

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Edward Scheboth on August 20, 2013

### INTRODUCTION

On August 20, 2013, at 8:03 a.m., Henderson Police Department (hereinafter "HPD") Officer Patricia Longworth was conducting traffic control following a fatal vehicle collision at Horizon Drive and Boulder Highway. Officer Longworth was stopped near the intersection of Boulder Highway and College Drive, in front of the Sinclair gas station located at 971 Boulder Highway. While in her fully marked police patrol vehicle, Officer Longworth heard the sound of two loud "pops." At first she thought the "pops" were from fireworks. However, upon scanning the immediate area, Officer Longworth observed a male, later identified as Edward Scheboth (hereinafter "Decedent"), approaching her vehicle from the east, shooting at her with a handgun. Several of the shots struck her vehicle. Officer Longworth considered retrieving her weapon, but decided that she would not have time due to the close proximity of Decedent. She made the decision to place her vehicle into gear and escape, driving through the Sinclair parking lot toward eastbound College Drive. After escaping the area, Officer Longworth broadcast that shots had been fired. HPD officers at the nearby fatal vehicle collision scene immediately responded to the location of the shooting.

The first officers to approach the scene were HPD Officers Achim Brunette and James Dunn. The two drove to the location in a marked HPD Chevrolet Tahoe patrol vehicle. As the officers approached the location, they observed Decedent walking in the landscaped area east of the northbound lanes of Boulder Highway. Upon seeing the officers responding from the south, Decedent turned toward their patrol vehicle and

opened fire, striking the vehicle one time at the passenger side mirror. Officer Dunn realized they were being fired upon when the mirror shattered and he immediately told Officer Brunette to stop the vehicle. Officer Brunette stopped the Tahoe approximately 394 feet south of Decedent. Both officers immediately exited their vehicle.

Decedent continued to fire his handgun at the officers, striking the Tahoe two more times. Both officers returned fire, striking Decedent once in the head, immediately disabling him and stopping the threat. Officers then approached Decedent using their vehicle as cover. Decedent was searched, handcuffed and medical aid was summoned to the scene. Decedent was transported to Sunrise Hospital Trauma and later died from his injury.

HPD Detective Chad Mitchell was assigned to conduct the investigation of the incident with the assistance of other members of his detective bureau and HPD personnel.

The District Attorney's Office has completed its review of the August 20, 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 conduct of the officers was not criminal.

This report explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Fact-Finding Review conducted on May 30, 2014. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal.

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

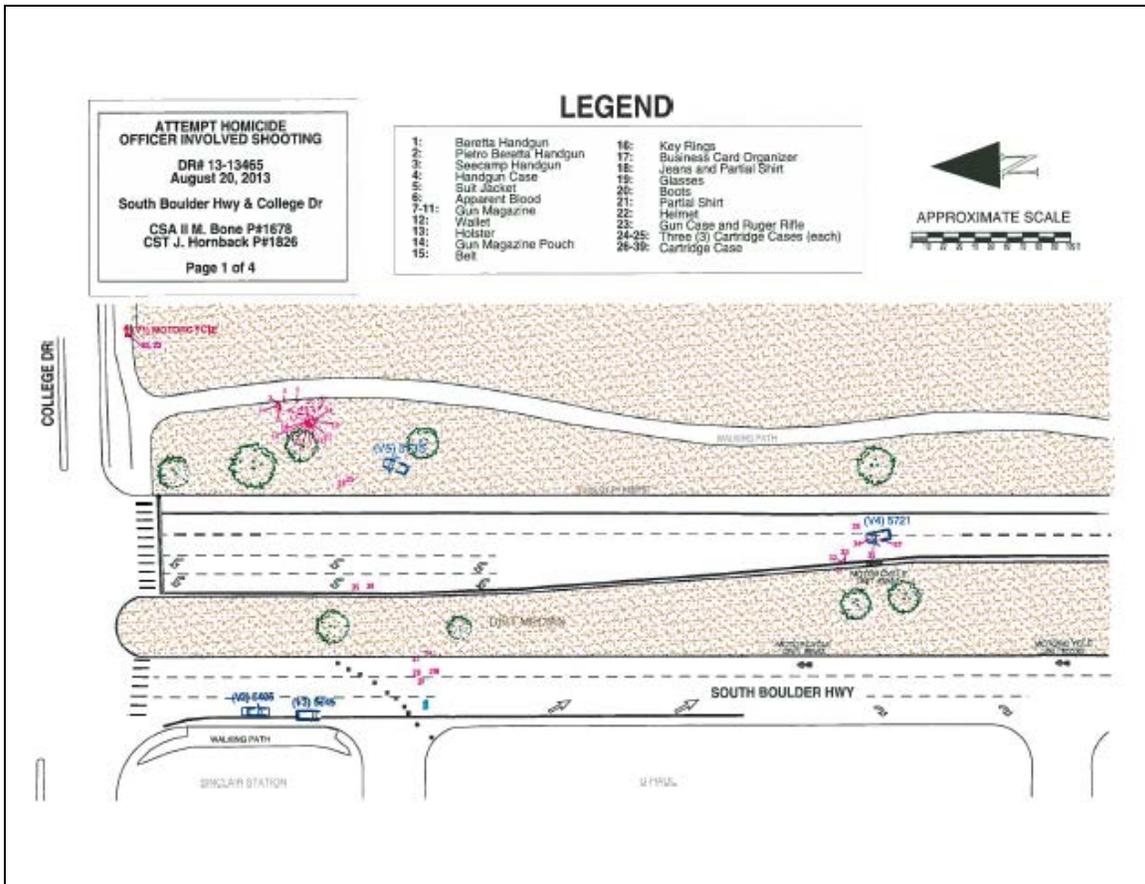
## **BACKGROUND**

Detective Mitchell learned through his investigation that Decedent moved to Las Vegas in 1984 from Cleveland, Ohio. Decedent never married and has no children. He had little contact with his family after he moved to Las Vegas and was known by his neighbors to be a recluse. Decedent's family members indicated that there is no history of mental illness in the family and they never knew Decedent to express a dislike for law enforcement or the government. Decedent's only local contact with law enforcement happened during two traffic stops in 1991 and 2001. In both cases, he was issued speeding tickets. Las Vegas Metropolitan Police Department records indicate that

Decedent had 148 registered firearms and had an application submitted to the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives for an automatic firearm.

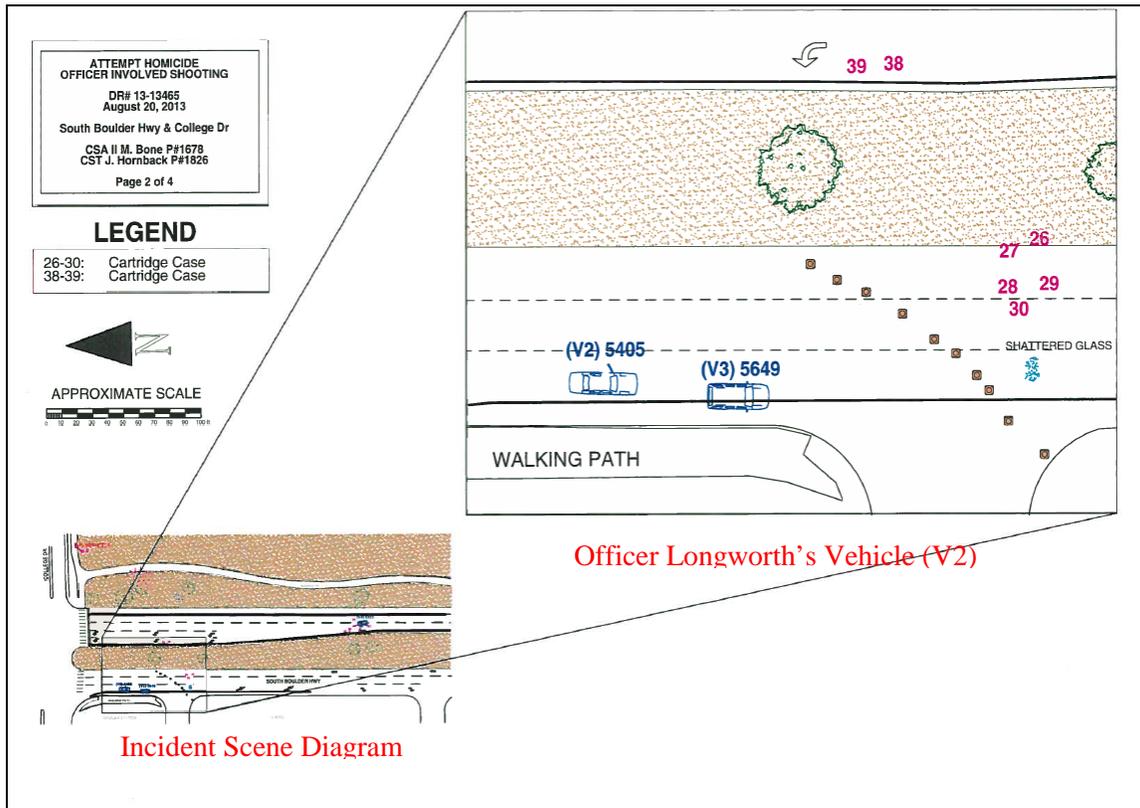
On August 21, 2013, Detective Mitchell, with the assistance of other HPD personnel, executed a search warrant at Decedent's residence. The residence was in disarray and 186 handguns, rifles and shotguns, as well as thousands of rounds of live ammunition, were recovered from the kitchen, hallway and bedrooms. Several books with anti-government themes were recovered. However, no other items were recovered that might indicate a motive for why Decedent fired upon police officers.

## THE EVENTS AT COLLEGE DRIVE AND BOULDER HIGHWAY ON THE MORNING OF AUGUST 20, 2013



**Incident Scene Diagram**

# POLICE OFFICERS



**Officer Longworth Diagram: Evidence at Incident Scene Surrounding Officer Longworth's Vehicle**

## Officer Patricia Longworth

On August 22, 2013, Detective Mitchell and Detective Mark Hosaka conducted a taped interview with HPD Officer Patricia Longworth at the HPD Main Station. On August 20, 2013, at approximately 7:15 a.m., Officer Longworth responded to southbound Boulder Highway and College Drive to divert traffic off of Boulder Highway because of a fatal accident investigation. Officer Longworth parked her marked HPD Crown Victoria at an angle with the front of the vehicle facing southwest. There were also orange cones set up which directed southbound traffic into the Sinclair gas station parking lot. At approximately 8:00 a.m., Officer Longworth was sitting inside of her car with her driver door open, and the front windows down, when she heard two "pops." (See "SHATTERED GLASS" in above "Officer Longworth Diagram") Officer Longworth did not immediately recognize the sound as gunfire, but started to look toward the Sinclair parking lot to see if she could see where the noise was originating. After seeing nothing, Officer Longworth then looked east, into the southbound lanes of Boulder Highway. She observed a male, later identified as Decedent, pointing a handgun at her and firing.

Officer Longworth thought about grabbing her firearm, but saw that Decedent was getting too close for her to have time to draw her handgun. Officer Longworth was able to place her car in drive. She drove west into the Sinclair station parking lot to escape the ambush. Officer Longworth immediately got on the police radio and told other officers that she was being shot at, her location and a brief description of Decedent. Officer Longworth then drove onto eastbound College Drive and back onto Boulder Highway to confront Decedent. (See (V2) in above "Officer Longworth Diagram") Upon arriving on Boulder Highway, she could hear further gunshots and saw the suspect on the ground in the dirt landscaping east of Boulder Highway. Officer Longworth initially approached Decedent with the other officers, but was then immediately taken from the scene by Sgt. Todd Wellman. Officer Longworth recalled that prior to the incident, she had observed Decedent traveling southbound on Boulder Highway. He was diverted into the Sinclair parking lot by her traffic control. She stated that Decedent was looking in her direction, but not directly at her. She had assumed that Decedent was looking down Boulder Highway at the accident like everybody was doing. She did not know if he ever exited the 7-Eleven /Sinclair parking lot.



**Trajectory of Bullets That Struck Officer Longworth's Vehicle**

### **Officer Achim Brunette**

On August 22, 2013, Detective Mitchell and Detective Hosaka conducted a taped interview with HPD Officer Achim Brunette at the HPD Main Station. On the morning of

August 20, 2013, Officer Brunette had been tasked with doing traffic control for a fatal traffic accident at Boulder Highway and Horizon Drive. He was partnered with Officer James Dunn, and the two were located at northbound Boulder Highway and Horizon Drive for traffic control.

At approximately 8:00 a.m., Officer Brunette heard Officer Longworth come onto the police radio and say that she was being shot at. Knowing that Officer Longworth was nearby, at Boulder Highway and College Drive, he and Officer Dunn left their position and Officer Brunette started driving their marked HPD Chevrolet Tahoe towards her direction north on Boulder Highway in the northbound lanes. While traveling north on Boulder Highway, approximately 120 yards south of the College intersection, Officer Brunette saw a male, later identified as Decedent, on foot, crossing Boulder Highway eastbound. Once Decedent observed the officers approaching, he turned to face them and assumed a shooting stance. Decedent then opened fire on the officers, striking the passenger-side mirror. Officer Dunn saw that the mirror had just been shot out and told Officer Brunette to stop the vehicle.



**Bullet Strike to Passenger Side Rearview Mirror of Officer Brunette's Vehicle**

Officer Brunette stopped the Chevy Tahoe approximately 394 feet south of the suspect, exited the driver-side door and returned fire twice from his Glock 17, 9mm handgun. Officer Brunette then retreated to the rear of the vehicle, but when he saw that Officer Dunn had already taken that position, he returned to the driver-side door and took cover behind the engine block. Officer Brunette steadied his gun using the

hood of the car, took aim and fired once more toward Decedent. Immediately after this shot, Decedent dropped to the ground and ceased firing at officers. Officer Brunette exclaimed over the radio "I got him," and fired no further shots. After Decedent fell to the ground, it was decided that officers would use Officer Brunette's vehicle as cover to approach Decedent. Officer Brunette entered the vehicle and drove it slowly toward Decedent while other officers stacked up behind the vehicle using it as a moving shield. Upon reaching Decedent, Officer Brunette could tell that Decedent was still breathing. Medical was immediately summoned to the scene and Decedent was handcuffed and searched by other officers. Prior to medical assistance arriving, Officer Brunette was taken away from the scene.<sup>1</sup>

## **Officer James Dunn**

On August 22, 2013, Detective Mitchell and Detective Hosaka conducted a taped interview with HPD Officer James Dunn at the HPD Main Station. On the morning of August 20, 2013, Officer Dunn was riding along with Officer Brunette. At approximately 8:00 a.m., Officer Longworth broadcast that she was being shot at in the area of Boulder Highway and College Drive. Officer Brunette then drove them north on Boulder Highway in a marked HPD Chevrolet Tahoe. As they approached Officer Longworth's location, he observed a male, later identified as Decedent, crossing east on Boulder Highway. Upon observing police approaching, Decedent stopped just off the road, in the landscaped area east of Boulder Highway, turned toward the officers and pointed a firearm in their direction. Officer Dunn realized that Decedent had opened fire when the passenger side mirror was broken by a bullet traveling through it. Officer Dunn immediately yelled for Officer Brunette to stop the vehicle and Officer Brunette complied. The two officers then exited the vehicle approximately 394 feet south of the suspect. Officer Dunn shot once from his Glock 21, .45 caliber handgun from the passenger door. He then retreated to the back passenger side of the Tahoe where he fired once more. Officer Dunn realized that they were still taking gunfire from Decedent, so he moved back to the passenger side door, got into a stable shooting position, aimed and fired a third and final time. Immediately after Officer Dunn fired, he observed Decedent fall to the ground and all gunfire then ceased. Other HPD officers began to arrive at the incident scene, and it was decided they would advance toward Decedent. Most officers walked up to the suspect with Officer Brunette's Chevrolet Tahoe acting as a shield. Officer Dunn split off from the group and approached the suspect from the bike path that runs parallel with northbound Boulder Highway. Officer Dunn arrived at Decedent with other Officers, and he watched as Officer David Linden cuffed and searched Decedent. During the search, Officer Dunn removed a gun that was next to Decedent's body, a black Beretta 9mm with optics, and placed it away from Decedent. Officer Linden also gave Officer Dunn a second silver 9mm Beretta that he

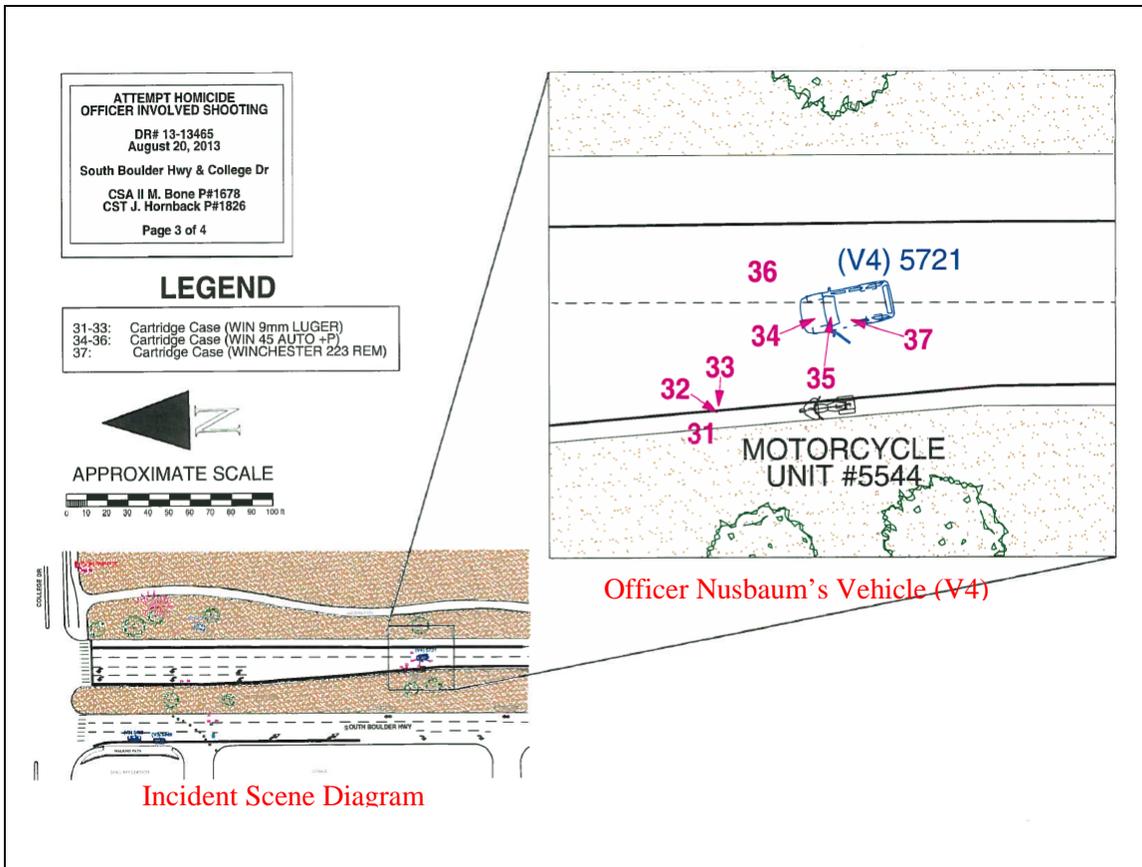
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<sup>1</sup> Officer Brunette's Chevrolet Tahoe was equipped with a "dash-cam" and the above incident was audio and videotaped from a vantage-point looking outward from the center of the front windshield.

found during the search, and Officer Dunn placed that gun with the other he removed. Officer Dunn was then taken away from the scene and never saw medical personnel arrive.



**Bullet Strikes to the Driver Side Roof and Passenger Side Door of Officer Brunette's Vehicle**



**Officer Nussbaum Diagram: Evidence at Incident Scene Surrounding Officer Nussbaum's vehicle**

## **Officer Travis Nusbaum**

On August 22, 2013, Detective Mitchell and Detective Hosaka conducted a taped interview with HPD Officer Travis Nusbaum at the HPD Main Station. On the morning of August 20, 2013, Officer Nusbaum was on patrol, driving westbound on Racetrack Road when he heard Officer Longworth call out that she was being shot at. Having just driven by her location, Officer Nusbaum knew exactly where Officer Longworth's last location was. Officer Nusbaum drove with his lights and sirens north on Boulder Highway towards College Drive. As he approached College Drive, Officer Nusbaum observed Officers Dunn and Brunette out of their vehicle shooting at a male, later identified as Decedent, who was standing in the dirt landscaping off the east side of Boulder Highway. Officer Nusbaum grabbed his Colt M4 .223 caliber rifle and pointed the rifle towards Decedent. As Officer Nusbaum focused on Decedent, he observed Decedent starting to turn and walk away. Officer Nusbaum fired his weapon one time. He could not remember if it was before or after he fired, but he did see Decedent go down to the ground. Officer Nusbaum then approached Decedent along with other officers behind the cover of Officer Brunette's vehicle. He then watched as Decedent was handcuffed and searched. Officer Nusbaum was taken away from the scene prior to rescue arriving on scene.<sup>2</sup>

## **Officer David Linden**

On August 22, 2013, Detective Mitchell and Detective Hosaka conducted a taped interview with HPD Officer David Linden at the HPD Main Station. On the morning of August 20, 2013, Officer Linden arrived at the incident scene after Decedent was already down. However, Officer Linden assisted in securing Decedent. Officer Linden was tasked with searching and handcuffing Decedent. During his search, Officer Linden recovered a silver Beretta 9mm handgun in a holster on Decedent's right hip, a Seecamp .32 caliber handgun in his right front pocket and five spare loaded 9mm magazines, one which was located under Decedent's body. Officer Linden stayed with Decedent until paramedics arrived.

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<sup>2</sup> Officer Nusbaum's Chevrolet Tahoe was equipped with a "dash-cam" and the above incident was audio and videotaped from a vantage-point looking outward from the center of the front windshield. A review of Officer Nusbaum's dash-cam revealed that Officer Nusbaum fired his shot after Decedent had already fallen to the ground. Based upon the circumstances surrounding the incident, the distance fired, the weapon used and the training provided, it was Detective Mitchell's conclusion, with the assistance of the HPD's use-of-force expert, Officer Jamie Bordon, that Nusbaum did not intentionally fire his weapon late and could have reasonably believed that Decedent still posed a threat.



**Firearms Recovered Next to Decedent**

## **Officer Mark Schaible**

On August 28, 2013, Detective Mitchell and Detective Hosaka conducted an interview with HPD Officer Mark Schaible. On the morning of August 20, 2013, Officer Schaible was working a fatal accident near Horizon Drive and Boulder Highway. At approximately 8:00 a.m., he heard approximately five gunshots from the north of his location. Officer Schaible knew the sound was gunfire and also knew there was an officer close to that location. However, since nothing was called over the radio, he continued about his business. A few seconds later, he heard another volley of gunfire and shortly after that Officer Longworth came onto the radio stating that she was being shot at. Officer Schaible drove his marked HPD motorcycle north on Boulder Highway in the southbound lanes. As he was driving, a grey pickup truck approached him from the north. Knowing that all traffic had been diverted at College for the fatal accident, Officer Schaible believed that the driver may be the suspect. Officer Schaible slowed and drew his weapon. As the truck came closer, the driver yelled at Officer Schaible that there is a crazy man shooting to the north. Officer Schaible continued north and observed Officer Brunette's vehicle across the median in the northbound lanes of Boulder Highway. Officer Schaible could hear gunfire from the officers on northbound Boulder Highway and could see a male in the distance shooting at those officers. Officer Schaible exited his bike and proceeded across the center median toward Officer Brunette. While crossing, Officer Schaible heard Officer Brunette say, "I got him," and he could see the male was now on the ground. Officers started to approach the suspect

with the cover of Officer Brunette's police vehicle. Officer Schaible realized there was no traffic control at Boulder Highway and Horizon Drive and traffic was coming north on Boulder Highway toward the officers. Instead of approaching the suspect, Officer Schaible decided to stop traffic and diverted them back south. Once Decedent was secured, Officer Schaible assisted in setting a perimeter.

## **Officer Glenn Morgan**

On August 27, 2013, Detective Mitchell and Detective Hosaka conducted an interview with HPD Officer Glenn Morgan. On August 20, 2013, at approximately 8:00 a.m., Officer Morgan was located near the intersection of Horizon Drive and College Drive when he heard Officer Longworth come on the police radio stating she was being shot at. Officer Morgan immediately drove to Officer Longworth's location at College Drive and Boulder Highway via eastbound College Drive. Upon arriving in the area, Officer Morgan observed a marked HPD Crown Victoria exit the Sinclair station and pull slowly into the number one travel lane of eastbound College Drive. As Officer Morgan pulled along the passenger side, he could see Officer Longworth inside. Officer Longworth appeared to be in shock and "looked like she had just seen the devil himself." Officer Morgan asked Officer Longworth where the suspect was. She could not tell him, yet she did mention that the suspect was on a motorcycle. Officer Morgan could see a motorcycle at the southeast corner of Boulder Highway and College Drive parked on the bike path. He scanned the area and did not see any possible suspects. Not knowing where the suspect was located, Officer Morgan decided to pull onto southbound Boulder Highway and park his marked HPD Chevy Tahoe. (See (V3) in above "Officer Longworth Diagram") As Officer Morgan was parking his vehicle, he looked to his left, across Boulder Highway, and saw what first looked to be a pile of tan clothing. He exited his vehicle and proceeded across the median into the northbound lanes. At this time, Officer Morgan could tell that what looked like a pile of clothing was actually a male down in the dirt. Officer Morgan then met up with other officers approaching from the south and they approached the suspect. Officer Morgan observed that the male, later identified as Decedent, was still moving and breathing. He saw a black Berretta, with an optical sight attached, next to Decedent. As Decedent was being searched, officers found a full magazine on the ground under his body. Officer Morgan also witnessed the searching officers remove two more handguns from Decedent's person as well as four more magazines from his pants. Officer Morgan then secured the incident scene with crime scene tape and maintained the perimeter.<sup>3</sup>

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<sup>3</sup> Officer Morgan's Chevy Tahoe was equipped with a "dash-cam." However, due to the positioning of his vehicle, the above incident was not captured on video.

## **Officer Michael Wolff**

On August 22, 2013, Detective Mitchell conducted an interview with Officer Michael Wolff. On August 20, 2013, Officer Wolff was off-duty in his personal vehicle, driving south on Boulder Highway, approaching College Drive, in the number one travel lane. Officer Wolff stopped near the intersection and was waiting to merge into the number two travel lane because of the lane closures ahead of him. While waiting to merge, Officer Wolff observed a male standing in the number one travel lane of southbound Boulder Highway, just south of College Drive, shooting a handgun west, toward the direction of the Sinclair station. Officer Wolff stated that his vision was obscured by a truck to the right of him. He could not see what the male was shooting at, nearly thirty yards in front of him. Officer Wolff wanted to establish what was happening to determine if he needed to take action. Upon turning right onto westbound College Drive, he observed Officer Longworth talking on the radio in her vehicle, which was parked along the curb on eastbound College Drive, approximately 40 yards west of the intersection. Officer Wolff also could still see the male shooting a gun from the center median of Boulder Highway in his rear view mirror. Since Officer Longworth "was alive and on the radio," Officer Wolff chose not to approach her. Officer Wolff stated that he was apprehensive to approach, worrying that he could add to the problem or be mistaken as a suspect. Officer Wolff decided to instead proceed west on College Drive to the entrance at the rear of the Sinclair station. Officer Wolff drove into the parking lot to find a good spot to "engage" the suspect. As he was looking for this spot, he observed police officers rushing to the scene. He decided not to insert himself into the situation since he was in plain clothes. Officer Wolff left the scene heading eastbound on College Drive, eventually driving home.

On August 26, 2013, Detective Mitchell and Detective Hosaka met with Officer Wolff at Boulder Highway and College. The detectives asked Officer Wolff to drive them through the scene the same way he came through it on the day of the shooting. Officer Wolff drove Detective Hosaka's vehicle. Officer Wolff took them south on Boulder Highway in the number one travel lane. As they approached College Drive, they remained in the number one travel lane. Officer Wolff stated that as he approached the intersection, he had one car in front of him and a white pickup truck next to him, and slightly ahead of him, in the number two lane. While waiting to merge into the number two travel lane to turn west on College Drive, Officer Wolff saw a male holding a handgun with a scope shooting west toward the Sinclair station. He stated that the male was standing just south of the intersection, near the center median. Officer Wolff said that his vision was obscured by the white truck to his right and he could not tell what the male was shooting at. Still unsure about what was happening, Officer Wolff merged into the number 2 travel lane and made a right turn onto west bound College Drive. As Officer Wolff headed west, he observed a marked HPD vehicle parked along the curb of eastbound College Drive, west of the front entrance to the Sinclair station. As he passed the vehicle, he could still hear gunfire and could see Officer Longworth inside of the car speaking on the police radio. Officer Wolff entered the rear entrance to the Sinclair station and pulled into the rear parking lot. As he was getting ready to

make contact with Officer Longworth, he observed a patrol vehicle coming west on College Drive with lights and sirens. Not wanting to get in the middle of things with plain clothes on, he exited the rear exit of 971 S. Boulder Highway and proceeded home west on College.

## **CIVILIANS**

### **Witness #1**

On August 20, 2013, at approximately 8:47 a.m., Witness #1 contacted HPD Dispatch to report that she was an eyewitness to the incident at Horizon Drive and Boulder Highway. HPD Detectives June Castro and Athena Raney responded to her residence and conducted a taped interview with Witness #1. Earlier that morning, between 7:45 a.m. and 8:00 a.m., Witness #1 was driving north on Boulder Highway, approaching College Drive. She was travelling in the number two travel lane when she drove by police cars on Boulder Highway. Witness #1 began to slow her vehicle for the red light at College Drive. She then observed a male subject in the southbound lanes that appeared to be pointing toward the officers. The male was standing in a "gun stance" and Witness #1 noticed he had a handgun in his hand. She believed the male was wearing a tan jacket and possibly had a beard. Witness #1 then heard gun shots and realized the male was firing at the officers approaching him in police SUV's on northbound Boulder Highway. Witness #1 stated the male was "clearly shooting" at the officers. Witness #1's eleven-year-old daughter, Witness #2, was in the front passenger seat of their vehicle. Witness #1 was afraid for herself and Witness #2's safety. Witness #1 ran the red light and turned westbound on College Drive to get away from the danger.

### **Witness #2**

On August 20, 2013, following their interview with Witness #1, Detectives Castro and Raney conducted a taped interview with Witness #2. Witness #2 was sitting in the front seat as her mother, Witness #1, drove the two to the store. They passed a police officer and a van pulled over on northbound Boulder Highway. When they got to the stop light at College Drive and Boulder Highway, Witness #2 looked out her open passenger side window and saw a male standing on the east side of Boulder Highway. He had a firearm in his hand and his hand was sticking straight out from his body pointing at police officers. Witness #2 heard "bang, bang" and became frightened. Witness #1 then drove them out of the area.

### **Witness #3**

On August 20, 2013, at approximately 8:33 a.m., Witness #3 contacted HPD Dispatch to report that he was an eyewitness to the incident at Horizon Drive and Boulder Highway. At approximately 12:20 p.m., Detectives Castro and Raney responded to his location and conducted a taped interview with Witness #3. At approximately 8:00 a.m., Witness #3 was driving his vehicle southbound on Boulder Highway, approaching College Drive. Witness #3 observed orange cones that had been set out to block off southbound Boulder Highway. Witness #3 was in the right turn lane and stopped at the red light at College Drive. There was a vehicle in each of the two lanes next to him. While waiting at the red light, Witness #3 observed a male walk out of the median and take a couple of steps into the travel lane of southbound Boulder Highway. Witness #3 noted the male seemed odd because it was hot outside and the male was wearing a brown long sleeve jacket. This male was also wearing a hat pulled low over his eyes. The male was very calm and deliberate as he lifted his right hand straight out from him and used his left hand to steady his right hand. Witness #3 then heard three to four quick gun shots. He realized the male was shooting at a police vehicle that was parked on southbound Boulder Highway. The police vehicle immediately pulled into the Sinclair station parking lot. Witness #3 then turned west onto College Drive in an effort to get out of the area.

### **Witness #4**

On August 20, 2013, at approximately 12:30 p.m., Witness #4 contacted HPD Dispatch to report that he was an eyewitness to the incident at Horizon Drive and Boulder Highway. Witness #4 came to the HPD Main Station, where Detectives Castro and Raney conducted a taped interview with Witness #4. Earlier that morning, Witness #4 was driving east on College Drive and had stopped at the intersection at Boulder Highway. She observed orange traffic cones and a police vehicle parked on southbound Boulder Highway, near the driveway to the Sinclair station. Witness #4 heard approximately three shots fired and realized there was a man standing near the police vehicle. The man had a firearm in his hand and was pointing it at the police vehicle. The police vehicle drove through the gas station parking lot, then out the driveway on the north side of the gas station and back onto eastbound College Drive. Witness #4 started reversing, heading west on College Drive. Witness #4 realized the police vehicle was approaching the rear of her vehicle. She did not want to be near the police vehicle so she put her vehicle in drive and proceeded east on College Drive, across Boulder Highway. Witness #4 made a U-turn on College Drive and stopped at the red light at the northeast corner of the intersection. Witness #4 then observed the same male standing on the east side of Boulder Highway, in the desert area. The male was facing across Boulder Highway. He then turned his attention toward the two approaching police vehicles driving north on Boulder Highway. The male began firing at the two approaching police vehicles. Witness #4 could see the dirt flying from the southeast

corner and thought shots were being fired in her direction. Witness #4 turned onto northbound Boulder Highway to get away from the area.

## **Witness #5**

On August 20, 2013, at approximately 9:20 a.m., HPD Detective Chris Aguiar conducted a taped interview with Witness #5 on the roadway of Boulder Highway. At approximately 8:00 a.m., Witness #5 was driving south on Boulder Highway. Witness #5 was approaching the intersection of Boulder Highway and College Drive, when he noticed that there were cones blocking Boulder Highway. Witness #5 slowed down and was waiting for someone to let him in, at which time he noticed a male walk from the Sinclair gas station sidewalk heading east along the orange cones. Witness #5 described the male as being a white older male with a braided ponytail. The male was wearing a light-colored tan jacket and khaki pants, and he was carrying a satchel. The male took a few steps and looked back towards the Sinclair. The male then pulled out a weapon, looked up and down Boulder Highway, turned towards the Sinclair and fired his weapon. Witness #5 first thought the male was an undercover police officer. However, as Witness #5 pulled up further on the roadway to get away, he could see a police vehicle sitting on the roadway facing west. After the shots were fired, he observed the officer take off towards the Sinclair and drive through the parking lot. Witness #5 looked back at the male and he observed the male reloading and continuing to shoot. The male then looked up and down Boulder Highway and went into the median of Boulder Highway. While he was in the median, it appeared that the male was trying to get something out of his black satchel. After the male went into the median, Witness #5 drove south to get out of the area. He then saw police bikes and vehicles coming north towards the suspect. There was another exchange of gunfire as the male was shooting his weapon at the responding officers. Witness #5 believed the suspect was trained because of the stance he assumed when he was firing his weapon. It was clear to Witness #5 that the male was shooting at the officers because the male could have shot at Witness #5 when he drove right past him. When the additional officers responded to the scene, Witness #5 recalled hearing yelling, but he was unsure if it was directed towards the male or him. Witness #5 estimated hearing 20 shots and explained that the male did not hesitate in shooting at the police officers.

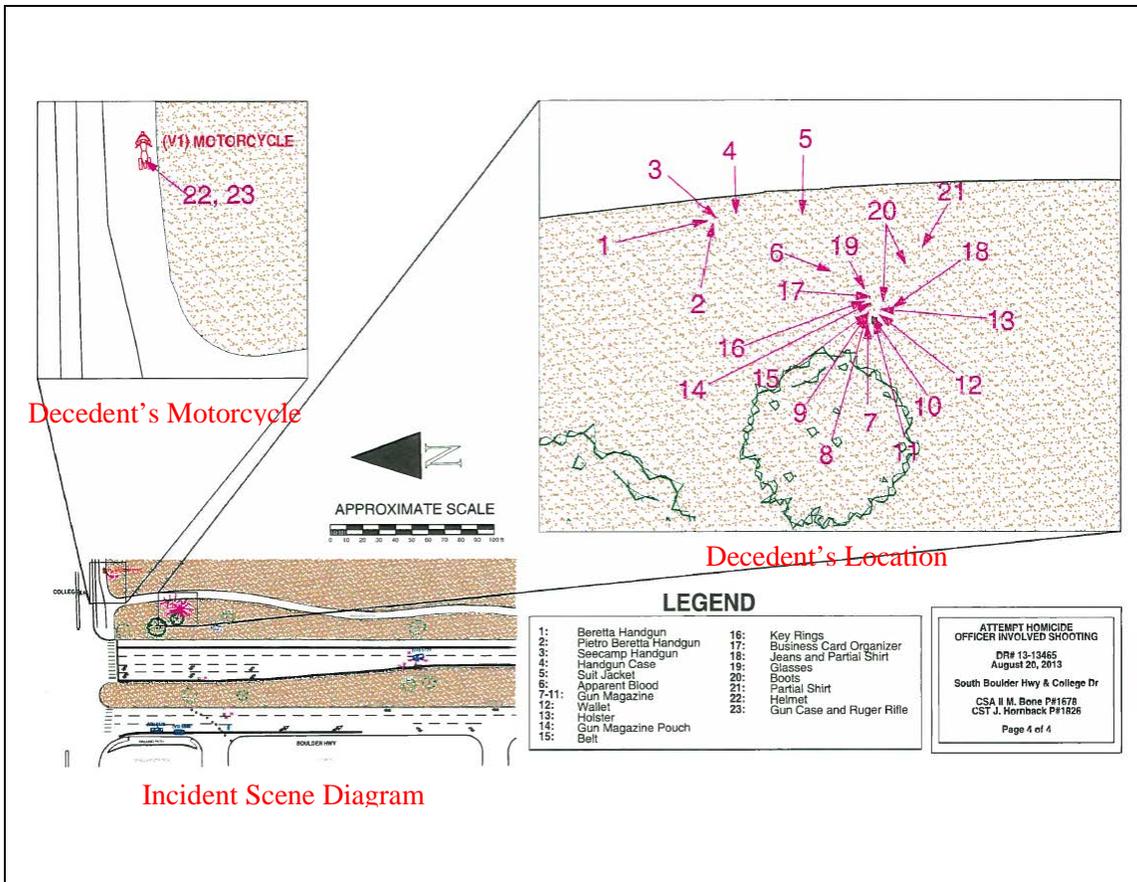
## **Witness #6**

On August 20, 2013, at approximately 12:34 p.m., Detective Aguiar conducted a taped interview with Witness #6 at the HPD Main Station. Somewhere between 8:00 a.m. and 9:00 a.m., Witness #6 was driving north on Boulder Highway. He made a U-turn at College Drive in order to go to the Sinclair gas station to get gas. When Witness #6 made the U-turn, he noticed southbound Boulder Highway was blocked because there was an accident by Lowe's (Boulder Highway and Horizon Drive). While pumping

gas at the Sinclair, Witness #6 heard a couple pops and saw birds coming out of the trees. He initially thought someone was shooting birds. However, Witness #6 thought that was weird because he observed a police officer in a patrol vehicle positioned on Boulder Highway. Witness #6 then heard a couple more pops and observed an older male with gray hair and a beard dressed in brown standing thirty to forty feet behind the driver's side of the patrol vehicle. The male was standing on the edge of the asphalt and median on Boulder Highway. Witness #6 then observed the passenger back window of the patrol vehicle explode and heard the female officer in the vehicle yell out something like, "What the [expletive] is going on?" The officer then drove through the parking lot of the Sinclair to get to safety. She eventually turned back onto eastbound College Drive towards Boulder Highway. Witness #6 observed the female officer meet up with another officer. By that point, the suspect had crossed the median onto the other side Boulder Highway. He observed all the police officers from up the street coming down towards College Drive and he lost sight of the male. Witness #6 then heard additional gunfire, and after walking approximately 50 feet to the south, he saw officers on top of the suspect. He believed that the male was fighting with the officers and he heard the officers issuing commands.

### **Sinclair Store Manager**

On August 21, 2013, Detective Aguiar responded to the Sinclair gas station located at 971 South Boulder Highway, Henderson, Nevada 89015, where he met with Store Manager. Store Manager provided Detective Aguiar with three CD's containing surveillance video from 7:00 a.m. to 9:00 a.m., on August 20, 2013. Detective Mitchell reviewed the surveillance video and observed Decedent driving through the Sinclair station parking lot and exiting toward eastbound College Drive at 07:59:50. At 08:02:13, Officer Longworth is shown driving quickly into the Boulder Highway entrance to Sinclair and then exiting toward east bound College Drive. Her patrol vehicle and another marked patrol unit then proceed to drive on to southbound Boulder Highway.



## **Decedent Diagram: Evidence at Incident Scene Surrounding Decedent and his Motorcycle**

### **THE INCIDENT SCENE**

The entire incident scene was examined, photographed, and diagramed by Detective Mitchell and assisting HPD personnel. All items of evidence were ultimately collected and impounded into evidence. An examination of the incident scene revealed two marked HPD vehicles: a Chevrolet Tahoe (V3) with no damage and a Ford Crown Victoria (V2), later identified as Officer Longworth's vehicle, with a shattered driver side rear window and two apparent gunshot holes to the rear driver side door and one to the B pillar that separates the front and rear driver side doors. These vehicles were parked in the number three travel lane of southbound Boulder Highway just prior to the entrance to the Sinclair gas station located at 971 South Boulder Highway. (See above "Officer Longworth Diagram")

In the northbound lanes of Boulder Highway, directly across from the entrance to the Sinclair station, there were two more marked HPD Chevrolet Tahoes. These vehicles were parked in the dirt just off the roadway and were facing north/northeast. The Chevrolet Tahoe furthest north (See (V5) in above "Incident Scene Diagram"), later identified as Officer Brunette's vehicle, had a bullet hole entering the front of the

passenger side mirror, exiting the rear side of the mirror and then entering the passenger door above the door handle near the window. Another bullet hole was observed entering and exiting the front passenger side door just above the window. Damage was also observed to the roof of the vehicle just above the driver's seat and to the light bar directly in line with the damage to the roof. This damage appeared to be made from a bullet striking and skipping off the roof and subsequently striking the vehicle's light bar. The second Chevrolet Tahoe had no damage. It was later determined that this vehicle had been brought to the scene by another officer after the incident. (See above "Incident Scene Diagram")

Approximately 394 feet south of Officer Brunette's Chevrolet Tahoe (V5) was another marked HPD Chevrolet Tahoe (V4) in the northbound number two travel lane of Boulder Highway. No damage was observed to this vehicle. It was later determined that this was Officer Nusbaum's vehicle. (See above "Officer Nusbaum Diagram")

The location where Decedent was taken into custody was a landscaped desert area east of Boulder Highway and south of College Drive. In this area was a large area of blood. To the east of the blood was a tan jacket. There was a black satchel-style bag and three handguns located to the north and east of the blood.

The first firearm was a black Beretta 9mm semi-automatic handgun. This firearm had a fifteen round capacity magazine inserted and the slide was forward, yet the firearm had no ammunition. This firearm was also equipped with "Tasco" ProPoint optics scope, a compensator and competition magazine well.

The second firearm was a silver Beretta 9mm semi-automatic handgun. This firearm had a fifteen round capacity magazine inserted. The magazine was loaded with fourteen cartridges and one cartridge was in the chamber. This firearm was also equipped with a laser sight which was mounted to the firearm's grip on the right side. This laser is triggered by a pressure trigger in the handgun's grip.

The third firearm was a Seecamp .32 caliber semi-automatic handgun. A magazine was inserted into this firearm and the magazine had one cartridge left in it. There was also a cartridge loaded into the chamber of the firearm.

All the above stated firearms were verified as being registered to Decedent by the Las Vegas Metropolitan Police firearms registration bureau.

Three wallets, brown boots, an empty holster, a brown belt, an empty magazine holster, keys, glasses and clothing removed during medical intervention by paramedics were located to the south and southwest of the blood. Also with this property were five loaded 9mm magazines. The first magazine had a capacity of fifteen cartridges and was loaded with fourteen cartridges. The second magazine had a capacity of fifteen cartridges and was loaded with fourteen cartridges. The third magazine had a capacity of seventeen cartridges and was loaded with sixteen cartridges. The fourth magazine was an extended magazine, but its capacity could not be determined. It was loaded with twenty-two cartridges. The fifth magazine had a capacity of fifteen cartridges and was loaded with fifteen cartridges.

A black 2007 Suzuki motorcycle registered to Decedent was located to the north and east of the area where he was taken into custody. It was parked on the bike path that runs parallel to east bound College Drive. Strapped to the back of Decedent's

motorcycle was a black rifle bag which was unzipped allowing easy access to the rifle inside. Inside of this bag was a Sturm Ruger and Co. Mini 14 .223 caliber rifle with a thirty cartridge capacity magazine inserted. The rifle had one .223 live cartridge chambered and the magazine inserted had nineteen cartridges loaded. There was also a spare magazine for this rifle in the bag and it was a thirty cartridge capacity magazine loaded with twenty cartridges. (See above “Decedent Diagram”)



### **Decedent's Motorcycle**

Spent cartridge casings were recovered throughout the incident scene. Near Officer Nusbaum's Chevrolet Tahoe (V4) were three spent "WIN" 9mm Luger casings, three spent "WIN" .45 caliber auto +P casings and one spent Winchester .223 caliber "REM" casing. (See above "Officer Nussbaum Diagram") The number of spent cartridge casings recovered near Officer Nusbaum's Tahoe matched the number of cartridges found missing from each of these officers' firearms during the countdown. (See below "THE REVIEW OF THE WEAPONS") It was later determined that these spent cartridge casings originated from Officer Dunn's .45 caliber Glock 21 handgun, Officer Brunette's 9mm Glock 17 handgun and Officer Nusbaum's Colt M4 LE 5.56mm caliber rifle. (See below "FIREARMS EXAMINATION")

Approximately five feet east of the original location of Officer Longworth's vehicle (V2), in the number two travel lane of southbound Boulder Highway, were five spent "WIN" 9mm Luger cartridge casings. (See above "Officer Longworth Diagram") In the dirt center median just off the northbound lanes of Boulder Highway, directly across from the entrance to Sinclair station, were an additional two spent "WIN" 9mm Luger cartridge casings. On the east side of Boulder Highway, northeast of the two spent

cartridge casings mentioned above, were six more spent "WIN" 9mm Luger cartridge casings. (See above "Incident Scene Diagram") These thirteen spent cartridge casings were later determined to exhibit general overall appearance to test fired cartridge casings fired from Decedent's black Beretta 9mm that was equipped with a "Tasco" ProPoint optics scope. (See below "FIREARMS EXAMINATION")

The distance between Officer Brunette and Officer Dunn's vehicle and Decedent at the time the officers returned fire was measured to be 394 feet. The distance between Decedent and Officer Longworth when Decedent first opened fire on Officer Longworth was measured to be 82 feet.

## **THE REVIEW OF THE WEAPONS**

### **THE COUNTDOWN OF OFFICER DUNN'S WEAPON**

A countdown of Officer Dunn's weapon - - a Glock 21 .45 caliber handgun - - revealed a total of eleven "WIN" .45 caliber auto +P cartridges in the weapon (one in the chamber and ten in the magazine). Officer Dunn normally carried one cartridge in the chamber and thirteen in the magazine. Officer Dunn fired his weapon three times during this incident.

### **THE COUNTDOWN OF OFFICER BRUNETTE'S WEAPON**

A countdown of Officer Brunette's weapon - - a Glock 17 9mm caliber handgun - - revealed a total of fifteen "WIN" 9mm Luger cartridges in the weapon (one in the chamber and fourteen in the magazine). Officer Brunette normally carried one cartridge in the chamber and seventeen in the magazine. Officer Brunette fired his weapon three times during this incident.

### **THE COUNTDOWN OF OFFICER NUSBAUM'S WEAPON**

A countdown of Officer Nusbaum's weapon - - a Colt M4 LE 5.56mm caliber rifle - - revealed a total of twenty-seven Winchester .223 caliber "REM" cartridges in the weapon (one in the chamber and twenty-six in the magazine). Officer Nusbaum normally carried one cartridge in the chamber and twenty-seven in the magazine. Officer Nusbaum fired his weapon one time during this incident.

## **FIREARMS EXAMINATION**

Anya Lester, of the Las Vegas Metropolitan Police Department Firearms/Toolmarks Unit, conducted an examination of the firearms, bullets, and spent cartridge casings recovered during the investigation of the incident. She reached the following conclusions:

The three spent "WIN" 9mm Luger cartridge casings recovered at the incident scene by Officer Nusbaum's marked HPD Chevrolet Tahoe were fired by Officer Brunette's 9mm Glock 17 handgun.

The three spent "WIN" .45 caliber auto +P cartridge casings recovered at the incident scene were fired by Officer Dunn's .45 caliber Glock 21 handgun.

The one spent Winchester .223 caliber "REM" cartridge casing recovered at the incident scene was fired by Officer Nusbaum's Colt M4 LE 5.56mm caliber rifle.

The remaining thirteen spent "WIN" 9mm Luger cartridge casings recovered at the incident scene exhibited general overall appearance to test fired cartridge casings fired from Decedent's black Beretta 9mm that was equipped with a "Tasco" ProPoint optics scope. However, there was a lack of sufficient microscopic detail for a positive identification of the handgun. The remaining thirteen spent "WIN" 9mm Luger cartridge casings were not fired from any of the officers' firearms.

## **THE AUTOPSY OF DECEDENT**

On August 21, 2013, at approximately 9:05 a.m., an autopsy was performed by Deputy Medical Examiner Doctor Alane Olson on the body of Decedent at the Clark County Coroner's Office. Dr. Olson determined Decedent died as the result of a single gunshot wound to the head. There was no bullet or bullet fragment recovered during the autopsy.

## **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 imminent danger to HPD police personnel. Decedent opened fire on Officer Longworth without warning as she was sitting, in uniform, in her marked patrol vehicle. Decedent then opened fire upon Officer Brunette and Officer Dunn when they attempted to respond to Officer Longworth's location to assist. All the police officers that Decedent fired upon were in uniform and in marked HPD patrol vehicles. In fact, it appears that Decedent fired upon the officers specifically because they were police officers. Officer Brunette and Officer Dunn were forced to exit their vehicle and return fire. Decedent continued to fire upon the officers after they exited the vehicle. It was during this exchange of fire that Decedent was ultimately shot and killed, ending the threat. Thus, the police personnel were

confronted by an actual imminent danger of being killed or suffering great bodily harm, which created in their minds an honest belief and fear that they, and others, were about to be killed or suffer great bodily injury. Accordingly, the officers were justified in acting upon those appearances, fears and actual beliefs.

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

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

In this case, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to themselves or other persons. Decedent approached and then fired upon Officer Longworth without warning. He then opened fire on officers responding to assist Officer Longworth. These circumstances created probable cause in the officers’ minds that the Decedent posed a threat of serious physical harm to the officers, motorists, and customers of the Sinclair gas station. In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* “in the discharge of a legal duty.”

## **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 law enforcement in response to being fired upon by the Decedent were reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS §200.190). A homicide which is determined to be justifiable *shall* be “fully acquitted and discharged.” (NRS §200.190).

As there is no factual or legal basis upon which to charge the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED , 2014

STEVEN B. WOLFSON  
District Attorney

By

ROBERT B. TURNER  
Chief Deputy District Attorney