

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Paul Palmer on January 21, 2017

Introduction

On January 21, 2017, at approximately 9:35 am, security at the Gold Strike Hotel and Gambling Hall, located at 1 Main Street, Jean, NV, was notified of a naked male with a knife. A maintenance worker at the hotel observed a naked male, later identified as Paul Carr Palmer III (hereinafter referred to as Decedent), near the pool area. Two patrons, who were in their hotel room, also observed Decedent. The maintenance worker notified hotel security via his radio while the two patrons contacted hotel security by phone.

Security Officer #1 responded to the location; she observed Decedent dressed only in socks. Decedent appeared to have blood on his arms and legs. As Security Officer # 1 attempted to see if Decedent needed help, Decedent moved toward her with a knife raised in a threatening manner. Security Officer # 1 ran from Decedent who she believed was going to attack her with the knife. Decedent chased Security Officer # 1 as she ran from him, but then Decedent turned and approached another security officer, Security Officer # 2, who had responded to the area. Security Officer # 2 observed Decedent had several bleeding cuts on his forearms and legs. Security Officer # 2 spoke to Decedent, but did not get any verbal response. Decedent then raised the knife over his head and chased Security Officer # 2 through the parking lot. As Security Officer # 2 was being chased, he passed Security Officer # 1 and told her to run.

As Security Officer # 1 and Security Officer # 2 ran toward the southwest corner of the building, they observed two Clark County Fire Department (CCFD) personnel. Firefighter # 1 and Firefighter # 2 observed Decedent as he chased Security Officer # 1 and Security Officer # 2. Firefighter # 1 and Firefighter # 2 were joined by Security Officer # 1 and quickly moved to their rescue unit and climbed in the cab. Security Officer # 2 retreated to the south tower of the hotel. Decedent then moved to the west through the parking

lot and hid behind a group of large propane tanks. Firefighter # 1 and Firefighter # 2 drove their CCFD rescue unit through the parking lot in a southwest direction in order to maintain a visual on Decedent until Las Vegas Metropolitan Police Department (LVMPD) personnel arrived.

LVMPD Officer Bicsanszky arrived at the south parking lot and drove toward the CCFD vehicle. Firefighter # 1 and Firefighter # 2 made eye contact with Officer Bicsanszky and pointed toward the propane tanks where Decedent had hidden. Officer Bicsanszky passed the CCFD vehicle and drove west toward the propane tanks. Officer Bicsanszky stopped his vehicle, exited the driver side, and grabbed a less than lethal (bean bag) shotgun. Decedent rushed toward Officer Bicsanszky. Officer Bicsanszky issued commands to Decedent to stop and drop the knife but Decedent did not comply. Officer Bicsanszky then fired four bean bag rounds toward Decedent as Decedent continued to charge him while armed with the knife. Decedent hesitated, raised the knife and again charged toward Officer Bicsanszky. Officer Bicsanszky transitioned from the less than lethal shotgun to his handgun and fired two rounds, striking Decedent. Decedent fell to the ground. Officer Bicsanszky placed Decedent in handcuffs. Firefighter # 1 and Firefighter # 2 exited their rescue unit and began to render first aid to Decedent. Decedent, however, was later pronounced dead.

The Clark County District Attorney's Office has completed its review of the January 21, 2017, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Bicsanszky were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Bicsanszky. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review, which was held on May 26, 2017.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer 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.

I. BODY WORN CAMERAS

Officer Bicsanzky was not equipped with a body worn camera.

II. SCENE WALK-THROUGHS

On January 21, 2017, at approximately 12:40 pm, Officer Bicsanzky provided a walk-through of the scene. During the walk-through, Officer Bicsanzky explained that he was at the Jean Justice Court building and received a call for service at the Gold Strike Hotel and Gambling Hall reference a subject with a knife. Officer Bicsanzky then responded to the hotel and observed a parked CCFD ambulance in the south side of the parking lot. As he drove along the driver side of the ambulance, he observed two firefighters in the cab. Officer Bicsanzky stated he made eye contact with the driver, and put his hands in the air indicating that he was wondering where the suspect was. The driver pointed to the west.

Officer Bicsanzky stated he did not see anyone and continued to drive forward (west). As he was driving forward, Officer Bicsanzky observed Decedent, who was naked, quickly come from behind a white vehicle parked in a parking space. Officer Bicsanzky stopped his vehicle, retrieved the low lethal shotgun, and exited his patrol vehicle. Decedent was holding a knife in his hand and began to advance toward Officer Bicsanzky.

Officer Bicsanzky gave verbal commands to Decedent to stop, but Decedent continued walking and then ran toward Officer Bicsanzky. Officer Bicsanzky fired four rounds from the low lethal shotgun. He observed the rounds strike Decedent in the chest with no effect. Decedent continued toward Officer Bicsanzky. Officer Bicsanzky then dropped the low lethal shotgun, transitioned to his handgun, and fired one round at Decedent. Decedent continued toward Officer Bicsanzky. Officer Bicsanzky then fired a second round at Decedent, who was approximately ten feet away, and Decedent immediately fell to the ground in front of the ambulance. Officer Bicsanzky stated after Decedent was on the ground, he sat up, threw the knife at him, and fell back to the ground.

Officer Bicsanzky approached Decedent and placed handcuffs on him. After Decedent was in custody, Officer Bicsanzky broadcast he had been involved in an officer-involved shooting.

III. PUBLIC SAFETY STATEMENT

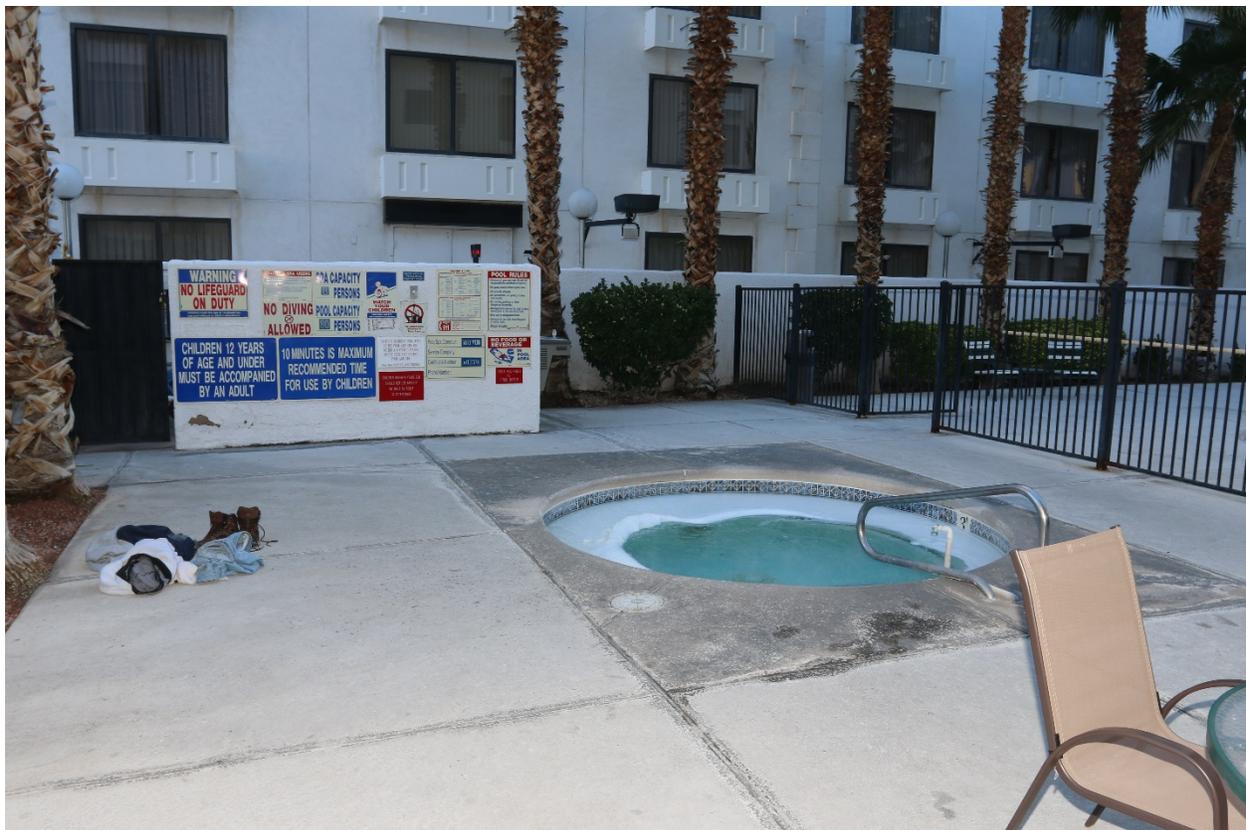
On January 21, 2017, at approximately 12:16 pm, Detective Jex interviewed Sergeant Calarco in reference to the Public Safety Statement he obtained from Officer Bicsanszky. Below are the questions asked by Sergeant Calarco, with the answers provided by Officer Bicsanszky in italics.

- 1) Did you discharge your firearm? *Yes.*
 - a) If so, in what direction? *West.*
 - b) Approximately where were you located when you fired? *Uh, next to the ambulances, on the south side. The southeast of the Gold Strike, in the parking lot.*
 - c) How many shots do you think you fired? *Four (4) from low lethal, two (2) from handgun.*
- 2) Is anyone injured? *Subject who has been shot.*
- 3) Are there any outstanding suspects? *Nn...no, not that I'm aware.*
- 4) Is it possible the suspect fired rounds at you? *No.*
- 5) Do you know if any other officer(s) discharged their firearms? *No.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
 - a) If so, where are they located? *Evidence by the cone, either cartridges or a suspect's knife.*
- 7) Are you aware of witnesses? *Two firemen and two security guards.*

IV. DESCRIPTION OF THE SCENE AND DECEDENT

The scene was located at the Gold Strike Hotel and Gambling Hall, specifically in the south parking lot and extending north into the area between the north and south towers. The Gold Strike Hotel and Gambling Hall consisted of two hotel towers, north and south, with the towers situated so that they ran east/west and faced in a north/northeast direction. The casino area was located at the west end of the hotel towers. Parking lots were located on the north and south sides of the respective towers. A pool/jacuzzi area was located in between the north and south hotel towers with additional parking spaces just east of the pool area.

The pool area consisted of a pool on the west side and a jacuzzi on the east side. A black fence ran north/south and separated the pool from the jacuzzi with a gate at the south end. A table with three chairs around it was located just north of the jacuzzi. A white block wall bordered the jacuzzi on the east side with a gate at the south end of the wall. The gate gave access to the adjacent parking lot. Several pieces of clothing, including a pair of jeans, boots, underwear, shirts, a hoodie, a pair of eyeglasses, and several ponytail holders, were located on the ground just east of the jacuzzi and near the gate leading to the parking lot. Apparent blood was located on both sides of the white block wall and on the top of the wall, just north of the gate. A trash can inside the jacuzzi area and a trash can in the parking lot, both adjacent to the gate, had apparent blood on them.



Numerous apparent footwear impressions in apparent blood were located in the parking lot just east of the pool/jacuzzi area. A vehicle was parked along the south side of the parking lot and was facing east, adjacent to the south tower. Apparent footwear impressions were located around the vehicle and apparent blood was located on the right side of the rear cargo door. The apparent footwear impressions meandered throughout the parking lot area and became difficult to see near the end of the lot, adjacent to the east end of the south tower.

The east end of the south tower opened into a larger parking lot area which covered the south side of the south tower. The parking lot consisted of east/west running rows of parking spaces. The scene was located near the 1st and 2nd rows of parking spaces, and south/southwest of the southeast corner of the south hotel tower.

A CCFD ambulance was parked facing southwest near the east end of the first full row of parking spaces and between the 1st and 2nd rows. The Decedent was located on the ground near the right front corner of the ambulance and was covered with a white sheet. A community ambulance was parked east of the CCFD ambulance, facing southwest and was along the north edge of the 2nd row of parking spaces.



A LVMPD Ford F150 truck was parked facing northwest along the south edge of the 1st full row of parking spaces and west of the CCFD ambulance. The F150 was running and the left front door was open. One (1) expended shot shell marked 'Defense Technology – Drag Stabilized Bean Bag' was on the ground underneath the open left front door of the F150.

A Saturn Aura XE was parked facing south, west of the F150, in the 9th parking space west of the east end of the 1st full row of parking spaces, on the south side of the row. One (1) ruptured bean bag was located in the left rear wheel of the Saturn.

One (1) black 'Remington Arms' shotgun, with serial # A924602M, and an orange stock was lying on the ground southwest of the front end of the CCFD ambulance. The shotgun was lying on its right side with the muzzle pointing southwest. A shot shell carrier was on the left side of the shotgun and contained six (6) 'Defense Technology – Drag Stabilized Bean Bag' shot shells.

One (1) cartridge case with the headstamp 'SPEER 45 AUTO' was on the ground just north of the shotgun, with another cartridge case with the same headstamp located southeast of the shotgun.

Three (3) expended shot shells marked 'Defense Technology – Drag Stabilized Bean Bag' were on the ground in a line, extending southeast to northwest, southwest of the shotgun's location. A bean bag was in the same southeast to northwest line, between two of the expended shot shells. Another bean bag was located on the ground southwest of the shotgun.

One (1) plastic shot shell wad was located south of the shotgun with another plastic wad located southwest of the shotgun. White paper shot shell wads were located in various locations throughout the scene. One (1) was southeast of the shotgun, another was south of the shotgun, four (4) were located southwest of the shotgun, and two (2) were west of the shotgun.

One (1) bronze-colored folding knife was located on the ground, approximately 32'6" east of the shotgun and slightly southeast. The knife was open and lying on its left side with the blade pointed south.



The Decedent was located on the ground by the right front corner of the CCFD ambulance. The Decedent was lying on his back with his head in a west/southwest direction and his legs in an east/northeast direction. Both arms were straight and were slightly extended away from the body. He was wearing a pair of black ankle socks. Multiple lacerations and incisions on the inside of the Decedent's right and left wrists, on the right side of the Decedent's neck, on the back of the lower right leg and on the inside of the Decedent's left thigh were noted, along with an injury to the Decedent's lower left leg. An abrasion was located on the Decedent's left hip, and there were injuries to the Decedent's right abdomen and upper right chest. An apparent gunshot wound, located on the Decedent's upper right chest, was also noted.

V. INTERVIEWS

Hotel Guest # 1:

On January 21, 2017, Hotel Guest # 1 was interviewed and explained that she was staying with her boyfriend, Hotel Guest # 2, at the Gold Strike. After waking up, she opened the curtains and observed a male (Decedent) in the parking area. She described Decedent as a white male in his late 50's, thin build, long gray hair, and only wearing socks. Hotel Guest # 1 saw Decedent had blood on his arms and legs, and was holding a

knife. While looking at Decedent, Hotel Guest # 1 saw a female walk into the area and Decedent chased her. After the female ran away, Decedent walked back and stood behind a white car. Hotel Guest # 1 then saw a male, who she believed was security, walk into the area and Decedent chased him as well. Hotel Guest # 2 called the front desk to report the incident while Hotel Guest # 1 recorded video on her cellular phone. Hotel Guest # 1 continued to record until she saw Decedent chase the security guards around the building and lost sight of them. Hotel Guest # 1 said she saw a police car arrive, but did not witness anything after that.

Hotel Guest # 2:

On January 21, 2017, Hotel Guest # 2 was interviewed and explained that he was staying with his girlfriend, Hotel Guest # 1, at the Gold Strike. After waking up, Hotel Guest # 1 opened the blinds and told Hotel Guest # 2 there was a naked man (Decedent) outside the room. Hotel Guest # 2 looked out the window and observed Decedent sneaking around a white vehicle located in the parking lot. Hotel Guest # 2 called down to the front desk and advised them of what he saw, and later stated he received a call back from the police. While he watched Decedent, Hotel Guest # 2 saw a female wearing all black, possibly a security guard, walk into the area, and Decedent, who was holding a knife, chased her. The female fled the area, and Decedent returned to the white vehicle where he was originally hiding. Shortly after that, Hotel Guest # 2 saw a male security guard approach the area where Decedent had returned to. Decedent chased the male security guard while still holding the knife. They disappeared from Hotel Guest # 2's view. Hotel Guest # 2 did not see Decedent anymore after that and he did not witness the officer-involved shooting and did not hear any gunfire.

Security Officer # 1:

On January 21, 2017, Security Officer # 1 was working at the Gold Strike Hotel and Gambling Hall as a uniformed security officer. Security Officer # 1 was dispatched to the pool area reference a naked male (Decedent). When she arrived at the pool area she observed Decedent holding a knife at his side. Security Officer # 1 also noticed Decedent had several cuts on his arms and legs. When Security Officer # 1 asked Decedent if he needed any help, Decedent raised the knife and walked towards her. Security Officer # 1 requested backup over the radio, and tried to get away from Decedent because she was afraid he was going to cut her with the knife. Another security officer arrived in the area and Decedent chased both of them with the knife.

Security Officer # 1 noticed a CCFD ambulance in the parking lot and ran to it. Security Officer # 1 told the firefighters to call the police because Decedent had a knife. A short

time later Security Officer # 1 observed a marked police truck pull into the parking lot. A uniformed officer exited the truck and gave Decedent commands to put down the knife. Security Officer # 1 took cover behind a vehicle, but heard the police officer yell at least four times to put the knife down. Security Officer # 1 did not see Decedent or the police officer as her view was blocked by the vehicle she was hiding behind, but she heard at least two gunshots. After the gunshots, the paramedics rendered aid to Decedent.

Security Officer # 2:

On January 21, 2017, Security Officer # 2 was working as a uniformed security officer at the Gold Strike and was on duty at the time of the incident. While on break he heard a call over his radio reporting a naked male (Decedent) in the pool area. Security Officer # 1 advised she would handle the call. Security Officer # 2 walked toward the pool area and met up with another employee in an elevated bridge area which overlooked the pool.

Security Officer # 2 looked into the pool area and observed discarded clothing. As Security Officer # 2 looked for Decedent, he observed him in the parking lot next to the pool hiding behind a white vehicle. Security Officer # 2 observed Security Officer # 1 exit the hotel tower and walk towards the parking lot. Before Security Officer # 2 could radio Security Officer # 1, Decedent came out from behind the vehicle and moved to approach her. Security Officer # 1 radioed that Decedent had a knife, and Security Officer # 2 began to run towards the pool area.

Upon arrival in the parking lot next to the pool, Security Officer # 2 saw Decedent and noticed he had several bleeding cuts on his forearms and legs. Security Officer # 2 spoke to Decedent, but did not get any verbal response from him. Decedent then raised the knife over his head and chased Security Officer # 2 through the parking lot. As Security Officer # 2 was being chased, he passed Security Officer # 1 and told her to run.

After creating distance from Decedent, Security Officer # 2 called 9-1-1 to report the incident. Security Officer # 2 lost sight of Decedent in the parking lot near the propane tanks. Security Officer # 2 re-entered the hotel, not knowing if Decedent had gone into the building.

Security Officer # 2 heard Security Officer # 1 state over the radio Metro was on property. Security Officer # 2 went back outside and saw Decedent laying on the ground. Security Officer # 2 did not observe the officer-involved shooting.

Firefighter # 1:

On January 21, 2017, Firefighter # 1 was working as a firefighter-paramedic and was assigned to station 87 in Jean, NV. Firefighter # 1 and his partner, Firefighter # 2, drove to the Gold Strike Hotel and Gambling Hall parking lot to work out and parked their rescue vehicle on the east side of the south tower. As they were putting on their workout gear, a female security guard approached them and stated there was a naked, bloody man (Decedent) with a knife in the parking area.

Firefighter # 1 and Firefighter # 2 went to investigate and saw Decedent with a knife. Firefighter # 1 observed a male security guard interacting with Decedent. Decedent walked towards Firefighter # 1 and Firefighter # 2, who retreated to their vehicle. Firefighter # 1 and Firefighter # 2 climbed into their vehicle and locked the doors.

Firefighter # 1 saw Decedent was bleeding from his arms and legs. Decedent walked around the vehicle two times as Firefighter # 1 and Firefighter # 2 watched. Decedent did not attempt to get into the vehicle. Decedent then walked south through the parking lot. Firefighter # 1 and Firefighter # 2 followed after Decedent while requesting assistance through their Dispatch. Firefighter # 1 observed Decedent crouch behind a short fence in the parking lot near some propane tanks. Firefighter # 1 believed Decedent was possibly getting ready to ambush someone.

Firefighter # 1 stated while he and Firefighter # 2 were watching Decedent, Officer Bicsanszky arrived. Firefighter # 1 pointed in the direction of where Decedent was and Officer Bicsanszky drove in that direction. Decedent then ran towards Officer Bicsanszky's stopped vehicle. Firefighter # 1 saw Officer Bicsanszky exit his vehicle with the low lethal shotgun.

As Decedent approached, Officer Bicsanszky fired the low lethal shotgun three times, striking Decedent in the chest. Decedent appeared stunned and briefly retreated, but did not drop the knife. Decedent advanced on Officer Bicsanszky, who gave verbal commands to Decedent while he backpedaled. Officer Bicsanszky then drew his firearm.

Decedent continued to approach Officer Bicsanszky and threw the knife at him. At the same time, Officer Bicsanszky shot two times at Decedent. Decedent fell to the ground in front of the ambulance. Officer Bicsanszky bent down out of view of Firefighter # 1, but later stood up, and after the scene was safe, told Firefighter # 1 and Firefighter # 2 to exit their vehicle.

Firefighter # 1 and Firefighter # 2 rendered aid to Decedent. Firefighter # 1 observed Decedent had a gunshot wound in the upper right chest area and did not see an exit wound. Firefighter # 1 and Firefighter # 2, with the assistance of bystanders, continued to give medical care to Decedent for approximately twenty minutes.

Firefighter # 2:

On January 21, 2017, Firefighter # 2 was working an overtime shift at station 87. He and his partner, Firefighter # 1, had driven over to the Gold Strike Hotel and Gambling Hall to run the stairs. After parking and exiting their vehicle, a female security officer approached them and stated there was a naked man (Decedent) with a knife chasing them. She also said Decedent was bleeding.

Firefighter # 2 and Firefighter # 1 looked around the corner of the building and observed Decedent with a knife bleeding from his arms and legs. Decedent was approaching them so Firefighter # 2 and Firefighter # 1 got into their vehicle and locked the doors. The female security officer ran out of the area as Decedent circled the vehicle twice. Decedent walked away to the south as Firefighter # 2 and Firefighter # 1 called their dispatch and requested assistance.

Firefighter # 2 and Firefighter # 1 moved their vehicle to keep an eye on Decedent. Decedent knelt down behind some propane tanks. Firefighter # 2 did not know if Decedent was hiding from security or waiting to catch a security officer so he could attack. Shortly after, Officer Bicsanszky arrived and pulled up next to Firefighter # 2 and Firefighter # 1. Firefighter # 2 pointed in the direction of Decedent and observed Decedent run at Officer Bicsanszky.

Firefighter # 2 observed Officer Bicsanszky exit his vehicle and back up while holding a bean bag shotgun. Firefighter # 2 heard Officer Bicsanszky yell, while backing up, to stop and put down the knife. As Decedent continued to approach, Officer Bicsanszky continued to back up, and fired three bean bag rounds at Decedent. Firefighter # 2 observed Decedent get knocked back, but then he regrouped. Decedent was still holding the knife.

Decedent then sprinted towards Officer Bicsanszky, who fired two times with his handgun. Firefighter # 2 said Decedent was shot one time in the right chest area. Firefighter # 2 said Decedent kept moving and Officer Bicsanszky told him to stop. After handcuffing Decedent, Officer Bicsanszky told the firefighters to come out of their rig and they rendered aid to Decedent. Firefighter # 2 stated Firefighter # 1 told him Decedent had thrown the knife, but he did not see that. Firefighter # 2 believed the officer had no other options in the incident.

Maintenance Employee:

On January 21, 2017, Maintenance Employee was working at the Gold Strike Hotel and Gambling Hall. He was on the walkway between the two hotel towers when he observed a white male [Decedent] only dressed in socks, near the pool. Maintenance Employee notified Gold Strike security Dispatch of the situation. Security Officer # 1 responded to the call. Maintenance Employee observed Security Officer # 1 make contact with Decedent. She then stepped back from Decedent to avoid contact. Security Officer # 1 radioed that Decedent had a knife. Maintenance Employee did not observe a knife in Decedent's hand. Maintenance Employee observed Security Officer # 2 respond to assist Security Officer # 1. When he arrived, Decedent became more aggressive and ran towards Security Officer # 1 and Security Officer # 2. He then observed Decedent chase both security officers east and then south around the building.

Maintenance Employee then went to room 1923 and looked out the window. He observed Decedent on the ground and Officer Bicsanszky standing over him with his firearm pointed at Decedent. Officer Bicsanszky then holstered his firearm and placed Decedent into handcuffs. Maintenance Employee witnessed paramedics perform CPR on Decedent. He did not witness the officer-involved shooting or hear gunshots.

Trucking Employee # 1:

On January 21, 2017, Trucking Employee #1 was doing mechanical work on semi-tractor trucks in the parking lot of the Gold Strike Hotel and Gambling Hall along with Trucking Employee # 2 when he heard two "pops." Trucking Employee # 1 came out from the trucks and observed Decedent laying in front of the yellow emergency vehicle. Trucking Employee # 1 observed Officer Bicsanszky kick a weapon away from Decedent, but Trucking Employee # 1 did not see what it was. Trucking Employee # 1 then approached the scene and assisted in rendering aid. Trucking Employee # 1 did not see the actual officer-involved shooting.

Trucking Employee # 2:

On January 21, 2017, Trucking Employee # 2 was doing mechanical work on some trucks with Trucking Employee # 1 when he heard a couple of "pops." Trucking Employee # 2 came around the trucks and observed a parked police vehicle and Officer Bicsanszky pointing his firearm at a naked man [Decedent] who was on the ground. Decedent was trying to get up and Officer Bicsanszky kept yelling at him to stay put. Trucking Employee # 2 approached to assist and was told to stay back. Once Decedent was handcuffed, the paramedics got out of their truck and rendered aid. Trucking Employee

1 and Trucking Employee # 2 assisted the paramedics with CPR until relieved. Trucking Employee # 2 did not witness the actual officer-involved shooting.

VI. FORENSICS REQUESTS/RESULTS:

Firearm Examination

A firearms examination was performed on Officer Bicsanszky's Glock Model 21 Gen4 .45 Auto caliber semiautomatic pistol and the two Speer .45 Auto cartridge cases recovered at the scene. The firearm and test-fired cartridge cases were examined and microscopically inter-compared. Based on these comparative exams, it was determined that the two evidence cartridge cases from the scene had been fired by the submitted Glock pistol.

DNA/Fingerprint Examination

Decedent's "Army" folding knife, with bronze-colored handle, model YC47051-AR, was forensically examined. The examination determined that the full DNA profile obtained from the swabbing from the grooved areas of the knife handle and the smooth edge of the knife blade are consistent with Decedent. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 2.61 nonillion. (The number followed by 30 zeros). The knife was processed for the presence of latent prints but no latent prints were recovered.

VII. OFFICER WEAPON COUNTDOWNS

On January 21, 2017, Officer Bicsanszky had his duty weapon counted down at the LVMPD Jean substation. Prior to the countdown Officer Bicsanszky stated he carried 13 cartridges in the magazine placed into his firearm and one cartridge in the chamber (13+1), as well as 13 cartridges in the two spare magazines carried on his belt. All three of his magazines had the capacity to hold 13 cartridges. At the completion of the countdown, it was determined Officer Bicsanszky's firearm was missing two rounds. Evidence at the scene indicated Officer Bicsanszky fired two rounds.

VIII. AUTOPSY

On January 22, 2017, at approximately 10:30 am, an autopsy was performed on the body of Decedent by Doctor Lary Simms. During the autopsy, the following wounds/injuries were noted on Decedent: a penetrating gunshot wound of the right chest, incised wounds to the left side of the neck, seven incised wounds to the lower right arm, six incised wounds to the lower left arm, superficial incised wound to the right

thigh, incised wound extended through subcutaneous tissue to the back of the left calf, complex incised wound extended through subcutaneous tissue to the left lower leg, two closely spaced superficial incised wounds to the left thigh, and a superficial incised wound to the right thigh. After a complete autopsy, Doctor Simms opined Decedent died as a result of a gunshot wound of the right chest. The manner of death was homicide.

The toxicology testing revealed the presence of Delta-9 Carboxy THC 7.8 ng/mL and Delta-9 THC 1.8 ng/mL, which is the metabolite of marijuana. No other narcotics were detected in the Decedent's system.



IX. Arrest History

A review of Decedent's arrest history revealed he had been arrested for Possession of a Controlled Substance – Marijuana on August 14, 1990. He had also previously been arrested for Possession of a Controlled Substance – Cocaine on February 2, 1990, Larceny on October 10, 1985, and Contempt of Court on October 9, 1985.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force 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 incident.

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 could be justifiable under one or both of two theories related to the concept of self-defense: (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.

I. 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 to commit a crime of violence ..." against the other person.¹ 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 NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

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 Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove beyond a reasonable doubt that an individual did not act in self-defense.

In this case, Decedent posed an imminent danger to hotel guests, hotel employees, firefighters, civilians in the area, and Officer Bicsanszky. Decedent's erratic behavior of being naked and bloody drew the attention of hotel employees and hotel guests who tried to determine if he needed help. Decedent never communicated with any of the hotel security officers who tried to check on him. Instead, he advanced upon them with a knife in a threatening manner, chasing them through the parking lot. In the parking lot, firefighters observed Decedent chasing after the hotel security officers with a knife.

The firefighters got into their rescue unit in order to get away from Decedent, while one of the hotel security officers hid behind a vehicle and the other ran back to the hotel.

By the time Officer Bicsanszky arrived, Decedent had already threatened multiple people with a knife causing them to take shelter in or behind a vehicle or back in the hotel. Officer Bicsanszky approached the situation armed with his less than lethal (bean bag) shotgun. Decedent rushed toward Officer Bicsanszky while armed with a knife and ignored commands to stop. Facing the situation of being charged by a man with a knife, Officer Bicsanszky tried to stop Decedent utilizing less than lethal means by shooting at him four times with bean bag rounds. Even after being shot with the bean bag rounds, Decedent did not relent but rather continued to rush Officer Bicsanszky while still armed. At that point, Officer Bicsanszky fired his handgun at the Decedent. There was imminent danger of death or great bodily injury to Officer Bicsanszky and/or the firefighters and/or the security officer in the area, in that Decedent continued to charge while armed with the knife. Thus, Officer Bicsanszky was confronted by the appearance of imminent danger which created in his mind an honest belief and fear that he, or others, were about to be killed or suffer great bodily injury. Accordingly, Officer Bicsanszky was justified in acting upon those appearances, fears and actual beliefs.

II. 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 facts demonstrate that Officer Bicsanszky had probable cause to believe that Decedent posed a threat of serious physical harm to himself and all the people in the area. This probable cause was based on the fact that Decedent had already charged at two hotel security guards while armed with a knife, and then Decedent charged Officer Bicsanszky while armed with that knife. Decedent repeatedly failed to comply with Officer Bicsanszky’s directions to put down the knife. Thus, Officer Bicsanszky had not only a duty to respond to the perceived deadly threat to the hotel security officer and the firefighters, but also the right to act on his reasonable fear of a threat to his life and use deadly force. The circumstances indicate the Officer Bicsanszky had a reasonable belief that Decedent was a threat to his safety as well as the other people in

the area. In light of this evidence, the actions of the officer were legally justified and appropriate “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Las Vegas Metropolitan Police Department Officer Bicsanszky were reasonable and/or 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, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.