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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 Jaime Padilla which occurred on February 23, 2011, at the Broadstone Montecito apartment complex under Las Vegas Metropolitan Police Department Event #110223-4594.

Dear Sheriff Douglas C. Gillespie:

On February 23, 2011, Las Vegas Metropolitan Department ("LVMPD") Dispatch received several 9-1-1 calls reporting that a gunman was attempting to break into numerous apartments at the Broadstone Montecito apartment complex located at 9745 Grand Teton Drive, Las Vegas, Nevada. LVMPD traffic officers, patrol officers and SWAT members were dispatched, and they observed the gunman - - later identified as Jaime Padilla (hereinafter "Decedent") - - armed with a 9mm handgun. During the course of the standoff, which lasted more than an hour, Decedent refused to comply with commands to drop his weapon, pointed his loaded 9mm handgun at traffic officers and SWAT officers, and fired at least one shot at officers. Ultimately, four SWAT officers fired numerous shots at Decedent in defense of themselves and others. Decedent was struck multiple times and died at the scene. Toxicology tests revealed that Decedent had toxic/lethal levels of Amphetamine and Methamphetamine in his blood, as well as Acetone, Benzoylcegonine, and Oxycodone.

The District Attorney's Office has completed its review of the February 23, 2011, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officers were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

This letter explains why criminal charges will not be forthcoming against the officers involved. It 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 officers 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.

BACKGROUND

Interview of Decedent's Girlfriend

On February 25, 2011, LVMPD Detective Cliff Mogg (P#5096) interviewed Decedent's girlfriend (hereinafter "Girlfriend"). Girlfriend knew Decedent for approximately two years. Although Girlfriend and Decedent did not live together, she was at Decedent's apartment at 9745 Grand Teton Drive #3053 every day. Girlfriend described Decedent as a calm person; however, she and Decedent recently were having problems in their relationship. Decedent recently quit his job at Sonic after completing probation (Decedent was a two-time convicted registered felon for Aggravated Assault and Criminal Mischief in Utah in 2008). Decedent was depressed, told her he wanted to die and kept a Smith & Wesson 9mm pistol in his bedroom. Girlfriend explained, "He's been saying he didn't want to be here no more ... He just wanted to die and everything like that." Girlfriend was aware that Decedent sold Xanax and Loritab to make money, and he was addicted to "Roxies" (which she described as a combination of Hydrocodone and Oxycodone). Decedent usually ingested the pills by swallowing them, but recently he started smoking the pills. Decedent would put the pills on a piece of tin foil and sniff the fumes. Decedent began using methamphetamine recently which he smoked the same way. Decedent acted "sketchy and paranoid" when he used a combination of drugs.

Girlfriend last saw Decedent at approximately 5:00 p.m. on February 23, 2011. She described Decedent as "all pale, and his lips were all dried, and just his jaw moving, you know, the normal stuff that you see...when someone's either on...coke...meth..." Decedent had a piece of tin foil with him, which she knew he used to smoke methamphetamine.

Interview of Decedent's Roommate

On February 25, 2011, Detective Mogg interviewed Decedent's roommate (hereinafter "Roommate"). Roommate knew Decedent for approximately fourteen years. A few months prior to Decedent's death, Roommate, Roommate's wife and Decedent moved to 9745 Grand Teton Drive #3053.

Roommate explained that Decedent recently started to experiment with methamphetamine which caused Decedent to act paranoid. Roommate explained, "These past four days it's just, he's been acting, he was acting weird." Roommate described an incident from February 22, 2011, one day prior to Decedent's death, when Decedent called Roommate and told him police officers were in front of his apartment coming to get him. Roommate knew there was no one outside. Roommate spent the next hour trying to convince Decedent no one was outside, but Decedent insisted there was.

On February 23, 2011, at approximately 11:00 a.m., Decedent arrived at Roommate's workplace to pick up a key for their apartment. Roommate described Decedent as paranoid. The last time Roommate saw Decedent, "He was acting like weird like it wasn't him ... I looked at him, and it wasn't him."

Interview of Decedent's Friend

On March 01, 2011, Detectives Mogg and Larry Hanna (P#2430) interviewed Decedent's friend (hereinafter "Friend"). Friend knew Decedent for approximately one month. Friend was aware that Decedent was addicted to "Roxies" and, Friend explained, "had gotten up to smoking like 40 or 50 a day."

On February 23, 2011, at approximately 9:00 a.m., Decedent arrived at Friend's sister's house and seemed intoxicated. Friend was aware that Decedent "hadn't slept for six to seven days." Friend watched Decedent snort methamphetamine around noon. Afterward, Friend and Decedent spent several hours together visiting other people. According to Friend, Decedent "wanted to make it a goal to see important people to him." It occurred to Friend that Decedent may be telling his friends "farewell."

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**THE EVENTS AT 9745 GRAND TETON DRIVE ON THE NIGHT OF
FEBRUARY 23, 2011**

Resident #1

On February 23, 2011, at approximately 10:45 p.m., Resident #1 heard a knock on the front door of his apartment at 9745 Grand Teton Drive. Resident #1 looked out the peephole; he saw no one. He then looked through the peephole at an angle and saw Decedent crouched down and pointing a semi-automatic handgun toward a staircase. Resident #1 described the weapon as a 9mm handgun. Resident #1, who did not know Decedent, called 9-1-1 and reported a gunman outside his door. While Resident #1 was on the phone with police, Resident #1 looked through the peephole again. Decedent now had his eye against the peephole looking back at Resident #1. Decedent began kicking the door and yelling to Resident #1, "I know you're in their homie! I know you're in there!" Decedent then went to Resident #1's balcony and tried to open the sliding glass door to the apartment; it was locked. Decedent returned to the front door and attempted again to open it. Resident #1 reported that Decedent continued banging on the door and yelling at him for 10-15 minutes. Police officers later arrived and Resident #1 heard an officer tell Decedent to drop his weapon.

Residents #2 and #3

On February 23, 2011, sometime after 10:30 p.m., Resident #2 noticed the handle to the front door of her apartment at 9745 Grand Teton Drive moved down as though someone was opening the door. The deadbolt was engaged. Resident #2 woke her boyfriend, Resident #3, who saw the door handle in a downward position. Resident #3 looked out the peephole; he saw no one. Resident #3 kicked the interior of the door and the handle moved up as though someone released the handle. A short while later, believing there was no longer a threat outside, Resident #3 went to his balcony to smoke a cigarette. Moments later, Decedent approached Resident #3 and said, "There's gonna be a shooting. Get inside and get your kids." Decedent continued, "I'm a detective. You didn't see those 15 black guys?" Resident #3 saw no one else outside. Resident #3 then noticed that Decedent was holding "a silver either .45 or 9mm, ah, chrome plated" handgun. Resident #3 returned inside his apartment, locked the door and told his girlfriend, Resident #2, to turn off the lights. Resident #2 called 9-1-1. Police officers arrived and Residents #2 and #3 were evacuated from their apartment through a back window. Residents #2 and #3 recognized Decedent as a person who stayed in an apartment above theirs.

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Resident #4

On February 23, 2011, sometime after 10:30 p.m., Resident #4 heard banging on the front door of her apartment at 9745 Grand Teton Drive. She explained that someone was “trying to open the door, actually, like for probably 15 minutes.” Resident #4 saw the door handle moving quickly. Alone in her apartment and fearing that someone was attempting to enter her home, Resident #4 blocked the door with a chair and called 9-1-1. She then called a friend, who lived in the complex, and was advised there was a gunman in the complex. Resident #4 was later rescued from her balcony by SWAT officers.

Resident #5

On February 23, 2011, sometime after 11:00 p.m., Resident #5, who resides at 9745 Grand Teton Drive, exited his apartment to walk his dogs. He reached the bottom of the stairs and saw Decedent “with a handgun, ah, cocking it, and kinda like brandishing, and looked really nervous.” Decedent was attempting to enter “either apartment 1054 or 1055.” Resident #5, who was employed at the apartment complex, called the property manager and then saw police officers arrive. Resident #5 next saw Decedent run into a stairwell. Resident #5 recognized Decedent from the apartment complex and a nearby barbeque restaurant where he believed Decedent had worked; he did not know his name.

THE ARRIVAL OF MEMBERS OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Traffic Officers

Traffic Officers Anthony Cavaricci (P#9024) and John Hartner (P#7451) arrived on scene first. They parked near Building 10 of the Broadstone Montecito apartment complex and approached on foot. Officer Cavaricci located Decedent near apartment 1054 of Building 9. Decedent pointed his handgun toward Officer Cavaricci who took cover behind the building and lost sight of Decedent.

Officer Hartner moved to the south end of the first floor breezeway of Building 9 to contain Decedent. Officer Hartner looked around the southeast corner of Building 9. He saw Decedent hiding in the southwest corner of the breezeway, pointing a handgun toward Officer Hartner. Officer Hartner explained, “I came around and he came into view he was standing, I want to say with his right hand, with just one hand, ah, it was, looked like a, ah, semi-auto pistol in his hand pointed right at me ... All I remember looking at was the end of the barrel...” Officer Hartner shouted at Decedent, “Metro police! Put the gun down! Come out with your hands up! ... We don’t want anyone to get hurt. Put the gun down!” Decedent ignored the commands.

Additional officers arrived and a perimeter was established around Building 9.

Patrol Officers

Patrol Officer Donald James (P#8871) arrived with several other officers and approached Building 9 from the north side. Officer James encountered one of the traffic officers, who told him Decedent was in the breezeway of Building 9. No one knew exactly where Decedent was, but he was last seen toward the south side of the building.

Patrol Officer Joshua Houchen (P#8880) was on the south side of the building and updated Decedent's location over the radio. Another officer attempted to talk to Decedent with the use of the public address system. Decedent went up the south stairwell to the second floor.

Officer James and Decedent made eye contact. Officer James saw something silver in Decedent's hand. Upon seeing Officer James, Decedent ran around the corner out of the officer's view. Officer James identified himself as police officer and began speaking with Decedent. Decedent sounded impaired and would not tell officers his name.

A radio broadcast updated that Decedent had pointed his gun toward Officer James, and Decedent was attempting to open an apartment door. Officer James was aware tenants were still being evacuated, so he continued to try to engage Decedent in conversation. Decedent stated several times he was going to make officers shoot him. Decedent cycled the slide on his gun and then counted to three, suggesting he was going to attack the officers; however, Decedent did not come out from his position. Officer James estimated that he spoke with Decedent for approximately thirty minutes.

Patrol Sergeant Russell Wood (P#5266) arrived and requested that the SWAT team respond to the scene. SWAT Lieutenant Mike McCrimon (P#4583) was notified and arrived on the scene with several SWAT officers. SWAT Officers relieved Officer James and other officers from their positions. Officer James went to Building 10 and briefed the negotiators.

SWAT Officer Sniper Marx

SWAT Sniper William Marx (P#5649) arrived and deployed to the south side of Building 9. He located Decedent in the southwest corner of the second floor breezeway in front of apartment 2051. Decedent was armed with a handgun. Decedent moved up the south staircase to the third floor where he was contacted by SWAT Officers Paul Dapra (P#3810) and Le Aareon Fincher (P#5038). They were part of the third floor north side containment team. Officer Dapra issued verbal commands to Decedent to drop his weapon; he refused.

Sniper Marx observed Decedent hold his gun over the south metal railing and shoot toward officers on the ground. SWAT Lieutenant McCrimon advised over the SWAT radio channel that Decedent could not be allowed to enter any apartment; officers were concerned because Decedent was armed and could take a hostage. Sniper Marx later saw Decedent turn the door knob to apartment 3051. Decedent then raised his foot as though he was going to kick open the door.

Fearing Decedent would make entry and create a hostage situation, Officer Marx fired one shot from his .308 caliber bolt-action rifle. The shot struck a metal railing and missed Decedent, who then ran north through the breezeway toward the north side SWAT containment team. As Decedent ran, he had his handgun raised in his left hand and pointed toward the SWAT officers.

SWAT Officer Fincher

SWAT Officer Le Aareon Fincher (P#5038) received information that Decedent was on the south side of Building 9. He heard other officers demanding that Decedent show his hands. Decedent refused. Eventually, Officer Fincher heard a gunshot which came from the south end of the building. A radio update advised that Decedent had fired his gun toward officers on the first floor. A short time later, Officer Fincher heard another gunshot.

After the second gunshot, Decedent sprinted around the corner toward Officer Fincher with a gun in his left hand pointed at Officer Fincher. The officer later explained, “[H]e was pointing towards our direction with the gun and coming that way, sprinting ... [H]e fired once ... At least one time, could have fired more, but ... Once he raised [his] gun up towards me, and my, and my team, I’m engaging.” Officer Fincher tracked Decedent as Decedent ran toward the containment position. Officer Fincher fired his weapon - - a Glock 9mm handgun - - “maybe six or so, five, six” times initially. Officer Fincher explained, “I mean it happened so fast ... but I shot ten rounds” altogether.

Decedent did not stop, and Officer Fincher did not know if his shots were hitting Decedent. Decedent ran past Officer Fincher while Decedent pointed his gun back toward the officers. Decedent was angling his head and shoulders away from officers which exposed Decedent’s back. Decedent eventually slumped to the ground next to a wrought iron fence at the north end of the breezeway. Decedent’s gun fell from his hand.

SWAT Officer David Reid (P#3241) issued a cease-fire command over the radio. Officer Fincher was then instructed to escort the tactical medic to Decedent. Officer Fincher returned with the medic and was next instructed to clear apartment 3053. He kicked open the door to apartment 3053 and he, SWAT Officer Anton Gorup (P#4905), and SWAT Officer Paul Dapra (P#3810) cleared the apartment.

SWAT Officer Gorup

Officer Anton Gorup (P#4905) arrived and took a containment position on the north side of the second floor breezeway of Building 9. He was there for a few seconds when a shot rang out. Officer Gorup could not tell where the shot came from, but a radio update advised that Decedent was on the third floor. Officer Gorup moved to the third floor with SWAT Officer Reid. They met with SWAT Officers Fincher and Dapra who already were in position. Officer Gorup took a position behind Officer Fincher who was providing cover. Radio traffic updated everyone that Decedent had fired a shot, and he could not be allowed to enter an apartment and create a hostage situation.

A short time later, another shot rang out. Stucco fell on Officer Gorup's head. He did not know if it was a ricochet shot or if Decedent was behind them. Officer Gorup heard more gun shots and realized Officer Fincher was engaging Decedent. Officer Gorup looked over Officer Fincher's left shoulder and saw Decedent running directly toward the officers. Officer Gorup was surprised because Decedent did not appear to be fleeing but instead fighting. Decedent had his gun in his left hand, pointed at the officers, and was crouched down looking to the right. Decedent made it past Officer Fincher while pointing his gun at the officers, so Officer Gorup fired his weapon - - a Colt .223 caliber rifle - - approximately "four or five times" at Decedent. Officer Gorup's rounds had no effect on Decedent, so he did not know if his rounds were hitting Decedent. Decedent continued running until he was past the officers which exposed his back, all the while pointing his firearm toward the officers. Decedent finally came to rest against a metal rail at the north end of the third floor. Decedent's gun fell from his hand. The officers approached Decedent, and Officer Gorup kicked Decedent's firearm away from him.

Officer Gorup and others were instructed to clear apartment 3053 and check for possible injuries since there were several bullet holes in the wall. He, Officer Fincher, and Officer Dapra entered and cleared the apartment.

SWAT Officer Reid

Officer David Reid (P#3241) arrived on scene and assigned arriving SWAT officers to containment positions around Building 9. He contacted a patrol officer who told him Decedent was on the south side of the second floor, still armed. Officer Reid positioned Sniper Marx south of the building. During his assessment of the scene, Officer Reid saw a scared female on a second floor balcony. Sniper Marx provided cover while the female jumped down from the balcony to Officer Reid.

Officer Reid walked toward the north side of the building on the first floor when he heard a gunshot from upstairs. Sniper Marx updated over the radio that Decedent had moved to the third floor and fired one shot down toward a SWAT containment team. Officer Reid

made his way up to the north side of the third floor and made contact with Officers Fincher and Dapra, who were already positioned there. Officer Dapra told Reid he had made contact with Decedent who was aware officers were there. Officer Gorup arrived and took up a position behind Officer Fincher. Officer Reid requested a shield be brought up to their position. Officer Reid believed he heard a gunshot, followed by another gunshot, and then Sniper Marx advised over the radio, "Shot out," which confirmed a sniper had fired a shot.

One or two seconds later, Decedent ran north toward the officers. Decedent ducked his head and extended his left hand. Officer Reid later explained, "I believe that he fired two rounds at us." Decedent ran past Officer Fincher, still pointing the gun at officers. Officer Fincher fired but his shots did not seem to slow Decedent. Officer Reid fired his Glock 9mm handgun at Decedent "four to five times." Decedent continued to run until he was past the officers which exposed his back. Decedent ran into a metal rail on the north end of the third floor. Decedent ended up in a kneeling position with his hands obscured. Officer Reid approached Decedent and pulled him from the rail, laying him prone on the ground.

Officer Reid called for a medic as Officer Gorup kicked away Decedent's firearm. Officer Reid saw several bullet holes in the wall, so he instructed officers to clear the apartments and ensure no one was injured. The officers eventually kicked open all the apartment doors on the third floor.

THE COUNTDOWN OF OFFICER'S WEAPONS

A countdown of SWAT Sniper Marx's primary weapon - - an Accuracy International .308 caliber rifle - - revealed a total of four cartridges in the weapon (none in the chamber and four in the magazine). He carried an additional magazine which contained five cartridges and an additional five cartridges in a carrier attached to the stock. Officer Marx fired his primary rifle one time during this incident.

A countdown of SWAT Officer Fincher's primary weapon - - a Glock 9mm handgun - - revealed a total of four cartridges in the weapon (one in the chamber and three in the magazine). Officer Fincher carried a Glock 9mm handgun as a back-up weapon which contained one cartridge in the chamber and 15 in the magazine. He carried two additional magazines (one contained 14 cartridges, the other 15 cartridges). Officer Fincher fired his primary handgun 11 times during this incident.

A countdown of SWAT Officer Gorup's primary weapon - - a Colt .223 caliber rifle - - revealed a total of 25 cartridges in the weapon (one in the chamber and 24 in the magazine). He carried two additional magazines (each contained 28 cartridges). Officer

Gorup also carried two Glock 9mm handguns; each contained 16 cartridges (one in the chamber and 15 in the magazine). He carried two additional handgun magazines; each contained 15 cartridges. Officer Gorup fired his primary rifle four times during this incident.

A countdown of SWAT Officer Reid's primary weapon - - a Glock 9 mm handgun - - revealed a total of 10 cartridges in the weapon (one in the chamber and nine in the magazine). Officer Reid carried a Glock 9mm handgun as a back-up weapon which contained one cartridge in the chamber and 16 in the magazine. He also carried two additional magazines (one contained 17 cartridges, the other 16 cartridges). Officer Reid fired his primary handgun five times during this incident.

THE AUTOPSY OF DECEDENT

On February 25, 2011, an autopsy was performed on the body of Decedent at the Clark County Coroner's Office. Doctor Gavin determined Decedent died as a result of "multiple gunshot wounds." Decedent suffered gunshot wounds to his head, left upper back, left mid back, left lower back, right mid back, right flank, right lower back, left flank, right hand, left elbow, and left hand. Toxicology tests revealed the presence of Acetone, Amphetamine, Methamphetamine, Benzoyllecgonine, and Oxycodone in Decedent's blood. The Amphetamine and Methamphetamine were at toxic/lethal levels.

THE SEARCH OF DECEDENT'S APARTMENT

During the follow-up investigation, Homicide Sergeant Stephen Naegele (P#4105) obtained a telephonic search warrant for Decedent's residence at 9745 Grand Teton Drive #3053. The warrant was approved by District Court Judge Linda Bell.

Decedent's apartment was a two bedroom, two bathroom unit, which was in disarray. There was damage visible on the interior door frame from the SWAT officers forced entry. On the ground just inside the front door of the apartment was a 9mm cartridge case, head stamped "FC 9mm LUGER." The living room contained three couches, the cushions of which all appeared disturbed. The north couch in the living room had apparent bullet impacts in the east arm, the seat, and the back. The wall behind the north couch and the floor below the couch also had apparent bullet impacts. A cartridge case head stamped "FC 9mm LUGER" was located under a cushion of the north couch. Bullet fragments were recovered in the carpet padding under the north couch. Two 9mm cartridges, head stamped "FC 9mm LUGER," were located on the north couch.

A bullet hole was located on the interior side of the front door of apartment 3053. The bullet path continued east through the east wall of the kitchen, the west and east walls of the bathroom, the west wall of the master bedroom, and through a television hanging in front of the west wall of the master bedroom. A bullet was recovered from the south side of the bed frame in the master bedroom.

A bullet hole was located on the interior side of the west living room wall. The bullet path continued east into a flat panel television, which was on top of an entertainment center on the east wall of the living room. The bullet was not recovered.

A video surveillance camera was mounted above the front door on the east facing wall. The camera was hooked up to a VHS recorder in the master bedroom and recorded the living room area of the apartment. The VHS was not recording at the time of the incident or search warrant service. Homicide Detective Travis Ivie (P#6405) recovered a VHS tape from inside the recorder.

The video depicted Decedent on two occasions walking around the living room area of his apartment carrying a semi-automatic handgun. Decedent pointed the handgun around the house as if he believed someone else was inside. Decedent could be overheard saying he was "fucking tweaking." The tape was neither time-stamped nor date-stamped.

A box of twenty-two (22) FC 9mm Luger cartridges was found on the bed in the master bedroom, as well as a lighter and pipe used for smoking narcotics. A wallet on a headboard shelf contained identification in Decedent's name and over five-thousand dollars (\$5,000.00) in cash. A headboard cabinet contained several prescription pill bottles in Decedent's name. Additional prescription pill bottles were found in a plastic bag in the master bedroom. Several items of narcotics paraphernalia were located in the master bathroom, which included burnt tinfoil and small plastic baggies.

FORENSIC REPORTS

On March 22, 2011, LVMPD Forensic Scientist James Krylo (P#5945) completed an examination of the weapons and firearms evidence recovered during the follow-up investigation.

Decedent's Smith & Wesson 9mm semi-automatic handgun was test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a maximum capacity of 17 cartridges. The test-fired bullets and cartridge cases from Decedent's handgun were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that one cartridge case and one bullet recovered on the breezeway had been

fired from Decedent's handgun. Also, two cartridge cases and one bullet recovered from inside Decedent's apartment had been fired from Decedent's handgun.

SWAT Officer Fincher's Glock 9mm semi-automatic handgun was test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a maximum capacity of 18 cartridges. The test-fired bullets and cartridge cases from Officer Fincher's handgun were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that 11 cartridge cases and three bullets recovered at the scene, and one bullet recovered at the autopsy, had been fired from Officer Fincher's handgun.

SWAT Officer Gorup's Colt .223 caliber rifle was test fired and found to be in normal operating condition with no noted malfunctions. The rifle and one magazine had a maximum capacity of 31 cartridges. The test-fired bullets and cartridge cases from Officer Gorup's rifle were microscopically compared to the evidence collected at the scene and autopsy. Based on these comparative examinations, it was determined that four cartridge cases and two bullet jackets recovered at the scene had been fired from Officer Gorup's rifle.

SWAT Officer Reid's Glock 9mm semi-automatic handgun was test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a maximum capacity of 18 cartridges. The test-fired bullets and cartridge cases from Officer Reid's handgun were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that five cartridge cases recovered at the scene had been fired from Officer Reid's handgun.

SWAT Sniper William Marx's Accuracy International bolt-action rifle was test fired and found to be in normal operating condition with no noted malfunctions. The rifle and one magazine had a maximum capacity of six cartridges. The test-fired bullets and cartridge cases from Officer Marx's rifle were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that one cartridge case and one bullet recovered at the scene had been fired from Officer Marx's rifle.

Additionally, three bullets/fragments recovered at the scene and three bullets recovered at autopsy bore rifling characteristics consistent with Glock handguns; however, they lacked sufficient microscopic detail to be conclusively identified or eliminated as having been fired from a specific Glock handgun.

The remaining bullets and fragments were of no value for microscopic comparison.

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 defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent was justifiable under two theories: (1) The killing of a human being in self defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

A. The Use of Deadly Force in Defense of 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, 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 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 the defendant did not act in [defense of another].

In this case, Decedent posed an imminent danger to the residents (and visitors) of the Broadstone Montecito apartment complex, traffic officers, patrol officers and SWAT members. Decedent, while armed with a 9mm handgun, attempted to enter several apartments. This was reported to 9-1-1 Dispatch by numerous residents of the apartment complex, and officers were aware of this information upon arrival. After officers arrived, Decedent pointed his handgun toward Officer Cavaricci and directly at Officer Hartner, who described a “semi-auto pistol in [Decedent’s] hand pointed right at me.” Officer Hartner stated, “All I remember looking at was the end of the barrel...” The officers exercised considerable restraint in the face of such grave danger by attempting simply to defuse the situation. Officer Hartner shouted at Decedent, “Metro police! Put the gun down! Come out with your hands up! ... We don’t want anyone to get hurt. Put the gun down!” Decedent ignored the commands. Officer Dapra issued similar verbal commands to Decedent to drop his weapon; he refused.

Later in the standoff, Sniper Marx saw Decedent hold his gun over a railing and shoot toward officers on the ground. The initial threat had now escalated. Officers now were aware the handgun was loaded, and Decedent displayed his willingness to use his weapon. The imminent threat of Decedent killing either officers or unarmed civilians was now heightened. There was an additional concern that Decedent would enter an apartment and take a hostage. This concern was well-founded given Decedent’s earlier efforts to enter several apartments before officers arrived, and his apparent attempt to kick open the door to apartment 3051 after officers arrived.

Finally, at the time the fatal shots were fired by SWAT officers, Decedent had his loaded 9mm handgun raised and pointed toward the SWAT officers. This, too, posed an imminent danger to the officers and others. Decedent, moments earlier, had fired a shot toward officers. He was willing to use his gun. He was prepared to shoot a police officer. All of the officers were aware of this information either because they actually heard the shots or because, at the very least, they heard the radio broadcast. Thus, the SWAT officers were confronted by the appearance of imminent danger which created in their minds an honest belief and fear that they, or others, were about to be killed or suffer great bodily injury. Accordingly, the officers were justified in acting upon those appearances, fears and actual beliefs.

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B. Justifiable Homicide by a Public Officer

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

In this case, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to the officers themselves or other persons. Decedent, while armed with a 9mm handgun, attempted to enter several apartments. Decedent pointed his handgun toward Officer Cavaricci and directly at Officer Hartner. Decedent held his gun over a railing and shot toward officers on the ground. Decedent, while armed with a loaded gun, attempted to kick open the door to apartment 3051. Finally, at the moment the fatal shots were fired by SWAT officers, Decedent had his loaded 9mm handgun raised and pointed toward the SWAT officers. All of these circumstances created probable cause in the officers’ minds that Decedent posed a threat of serious physical harm either to the officers or others.

In 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.” This is true even though the autopsy revealed that Decedent suffered a number of gunshot wounds to his back. As SWAT officers tracked Decedent and fired at him, the SWAT members described Decedent as running past them with his gun raised and pointed at them. None of the initial shots fired by SWAT members stopped Decedent; therefore, they continued to shoot as Decedent ran. Decedent’s path would have exposed Decedent’s back as the SWAT members shot at Decedent, thereby resulting in gunshot wounds to Decedent’s back. Finally, a countdown of the SWAT officers’ weapons corroborates that the officers stopped firing once the threat ceased to exist. None of the four weapons fired by SWAT officers was “emptied”; rather, each weapon contained unfired cartridges. This fact also illustrates the considerable restraint exercised by the officers - - when Decedent no longer posed a threat to officers or civilians, no additional shots were fired.

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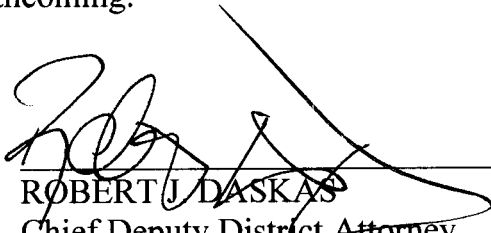
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CONCLUSION

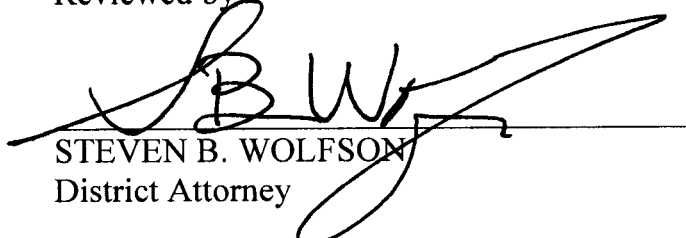
Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of SWAT Officer Le Aareon Fincher (P#5038), SWAT Officer Anton Gorup (P#4905), SWAT Officer David Reid (P#3241), and SWAT Officer William Marx (P#5649) were reasonable and 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 the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.



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Reviewed by:



STEVEN B. WOLFSON
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