the walls of the adjoining apartment. The caller believed a male and a female were involved in some type of altercation. The caller also stated that he believed he heard a gunshot or a firework prior to the screaming.

Officers arrived at the apartment complex in separate vehicles and located the reported apartment, apartment #F13. The apartment was on the second floor and upon reaching it, the officers stood on either side of the door along a narrow walkway. They could hear yelling coming from the apartment and believed someone inside was in distress. Officer Welin knocked on the door and unholstered his firearm. Officer Thomas contacted dispatch to ask for an open channel in case entry into the apartment was needed.

The officers heard a loud thump and then the front door to the apartment suddenly opened. Immediately after the opening of the door, an arm extended out of the doorway. In its hand was a semiautomatic firearm that was pointed in the direction of Officer Thomas. Fearing for their lives, Officer Thomas and Officer Welin discharged their weapons in the direction of the armed subject in the entryway to apartment #F13. The individual who had opened the apartment door, later identified as Isaiah Hartford Herndon (hereafter "Herndon") then retreated into the apartment and began shouting to officers that he was shot.

Immediately after firing, Officers Thomas and Welin backed away from the apartment and attempted to take cover while also calling for assistance. Numerous officers arrived on scene and one RPD officer, Colby Thomas (hereinafter "Officer C. Thomas"), took a position in the parking lot where she could see inside the apartment. Officer C. Thomas reported that Herndon was now

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<sup>1</sup> The Introduction is synopsised from 911 calls, police reports, witness interviews, Body Worn Cameras ("BWC") and forensic reports.

lying down in the doorway of the apartment. Based on this information, Herndon was given commands to show his hands. Officers then grabbed Herndon and pulled him out of the apartment and down the walkway to the front of apartment #F12, which was next door to Herndon's apartment. Officers immediately began life saving measures on Herndon, who was actively bleeding from multiple gunshot wounds. He was transported to Renown Regional Medical Center where he underwent treatment and survived.

Responding officers searched the apartment immediately after the shooting but found no other persons inside. It was later determined that Herndon had been consuming alcohol, methamphetamine, and ecstasy prior to the shooting and was having a self-diagnosed "mental episode" where he was hearing voices and yelling back at them. He subsequently claimed that when he heard the officers knock on the door, he asked who it was, and when no one answered, he opened the door with his gun in front of him and shot<sup>2</sup>.

Consistent with the regionally adopted Officer Involved Shooting (hereinafter "OIS") Protocol, the Sparks Police Department (hereinafter "SPD") led the investigation into the shooting of Isaiah Herndon. The Washoe County Sheriff's Office (hereinafter "WCSO") provided secondary investigative support, and the Washoe County Sheriff's Office Forensic Science Division (hereinafter "FIS") provided forensic services.

Herndon was subsequently charged and pled guilty to two counts of Assault with a Deadly Weapon upon the officers and one count of Being a Felon in Possession of a Firearm. On March 14, 2023, he was sentenced to an aggregate sentence of 216 months in prison with parole eligibility commencing after 84 months have been served. To ensure the integrity of the criminal case, this Officer Involved Shooting review was held pending the outcome of Herndon's prosecution.

Upon completion of the criminal prosecution, all police reports, along with FIS forensic reports, collected documentation,

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<sup>2</sup> Several fired cartridge cases identified as having been fired from Herndon's Taurus pistol were located on the walkway outside the apartment's doorway. However, this review was unable to determine if Herndon fired his weapon upon opening the door to his apartment or prior to police being called.

photographs, witness statements, recorded audio and video of the incident, dispatch recordings, and recorded interviews were re-submitted to the Washoe County District Attorney's Office on July 12, 2023, for a final determination of whether the shooting of Herndon was legally justified. No criminal charges against Officers Welin or Thomas were recommended by SPD.

The OIS investigation included interviewing witnesses, collecting physical evidence from the shooting scene, photographing the shooting scene, forensic testing of collected evidence, and reviewing Body Worn Camera (hereinafter "BWC") footage taken from the BWC worn by the officers involved.

The District Attorney's evaluation included reviewing hundreds of pages of reports and documents and watching hours of BWC video collected from law enforcement on scene at the time of the shooting and this report follows that review.

Based on the available evidence and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Isaiah Herndon was justified under Nevada law.

## I. STATEMENT OF FACTS

### A. Witness Accounts

#### 1. RPD Officer Casey Thomas

On November 7, 2021, RPD Officer Thomas was interviewed at the Reno Police Department by SPD Detective D. Lawson (hereinafter "Detective Lawson") and WCSO Detective Stephanie Brady (hereinafter "Detective Brady"). Officer Thomas told detectives that he had worked for RPD for approximately two years and was a correctional officer prior to becoming employed with the Reno Police Department. Officer Thomas was assigned to the patrol division and worked the graveyard shift as a single unit.

On November 5, 2021, Officer Thomas was working as a marked patrol unit and in full police uniform when he responded to a family disturbance call at an apartment complex located at 197 E. Grove Street. Officer Thomas was aware that a third party had called 911 and reported screaming coming from apartment #F13. The caller also mentioned hearing a gunshot or a firework prior to the screaming. Officer Thomas arrived on scene along with fellow RPD Officer Welin. The two officers had to search for apartment #F13, finding it on the second floor of a building

located on the northeast side of the complex. Officer Thomas, along with Officer Welin, walked up a set of stairs to the west of #F13 and walked along a short walkway, which had a railing on the parking lot side and a series of apartments on the other side. The walkway was approximately five feet wide. Upon reaching #F13, Office Welin positioned himself to the east side of the apartment door and Officer Thomas was on the west side. Officer Welin then knocked on the door and Officer Thomas heard a person yell "Fuck" really loudly and could hear other words being said and believed the person or persons inside the apartment were in distress. Officer Thomas noted that Officer Welin stepped back about a foot from the doorway and pulled out his firearm. Officer Thomas pulled out his firearm and then contacted dispatch through his radio and asked to obtain a dedicated radio channel in case the situation escalated. Just then Officer Thomas heard loud thumps on the door and the door suddenly opened. An arm extended out the door with a semiautomatic pistol. The barrel of the gun was pointed towards Officer Thomas, who then raised his firearm and discharged 3-4 shots in the direction of the threshold of the apartment to not exchange crossfire with Officer Welin. Herndon retreated into the apartment, so Officer Thomas retreated along the second-floor walkway to a corner of the adjoining apartment building. Officer Thomas' firearm had a malfunction while he was backing away, so he attempted to clear his weapon several times and was forced to release his magazine onto the ground. Officer Thomas picked up the magazine and inserted it back into the weapon. Officer Thomas told investigators that it was possible he ejected unfired cartridges while trying to clear the malfunction to his firearm.<sup>3</sup> Officer Thomas communicated via radio that shots had been fired. Officer Thomas told detectives that he was unsure if Herndon had fired his weapon.

At this point Officer Thomas noticed that Officer Welin had also retreated, but based on his location he had no cover and was standing at the end of the second-floor walkway in front of a neighboring apartment. Officer Thomas asked Officer Welin if he shot the suspect. Officer Thomas could not recall what Officer Welin told him, but he did hear whom he believed was the

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<sup>3</sup> One (1) Speer .9mm Luger +P cartridge (unfired) was located by FIS near apartment F12 which is where Officer Thomas' weapon malfunctioned.

suspect, moaning inside the apartment. Officer Thomas asked for a shield to be brought by responding officers, as he believed someone else was still inside the apartment and that entry into the apartment was necessary.

After other officers arrived on scene, Officer Thomas learned that Herndon was inside the apartment on the ground. Officer Thomas gave commands to Herndon to drop the gun and another officer gave commands to come to the door with his hands up. Officer Thomas observed one hand at the entryway and saw Officer Welin approaching the apartment. Officer Thomas, along with RPD Officer Jager (hereinafter "Officer Jager"), who had arrived behind Officer Thomas, approached the doorway and saw Herndon lying on his back inside the apartment. Officer Jager grabbed both of Herndon's wrists and dragged him out onto the walkway. Officer Thomas yelled into the apartment, identifying himself as a Reno Police Department officer and asking that any other persons inside make themselves known. Nobody responded, so Officer Thomas along with Officer Welin, entered the apartment. Officer Thomas noted a good amount of blood on the kitchen floor which was right off the entryway in an area described as a living room/kitchen combination. Officer Thomas also observed a firearm lying on the floor. No other people were located inside the apartment. Officer Thomas was removed from the scene and taken to the police station where his BWC and firearm were retrieved from him.

## 2. RPD Officer Steven Welin

On November 10, 2021, RPD Officer Steven Welin was interviewed by Detective Lawson and Detective Brady at the Reno Police Department. Officer Welin told investigators that he had been employed with the Reno Police Department since January 2020 as a police officer. Officer Welin was assigned to the patrol division and worked the graveyard shift.

On November 5, 2021, Officer Welin was working as a uniformed marked patrol unit and responded, along with Officer Thomas, to a domestic call on Grove Street. Once on scene, the officers climbed the stairs to apartment #F13 on the second floor and Officer Welin crossed in front of the apartment and took up a position on the east side of the doorway. While outside the apartment, Officer Welin heard a male yelling. He then knocked on the door and drew his firearm from his holster. A loud thump

occurred, and the door suddenly opened. Officer Welin then saw a handgun and an arm reaching out the door as Herndon stepped out of the apartment and pointed the firearm at Officer Thomas. Officer Welin stated that he believed if he did not shoot Herndon right then, Herndon would kill Officer Thomas. He then pointed his firearm at Herndon and discharged his weapon approximately four times. Herndon then retreated into the apartment and Officer Welin stepped back from the door but continued to point his firearm in the direction of #F13 in case Herndon, or anyone else, reappeared. Officer Welin checked whether he had been shot and then asked Officer Thomas if he had been shot. He then heard Officer Thomas communicate over the radio that shots had been fired and determined that back up would be arriving soon. Based on this, he decided not to approach the apartment and waited for additional units to arrive.

Once additional officers arrived on scene, Officer Welin recalled hearing another officer stating that they could see a single male inside the apartment and another officer giving commands. Herndon then stuck his hands out the door and Officer Jager, who had come up the stairs, grabbed him and pulled him out of the apartment to render aid. Officers Welin and Thomas then entered the apartment to check for any other persons. While in the apartment Officer Welin noted there was blood and a firearm on the floor. No other persons were located, and Officer Welin was then taken to the police department where he turned his firearm and BWC over to the appropriate officials.

### 3. RPD Officer Colby Thomas

Officer C. Thomas responded to 197 E. Grove Street after hearing officers communicate over the radio that shots had been fired while responding to a family disturbance call. When Officer C. Thomas arrived, she observed Officer Thomas and Officer Welin standing on either side of an apartment with the door open. Officer C. Thomas was able to get a visual into apartment #F13 and observed a male subject lying on the floor and could hear the male stating that he had been shot. Officer C. Thomas gave commands to Herndon to show his hands and watched as Officers Thomas, Welin and Jager approached the apartment and pulled the subject out. Officer C. Thomas then participated in clearing the apartment for any additional persons.

#### 4. Robert Estey

Robert Estey (hereinafter "Mr. Estey") was interviewed on November 6, 2021, by Detective Lawson and Detective Brady at RPD. Mr. Estey told police he lived in apartment #F14, which was directly to the east of Herndon's apartment, and had resided there since 2018. Mr. Estey knew of Herndon as his neighbor in #F13 and had spoken to him several times about turning his stereo down. Mr. Estey said Herndon was friendly but appeared to have some psychological issues. Mr. Estey reported hearing disturbances coming from Herndon's apartment numerous times on previous occasions.

On November 5, 2021, Mr. Estey first heard screaming and noise coming from Herndon's apartment around 9:00 p.m. He waited approximately 30-60 minutes before calling 911. Mr. Estey believed he heard a female inside the apartment along with Herndon. Mr. Estey reported to 911 that he heard a gunshot or a firework prior to the yelling and screaming coming from Herndon's apartment. Mr. Estey said after he called 911, he heard approximately 10 gunshots and when he looked out his window saw a police officer with his gun drawn.

#### 5. Jacob Knapp

On November 10, 2021, Jacob Knapp (hereinafter Mr. Knapp") was interviewed by SPD Detective Jose Zendejas (hereinafter "Detective Zendejas"). Mr. Knapp resides at 197 E. Grove Street apartment #F12, which is directly to the west of Herndon's apartment. Mr. Knapp told police that on the evening of November 5, 2021, he heard loud music and fighting coming from Herndon's apartment. Mr. Knapp said he heard a gunshot from the area of the second-floor walkway prior to police arriving.

#### 6. Angelique Depauw

On November 10, 2021, Angelique Depauw (hereinafter "Ms. Depauw") was interviewed by Detective Zendejas. Ms. Depauw resided in apartment #F12 along with Jacob Knapp. She was interviewed by police on November 10, 2021, and told police that she had been walking home and had just passed the 7-11 (211 Grove Street) when she heard a gunshot. When she arrived home, Mr. Knapp told her there was some weird things going on with the neighbor. Mr. Knapp told Ms. Depauw that he had seen the neighbor running up and down the stairs and then fired a round

off. Ms. Depauw told police that she could hear arguing coming from Herndon's apartment but was unable to distinguish what was being said but it sounded "super-heated". Ms. Depauw said that she and Mr. Knapp retreated to the back of their apartment. Ms. Depauw heard police officers arrive and then heard gunshots. After the gunshots occurred, she heard officers giving verbal commands.

#### B. Countdown and Forensic testing of Officer Thomas' Firearm

Officer Thomas' primary weapon on November 5, 2021, was a Sig Sauer P320 .9mm. Officer Thomas told detectives that he loaded his duty weapon with seventeen (17) rounds plus an additional round in the chamber of the weapon for a total of eighteen (18) rounds.

On November 6, 2021, Washoe County Forensic Investigator Madison Langford (hereinafter "FIS Investigator Langford") collected Officer Thomas' equipment worn and used during the shooting. The collection of Officer Thomas' firearm and its contents revealed 1 Speer 9mm Luger +P cartridge in the chamber of the firearm and a Sig Sauer 9mm magazine containing twelve (12) Speer 9mm Luger +P cartridges. The magazine had a manufactured capacity of 17 cartridges. These items were booked into evidence at the WCSO Forensic Science Division.

Firearms testing was conducted on Officer Thomas' handgun which found that the firearm was in normal operating condition with no malfunctions. Four (4) of the fired cartridge casings recovered from the scene were identified as having been fired from Officer Thomas' handgun.<sup>4</sup>

#### C. Countdown and Forensic Testing of Officer Welin's Firearm

Officer Welin's primary weapon on November 5, 2021, was a .9mm Sig Sauer P320. Officer Welin told detectives that he loaded his weapon with a full magazine, seventeen (17) rounds, and one in the chamber for a total of eighteen (18) unfired cartridges.

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<sup>4</sup> All of Officer Thomas' fired and unfired cartridges were accounted for based on Officer Thomas' statement that he loaded his weapon with eighteen (18) total cartridges.

On November 6, 2021, FIS Investigator Langford collected Officer Welin's equipment worn and used during the shooting. The collection of Officer Welin's firearm and its contents revealed 1 Speer 9mm Luger +P cartridge in the chamber of the firearm and a Sig Sauer 9mm magazine containing ten (10) Speer 9mm Luger +P cartridges. The magazine had a manufactured capacity of 17 cartridges. These items were also booked into evidence.

Firearms testing was conducted on Officer Thomas' handgun which found that the firearm was in normal operating condition with no malfunctions. Six (6) of the fired cartridge casings recovered from the scene were identified as having been fired from Officer Welin's handgun.<sup>5</sup>

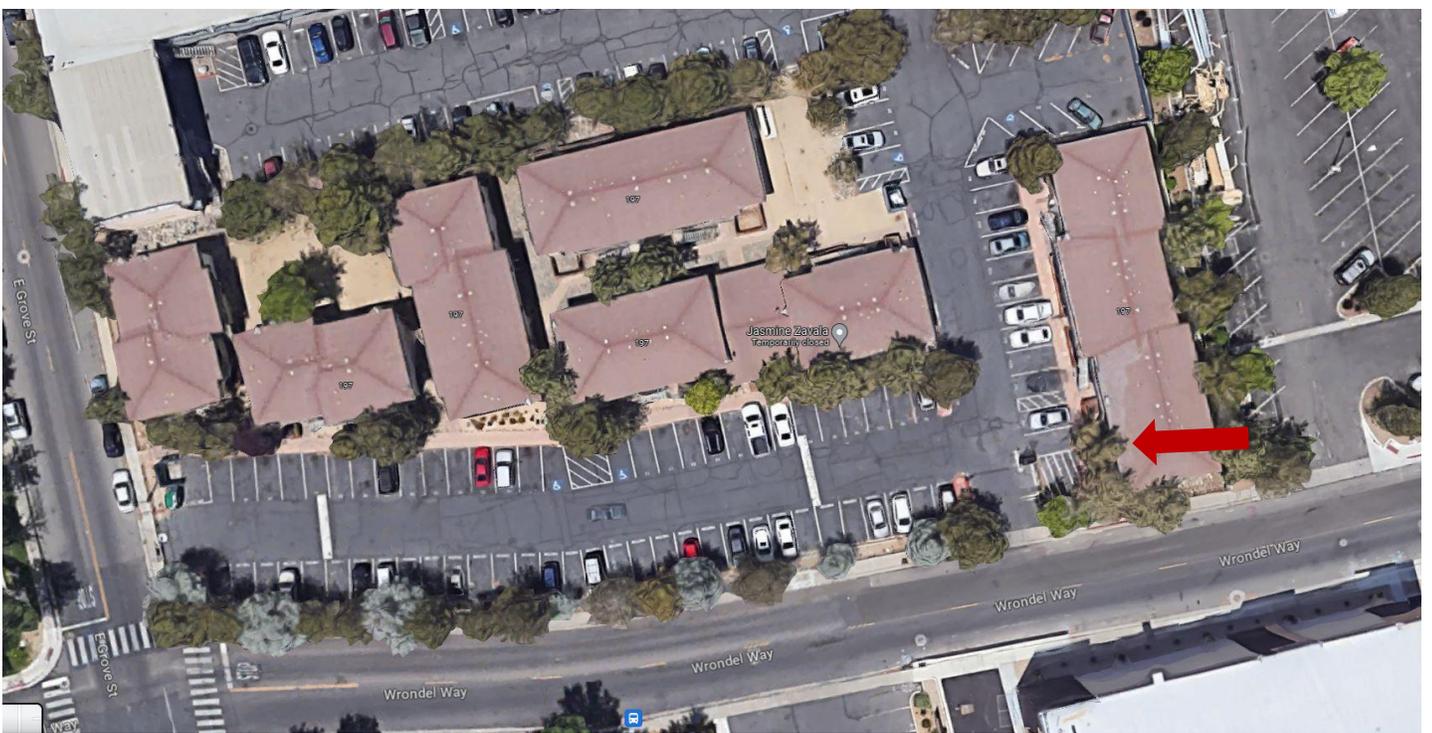
## II. PHYSICAL EVIDENCE

### A. Shooting scene

The Grove Garden Condominiums are located at 197 E. Grove Street, Reno and consist of six two-story multi-dwelling buildings. The main entrance to the complex is on Grove Street with a side entrance on Wrondel Way. The building that contains apartment #F13 is located in the northeast portion of the property with a south facing building. #F13 is on the second floor with apartment #F12 to the west and #F14 to the east. #F13 is a two room, one bedroom apartment with a kitchen/living room upon entry and a bedroom with a door, and an attached bathroom directly to the north of the living room area. The front door is the only ingress/egress in the apartment. There are windows on either side of the door, which were covered in black cloth acting as window coverings.

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<sup>5</sup> Officer Welin had eleven (11) unfired cartridges in his firearm and six (6) fired cartridge casings were recovered at the scene and identified as having been shot from his weapon. This leaves one outstanding fired cartridge case if Officer Welin was correct about loading his firearm with eighteen (18) rounds.



*Satellite photo of the Grove Garden apartment complex. The main entrance is on Grove Street which runs east/west and is on the left side of the photograph. Wrondel Way runs north/south and is at the bottom of the photograph. Building F is the rectangular building in the lower right-hand corner of the complex. Apartment #F13 is on the second level and the second apartment from Wrondel Way. The red arrow depicts the general area of Herndon's apartment.*



*Satellite photo of Building F at 197 E. Grove Street. This photo looks north with Wrondel Way shown on the far right of the photo. Apartment #F13 is on the right side of building F, with Robert Estey's apartment #F14 being the very last apartment on the second floor closest to Wrondel Way. Officers Thomas and Welin parked to the south of the building and then walked up the far left/west staircase and across the middle section of the building before arriving at Herndon's apartment.*



*This FIS photograph depicts the front of building F with Herndon's apartment being on the second floor with the open door. Mr. Estey's apartment (#F14) is on the second floor and to the east or right of Herndon's apartment. Mr. Knapp and Ms. Depauw's apartment (#F12) is to the immediate left, or west, of Herndon's apartment. The apartments on the ground floor are labeled as #F5, #F6 (directly under Herndon's apartment), and #F7 from left to right. The placards represent evidence located on scene.*

#### 1. Body Worn Camera

Both Officer Thomas and Officer Welin were wearing BWCs which were activated. Officer Thomas' video begins after he has exited his patrol vehicle and starts walking toward Building F. Officer Thomas' video shows Officer Welin walking in front of him and the two arriving at apartment #F13. As they arrive, Officer Welin shines his flashlight into the large picture frame window, which appears to be covered, as well as a window to the right side (east) of the front door. Just as the officers arrive, you can hear Herndon yelling inside the apartment. When Officer Welin knocks on the front door, Herndon then yells more unintelligible statements. Officer Welin takes several steps back from the door while retrieving his firearm from the holster. Officer Thomas also retrieved his firearm from its holster and utilized his radio to contact dispatch and request a channel. Officer Thomas then re-holstered his weapon.

Instantaneously, the door of #F13 opens and an arm holding a black handgun can be seen pointing out the door in the direction of Officer Thomas. Officer Thomas pulls his firearm from his holster as Herndon begins to exit the apartment. A volley of gunshots is heard.

Officer Thomas can be seen backing away from the apartment and attempting to clear his weapon as it appears to jam. Officer Thomas releases his magazine, picks it up and reinserts the magazine back into the weapon. Officer Welin can also be seen backing up from the apartment to the end of the walkway/landing and calls out shots fired. Herndon retreats into his apartment. Officer Thomas takes cover near the corner of the adjoining apartment building and notifies dispatch over the radio that shots had been fired. Officer Thomas can also be heard asking Officer Welin if he had shot Herndon. Officer Welin replies that he did not know if the suspect has been shot. Yelling can be heard coming from Herndon and Officer Thomas tells him to "Put down the gun now" two times as Officer Welin gives similar commands.

Both officers can then be seen holding the area of the entryway to #F13 at gunpoint for several minutes. During this time, Officer Welin asks Officer Thomas if he had been shot, to which Officer Thomas tells him that he was good. Officer Thomas makes the same inquiry of Officer Welin, who also responds that he is good. The officers then continue to hold the entryway to #F13 and tell Herndon to put down the gun so they can help him.



*A still photograph from Officer Thomas' BWC footage showing Herndon's arm with the gun extending from #F13 aimed at Officer Thomas. Officer Welin is holding his flashlight in the center of the photograph to the east of the door.*



*Still photo from Officer Welin's BWC footage showing Herndon pointing his firearm at Officer Casey Thomas who is standing feet away from Herndon's*

*apartment door. Officer Thomas has his hand on his firearm, but it is still holstered at this time.*

Additional units arrive on scene within two minutes of the shooting. Once additional officers arrive, BWC footage shows Officer C. Thomas taking a cover position across from the apartment and Officer Jager taking a position behind Officer Thomas near the eastern stairwell. Herndon can be heard telling officers that he has been shot. Officers are then seen approaching the apartment and pulling Herndon out to the landing once he places both hands outside the doorway. Medical aid is immediately started by officers on scene and Officers Thomas and Welin are seen entering the apartment. The firearm Herndon possessed can be seen lying on the floor near the entryway into the apartment.

## 2. EVIDENCE COLLECTED

The following relevant evidence was collected and photographed at the scene of the shooting.

- Four (4) Speer 9mm Luger +P fired cartridge cases located in the parking lot directly in front of building F, which were identified as having been fired from Officer Thomas' firearm.
- Two (2) Speer 9mm Luger +P fired cartridge cases located in front of apartment #F6 (the apartment directly below #F14), which were identified as having been fired from Officer Welin's firearm.
- One (1) Speer 9mm Luger +P unfired cartridge from the walkway in front of apartment #F12.
- Three (3) Speer 9mm Luger +P fired cartridge cases from the walkway in front of apartment #F13, which were identified as having been fired from Officer Welin's firearm.
- One (1) Speer 9mm Luger +P fired cartridge case from the walkway in front of apartment #F14, which was identified as having been fired from Officer Welin's firearm.
- One (1) Tulammo 9mm Luger fired cartridge case from underneath a bench outside of apartment #5, which was identified as having been fired from Herndon's Taurus pistol.

- Two (2) Tulammo 9mm Luger fired cartridge cases from the walkway between apartment 12 and 13 and were identified as having been fired from Herndon's Taurus pistol.
- One (1) black "Taurus G3 9x19" handgun with one "Tulammo 9mm Luger" cartridge from the chamber and one black "Mecgar" magazine containing nine "Tulammo 9mm Luger" cartridges from the living room floor of Herndon's apartment.

Firearms testing was conducted on the Taurus G3 9x19 handgun which found that the firearm was in normal operating condition with no malfunctions.



*Photograph taken by FIS of Herndon's Taurus firearm found on the floor inside F13. The gun was loaded with one round in the chamber and 9 bullets in the magazine.*

### III. PROSECUTION

Based on this investigation, the WCSO submitted a criminal case to this office for the prosecution of Herndon. This office subsequently filed formal criminal charges against this

defendant and on January 19, 2023, in the Second Judicial District Court, Department 1, Herndon pled guilty to two counts of Assault with a Deadly Weapon, a category B felony naming both Officer Thomas and Officer Welin as the victims, and one count of Being a Felon in Possession of a Firearm, a category B felony. The latter charge was based on Herndon's criminal history, which contained prior felony convictions for Burglary.

Following his guilty plea, Herndon was interviewed by the Division of Parole and Probation in preparation of a Presentence Investigation Report. In this report, he stated that prior to the shooting on November 5, 2021, he had been consuming alcohol, methamphetamine, and ecstasy. Herndon claimed he had a "mental episode" and was hearing voices and yelling back at them. When Herndon heard a knock at the door, he asked who it was, and when no one answered, he opened the door with his gun in front of him and shot. Herndon claimed that he did not know the individuals at the door were policemen and could not recall if he shot first.<sup>6</sup>

On March 14, 2023, the Honorable Kathleen M. Drakulich sentenced Herndon to an aggregate sentence of a minimum term of imprisonment in the Nevada Department of Corrections for 84 months with a maximum term of 216 months.

#### IV. LEGAL PRINCIPLES

The Washoe County District Attorney's Office is tasked with assessing the conduct of the officers involved and determining whether any criminality existed on behalf of the officers at the time of the shooting. Although Herndon 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

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<sup>6</sup> Taken from the Presentence Investigation Report in CR21-4186.

authority interpreting justifiable self-defense and defense of others. All 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."

#### 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.

#### V. ANALYSIS

On November 5, 2021, the use of deadly force upon Herndon was justified based on the imminent danger he posed to RPD officers Thomas and Welin. The danger presented was corroborated by witness interviews, BWC footage, evidence collected from the scene and the defendant's own statement of producing the firearm and discharging it in the presence of the officers.

The evidence shows that police were called to Herndon's apartment due to a 911 call placed by his neighbor, Mr. Estey, who was concerned that someone was being hurt in apartment #F13 and that a firearm may have just been fired. Upon arrival at 197 E. Grove Street, officers made their way to apartment #F13 where they heard shouting and what appeared to be a distressed individual inside. Officer Welin then knocked on the door and almost immediately sees Herndon open the apartment door with a .9mm semiautomatic firearm extended and pointed in the direction of Officer Thomas.

Upon seeing Herndon pointing the firearm at Officer Thomas, both officers reasonably believed that Herndon was attempting to shoot Officer Thomas. Believing that Herndon presented an imminent danger to shoot and kill or cause great bodily injury to either Officer Thomas and/or Officer Welin, both officers discharged their weapons in the direction of Herndon, hitting him multiple times.

After Herndon was taken into custody, police located a .9mm semiautomatic firearm on the floor of his apartment. Herndon admitted that he had been using controlled substances and was hearing voices prior to the shooting and that when he heard the knock on the door he opened the door, produced his firearm, and pulled the trigger. Three Tulammo fired cartridge casings were found on scene and were identified as having been fired from Herndon's firearm.

Having pled guilty to two charges of Assault with a Deadly Weapon, Herndon admitted that he attempted to use physical force against Officer Thomas as well as Officer Welin and/or that he specifically intended to place each officer in reasonable apprehension of immediate bodily harm by brandishing the firearm

in the presence of the officers. His guilty pleas to those charges are further irrefutable evidence that he posed an imminent danger to the officers.

#### VI. CONCLUSION

Based on the review of the entire investigation presented and the application of Nevada law to the known facts and circumstances surrounding the November 5, 2021, officer involved shooting of Isaiah Herndon, the actions of Officers Casey Thomas and Steven Welin were warranted and justified 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.