



# OFFICE OF THE DISTRICT ATTORNEY

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May 18, 2012

Sheriff Douglas C. Gillespie  
Las Vegas Metropolitan Police Department  
400 Martin Luther King Blvd  
Las Vegas, NV 89106

**Re:** Officer Involved Death of Tory Manvilla, which occurred on February 15, 2011, and is referenced as 110215-3792

Dear Sheriff Douglas C. Gillespie:

The District Attorney's Office has completed its review of the February 15, 2011 death of Tory Manvilla which involved Officers Juan Guzman and Mike Henry. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of these officers were not criminal in nature. It appears that the decedent attacked the officers with a knife to which they responded with reasonable force. It should be noted that this review was made based on all the evidence currently available but without the benefit of an inquest proceeding.

This letter is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. This letter is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the involved officers was not criminal. This decision, premised upon criminal-law standards, is not meant to limit administrative action by the Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person where less-stringent laws and burdens of proof apply.

## **FACTUAL SUMMARY**

### **Background**

On Tuesday, February 15, 2011, at 8:47 p.m., PC#1 (private citizen) called the LVMPD Communications Center via 9-1-1 to report a subject, armed with a knife, outside his residence at 4765 Fairfax Avenue, trying to get inside his residence, and claiming someone was after him. PC#1 described the subject as a white male adult wearing a white shirt, black pants, and tennis shoes, and the subject appeared to be talking to himself or someone PC#1 could not see. At 8:56 p.m., PC#1 told the 9-1-1 operator the subject had left his residence, walking away on Fairfax Avenue, and possibly into another residence.

At 8:56 p.m., PC#2 called the LVMPD Communications Center via 9-1-1 and reported a Hispanic male, dressed in a white shirt and black pants, armed with a knife, had just forced his way into her residence at 4786 Fairfax Avenue claiming someone was after him. PC#2 further advised the subject was tearing up the residence and was believed to be in the master bathroom.

### **Contact with Law Enforcement**

At approximately 8:58 p.m., Officers Guzman and Auten arrived at 4786 Fairfax Avenue and were told that the subject was in the master bathroom. The officers instructed PC#2 and her family to vacate their residence and conducted a cursory sweep of the home. At 8:59 p.m., the officers broadcasted the subject was in the bathroom and not responding to their commands to exit. Officer Auten requested additional officers to assist in securing the scene and to cover a possible exit through the bathroom window.

At approximately 9:02 p.m., Officer Auten broadcast that the subject was barricaded in the bathroom and not responding to the officers' repeated commands to come out. Ultimately Officers Juan Guzman, Mike Henry, Isaac Auten, Jason Leavitt, and Justin McKinney were positioned inside the residence, and Officer Larry Cripe covered the rear yard. At approximately 9:08 p.m., according to the Public Safety Statement (P.S.S.) questionnaire conducted by Sergeant Debra Webb of Officers Guzman and Henry, the decedent exited the bathroom, charged the officers with the knife, and Officers Guzman and Henry each fired one shot striking the decedent.<sup>1</sup> Officers broadcasted shots had been fired and requested medical personnel for the decedent. No officers were injured.

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<sup>1</sup> A Public Safety Statement questionnaire is a document created by the LVMPD which has a list of questions that must be answered by the officers involved in use of force to ensure that public safety is protected.

As the first supervisor to arrive on scene, Sergeant Webb first completed the P.S.S. with Officer Guzman. Officer Guzman said that he was in the bedroom of the residence when he fired one shot which struck the decedent, who was armed with a knife, at a distance of approximately five feet. Another officer fired his weapon as well and all related evidence was contained in the bedroom where the shooting occurred. The only witnesses to the incident were the officers on scene.

Sergeant Webb next spoke with Officer Henry and learned that he was in the bedroom of the residence when he fired one shot which struck the decedent, who was armed with a knife, at a distance of approximately three feet. The subject was alone and appeared deceased in the bedroom. Another officer fired his weapon as well, and all related evidence was contained in the bedroom where the shooting occurred.

Upon the arrival of Police Protective Association legal counsel, a “walk through” was conducted with Officer Guzman wherein he provided a cursory explanation of the scene and his actions to include the following: Upon arriving at 4786 Fairfax Avenue, he learned from residents that the decedent armed with a knife had locked himself in the master bedroom’s bathroom. After a sweep of the residence for the armed decedent, Officer Guzman entered the master bedroom and took a position in the southwest corner of the room, between the bed and wall, where he could best watch the closed bathroom door. Officer Guzman repeatedly called to the decedent, identifying himself as a police officer and for the decedent to exit the bathroom. After several minutes of challenging the decedent and considering the options of entering the bathroom to extract the decedent, the officers on scene decided to handle the situation as a barricaded subject and maintain their positions pending the arrival of specialized units.

As the officers were waiting, the bathroom door suddenly opened and the decedent, holding a knife in his raised right hand in an attack position, came running out of the bathroom towards, and focused on, Officer Guzman. Upon recognizing the decedent’s intent to attack him, Officer Guzman discharged his duty weapon one time at the decedent’s center mass when the decedent had cleared the alcove to the bathroom and was moving into the bedroom. The decedent immediately began to stumble, went to his knee(s) towards Officer Henry, who was standing near the bedroom door. Officer Henry fired his weapon and the decedent dropped to the floor.

Officer Henry, also accompanied by Police Protective Association legal counsel, completed a “walk through” which included: Upon responding to the scene with other officers and learning the decedent armed with a knife was currently barricaded in the master bathroom, Officer Henry coordinated with the residents in locating a key to unlock the bathroom door. As Officer Guzman’s calls to the decedent to come out of the

bathroom went unanswered, officers decided not to use the key, classified the situation as a barricade, and awaited specialized units.

At about the time this decision was made, the decedent opened the bathroom door and charged out toward Officer Guzman, holding a knife aloft in a manner consistent with attacking someone. Upon the decedent entering the open area of the bedroom, Officer Guzman discharged his weapon one time at the decedent, apparently striking him. The decedent stumbled, went to his knees, and with the knife still raised in attack position, focused on Officer Henry. As the decedent was approximately two feet away from Officer Henry, Officer Henry tried to back away but was already against the chest-of-drawers adjacent to the bedroom door. Officer Leavitt was standing in the doorway, further impeding Officer Henry's withdrawal. Officer Henry perceived the decedent was going to stab him and, with his firearm held close to the right, mid-chest area, close to his body and cantered downward, Officer Henry fired one shot downward at the subject. The decedent collapsed on the floor at Officer Henry's feet, dropping the knife. Officer Henry kicked the knife away from the decedent's hand with his right foot and the knife came to rest in front of the chest-of-drawers.

Officers Leavitt, Auten, Cripe, McKinney and Sergeant Webb elected not to submit to recorded statements to F.I.T. detectives concerning the facts surrounding the situation. Sergeant Webb did give a recorded statement to document the P.S.S. responses. Officer Leavitt deployed his Electronic Control Device (E.C.D.) but did not activate it. There was no video of the incident recorded on the E.C.D.

### **Contact with Private Citizens**

PC#1 was contacted and interviewed and the following was learned: PC#1 was inside his residence at 4765 Fairfax Avenue with his brother, PC#3, when he heard the front door open and an unknown white male entered the home. PC#1 and 3 pushed the male out of the house, closed and locked the door, and called 9-1-1. The male subject attempted to get back inside and PC#1 could see the subject had a seven-inch-long knife in his hand. The subject screamed, "I didn't do it!" and seemed scared. It then appeared to PC#1 that the subject fought with and hid from someone, but PC#1 saw no one else. The subject then ran eastbound to 4786 Fairfax Avenue and a few minutes later police officers arrived. PC#1 directed the officers to where he last saw the subject. PC#1 thought the subject was "crazy nuts," not drunk, but possibly on drugs. PC#1 stated he does not know the subject and had never seen him before.

PC#3 was contacted and interviewed and the following was learned: PC#3 was inside his residence at 4765 Fairfax Avenue with his brother, PC#1, when he heard someone open the front door and an unknown white male entered the house. PC#3 and 1 pushed the subject out of the house, closed and locked the door, and called 9-1-1. The subject stood outside, yelling and screaming and appeared the subject fought with and hid from someone, but no one was there. A few minutes later police officers arrived and

PC#3 directed them to where he last saw the subject. PC#3 never saw a knife and thought the male was possibly on drugs. PC#3 said he does not know the subject and has never seen him before.

PC#4 was contacted and interviewed and the following was learned: PC#4 was inside his residence with PC#2 and PC#5, when he heard someone yelling at his front door. PC#5 opened the front door and a Hispanic male pushed his way into the house. The subject said someone was chasing him and was going to shoot him. The subject went to the master bedroom and hid. PC#4 and 5 grabbed the subject and attempted to pull him outside, but when PC#4 saw the subject possessed a “steak knife” with a dark handle and an approximately eight inch blade, they retreated. While PC#2 called 9-1-1, PC#4 kept an eye on the subject. The subject seemed “scared to death” and never threatened him with the knife.

The subject moved from room to room, and attempted to jump out of a closed sliding glass door, but hit his head and fell back into the room. The subject then ran into the master bathroom and barricaded the door. When the officers arrived, they had PC# 2,4, and 5 exit the residence. A few minutes later the officers told them a shooting had occurred and the male was dead. PC#4 did not know the subject, had never seen him before, and the subject had neither reason nor permission to enter his residence.

PC#2 was contacted and interviewed and the following was learned: PC#2 was in her computer room in her residence when she heard yelling coming from the living room. PC#2 stepped into the hallway and saw an unknown subject running toward her with PC#4 and 5 following. PC#2 grabbed the subject by the arm as he passed, and he said someone was after him with a gun. The subject looked terrified, broke free from her grip, and began running around the house. PC#2 locked herself in her computer room and called 9-1-1. PC#2 said she could hear the subject running around the house from room-to-room. While still on the phone with LVMPD dispatch, PC#4 told her the subject was locked in the bathroom. PC#2 left the computer room for the living room, then outside where she waived two arriving officers into the house.

The officer gathered some quick information from PC#2 then proceeded into the residence towards the back bedroom. PC#2,4,and 5 waited outside their residence as several additional police officers arrived. PC#2 was later told by the officers the subject had been shot, but she did not hear the officers giving commands, nor did she see the shooting.

PC#2 said she did not know or recognize the subject who entered her residence, nor did she see him in possession of a knife. The subject did not threaten her. He only appeared threatening, and seemed frightened. The subject was Hispanic wearing a white shirt with black pants.

PC#5 was contacted and interviewed and the following was learned: PC#5 was in his bedroom with the sliding door open when he heard someone outside yelling for help. PC#5 went to the front door of the house to investigate and PC#4 asked what was going on outside. PC#5 said he did not know, but he was going to check it out. PC#5 opened the front door and a man pushed his way by PC#5 and ran into the house. The subject looked “scared to death” and ran in and out of several bedrooms trying to hide. The subject said someone was after him with a gun.

After the subject was inside the house for a couple of minutes, PC#5 noticed he was armed with a black handled kitchen knife. PC#5 armed himself with a sword and told the subject he had to leave. The subject was not aggressive or threatening toward PC#5 or his family, but once PC#5 saw the knife, he felt the subject was acting crazy and could have turned on him in a “second.” When the patrol officers arrived, they told PC#5 to leave the house. Approximately five to ten minutes after the officers arrived, PC#5 heard at least one, possibly two, muffled gunshots. PC#5 said he was not able to hear any verbal commands the officers might have given the subject.

During the investigation, several PCs were contacted concerning the decedent’s history. A number of them indicated that the decedent had used drugs in the past. PC#6 indicated that when the decedent used illegal substances or alcohol, he was mean and became a “monster.” On a recent occasion when PC#6 saw the decedent intoxicated, he was acting very paranoid, looking around a lot and claiming someone was after him. PC#7 knew the decedent to abuse illegal substances, and the abuse would make the decedent, “hyper....talking fast and a lot.” PC#8 described the decedent as using alcohol, methamphetamine, and crack cocaine. When he used methamphetamine, the decedent would be up all night. When the decedent used crack cocaine, he became paranoid, peeking under the front door, standing by the door and scratching on it, believing someone was after him, and pacing back and forth. PC#8 indicated for a period of time, the decedent used drugs almost every day.

Eventually, it was learned during the investigation that the decedent was visiting 4707 Fairfax Avenue on February 15, 2011. After being at the residence for a short period of time, the decedent abruptly left. PC#9 did indicate that the decedent had explained to him that the decedent had been “partying” with a girl near Lake Mead Boulevard and Hollywood Boulevard.

### **Findings from the Autopsy**

On February 16, 2011, Dr. Gary Telgenhoff of the Clark County Coroner conducted an autopsy of the decedent and determined the cause of death was gunshot wounds from two fired rounds. Dr. Telgenhoff noted a penetrating gunshot wound of the chest. The trajectory of the wound was front-to-back, downward with no significant left or rightward deviation. Dr. Telgenhoff also noted a perforating gunshot wound of the neck. Neither gunshot wound showed evidence of close range firing. A toxicology

report determined the existence of Amphetamine and Methamphetamine in the decedent's system at the time of death.

### **Findings from the Scene**

The scene was contained to the master bedroom of the residence. On the floor between the chest and the closet was a white, button down shirt with apparent blood, apparently cut away by medical personnel. Two casings were located on the floor, one by the dresser, and one between the south side of the bed and the wall. Under the chest at the foot of the bed was one expended bullet. On the floor at the end of the bed on the south side was a steak knife with an approximate five inch smooth edged blade. Based upon the measurements in the scene and the description of Officer Guzman of his position and the decedent at the time the first shot was fired, the distance between Officer Guzman and the decedent was determined to be approximately 9'9".

### **LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada there are a variety of statutes that define the various types of justifiable homicide. (NRS 200.120 – Justifiable homicide; NRS 200.140 – Justifiable homicide by a public officer; NRS 200.160 – Additional cases of justifiable homicide). The shooting of the decedent was justifiable under two theories: the killing of a human being in self-defense of others and justifiable homicide by a public officer. Both of these theories will be discussed.

#### **A. 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 NRS 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony ..." against the other person. NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished ....

NRS 200.160(1).

The Nevada Supreme Court has refined the analysis of self defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

....

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.



The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

*Id.* at 1051-52.

From the evidence available, it appears the officers were lawfully in the residence based upon the request of the owners and engaging in lawful conduct in attempting to remove an armed intruder from the home. During the course of the discharge of their lawful duties, the decedent exited the bathroom and attempted to stab Officer Guzman with a sharp edged weapon. It appears the decedent was a mere 9'9" from Officer Guzman at the time of the initial shot.<sup>2</sup> In reasonable apprehension of imminent bodily injury, Officer Guzman discharged his weapon, striking the decedent in the chest. As the decedent began to go down, the decedent appeared to attack Officer Henry, who, with no avenue of retreat, also discharged his weapon a single time, striking the decedent. At that point, the threat to the officers was neutralized, and no further use of force occurred. Based upon these facts, all the force utilized by the officers was necessary to protect themselves from imminent serious bodily injury. As such, the actions of the officers were in necessary self-defense.

#### **B. Justifiable Homicide by a Public Officer**

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. *See* 1985 Nev. Op. Att’y Gen. 47 (1985).

Upon learning of the situation where an armed intruder has barricaded himself in another citizen’s home, the officers took up defensive positions and attempted to have the decedent exit the bathroom unarmed voluntarily. Upon the decedent failing to obey the lawful commands, officers remained securing the home until specialized units could arrive to handle the situation. Before that time occurred, the decedent appears to have

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<sup>2</sup> “The 21 Foot Rule” is a guideline for the distance that an attacker with a sharp edged weapon can cover in the time it takes for a person with a firearm to react in self-defense. This “reactionary gap” was first published in the March 1983 issue of SWAT Magazine.

exited the bathroom and attacked the officers with a knife in the confines of the master bedroom. Thus, the actions of Officers Guzman and Henry were necessary in the discharge of their duties.

It light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact unjustified “in the discharge of a legal duty.”

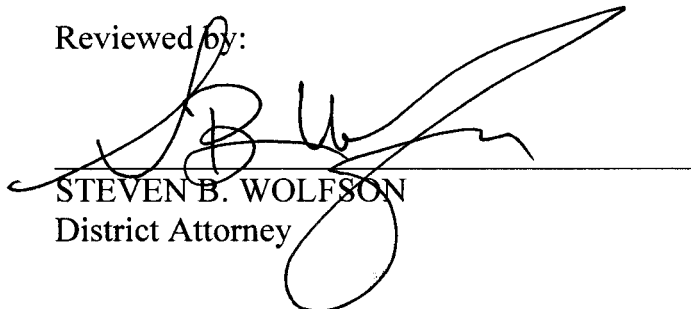
### CONCLUSION

Based on the review of the available materials, and the application of Nevada law to the known facts and circumstances surrounding the officer involved death of Troy Manvilla, it has been determined that the actions of Officers Juan Guzman and Mike Henry were reasonable and that the shots fired by Officer Guzman and Henry were justified to stop the advancement of the decedent and protect the officers on the scene. There is no evidence that the officers acted unlawfully, or with malice aforethought.

The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190) “The homicide appearing to be justifiable or excusable, the person indicted shall, upon trial, be fully acquitted and discharged.” (NRS 200.190) As there is no factual or legal basis upon which to charge Officers Guzman and Henry based on the totality of the circumstances, and unless new facts come to light which contradict these findings, no charges will be forthcoming.

  
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MARC DIGIACOMO  
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Reviewed by:

  
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