

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Brenda Kimberling on December 14, 2015

Introduction

On December 14, 2015, at 5:48 a.m., A.B., who was in Ohio, called Las Vegas Metropolitan Police Department (LVMPD) Dispatch. A.B. reported that she saw a video of Brenda Kimberling (hereinafter referred to as Decedent) on Facebook in which Decedent took prescription medications in an attempt to overdose. An event was generated by Dispatch and officers were sent to Decedent's residence. Officers attempted to make contact with Decedent at her residence which was located at 4564 Aviation Street, Las Vegas, Nevada. When they arrived at Decedent's residence, they were unable to make contact with her. As a result, the call was cleared.

At 6:08 a.m. the same day, LVMPD Dispatch received a teletype from Medina County Sheriff's Office in Ohio. The teletype advised that R.R., Decedent's boyfriend, saw a video posted to his Facebook page that depicted Decedent taking prescription medication. He further indicated that in the video Decedent advised that she wanted to end her life. Dispatch called R.R. who advised that he was out of town and not with Decedent. R.R. also reported that Decedent threatened suicide several other times in the past, and he knew she was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Anxiety. According to R.R., the video was removed from his Facebook page. Once again, officers with LVMPD were dispatched to Decedent's residence, but there was no answer at the door. Officers cleared the call.

Then, at 10:36 a.m., an employee of Advanced Psychiatric Associates called LVMPD Dispatch and reported that Decedent called their office. Decedent advised them that she took enough pills to kill her liver. She further advised them that she was in possession of two (2) 9mm firearms and, if the police came to her door, she would commit suicide by cop. Decedent also relayed that she was upset over what her boyfriend's mistress had done to her and her boyfriend. The employee informed Dispatch that Decedent was diagnosed

with Mood Disorder, PTSD, Anxiety, and Depression. In addition, they were in the process of trying to rule out Bipolar Disorder. LVMPD Officers were dispatched to Decedent's home again where they positioned themselves several residences south of Decedent's home.

At 10:55 a.m., Decedent called into LVMPD Dispatch and stated, "Yeah, you can tell the cops sitting outside the door...I have a 9 millimeter sitting in my lap. I'll make it suicide by cop." When the dispatcher asked if she could patch Decedent through to officers, Decedent responded,

No...If anyone tries to get into this house...I've got a 33 round clip sitting in my fucking hand. I have 4 cameras around this house. I can see everything. It'll either go to my fucking head or it'll be pointed at them and they can kill me.

Throughout the call, Decedent was extremely distraught over her relationship with her boyfriend. She indicated that her boyfriend did not believe she had legitimate mental health concerns, and that he was being unfaithful. During the call she stated she had two (2) 9mm handguns and a shotgun inside the residence.

At 11:16 a.m., Decedent called LVMPD Dispatch a second time. Decedent advised Dispatch to instruct officers to quit trying to "assess" the house, and she asked that they just let her die peacefully so she wouldn't have to shoot any officers. She further relayed to Dispatch she was watching officers on her surveillance cameras.

Decedent called Dispatch again at 11:35 a.m. She informed Dispatch she just showed police she wasn't playing. When asked what was going on, Decedent advised the dispatcher that she just walked outside and pointed the gun to her head. At that point, Dispatch successfully patched Decedent through to an officer on scene, Officer David Delaria.

At 11:38 a.m., Decedent began speaking to Officer Delaria. During the conversation, she told him that she walked outside, pointed a gun at her head, and then pointed the gun at the officers.¹ Officer Delaria remained on the line with Decedent and tried to convince Decedent to let them help her. While Officer Delaria attempted to help her, Decedent's speech became slurred, her responses became more delayed, and she fell asleep. After the officer spent about an hour on the phone with Decedent, a crisis negotiator was placed on the line with her.

¹ The information is consistent with information contained within the Computer Automated Dispatch (CAD) log which reveals that at 11:33 officers reported Decedent pointed the firearm at her head first, then at them. Because Decedent pointed a firearm at officers, SWAT was called out to assist.

Because neither the officer nor the negotiator were able to wake Decedent after more than an hour, SWAT breached the front door. The breach occurred at 1:08 p.m., and the noise from the breach awoke Decedent. She was angered by the fact that the door was blown off and disconnected the call. At 1:10 p.m., officers on scene observed Decedent place the front door back in place. When she did so, they saw that she was armed with a gun.

Decedent called back to Dispatch a short time later. She was irate about her broken front door. Almost immediately, she disconnected the call again. At 1:23 p.m., Dispatch was able to reach her again. Decedent was still extremely upset and ended the call shortly thereafter. Ten (10) minutes later, Decedent reinitiated contact. While on the phone with Dispatch, Decedent reiterated that if police tried to enter her house, she would kill herself. Decedent hung up before Dispatch could connect her with the negotiator.²

At 1:50 p.m. Decedent moved her front door. She stood in the doorway of the home with a shotgun aimed at her chin. Then she leveled the shotgun and aimed it toward officers who were positioned in a westerly direction.

LVMPD SWAT snipers, Officers Jonathan Collingwood and Charles Moser, fired one (1) round each. Decedent was struck and incapacitated. A rescue team immediately began lifesaving measures with no success. Decedent was pronounced dead at the scene.

The Clark County District Attorney's Office has completed its review of the December 14, 2015, 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 Officers J. Collingwood and C. Moser 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 J. Collingwood and C. Moser. 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 September 28, 2016.

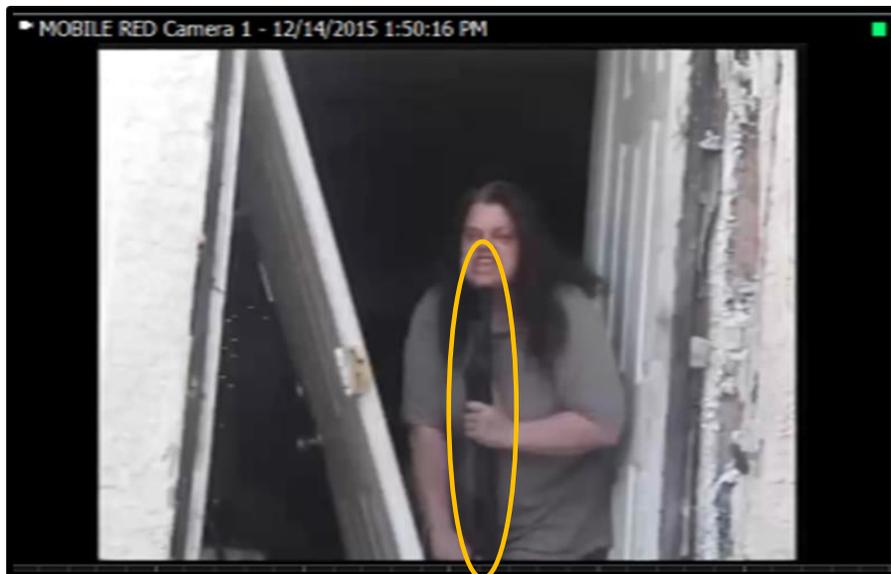
This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

² In total, the officer and negotiator were on the phone with Decedent for approximately two (2) hours.

I. LVMPD ARMOR ICOR T-5 robot, serial# CAL 1509

Officers Kurt Adair, Gabriella Brown, and Michael Smith responded to the incident to provide support for the SWAT commander. The T-5 ARMOR robot had several functions, including providing a live video feed to the SWAT Tactical Operations Center where the video was recorded. During the incident, Officer Adair operated the robot while Officer Brown watched the live feed on a small handheld screen while standing next to Officer Adair.

After the explosive breach was detonated, Officer Adair drove the robot to the front entryway of 4564 Aviation Street and parked it with the camera focused on the front door of the residence. The robot recorded footage of Decedent moving her damaged door and yelling at the robot. The robot lost connection and stopped recording momentarily. When the robot regained connection, Decedent had already propped her damaged door in a closed position and disappeared back into the residence. Approximately thirty (30) minutes later, Decedent moved the door and stood in the entryway armed with a shotgun. Decedent placed the barrel of the shotgun under her chin then shouted at police. She then shouldered the shotgun and pointed it in the direction of officers. At that point, Decedent was shot by Officers Jonathan Collingwood and Charles Moser.



(Still photograph taken from robot video showing Decedent pointing the shotgun at her chin.)



(Still photograph taken from robot video showing Decedent aiming the shotgun in the direction of officers and other homes.)

II. SCENE WALK-THROUGHS

On December 14, 2015, at approximately 4:09 p.m., Officer C. Moser provided a walk-through of the scene. During the walk-through, Officer C. Moser relayed that he positioned himself on the ground next to a shrub in the front yard of 4567 Skybolt Street. Officer C. Moser's weapon was supported by an attached bipod. Officer C. Moser placed a veil over himself and his weapon in an attempt to conceal himself. His view was in an easterly direction towards 4564 Aviation Street. Officer C. Moser fired one (1) round from his bolt action rifle towards the front door area of 4564 Aviation Street.

At 4:20 p.m. the same day, Officer J. Collingwood provided a walk-through of the scene. According to Officer J. Collingwood, he positioned himself on the ground next to the northeast corner of 4567 Skybolt Street. His weapon was supported by an attached bipod. Officer J. Collingwood placed a veil over himself and his weapon in an attempt to conceal himself. Officer J. Collingwood's view was in an easterly direction towards 4564 Aviation Street. Officer J. Collingwood fired one (1) round from his semiautomatic rifle towards the front door area of 4564 Aviation Street.

III. PUBLIC SAFETY STATEMENT

On December 14, 2015, at approximately 4:19 p.m., Detective Joseph Patton interviewed Sergeant Todd Mueller in reference to the Public Safety Statement he obtained from

Officer C. Moser. Below are the questions asked by Sergeant Mueller, with the answers provided by Officer C. Moser in italics.

- 1) Did you discharge your firearm? *Yes.*
 - a) If so, in what direction? *To the east.*
 - b) Approximately where were you located when you fired? *Seventy-one (71) yards away, to the west of the target house.*
 - c) How many shots do you think you fired? *One (1).*
- 2) Is anyone injured? *Yes.*
 - a) If so, where are they located? *The doorway, on the north side of the target house.*
- 3) Are there any outstanding suspects? *No.*
 - a) If so, what is their description? *Not applicable / not asked.*
 - b) What direction and mode of travel? *Not applicable / not asked.*
 - c) How long have they been gone? *Not applicable / not asked.*
 - d) What crime(s) have they committed? *Not applicable / not asked.*
 - e) What type of weapon do they have? *Not applicable / not asked.*
- 4) Is it possible the suspect fired rounds at you? *Yes.*
 - a) If so, what direction were the rounds fired from? *They were fired from the east to the west.*
 - b) How many shots do you think the suspect fired? *One (1) round.*
 - c) Approximately where was the suspect located when they fired? *In the doorway of the house.*

- 5) Do you know if any other officers discharged their firearms? *Yes.*
 - a) If so, who are they? *Officer J. Collingwood.*
 - b) Approximately where was the officer(s) located when they fired? *To my right.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
 - a) If so, where are they located? *By the doorway of the target house.*
- 7) Are you aware of witnesses? *Yes.*
 - a) If so, what is their location? *All the officers in the 1-2 BearCat and Officer J. Collingwood.*

On December 14, 2015, at approximately 4:35 p.m., Detective Patton interviewed Sergeant Mueller in reference to the Public Safety Statement he obtained from Officer J. Collingwood. Below are the questions asked by Sergeant Mueller, with the answers provided by Officer J. Collingwood in italics.

- 1) Did you discharge your firearm? *Yes.*
 - a) If so, in what direction? *East.*
 - b) Approximately where were you located when you fired? *Approximately seventy (70) yards to the west of the target house.*
 - c) How many shots do you think you fired? *One (1).*
- 2) Is anyone injured? *Yes, the suspect.*
 - a) If so, where are they located? *The doorway of the target house.*
- 3) Are there any outstanding suspects? *No.*
 - a) If so, what is their description? *Not applicable / not asked.*
 - b) What direction and mode of travel? *Not applicable / not asked.*
 - c) How long have they been gone? *Not applicable / not asked.*
 - d) What crime(s) have they committed? *Not applicable / not asked.*
 - e) What type of weapon do they have? *Not applicable / not asked.*
- 4) Is it possible the suspect fired rounds at you? *No.*
 - a) If so, what direction were the rounds fired from? *Not applicable / not asked.*

- b) How many shots do you think the suspect fired? *Not applicable / not asked.*
- c) Approximately where was the suspect located when they fired? *Not applicable / not asked.*
- 5) Do you know if any other officers discharged their firearms? *Yes.*
 - a) If so, who are they? *Charles.*
 - b) Approximately where was the officer(s) located when they fired? *To my left.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
 - a) If so, where are they located? *By the doorway of the target house.*
- 7) Are you aware of witnesses? *Yes.*
 - a) If so, what is their location? *The 1-2 BearCat.*

IV. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The address of 4564 Aviation Street was a two-story single family residence with a two car garage. It was located on the southeast corner of Aviation Street and Pentagon Avenue. The garage was on the southwest corner of the residence. The front door of the residence was located on the north side of the residence and faced west.



(Front of Decedent's Home on Aviation Street)

A surveillance camera mount was located on the northwest eave of the residence, and the camera was on the ground in the rocks adjacent to the walkway to the front door. Bloodstains were located on the walkway to the front door, with additional blood stains extending from the walkway, south across the east end of the driveway in front of vehicle #1, west on the driveway south of vehicle #1, onto the street, and continuing south to the location of the victim. Bloodstains were also located on the south closet door, and on the interior north wall, just inside of the west front door. Pooled blood was observed on the interior south half of the entryway, door threshold, and bricks stacked just outside of the door. Bloodstains were also observed on the exterior surface of the damaged front door in the living room.

A Mossberg 500 pistol grip, pump action, 12 gauge shotgun, serial# T643431, was located in the pooled blood on the floor of the entry way. The shotgun was resting on its left side pointing west. When later examined, it was determined that there was one (1) shot shell cartridge in the chamber, and four (4) additional cartridges were in the magazine tube.



(Shotgun with which Decedent was armed)

The interior of the residence was extremely cluttered and dirty, with large amounts of cat feces throughout, a strong odor of urine, trash and miscellaneous items piled and covering the floors throughout.

In the upstairs northeast master bedroom, a computer desk was along the west wall in the northwest corner of the room. Two (2) computer monitors were on the desk, with one (1) on the upper level, and one (1) on the lower level with a key board in front of it. The upper monitor had surveillance video images playing on it, with one being a static image of the BearCat outside the residence. On the lower portion of the desk adjacent to and north of

the key board was a Glock 19, 9mm semiautomatic handgun, serial# NZH098, with an extended thirty-one (31) round magazine in the well. The gun was resting on its left side pointing west, and had a rail below the barrel. The gun had a cartridge in the chamber and twenty-nine (29) cartridges in the magazine. Also on the desk next to the keyboard was a cell phone, and another cell phone was on the floor next to the desk and was plugged in.



(Surveillance Monitor and Glock 19 with a thirty-one (31) round magazine found in master bedroom)

The bathroom was located in the northwest corner of the room, north of the west vanity and sink area. A Smith & Wesson model 39-2 9mm semiautomatic handgun, was located on the south side of the toilet, on its left side, pointing north and upward. The firearm was not cocked, the safety was off, the chamber was empty, and the magazine contained eight (8) cartridges.



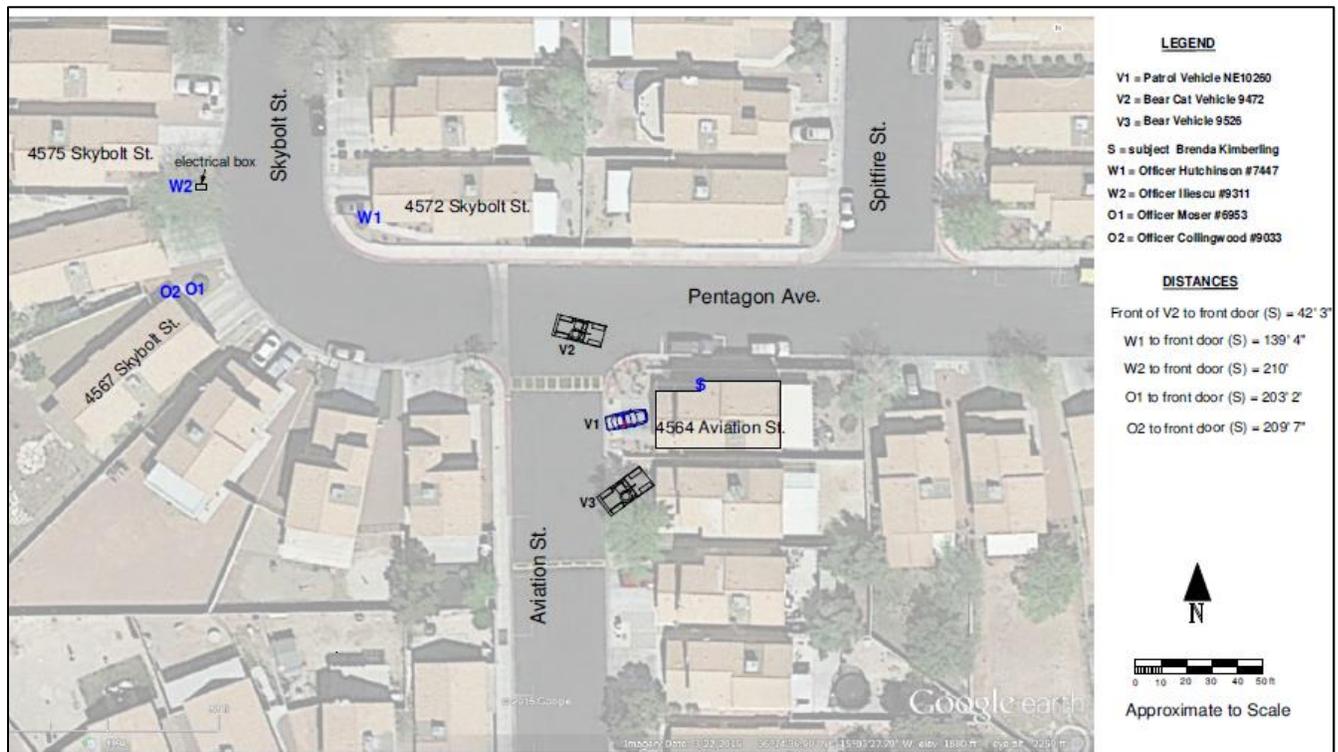
(Smith & Wesson 9mm semiautomatic handgun located on side of toilet in master bathroom)

In the southwest bedroom, three (3) ammunition boxes containing miscellaneous ammunition were located on the west shelf. Another ammunition box was on the floor and also contained miscellaneous ammunition. A rifle was located on the upper shelf in the east walk-in closet.

4567 Skybolt Street, Las Vegas, Nevada 89115

4567 Skybolt Street faced northeast, and was west of the target residence. A large bush was located in the planter northeast of the north corner of the garage (SWAT sniper location). A sniper rifle with camouflage netting over it was on the sidewalk at the north corner of the house aimed toward the target residence. Officer J. Collingwood was positioned at that location. The rifle was a POF USA model P308 caliber semiautomatic rifle equipped with a scope and bipod. Another piece of tan camouflage material was on the rocks south of the rifle. A cartridge case and two (2) cartridges were within the camouflage netting.

Another sniper rifle with camouflage netting over it was at the southwest portion of the same bush. Officer C. Moser was positioned at that location. The rifle was aimed toward the target residence. It was a Desert Tech Arms LLC model DTSRS, bolt action, 308 caliber, equipped with a scope and bipod. The rifle's safety was off. A cartridge case was on the rocks adjacent to and south of the rifle. A tactical backpack was in the rocks north of the bush.



(Crime Scene Diagram depicting locations of Officers and Decedent)

Officer Ion Iliescu was located in the east front yard, near the southeast corner of the property at 4575 Skybolt Street. The residence faced east. Officer Mark Hutchinson was located at the southwest corner of the home at 4572 Skybolt Street, which faced west.

Officers Cory Mikkelson and Ciprian Arcalean were positioned at 4574 Spitfire Street. That residence faces west, and is northeast of the target residence. An air conditioning unit was located on the north slope of the residence. The north and east sides of the target residence were visible from that location. A sniper rifle was located on the roof on the south side of the air conditioning unit, near the southeast corner. The rifle was aimed toward the target residence. The rifle was resting atop some tactical bags stacked on the roof next to the air conditioning unit. It was an AI (Accuracy International) model AE308, 308 caliber bolt action, equipped with a scope and bipod. This was the reported position of Officer Mikkelson. Another rifle was located on the roof on the north side of the air conditioning unit, aimed south. There was no view of the target residence from this location. The rifle was an AI (Accuracy International) model AE308, 308 caliber bolt action, equipped with a scope and bipod. This was the reported position of Officer Arcalean.

Location and Description of the Body

The body of Decedent, a white female adult, was located lying on the east side of the street in front and to the west of 4558 Aviation Street, southwest of vehicle #3. Her head was toward the north, and feet toward the south. Decedent was clad in a pair of gray shorts, and her shirt was cut back exposing her torso. She had apparent gunshot wounds to the medial right eye, the right side of the head behind the ear (through and through), the underside of her upper left arm near the armpit, and the left side of the chest at the armpit. There was blood on her face, chest, abdomen, hands, legs, and feet. Bluetooth type earbuds were located in her hair.

V. INTERVIEWS

Decedent's Neighbor

On December 14, 2015, at approximately 4:55 p.m., Detective Craig Jex conducted an interview with JD. JD lived in her house for the past twenty (20) years, and was Decedent's next door neighbor for about seven (7) of those. JD was not at home at the time of the incident.

The relationship between JD and Decedent was amicable until approximately six (6) months prior when the police were called to Decedent's residence in reference to Decedent having several cats in her residence. Additionally, JD relayed that after she first met Decedent, Decedent began to feed JD's dogs over the fence. JD made contact with Decedent and asked her not to feed her dogs. Decedent went into a rage and started yelling

at JD. JD indicated that Defendant always felt like people were picking on her. Another neighbor also confronted Decedent about the cats coming into her yard. Decedent yelled at that neighbor and called her a cat murderer.

JD knew of two (2) incidents where the police contacted Decedent about her cats. She did not know that Decedent had any firearms inside the residence, but was aware of her mental health issues. Decedent told her she had PTSD due to her family relationship with her mother and father.

Sergeant George Donelson

On December 14, 2015, at about 5:58 p.m., Detectives Marc Colon and Blake Penny conducted an interview with Sergeant Donelson. Sergeant Donelson responded to 4564 Aviation Street reference a possible suicidal female (Decedent). Upon his arrival, officers reported that Decedent was possibly armed with a gun and had stated she would “shoot it out with police.” Prior to Sergeant Donelson’s arrival, Sergeant Victor Sabino established an inner perimeter and formed an immediate action team as well as a rifle team. Sergeant Donelson created an outer perimeter and established a command post at 5300 East Craig Road.

While heading toward the command post, Sergeant Donelson heard an officer yell, “She has a gun!” Sergeant Donelson ran toward the officers and observed Decedent standing in the street in front of her residence, holding a handgun with an extended clip to her head. Sgt. Donelson relayed that the firearm reminded him of a Beretta with a 33 round magazine or a Glock with a 33 round magazine.

There were approximately ten (10) to twelve (12) officers in the area. A patrol vehicle was parked perpendicular across the roadway blocking traffic traveling on Aviation Street. Sergeant Donelson ran to the front wheel well of that vehicle for cover. Decedent stood in the street for a short time before she raised her gun and pointed it towards Sergeant Donelson and the surrounding officers. Decedent then walked back into her residence.

SWAT was immediately requested and Sergeant Donelson returned to the command post. While Sergeant Donelson was setting up the command post an officer made contact with Decedent by telephone. Decedent continued making statements about killing herself and shooting it out with police. SWAT was briefed regarding those statements and her actions prior to their arrival.

Sergeant Donelson did not witness the officer-involved shooting because he was at the command post at the time of the shooting.

Sergeant Victor Sabino

On December 14, 2015, at approximately 6:15 p.m., Detectives Colon and Penny conducted an interview with Sergeant Sabino. Sergeant Sabino advised that he was at Northeast Area Command when he heard Dispatch broadcast information reference a suicidal female (Decedent). Sergeant Sabino researched the incident and learned Decedent took a large number of pills, was in possession of a 9mm handgun, and threatened to commit suicide by shooting at the police. Sergeant Sabino responded to Decedent's residence at 4564 Aviation Street and advised responding units not to make contact before he arrived. He was advised there was an earlier event at that address concerning Decedent being suicidal, but officers were not able to make contact with her.

Upon Sergeant Sabino's arrival, he instructed officers to post further away from the residence. Sergeant Sabino formed a rifle team and posted them northwest of the residence where they had a clear line of sight of the residence. He also formed an immediate action team, posted them behind cover, and instructed an additional unit to block traffic northeast of Decedent's residence.

Sergeant Sabino heard the rifle team broadcast that Decedent exited her residence holding a handgun. Sergeant Sabino was standing approximately seven (7) to eight (8) houses south of Decedent's residence and watched her slowly walk into the street and turn toward officers. Decedent was holding a black semiautomatic handgun in her right hand and pointed it at her head. She slowly raised the gun and pointed it toward Sergeant Sabino and the nine (9) other officers in the area. Sergeant Sabino, feared for his life and moved to cover behind a patrol sport utility vehicle (SUV). Decedent then turned and walked back inside her residence.

Sergeant Sabino advised Dispatch of Decedent's actions and requested that SWAT respond. While waiting for SWAT's arrival, Sergeant Sabino had officers evacuate surrounding residences.

Officer Wil Germosen

On December 14, 2015, at approximately 7:19 p.m., Detectives Ryan McNabb and Joseph Patton conducted an interview with Officer Germosen. Officer Germosen was notified of the incident by SWAT Lieutenant Pelletier and arrived on scene shortly before noon. Officer Germosen and SWAT Officer Sean O'Donnell grabbed their breaching gear and set up one house to the south of Decedent's residence. Officer Germosen observed a patrol officer with a rifle set up to the northwest.

He coordinated the locations for the BearCats based upon the best entry locations. They knocked on the door of the adjacent house and evacuated the residents. He and Officer O'Donnell pulled down Decedent's video camera which was on the front of the house near the garage door. Officer Germosen then parked a patrol vehicle in front of the garage door.

It was broadcasted that Decedent took drugs and was groggy. The explosive breach was set up in anticipation of making entry to render aid. After the door was explosively breached, Decedent got back on the phone with the command post. A small tactical robot equipped with a video camera was positioned several feet in front of the front door of the residence. Through the video camera, Officer Germosen observed Decedent at the door with a black semiautomatic handgun with an extended magazine. She made violent gestures and was yelling and screaming. Officer Germosen did not hear what Decedent said. Decedent pointed the handgun towards officers in the BearCat and in the directions where the snipers were positioned. She did not fire any rounds before going back inside the residence.

As the SWAT officers considered a gas deployment option, Decedent returned to the front door with a shotgun. She had the shotgun pointed down in front of her chest. She was screaming and seemed very upset. Officer Germosen did not hear what Decedent said as he listened through a headset. Facing west, Decedent raised the gun up, and Officer Germosen believed she was going to shoot at the officers inside the BearCat or the snipers. It sounded like Decedent fired a round. Officer Germosen heard two (2) more shots fired, but he did not see a muzzle flash. The snipers then indicated over the air they fired rounds. Officer Germosen and other SWAT officers organized a rescue team. They moved her from the front door to the area behind the BearCat. The tactical medic and doctor rendered medical aid. The doctor pronounced Decedent deceased.

Officer Theodore Carrasco

Detective Jex conducted an interview with Officer Carrasco on December 14, 2015, at approximately 7:25 p.m. Officer Carrasco responded to the incident, and after dressing out moved to the BearCat on the side of Decedent's residence. He remained behind the BearCat with other SWAT officers. He was briefed that Decedent was armed with a shotgun and possibly in possession of handguns. Officer Carrasco arrived after Decedent had been outside with a firearm and returned to the residence. Negotiators continued to attempt to get Decedent to exit her residence.

Officer Carrasco heard a broadcast that Decedent exited the residence with a shotgun in her hand and was at the front door. A very short time later he heard two (2) shots fired from the SWAT snipers and "shot out, shot out, shot out" broadcasted, indicating SWAT snipers fired. It was also broadcasted Decedent was down at the front door.

SWAT officers were ordered forward. Officers Carrasco and Germosen moved up to Decedent, who was lying in an awkward position at the door. She still had the shotgun in her hand and her finger was on the trigger. The shotgun was moved away from Decedent. Officers Carrasco and Germosen dragged Decedent to the back of the BearCat where the tactical doctor and medic immediately rendered aid to her.

Officer David Delaria

On December 14, 2015, at approximately 8:10 p.m., Detectives Patton and McNabb conducted an interview with Officer Delaria. Officer Delaria was dispatched to the suicidal person call for service and was about the third officer to arrive. Due to the details of the call, and that Decedent had weapons, he parked several houses to the south of Decedent's residence. As Sergeant Sabino organized the immediate action team, he assigned Officer Delaria to make telephone contact with Decedent and act as the negotiator. He was unable to get through by directly calling Decedent, and was similarly unsuccessful when having the dispatcher attempt to connect the call.

Officer Delaria then exited the vehicle when he heard one of the officers indicating that Decedent exited the residence. He looked down the street and observed Decedent walk into the street in front of the house with a black semiautomatic handgun at her temple. She stopped and faced the officers and slowly lowered the gun from her temple and pointed it at Officer Delaria and about seven (7) other officers. The officers retreated behind the patrol vehicle and Decedent then went back into the residence without firing a shot. None of the officers fired a weapon.

The dispatcher called Officer Delaria and connected Decedent to him. Officer Delaria learned Decedent had PTSD, but she would not provide further details. She was upset because she learned that her boyfriend of nine (9) years had a mistress, and because he left her. Decedent told Officer Delaria she took thirty (30) Percocet, and she had thirty (30) more in her hand that she wanted to take. Additionally, she confirmed that she had two (2) handguns and a shotgun. Officer Delaria relayed this information to other officers. He offered Decedent medical attention but she refused. Officer Delaria asked Decedent to put the gun down and come outside, but she declined and said the officers could not help her. Over time her voice became slurred and she fell asleep while still on the phone, but Officer Delaria kept the line open.

Once the Crisis Negotiation Team arrived, a negotiator took over. Officer Delaria remained with the negotiator while she had contact with Defendant. Officer Delaria did not hear any gunfire.

VI. OFFICER WEAPON COUNTDOWNS

On December 14, 2015, Officers J. Collingwood and C. Moser had their duty weapons counted down at LVMPD Headquarters.

Officer J. Collingwood:

Prior to countdown, Officer J. Collingwood stated he carried eighteen (18) cartridges in the magazine which was loaded in his rifle. Prior to putting the magazine in the rifle, Officer J. Collingwood stripped off the top two (2) cartridges which were bonded rounds. The cartridges were left at the scene. After putting the magazine in the rifle, he loaded one (1) round into the chamber. He did not top off the magazine. Officer J. Collingwood stated the magazines had a twenty (20) round capacity and he loaded eighteen (18) rounds per magazine. At the completion of the countdown, it was determined that Officer J. Collingwood discharged his firearm one (1) time during this incident. Officer J. Collingwood's rifle, magazines, and cartridges were photographed and impounded by SCSA Joseph Szukiewicz.

Officer C. Moser:

Prior to countdown, Officer C. Moser stated he carried six (6) cartridges in the magazine which was loaded in his rifle. After putting the magazine in the rifle, he loaded one (1) round into the chamber. He did not top off the magazine. Officer C. Moser stated the magazines had a six (6) round capacity and he loaded six (6) rounds per magazine. At the completion of the countdown, it was determined Officer C. Moser fired one (1) round during the incident. Officer C. Moser's rifle, magazines, and cartridges were photographed and impounded by SCSA Szukiewicz.

VII. FORENSICS REQUESTS / RESULTS

Cartridge Cases

The firearms and test fired cartridge cases were examined and microscopically inter-compared with the following results: A cartridge case from the scene was identified as having been fired by Officer J. Collingwood's POF Rifle. Another cartridge case from the scene was identified as having been fired by Officer C. Moser's Desert Tech Rifle.

VIII. AUTOPSY

On December 15, 2015, at approximately 7:00 a.m., an autopsy was performed on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner by Doctor Corneal. After a complete autopsy, Doctor Corneal concluded Decedent died as a result of multiple gunshot wounds. The manner of death was homicide. In addition, it was determined that Decedent had lethal levels of acetaminophen and oxycodone in her system, along with toxic levels of clonazepam and its metabolite 7-amino clonazepam. The

presence of those narcotics in Decedent's blood corroborates her repeated statements to law enforcement that she took prescription pills in an attempt to commit suicide.

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.³ 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:

³ 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 was perceived to pose an imminent danger to all officers and civilians in the area. She was emotionally distraught and repeatedly expressed her desire to commit suicide on that date. LVMPD employees attempted to talk her into allowing them to assist her for more than two (2) hours. Decedent confronted them once with a semi-automatic firearm with an extended magazine shortly after 11:00 a.m. She placed them in fear of being shot, and in fear that she might shoot one of the many occupants of the nearby homes. Officers refrained from firing at her at that time and continued to try and convince her to allow them to help her. Unfortunately, about two (2) hours later, Decedent confronted them once again, but this time with a shotgun. Once again, Decedent

placed them in fear of imminent danger to themselves and nearby neighbors. The officers had a duty to respond to the perceived deadly threat to people in the line of fire, and also could have responded based upon their reasonable fear of a threat to their lives and use of deadly force against them.

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, at the time the officers fired their weapons, the facts demonstrate that the police had probable cause to believe that the Decedent posed a threat of serious physical harm to the officers and all the people in the area. Officers saw Decedent armed with a semiautomatic firearm that contained an extended magazine at 11:00 a.m. that morning. Then, Decedent confronted them with a shotgun several hours later. The officers had not only a duty to respond to the perceived deadly threat to people in the nearby homes, but also could act on their reasonable fear of a threat to their lives and use deadly force.

The circumstances indicate the officers had a reasonable belief that Decedent was a threat to their safety as well as any other people in the area.

In light of this evidence, the actions of the officers 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 J. Cunningham and Officer C. Moser 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.