

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Javier Reyes on February 19, 2013

Introduction

On February 19, 2013, the Las Vegas Criminal Apprehension Team (CAT), comprised of FBI Special Agents (SAs), Las Vegas Metropolitan Police Department Task Force Officers (TFOs), and a Henderson Police Department officer, identified a house where Javier Reyes (Decedent), a felon known to be in possession of firearms, could be living.

After surveillance was in place, officers requested a tactical team, K-9 Units, and air support. Before that assistance was in place, Decedent exited the residence and began running from officers.

CAT team officers followed Decedent on foot. SA I¹ pursued Decedent through a series of residential backyards. When SA I got within 15 feet of Decedent, he instructed Decedent to stop and show SA I his hands. Instead of complying, Decedent fled. SA I attempted to parallel the route of Decedent. Before SA I could exit a neighboring yard, Decedent shot at SA I from an adjoining yard. Decedent fired at least three shots at SA I—one bullet passing by his head, two hitting him in the chest and back.

Initially, SA I could not tell the location from which Decedent was shooting. SA I took cover and observed Decedent on a roof of a residence. Decedent was looking down from over the roof. Believing that Decedent was looking for other officers to harm, SA I

¹ At the request of the FBI, the names of all Special Agents and Task Force Officers have been removed from this Report.

fired at Decedent, striking him three times. After the third shot, Decedent fell. SA I ceased firing and was transported for medical treatment.

The District Attorney's Office has completed its review of the February 19, 2013, 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 Special Agent were not criminal in nature. This review was based on all of the evidence currently available.

This report explains why criminal charges will not be forthcoming against the Special Agent involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the Special Agent was not criminal.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

A Police Fatality Public Fact-finding Review was not conducted in this case. Clark County Code 2.14 mandates such a review when a police-involved death occurs, and the prosecutor preliminarily determines that no criminal prosecution of the officer is appropriate. The definition of "officer" is limited by NRS Chapter 289 to state and local law enforcement personnel. In the instant case, SA I was acting in his capacity as a federal law enforcement agent; therefore, he was not an "officer" for purposes of Clark County Code 2.14.

The Events at Alpaca Circle and Starridge Lane, Las Vegas, Nevada, on February 19, 2013

Task Force Officer A

TFO A has been a Metro police officer since 2003. In November or December of 2012, a LVMPD Public Information Official asked TFO A if he could post her contact information for any tips regarding the whereabouts of Decedent. TFO A agreed, but ultimately no usable information came from that effort.

TFO A investigated Decedent's background. She learned that Decedent was involved in a home invasion at the residence of his ex-girlfriend. He got into a fight with two males present in the residence at the time. During the fight, Decedent retrieved a knife and cut the shirt off a female in the residence. He also pointed a gun at the sister of his ex-girlfriend. TFO A interviewed the ex-girlfriend's sister. The sister related another

incident where Decedent got into a fight with her father, pulled out a handgun and discharged a round into the ground. This was not reported to police.

On February 7, 2013, TFO A received a call from a confidential source reporting that Decedent was inside an apartment in the Las Vegas area and would be departing shortly. TFO A contacted Repeat Offender Program teams, K9 units, and an air unit and asked them to respond to the apartment until she and her team could arrive. Approximately 15 minutes after her arrival, a subject in dark clothing ran from the apartment and toward a vehicle.

TFO F observed a person believed to be Decedent moving away from police. TFO A determined a subject in dark clothing who ran toward a vehicle was not the target, Decedent, and directed officers to the area of TFO F. TFO F got into a foot chase with Decedent, but lost sight of him. TFO A later learned Decedent scaled a second floor balcony, entered an apartment and held the elderly occupants hostage, while holding a pistol in each hand. He took their keys and drove their car out of their garage through the police perimeter undetected. After Decedent departed, the residents called 911.

The air unit observed the stolen vehicle and alerted the ground team. TFO A located the vehicle. TFO A engaged in a vehicle pursuit where Decedent was driving in excess of 100 mph. He escaped.

TFO A conducted additional investigation and learned of a possible location for Decedent at 1272 Pleasant Brooks Street.

On February 19, 2013, the CAT team targeted Decedent. TFO A conducted the in-person briefing for officers. She emphasized his likely possession of firearms. Officers then attempted to locate Decedent.

When TFO A exited her vehicle in a parking lot near the location of the incident, she heard a CAT team member radio that an individual resembling Decedent had gone over a wall and was walking southbound.

TFO A drove to Eastbrook Drive where she saw SA II, SA I, and TFO F. They waived her away, indicating the area was covered, so she proceeded to South Christy Lane. TFO A heard radio traffic advising that Decedent was seen running south. TFO A drove south, trying to parallel the foot chase. She heard, “[h]e’s on the roof!” and “[e]astbound” over the radio.

TFO A parked on Starridge Way. She heard a male commanding, “[l]et me see your hands!” and “[g]et on the ground!” Immediately after, she heard one or two gunshots from between the houses and a yell. She and other officers moved toward the sound of the gunshots. As she proceeded, she saw Decedent on a roof while officers shouted commands at him. She saw Decedent roll from one side of the roof to another, where

more commands were issued. She then heard gunshots and saw Decedent drop down to the roof.

TFO F began yelling for information on SA I, who was unaccounted for, and TFO A, TFO D, and SA II began running down Eastwick Circle looking for him. They found him walking out from between two houses. SA I advised them that he had been shot and needed to go to the hospital.

TFO A ran to her vehicle. SA I walked up to the vehicle and TFO A and TFO D loaded him into the vehicle and transported him to the hospital. En route, SA I stated, "I shot him. I hit him."



Special Agent I

SA I is assigned to the Criminal Apprehension Team (CAT). He became aware of the investigation involving Decedent in mid-January 2013.

It was his understanding that TFO A was looking for Decedent as he was wanted for robbery. On February 7, 2013, TFO A told SA I that she received confidential information regarding a potential location of Decedent. SA I was not part of the operation, but he learned that CAT team members went to that location to apprehend Decedent. During that encounter, Decedent pointed a weapon at TFO F, but no shots were fired by either the CAT team or Decedent.

On February 16, 2013, SA III updated SA I on the search for Decedent. On February 19, 2013, the CAT team had a potential location for Decedent and the officers made plans to attempt to locate him.

SA I arrived at the staging area for the operation at 1:30 p.m. The location was near Sahara and Nellis. TFO A briefed other officers. She discussed Decedent's propensity for violence, history of running from law enforcement, and that he was known to carry two guns. At the time, Decedent had pending charges for robbery, narcotics offenses, domestic violence, home invasion and robbery with a weapon.

As is customary, TFO A reviewed the deadly force policy with officers. SA I reviewed FBI deadly force policy as well.

The objective of the operation was to confirm the location of Decedent. The confirmation would later be used in a search warrant to be executed by a tactical team. TFO A advised that K-9 and air units would be en route. Other Metro officers had established a perimeter.

Supervisors assigned SA I to identify the residence and conduct perimeter support. Due to safety concerns, SA I understood that the surveillance team would pursue Decedent if he fled.

SA I put on a protective vest with word POLICE printed on the front. He carried his SWAT-issued, .45 caliber Springfield 1911 handgun. The magazine held 8 rounds and the weapon had one round in the chamber. SA I wore a maintenance shirt over the top of the vest to conduct covert surveillance.

After leaving the staging area, SA I received a description of Decedent's clothing. SA I was with SA II. Once at his assigned location, SA I saw Decedent. Decedent looked directly at SAs I and II. Decedent immediately fled with his hands going into his waistband. SA I and SA II pursued.

The agents followed Decedent along an easement and into a cul-de-sac. SA I saw SA II draw his weapon. SA I did not have his weapon drawn at that point. SA II issued verbal commands to Decedent, which Decedent ignored.

As the agents pursued Decedent, SA I lost sight of SA II. Eventually, SA I made visual contact with Decedent along the roofline of a house, 5415 Alpaca Circle. SA I was on the east side of the house and Decedent was on the roof. With his weapon drawn, SA I instructed Decedent, "[p]olice! Stop! Show me your hands!" Decedent did not comply. Decedent jumped from a high roof to a lower patio roof and over a wall. SA I lost sight of him. SA I radioed other officers that Decedent was headed east.

SA I continued looking for Decedent. He jumped into the backyard of a house southeast of 5433 Alpaca Circle and approached a cinderblock wall. He saw Decedent near a tree in the backyard of a house. Decedent appeared out of breath.



SA I was 10 to 15 yards from Decedent and issued commands. Decedent again ignored the commands and ran along a wall on the east side of 5438 Eastwick. SA I radioed, “[s]outh.” SA I described the ensuing encounter as follows:

I moved south from this location in an attempt to exit the rear yard. At this point, I heard a gunshot (shot 1), which was extremely loud. When I heard this gunshot, I was approximately midway along the length of the side wall in the rear yard of 5438 Eastwick Circle. I believed officers were engaging Reyes along Eastwick, so I turned my attention south in that yard in an attempt to assist my fellow CAT team members. I then felt a second shot (shot 2) near and past my head and felt particles hitting the left side of my face.

The second shot (shot 2) seemed to come from the north and I turned to engage. As I faced north, I was struck by a gunshot (shot 3) in the front center of my ballistic vest. I immediately turned and moved to the far southeast corner of the rear yard, away from the direction of the gunfire. As I faced south, I was struck by a gunshot (shot 4) in my back.

I could not exit the yard due to a wall and a very large and overgrown oleander tree, blocking the narrow space between the two houses. I assumed a low profile tactical position in the southeast corner of the rear yard and scanned the area in an attempt to relocate Reyes. I reached around and felt blood on my back.

After the gunshots ceased, I slowly and methodically proceeded north, while attempting to maintain cover behind the wall. I spotted Reyes standing on the roof of a home, which I later learned was at the intersection of Alpaca Circle and Starridge Way. Reyes was standing and moving back and forth behind the air conditioning unit with his elbows bent and hands along his waistband. Reyes was craning his neck to look over the side of the roof down to the street.

I believed Reyes was scanning for officers on the ground to shoot. I knew Reyes had shot at me three times and was highly willing to use deadly force against law enforcement officers. I was also aware of Reyes' recent history of violence, his continued disregard of officers' commands, and other CAT members were well within Reyes' shooting range at the time. Reyes posed an imminent threat of death or serious bodily injury to my fellow CAT team members.

I took a stable firing position, utilizing the top of the cinderblock wall to support my hand and stabilize my weapon. I also used the bushes as concealment. Due to my prior tactical training, I knew I could shoot through the bushes and I fired at Reyes. I could tell by Reyes' movements the shot hit him; however, Reyes remained on his feet and still moving. As he continued to pose a threat, I fired two more shots at Reyes. I could tell by Reyes' movements the shots hit him. After the third shot, Reyes went to his knees and then down on his back.

At this point, I concluded that Reyes was no longer an imminent threat. I maintained cover with my weapon on Reyes until I saw [TFO G] take control of Reyes on the roof. At that point, I believed there was no longer a threat from Reyes. I called over the radio I was shot, and sought medical help.



SA I saw TFO D on Eastwick and told him he had been shot. TFO D took SA I's arm and quickly moved from Eastwick to Starridge. SA I removed his vest to check for wounds. TFO D noticed a bullet hole in SA I's back. SA I relinquished his radio and weapon to TFO D.

TFO A drove TFO D and SA I to UMC hospital. UMC released SA I later that evening.

Special Agent II

On February 19, 2013, SA II and SA I set up for surveillance on Eastbrook Drive.

Over the radio, a TFO announced that he saw a male coming out of the target location and described his clothing. SAs II and I got out of their vehicle. SA I wore a maintenance shirt over his ballistic vest and pretended to work on the vehicle. SA II took a position across the street from SA I.

After Decedent walked past their location, he started running. SAs II and I commanded Decedent to stop. He did not comply and appeared to be reaching for a weapon in his waistband. SA II drew his weapon.

Initially, SA II had a shirt over his ballistic vest, but once the foot pursuit began, SA II took off the shirt to reveal his vest with POLICE written on it.

SA II saw Decedent climb over a wall between houses. SA II holstered his weapon and climbed the wall and drew his weapon again. At this point, SAs II and I were side by side walking on top of concrete walls. Decedent was ahead of them, scaling walls. SA II lost sight of Decedent and re-holstered his weapon.

SA II came upon a shed and thought Decedent may be hiding in it. SA II cleared the shed, but lost sight of Decedent and SA I. He could hear SA I issuing commands to Decedent.



By radio communication, SA II ascertained that Decedent and SA I were traveling eastbound. In order to meet up with them, SA II got inside another agent's vehicle and was driven to Starridge Way. Other agents were present, but he did not see SA I. SA II asked, "[w]here is [SA I]?"

SA II jumped on a residential wall and did not see anyone. He heard one shot and then two to four shots. SA II was concerned a team member had been shot. He could not assess the location of the shots because the area echoed. SA II began yelling for SA I and eventually saw Decedent on the roof of a house. SA II then heard three shots and saw Decedent fall to the ground.

SA II then overheard that a CAT team member had been shot.

Special Agent III

SA III was at the scene. Once another officer announced over the radio that he had seen Decedent, SA III drove from his surveillance location to Eastbrook Drive and then to Alpaca Circle where he picked up SA II who was running east.

SA III exited his vehicle with SA II. He heard four to six possible gun shots and saw Decedent jump onto the roof of the residence at the corner of Alpaca Circle and Starridge Way. SA III saw Decedent move to south of the roof and heard him yell, “[f]uck you pigs!” and other expletives. SA III heard another three possible gunshots, heard Decedent yell, “[f]uck!” and saw him fall to the ground.

Some team members responded to the roof to apprehend Decedent. SA III and TFO D went to Eastwick Circle where they encountered SA I who explained he had been shot.

SA III remained at the scene after SA I was transported to the hospital.

Task Force Officer B

TFO B is detective with the Henderson Police Department. TFO B was part of the surveillance team.

He heard the radio call indicating another member had seen Decedent. TFO B got out of his vehicle and attempted to block Decedent into an area. Decedent ran from the area. TFO B saw two law enforcement officers chasing him. TFO B chased as well.

He met up with other team members and saw SA II standing on a wall. TFO B went in that direction and both he and SA II jumped over walls in an effort to follow Decedent. In the path, TFO B saw a blue baseball cap and the receiver of a Glock handgun on the ground. He did not stop to pick up these items.

Eventually, TFO B ended up on Alpaca Circle. He heard multiple gunshots. TFO B took a tactical position behind a pillar. He saw a head on the other side of the wall. TFO B moved locations and the individual came over the wall and was 15 feet from TFO B. TFO B pointed his weapon and commanded, “[g]ive me your hands!” The individual did not respond, but, because he did not see the person’s face, TFO B did not shoot as he was concerned the person may be a fellow law enforcement officer. The individual then climbed a wall and TFO B saw a silver object in his hand, but then lost sight of him.

Next, TFO B saw the individual on the roof of 5441 Alpaca. TFO B lost sight of the individual when he moved to the south side of the roof of 5441 Alpaca. TFO B heard SA I call, “[m]edical, medical!” over the radio. TFO B next heard someone call out, “[s]uspect down.”

Task Force Officer C

TFO C was involved with the investigation involving Decedent on February 7, 2013.

On February 19, 2013, TFO C's responsibilities were logistics and placement of CAT members at various locations.

TFO C heard over the radio that another team member had seen Decedent. TFO C then heard a team member say, "[h]e's running southbound." TFO C proceeded southbound. While en route, TFO C heard SA I announce "[e]astbound" over the radio. From SA I's breathing, TFO C believed he was running. TFO C then heard SA I say, "[s]hots fired!" followed by a keying of the radio with no voice and then SA I saying, "I'm hit!" TFO C radioed back to SA I, "[w]here are you?" SA I responded, "[i]n a backyard," but SA I was unclear as to which backyard.

TFO C then proceeded on Eastbrook Drive. Over the radio, he heard, "[h]e's up on a roof." Once it appeared Decedent was confined on a roof, TFO C went looking for SA I. Next, he heard TFO D radio, "[w]e have [SA I] and WF8. Will transport."

Task Force Officer D

TFO D was involved in contact with Decedent on February 7, 2013. During that incident, TFO D saw Decedent and drew his weapon on him. Decedent looked at TFO D and clutched his waistband area and ran. TFO D lost sight of Decedent.

TFO D was involved on February 19, 2013, as well. He was at the corner of Eastwick and Starridge when he heard, "[I]et me see your hands." About five seconds later, he saw the oleander shrubs moving and he called out, "[p]lants moving." Thereafter, he heard one shot, a short pause, and then two to three more shots, all of which sounded familiar.

At that point, multiple people were using the radio causing interference. TFO D saw Decedent on the roof moving around. He was yelling expletives at law enforcement officers and walking from side to side. TFO D heard a shot and saw Decedent stumble, but stay upright. TFO D heard two more shots and Decedent fell to his back.

TFO D saw SA I emerge from between two houses clutching his chest, saying he had been hit. SA I said he needed to get to a hospital. TFO D removed SA I's vest and saw blood on his back, three or four inches above the beltline to the left of the spine. TFO D did not think the wound looked like a normal bullet wound because the edges were jagged. He thought it was possibly an exit wound. TFO D checked SA I for other injuries.

SA I said he had none, but he took a round to the chest which was stopped by his vest. He said his back burned.

Upon arrival to UMC, TFO D took SA I's duty weapon and magazines which he later gave to the FBI SWAT Team Leader.





Task Force Officer E

TFO E was aware of the contact with Decedent on February 7, 2013, but did not participate in the operation.

On February 19, 2013, TFO E was in a surveillance position on Charleston Boulevard. He did not hear the shots fired by Decedent, but he did hear “[n]eed medical” and “I’m hit” and believed it to be SA I’s voice.

Task Force Officer F

TFO F was involved in the attempt to apprehend Decedent on February 7, 2013. During that incident, while TFO F pursued Decedent, he lost sight of him. He came upon a corner and, as he cleared it, he observed Decedent pointing a weapon at him. TFO F retreated and lost visual contact.

On February 19, 2013, TFO F heard radio broadcast that a team member had seen Decedent and the direction in which he was moving. He and SAs II and SA I were advised that they had approximately 30 seconds before Decedent would reach them. Once Decedent ran to their area, SA II told Decedent, “[c]ome here.” Decedent fled south.

SAs I and II pursued on foot, over a fence. TFO F drove his vehicle south to intercept. TFO F heard yelling, “[l]et me see your hands” and observed people coming out of their homes. He instructed civilians to get inside.

TFO F saw SA I briefly between two houses and SA I said, “[s]till east.” TFO F said, “[h]ow far?” and SA I responded, “[g]o east.”

TFO F ran down Alpaca Circle to see if he could locate Decedent. He went back to his vehicle and drove with his car door propped open. He heard a gunshot. He retrieved his rifle and heard a second gunshot. He joined the group of officers moving toward the sound of gunfire. TFO F heard numerous gunshots.

TFO F saw officers on the corner of Alpaca Circle and Starridge Way. He heard yelling. He walked around the residence until he had a visual on Decedent. He saw him on a roof, crouched down. TFO F issued commands to Decedent to show his hands. TFOs G and H moved toward Decedent. TFO F believed the scene was contained and focused on finding SA I. He encountered other officers who reported that SA I had been transported.

Task Force Officer G

Decedent came to the attention of TFO G in November 2012. TFO G received information that Decedent had committed robberies and car jackings and was wanted for domestic violence. LVMPD also received information that Decedent said he would kill a police officer if necessary.

On February 7, 2013, while working the Christopher Dorner-Los Angeles matter, TFO G was informed about a possible location of Decedent. TFO G could not leave Dorner’s Las Vegas residence as a search warrant was about to be served. He was later informed of the encounter with Decedent.

On February 19, 2013, TFO G was assigned to start surveillance in a church parking lot. TFO G eventually radioed seeing an individual scaling a wall behind the target residence. TFO soon lost visual contact but he relayed the activity. The target apparently saw officers and ran south. TFO G called out the activity, rammed his truck through the gate of an easement and drove. He saw Decedent jump a wall and head east. TFO G exited his truck and drew his gun on Decedent, giving Decedent commands. Decedent backed up saying, “[d]on’t kill me.” TFO G heard other officers issuing commands. Decedent continued backing up and suddenly dove onto the other side of the roof, out of view of TFO G.

TFO G holstered his handgun and retrieved his shotgun from his truck. TFO G saw SA I pursuing Decedent. TFO G ran east on Eastwick and encountered other officers yelling that Decedent had started running in the opposite direction. TFO G ran back and saw Decedent in the backyard of a residence. TFO G saw Decedent pull a gun from his waistband. TFO G yelled, “[g]un!” three or four times and ran west. He tried to access a backyard, but got stuck in oleander bushes. While trying to get through, he heard three to four shots, but the location of the shooting was unknown. TFO G looked into backyards, but saw nothing.

TFO G ran back onto Eastwick and to Starridge. At that location, he saw law enforcement officers commanding Decedent. TFO G heard Decedent yell, “[f]uck you cops” from a roof. TFO G continued toward Alpaca when he heard two shots. He heard Decedent say, “[a]w fuck,” and saw him drop down.

TFO G climbed the roof to Decedent’s location with other officers. When they approached Decedent, he said, “[f]uck you.” TFO G grabbed Decedent’s right hand to handcuff him. Decedent resisted and another officer struck him in the back until he stopped resisting.

TFO H frisked Decedent and found a gun magazine on Decedent’s right side and a handgun in Decedent’s front waistband. The handgun was a semi-automatic.

TFO G heard other officers ask, “[w]here’s [SA I]?” A few moments later, TFO G saw SA I walking toward Starridge.

Minutes later, paramedics arrived for Decedent. TFO G saw a bullet hole on Decedent’s torso on the right side.

Task Force Officer H

On February 19, after hearing TFO G announce seeing Decedent, TFO H saw him walking south. Hearing radio traffic of a foot pursuit, TFO H drove his vehicle to Alpaca Circle and Starridge Way. He heard six to seven possible gunshots.

Fifteen seconds after hearing possible gunshots, TFO H saw Decedent jump onto a roof of a residence on Alpaca Circle. TFO H and other officers yelled to Decedent to stop moving and get to the ground. Decedent told them to, “[f]uck off,” among other expletives. TFO H heard another three possible gunshots, heard Decedent grunt, and saw him fall. TFO H and other officers responded to the roof.

Decedent resisted being handcuffed. TFO H struck Decedent and kned him to free his left hand. TFO H searched Decedent and pulled a gun with a black receiver and sliver

slide from Decedent's waistband—as well as a wallet, cash, pills, gloves, and a green leafy substance.

Medical personnel arrived to treat Decedent and remove him from the area.

OTHER OFFICERS AT THE SCENE

Officer I

LVMPD Officer I was present at scene, heard gunshots and a radio request for medical assistance, but did not see either shooting.

Officer J

LVMPD Officer J was taking an auto burglary report on East Charleston when he heard over the radio that a fugitive was running through the nearby golf course. Officer J, who was in full uniform, drove to the location. The radio reported “[s]hots fired!” Officer J got out of his vehicle and saw Decedent running on the roof of a residence. Officer J saw TFO G with a shotgun. Officer J drew his weapon and pointed it at the subject on the roof, commanding Decedent to “[g]et down! Get down on your stomach!”

Someone advised that they should not shoot over rooftops and Decedent ran again. Officer J was on the east side of a house when he heard three gunshots. He saw Decedent sit, and then go to his back.

With TFO G, Officer J and other officers climbed the fence, wall, and up onto the roof. Officer J took possession of Decedent's money, marijuana, and a pink substance in a plastic bag. Decedent's gun was not taken by Officer J.

Officer J heard Decedent say he was thirsty, but nothing else. Officer J put Decedent's property into a rubber glove by Decedent's gun. Officer J saw the fire department transport Decedent.

Officer K

LVMPD Officer K is assigned to the Repeat Offender Program. On February 19, he was assigned to surveillance. When he arrived at the incident location, he heard reports via radio indicating the subject was fleeing the area. Officer K drove to Alpaca based on radio information. He heard two to three gunshots from two different guns. The radio requested medical. When Officer K arrived, he saw a subject face down on the roof and officers with their weapons drawn.

Officer L

LVMPD Officer L also is assigned to the Repeat Offender Program. When he arrived at the incident location, he heard over the radio that the subject was running toward Alpaca Circle. Officer L proceeded to that location and exited his vehicle. He heard three to four gunshots, possibly from two different guns. Another officer pointed to a house. Officer L proceeded to that location and saw TFO G on the roof with Decedent handcuffed.

Sergeant M

LVMPD Sgt. M met TFO A on February 19, 2013, to be briefed. Sergeant M heard via radio that the subject had gone over a wall and was heading east. He then heard four to five gunshots. The radio still indicated that the subject was fleeing eastbound. Sergeant M heard five to six gunshots. Sergeant M could see officers on a roof giving commands to a subject. He saw the subject collapse and officers go to the roof to apprehend the subject.

Officer N

LVMPD Officer N responded to the incident location and was assigned to an apartment complex north of Charleston. Over the radio, he heard TFO G advise that the subject had jumped over a wall and was in a wash area. Officer N moved his car to the corner of Alpaca Circle and Starridge when he saw Decedent on the roof. Officer N got his shotgun from his vehicle and took a cover position since Decedent had a tactical advance. Officer N heard other officers yell, "[l]et me see your hands." He heard Decedent repeatedly say, "[f]uck you" to the officers. He heard three to six gunshots followed by another three or more shots. Someone called out not to shoot over the roof so Officer N maintained his position. When Decedent came into view, Officer N instructed, "[l]et me see your hands, Metro police." Decedent rolled back to the other side of the roof and Officer N heard two more shots. The next person Officer N saw on the roof was TFO G.

Officer O

LVMPD Officer O was working on February 7, 2013, when officers attempted to arrest Decedent. On February 19, 2013, Officer O was set up on Christy and Starridge. He heard five gunshots in the distance, a break, and then more shots. By the time he moved closer, the subject was in custody.

Officer P

LVMPD Officer P responded to the incident location as directed. Once at the location, he heard over the radio that the subject was fleeing the area and headed toward Eastbrook Drive. Officer P drove to that area. He saw TFOs F and B and SA II on foot. Officer P could hear officers shouting, “[p]olice! Stop!” and “[g]et on the ground.” Officer P proceeded to Alpaca Circle. Once there, he heard two shots. He could see Decedent. He heard officers announce to Decedent to get on the ground or they would shoot. He saw Decedent drop to the ground and roll out of sight.

While he was chasing the subject, Officer P saw a possible gun between the block wall and a small shed. A different officer was assigned to keep an eye on the item.

Officer Q

LVMPD Officer Q worked on February 7, 2013, in the effort to apprehend Decedent; thus, Officer Q was aware of Decedent’s past actions. On February 19, 2013, Officer Q was in his vehicle when he heard over the radio that a subject was fleeing the area. Officer Q stopped his vehicle in front of the residence where the Decedent was on the roof. He heard officers announce they were the police. He went on the roof with TFO G to handcuff Decedent. While on the roof, Decedent called the officers “motherfuckers” and said, “[s]uck my dick” multiple times. He also said, “I want to die.”

FBI AGENTS NOT AT THE SCENE AT THE TIME OF THE INCIDENT

Supervisory Special Agent IV

SSA IV was the Acting Assistant Special Agent in Charge on February 19, 2013, because the Assistant Special Agent in Charge was on leave at the time. SSA IV reviewed and approved the operation plan.

Before approving the plan, SSA IV spoke to SSA V, who supervises Squad 5 and the Criminal Apprehension Team. SSA IV told SSA V that the plan seemed “kind of skimpy” but, after SSA V explained the usual and customary plans utilized by CAT, SSA IV understood why an abbreviated plan was used.

Later, SSA V informed SSA IV that an agent was involved in a shooting. SSA IV drove to the scene of the incident and notified Acting Special Agent in Charge VI and Acting Special Agent in Charge VII of the situation. SSA IV also called the FBI Las Vegas Chief

Division Counsel. SSA IV asked FBI Las Vegas Division Chief Counsel to ensure the FBI Strategic Information and Operations Center was notified. SSA IV was in contact with LVMPD Captain R who was the on-scene commander for Metro.

SSA IV spoke to SA III who informed him that SA I was the officer who fired his weapon.

Because it was an FBI agent who fired, the FBI took over the scene. Metro crime scene analysts assisted in gathering evidence.

Supervisory Special Agent V

SSA V approved some of the investigation done on Decedent prior to the incident. SSA V approved the Operational Plan to locate Decedent. She emailed the plan to SSA IV. Once SSA IV approved the plan, SSA V informed SA III of the approval.

During the operation, SA III briefed SSA V electronically. Just before 3:00 pm, SA III informed SSA V that SA I had been shot, that Decedent had been shot, and that both had been transported to the hospital.

SSA V notified SSA IV and others and went to the hospital. SSA V spoke with SA I.

TFO D told SSA V that he had SA I's gun. SSA V designated a room at the hospital for collection of evidence and the gun was placed there.

PARAMEDICS

The Clark County Fire Department Battalion Three Chief responded to the scene. He went onto the roof with other CCFD members to treat Decedent. He did not recall any conversation.

EMT 1 responded to the scene. He was the first medical responder on the roof. He noted Decedent was awake but refused to answer EMT 1's medical questions. Decedent said, "I hate you people" and "fuck." EMT 1 cut Decedent's sweatshirt and identified two wounds. He loaded Decedent onto a backboard.

EMT 2 responded to the scene and was on the roof as well. During the ride to the hospital, Decedent told EMT 2 to "[f]uck off" several times.

Fire Fighter responded to the roof as well. He did not recall Decedent saying anything.

Firefighter/Paramedic responded to the roof. He noted Decedent was conscious and trying to talk, but he was unsure what he was trying to say.

CIVILIANS

Witnesses 1, 2, and 3 were all in the same residence. Witness 1 is the boyfriend of Witness 3. Witness 2 is the father of Witness 3.

Witness 1

Witness 1 was talking to his mother on the phone when he heard what he thought were firecrackers outside his house. His girlfriend called him to the front door and told him that police officers were in the street. As he approached the door, he heard two to three gunshots. He activated his phone recorder and recorded a man on a roof of a house. He could hear police officers shouting at the man, but could not hear what they said or if the man was shouting back. He then saw officers get on the roof and take the man into custody.

Witness 1 took the video from his phone and downloaded it to a computer, removing the audio of him making comments about the actions of police. He did not want that broadcast online. His opinion was that the use of force by police was excessive. He uploaded the video to YouTube. He also gave a copy of the video to investigators. The video does not depict either shooting.

Witness 2

Witness 2, a male in his sixties, was home when he heard eight to ten gunshots. He walked to the front door of his residence with his daughter and looked out. He saw multiple police officers on the street pointing their guns at a roof. He saw a male standing on a roof. He saw a police officer fire two shots, striking the man on the roof. The second shot caused the man to collapse. Other police climbed the roof to handcuff the man. Witness 2 said there was a struggle to handcuff the man and officers used force on the male.

Witness 3

Witness 3, a woman in her twenties, was at home on her laptop when she heard police sirens.

Witness 2 informed Witness 3 that her brother was trying to call the house. When Witness 3 got on the phone with her brother, the brother told her that there were gunshots and police activity at his nearby house.

Witness 3 went to her front door, opened it and looked outside. She saw two to four officers pointing their guns at the roof. She saw a male standing on the roof. She heard the officers yelling at the man, but could not recall what they said or if the man said anything.

She heard a single gunshot fired from an officer in front of her house, but she was unsure which one. She thought this shot struck the man in the leg. Police officers continued to yell at the man on the roof who was still moving around. She then heard a second shot. She looked away. When she looked back, the man was lying prone on the roof. She saw officers climb the roof and said the officers were hitting the male on the roof.

Witness 4

Witness 4 is a woman in her thirties. She was home on February 19, 2013, when she heard people shouting, “[f]ire, fire!” She also heard banging on her home. She ran outside and found a law enforcement officer who directed her to get back inside. She complied.

She heard an officer yell, “[s]top, police!” and “[f]reeze, get down!” It was clear to her that the officers were identifying themselves as law enforcement. She heard multiple gunshots. She saw an agent on the side of her house firing shots and then climbing over a wall.

She heard additional gunshots from “all over the place.” She said she heard at least 15 gunshots, possibly more. She said she heard three bursts of gunfire. The first on the side of her home, consisting of four or five shots, the second being four to five shots from her backyard, and the third being two to three shots from a rooftop in the back of her home.

Witness 5

Witness 5, a man in his thirties, was at home on February 19, 2013. His home had been burglarized two months prior. As he was working in this garage that afternoon, his dogs became agitated. He thought someone might be burglarizing his house again. He ran to his backyard and saw a male running. Witness 5 chased after the man until the man identified himself as law enforcement. At that point, Witness 5 could see that the man was chasing someone. Another officer told Witness 5 to go back inside his house. Witness 5 saw another male on top of a roof. Once inside his house, he heard 6-7 gunshots. He looked out a window and saw the man who was running from police on a roof.

Witness 6

Witness 6, a twenty year old man, was visiting his cousin the afternoon of February 19, 2013. He went to the backyard to smoke a cigarette and saw a person jump out of the neighbor's yard into another yard. Immediately after, he saw "detectives" chasing the man with guns drawn. One of the "detectives" was wearing a vest which said "FBI."

Witness 6 heard the officers yell, "[i]t's the police!" and "[s]tay in the house!" He heard 4-5 gunshots followed by 3-4 gunshots about a minute later. Witness 6 went to the front of his cousin's house and saw officers standing in a ditch.

Witness 7

Witness 7 is a man in his thirties. He was at home when he noticed several law enforcement officers getting out of their cars. At least one had "FBI" on a jacket. He saw officers focus on a house across the street. He heard officers yell, "[g]et down!" and what he thought was 12 gunshots. Then he saw paramedics take a man down from the roof on a backboard.

Witness 8

Witness 8 is a nineteen year old woman. She was at home in her parents' residence when she heard a male tell someone to put their dog away. She looked out a window and saw a man with a police radio talking over the fence to her neighbor. Soon this man jumped over the fence of her residence and walk through other yards. A minute later, she heard 4-6 gunshots, but she did not see who fired. She heard a neighbor yell, "[h]e ran that way!"

Witness 9

Witness 9 is a man in his fifties. He was home when he heard male voices yelling. He looked out a back window and saw a man standing in a neighbor's side yard requesting that Witness 9 put his dog in the house. The dog is a pit bull. Witness 9 complied.

Witness 9 saw another male wearing a green vest standing in a neighbor's yard. He saw this man point his gun and yell, "[d]rop the gun! Drop the gun!"

Witness 9 moved to a different section of his house. He heard two rounds of gunfire and then a male voice saying, "[d]oes anyone hear me?" Witness 9 then heard one more round of gunfire.

After a few minutes, officers arrived in Witness 9's backyard and the officers identified themselves and said they were looking for evidence. One of the men had "FBI" on his jacket.

Witness 10

Witness 10 is a male in his twenties. He received a call from his friend in the neighborhood telling him that the police were in front of his house. Witness 10 opened his garage and saw officers. Witness 10 saw a man on a roof and told officers what he saw.

Witness 10 heard the officers tell the man on the roof to get down. Witness 10 ran to his aunt's house. He heard gunshots and the man on the roof fell down and was yelling. Witness 10 recorded some of the events on his phone. He gave the recording to investigators.

Witness 11

Witness 11 is a male in his seventies. He had just returned home with his son when saw law enforcement officers chasing a man. One officer instructed Witness 11 to go inside his house, which he did.

As Witness 11 made his way back inside his house, he saw the man who was running from police on his roof. He heard gunshots, but did not see the shooting.

OTHER CIVILIAN WITNESSES

Agents interviewed other lay witnesses. None of these witnesses saw either shooting. In addition, agents canvassed 10 other residences in the area and received no answer. Finally, Metro officers collected two voluntary statements from individuals and provided them to the investigating agents. Those witnesses also did not see either shooting.

EVIDENCE AT THE SCENE

A Smith & Wesson .40 caliber handgun was recovered from the scene. This was the gun in Decedent's possession. The gun was reported stolen from California in 2009.

A total of five .40 caliber casings were recovered from the scene. One casing was recovered from 5438 Eastwick and four were recovered from 5433 Alpaca Circle. FBI ballistics testing indicated that all five casings were fired from the .40 S&W pistol.

Investigators found three .45 Auto caliber cartridge casings. Two were located at 5434 Eastwick and one was found at 5438 Eastwick. Ballistics testing indicated that all three were fired from SA I's .45 Auto caliber Springfield Armory pistol.

SA I'S WEAPON

TFO D took possession of SA I's loaded Springfield 1911A1 with holster, a magazine pouch containing 2 magazines, and handcuffs.

The weapon was ultimately transported to the FBI and found to have one round in the chamber and five rounds in the magazine. The two additional magazines had 8 rounds each.

AUTOPSY OF DECEDENT

The Clark County Medical Examiners Office performed the autopsy on Decedent. The pathologist concluded that Decedent died from three gunshot wounds.

A blood sample taken at time of autopsy indicated that Decedent was under the influence of marijuana at the time of this incident.

SEARCH OF DECEDENT'S RESIDENCE

On February 19, 2013, Metro officers executed a search warrant at Decedent's residence. This occurred after the shootings. Decedent had been renting a room from an individual. The warrant was for only Decedent's room.

The following was recovered:

1. black jacket
2. black beanie
3. 100 baggies, scale, crystal substance
4. photos of two female juveniles
5. additional plastic baggies
6. 16 9mm cartridges
7. 10 .40 caliber Smith & Wesson cartridges
8. 6 .44 caliber cartridges retrieved from a .44 Magnum revolver
9. .44 Magnum revolver, Smith & Wesson
10. Smith & Wesson 32 Magnum revolver
11. camouflage back pack
12. 3 9mm cartridges

13. 4 .22 cartridges
14. baggie of white crystal substance, small
15. large baggie of white crystal substance
16. 2 .44 caliber cartridges

DECEDENT'S CRIMINAL HISTORY

Decedent had been removed from the United States for an aggravated felony. There is no record of a legal re-entry.

On February 12, 2013, Decedent had active warrants for Robbery with Use of a Deadly Weapon, Felony Assault with Use of a Deadly Weapon, Felony Domestic Violence, Misdemeanor Domestic Violence 2d, Misdemeanor Battery (2), and Misdemeanor Domestic Violence.

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].

Id. at 1051-52.

In this case, Decedent posed an objectively reasonable imminent danger to SA I and other CAT Team officers as well as citizens in the area. Decedent had refused commands by officers multiple times and shot at SA I, striking him twice and nearly hitting him in the head. At the time he fired, SA I had an objectively reasonable belief that Decedent posed an imminent danger, which created an honest belief that either he or another team member were about to be killed or suffer serious bodily injury. Accordingly, SA I was justified in acting upon those appearances, fears and actual beliefs.

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, SA I had probable cause to believe that Decedent posed a threat of serious physical harm either to himself or other persons. Decedent had failed to comply with CAT team members’ directives and engaged in a foot chase. At one point, Decedent shot at SA I at least three times, striking him in the upper chest and back. Decedent’s failure to comply with CAT team members’ directives and attempts to kill SA I, were all circumstances which created probable cause in SA I’s mind that Decedent posed a threat of serious physical harm either to himself or others.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of SA I were in fact unjustified “in the discharge of a legal duty.” Decedent’s actions leading up to the shooting led SA I to reasonably believe that Decedent was in possession of a weapon and would use it again.

C. FBI Deadly Force Policy

Law enforcement officers may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or another person.

A. Deadly force may not be used to prevent the escape of a fleeing subject (must be able to articulate a threat outlined in the bolded core principle above).

- B. Firearms may not be fired solely to disable moving vehicles (must be able to articulate a threat outlined in the bolded core principle above).
- C. If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to authority of the officer shall be given prior to the use of deadly force.
- D. Warning shots are not permitted outside the prison context.

SA I's actions complied with this policy as well.

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 SA I 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 agent, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Submitted March 13, 2014

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By

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