

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Zachary Andrews on January 31, 2014

### INTRODUCTION

On January 31, 2014, at approximately 2258 hours, Las Vegas Metropolitan Police Department (hereinafter "LVMPD") dispatch received a call from a clerk at the South Pointe Food Mart in Laughlin, Nevada, regarding an armed robbery. Patrol Officer S. Solorio was dispatched to the call. Patrol Officer C. Crawford, who was also working in the area, heard the dispatch and responded to the Food Mart to assist Officer Solorio. Officer Solorio arrived and saw a male, later identified as Zachary Andrews (hereinafter "Decedent"), matching the description of the suspect, walking on the north sidewalk of James A. Bilbray Parkway. He parked his vehicle in between Decedent and a Silver Rider public transit bus that was at a designated stop on the road. Officer Solorio exited his vehicle, ordered Decedent to stay at the front of the patrol car, and then moved behind Decedent. Decedent briefly paced in front of the car before he pulled a firearm from his right front pocket and put it to the side of his head. Officer Solorio drew his own weapon and immediately started backing up. Decedent kept the weapon to his head as he pursued Officer Solorio. Officer Solorio gave Decedent numerous commands including, "Put the gun down" and "Don't do it." Decedent refused to comply with the commands and instead continued to walk west and north toward Officer Solorio. Officer Solorio continued to issue commands to stop and put the gun down, but was forced to retreat as Decedent grew closer. There was a 20 to 25 foot tall concrete block wall behind Officer Solorio and no options for coverage in the street. As Officer Solorio got closer and closer to the wall, he continued to issue commands for Decedent to stop and put the gun down.

Decedent refused to comply until ultimately Officer Solorio stopped the threat by firing his weapon two times, striking Decedent once in his head and once in his hip.

LVMPD Detectives Christopher Bunn and Marty Wildemann were assigned to conduct the investigation of the incident with the assistance of other members of the detective bureau and LVMPD personnel.

The District Attorney's Office has completed its review of the January 31, 2014, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Solorio were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officer 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 Public Fact-Finding Review conducted on December 8, 2014. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Solorio was not criminal.

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

## **THE EVENTS AT 3675 NEEDLES HIGHWAY, LAUGHLIN, NV, ON JANUARY 31, 2014**

### **POLICE OFFICERS**

#### **Officer Christopher Crawford**

On February 1, 2014, at approximately 0310 hours, Detective Chris Bunn and Detective Barry Jensen conducted a taped interview with LVMPD Officer Christopher Crawford at the Laughlin Substation. Also present was Las Vegas Police Protective Association Attorney Charles Kelly.

On January 31, 2014, Officer Crawford was conducting a car stop at 1701 Cal Edison, Laughlin, Nevada, when dispatch reported an armed robbery at the South Pointe Food Mart. The suspect of the robbery was described as a white male wearing a dark hoodie. Officer Crawford cleared from the car stop and traveled approximately one mile to the supermarket. Officer Crawford looked for a possible suspect along the drive, but did not see anyone matching the description of the robber. Once Officer Crawford

arrived, he parked his LVMPD vehicle in the front parking lot of the South Pointe Food Mart complex. As he was exiting his vehicle, he heard that Officer Solorio had also arrived.

Officer Crawford approached the front door of the business to speak with the store clerk. Before he entered, he heard Officer Solorio radio that he had a possible suspect. Officer Crawford looked north in the direction of James A. Bilbray Parkway and saw Officer Solorio's LVMPD vehicle, with active emergency lights, parked in front of a bus.

From the supermarket, Officer Crawford moved north to assist Officer Solorio. He saw Officer Solorio ordering a male, later identified as Decedent, to the front of his vehicle and saying, "Put the gun down" and, "Let me see your hands." Based on the commands of Officer Solorio, Officer Crawford drew his .22 caliber Glock and approached Decedent from behind. He saw Decedent raise his right arm such that his elbow was pointing out and his arm was parallel to the ground. He then heard Officer Solorio continue to say, "Put the gun down. Don't do it." Officer Crawford could not see anything in Decedent's hand; however, due to the position of his arm and the commands given by Officer Solorio, he assumed Decedent was holding a weapon. Decedent ignored Officer Solorio's commands and instead continued to walk toward him, forcing Officer Solorio to retreat.

Keeping his weapon drawn on Decedent, Officer Crawford started to back away in order to avoid potential crossfire with Officer Solorio. As he moved westbound on James A. Bilbray Parkway, his attention was momentarily diverted when a vehicle travelling eastbound began to enter the scene. Officer Crawford ordered the vehicle to stop, turn around and leave the area. Before Officer Crawford returned his attention to Decedent, he heard two shots. He looked back and saw Decedent fall to the ground. Officer Crawford immediately positioned himself next to Officer Solorio as Decedent was still moving and trying to get up. Officer Crawford asked Officer Solorio if he could see Decedent's gun and he responded, "Yeah, it's laying behind him".

Sergeant Lehtinen arrived immediately after shots were fired. Officer Crawford and Officer Solorio maintained cover on Decedent until he was handcuffed by LVMPD Sergeant Stephen Lehtinen.

## **Sergeant Stephen Lehtinen**

On Saturday, February 1, 2014, at approximately 0330 hours, Detective Bunn and Detective Jensen conducted a taped interview with LVMPD Sergeant Stephen Lehtinen.

On the evening of January 31, 2014, Sergeant Lehtinen was running radar at State Route 163 and Casino Drive in Laughlin, Nevada, when he heard a call come through dispatch reference a robbery at a supermarket on Needles Highway. Sergeant Lehtinen was familiar with the store as it had been robbed twice before. He immediately left his post at State Route 163 and traveled toward the supermarket. En route, he heard via dispatch that both Officer Solorio and Officer Crawford had responded to the call. He then heard Officer Solorio relay that he did not see anybody in the desert area. Within seconds, Officer Solorio updated that he saw a possible suspect running across the street and that he was going to pursue him. The radio traffic became slightly broken and

unintelligible; however, Sergeant Lehtinen heard “gun” and “roll medical, shots fired, roll medical.” Sergeant Lehtinen was preparing to request additional information when he heard the suspect was down.

When Sergeant Lehtinen arrived, he exited his vehicle and saw a man, later identified as Decedent, down in the middle of the street. Officers Solorio and Crawford, who were both in marked uniforms, were pointing their handguns at Decedent. The two officers were in a tactical “L” formation, with Officer Solorio just north of the subject and Officer Crawford to the west of Officer Solorio. Sergeant Lehtinen noted slight movements and belabored breathing coming from Decedent. Officer Solorio alerted Sergeant Lehtinen that he had not yet secured Decedent. Sergeant Lehtinen saw a black .38 caliber hammerless revolver on the road next to Decedent. He secured the weapon and handcuffed Decedent. He then began securing the scene and requested dispatch make the appropriate notifications reference an officer involved shooting.

After Decedent was secured, Sergeant Lehtinen placed Officer Solorio in the back of his vehicle. He then went to the bus that was parked on James A. Bilbray Parkway to inquire as to who, if anyone, had seen what had transpired between law enforcement and Decedent. The bus driver and one passenger reported seeing the incident. Sergeant Lehtinen directed Officer Crawford to obtain voluntary statements from the witnesses.

After the scene was secured, additional LVMPD officers assisted in investigating the incident. LVMPD Officer Peto gathered voluntary statements from the bus driver and passenger. LVMPD Officer Johnson secured the block wall to the north of the scene. LVMPD Officer Stevens conducted interviews on other possible witnesses in the immediate area.

## **Officer Samuel Solorio**

On January 31, 2014, at approximately 2337 hours, Sergeant Lehtinen obtained a Public Safety Statement from Officer Solorio following the shooting. During the statement, the following questions were asked and answers given:

Q. Did you discharge your firearm?

A. Yes, two times in a southeasterly direction towards Needles Highway. I was by the speed limit sign backing up towards the north curb.

Q. Is anyone injured?

A. Yes, the suspect, in the roadway.

Q. Are there any outstanding suspects?

A. No.

Q. Is it possible the suspect fired rounds at you?

A. No, he did not.

Q. Do you know if any other officers discharged their firearms?

A. No other officer did.

Q. Are there any weapons or evidence that needs to be secured/protected?

A. Yes, behind the suspect.

Q. Are you aware of any witnesses?

A. Yes, on the bus.



James A. Bilbray Parkway

## **CIVILIANS**

### **South Pointe Market Clerk**

On Saturday, February 1, 2014, at approximately 0315 hours, Detective Marty Wildemann and Detective Tod Williams conducted a taped interview with South Pointe Market Clerk in the office of the South Pointe Market.

On January 31, 2014, Clerk was working the graveyard shift at the South Pointe Market, located at 3675 Needles Highway, Laughlin, Nevada. His shift started at 2245 hours and finished at 0645 hours. At approximately 2255 hours, a white male adult, wearing a grey hooded sweatshirt, dark sunglasses, and a face bandana, brandished a small black revolver, pointed it at two patrons playing slots, and ordered them to stay seated. Clerk had been the victim of two prior robberies in the previous two weeks, both occurring at approximately 2300 hours.

During the first robbery (LVMPD Event# 140116-4147), the male suspect wore a brown hooded sweatshirt, dark sunglasses, and a bandana covering his face. While the suspect did not brandish a weapon, he implied he had a weapon by the position of his hands in his pockets. On the second robbery (LVMPD Event# 140119-0005), the male suspect wore the same clothing and had a large kitchen knife in his hand. Based upon the physical characteristics, voice, clothing, and mannerisms of the assailant, South Pointe Market Clerk attributed all three robberies to the same individual who brandished a firearm on January 31, 2014.

During the January 31, 2014, robbery, the man, later identified as Decedent, calmly approached Clerk, pointed the gun at him, and ordered him to “empty the register” and “put all the money in the bag.” Clerk took approximately \$300 from the register and from under the counter, put it in one of the store’s white plastic shopping bags, and gave the bag to Decedent. Decedent ordered Clerk to unplug the telephone and then fled with the money. As soon as Decedent left, Clerk activated the alarm button and called 911.

## **Bus Driver**

On Saturday, February 2, 2014, at approximately 0234 hours, Detective Barry Jensen conducted a taped interview with Bus Driver. The interview took place inside bus # 976, which was parked at a designated bus stop on James A. Bilbray Parkway.

Bus Driver was employed by Silver Rider Bus Line. On January 31, 2014, he was driving bus # 976 on route # 888 Swing. At 2302 hours, while stopped at a designated bus stop on James A. Bilbray Parkway, Bus Driver saw a male, later identified as Decedent, jaywalking northbound from Beside the Pointe Bar. As a passenger was exiting the bus, a marked LVMPD Police SUV with activated lights approached, traveling westbound. The patrol vehicle stopped directly in front of the bus. A uniformed police officer got out of his vehicle and approached Decedent. Bus Driver could not hear what the officer was saying but did see him interact with Decedent and point toward the LVMPD SUV.

Bus Driver saw Decedent walk toward and then away from the LVMPD SUV. As Decedent walked away, he drew what appeared to be a handgun and held it to his own head. The officer then drew his weapon and pointed it towards the ground, still interacting with Decedent. Bus Driver immediately directed all of the passengers on the bus to get on the floor. Bus Driver also positioned himself on the floor of the bus.

After approximately ten seconds of being on the floor, Bus Driver heard two gunshots in rapid succession. He waited a moment, looked out the window, and saw the officer standing to the north of the bus.

## **Bus Passenger**

On Saturday, February 1, 2014, at approximately 0236 hours, Detective Williams conducted a taped interview with Bus Passenger. The interview took place in his LVMPD vehicle at the corner of Needles Highway and James A. Bilbray Parkway.

On January 31, 2014, Bus Passenger rode the bus home from work. He planned to get off the bus at the Needles Highway and James A. Bilbray Parkway stop to go to the South Pointe Market. As the bus traveled north on Needles Highway, Bus Passenger noticed a marked LVMPD Blazer in the supermarket parking lot. The bus then turned west onto James A. Bilbray Parkway. As the bus approached the stop, Bus Passenger saw a man, later identified as Decedent, walking east on the sidewalk towards the bus stop. At the same time, a second marked LVMPD Blazer, with activated emergency lights, pulled in front of the bus and stopped.

Bus Passenger exited the bus, walked east to the crosswalk and began crossing James A. Bilbray Parkway towards the South Pointe Market. As he was in the middle of the intersection, he heard a police officer yelling, "Stop, stop" and, "Stop, drop it." Bus Passenger looked and saw Decedent in the street holding what appeared to be a gun to his head. People on the bus started yelling, "He's got a gun, he's got a gun!" Bus Passenger then heard approximately three shots and saw Decedent fall to the ground. Bus Passenger could not see any officers at that point because the bus was blocking his view. He then ran back behind the bus for safety.

Of note, during the Police Fatality Public Fact Finding Review, it was elicited that Bus Passenger - - in his written statement to officers at the scene - - described Decedent as "walking away from the officer" with what looked like a gun to his head. However, video surveillance established that this was prior to Decedent turning toward the officer. It is undisputed that Decedent was squarely facing Officer Solorio when the officer fired his weapon as Decedent was shot in the face.

## VIDEO EVIDENCE



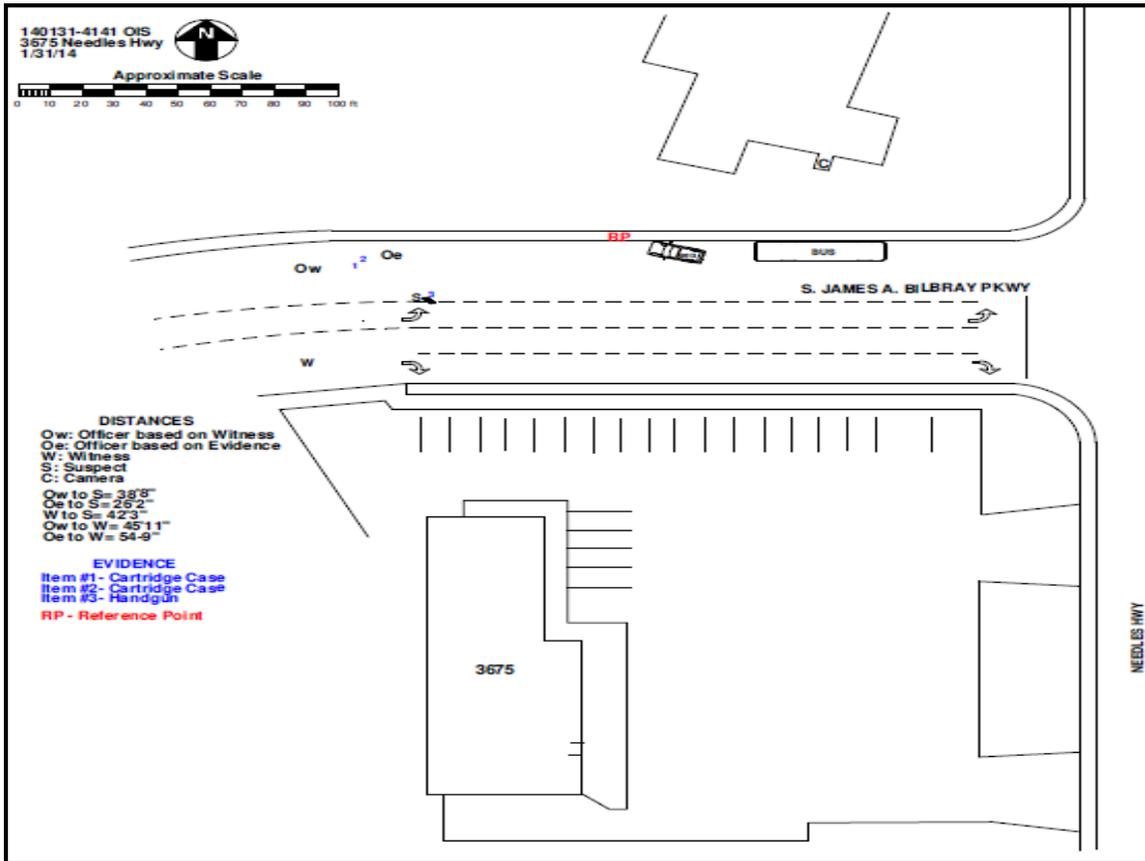
Video surveillance from the TASS camera mounted north of the scene

Due to the prior robberies of the South Pointe Market, a Technical Analysis Surveillance System (hereinafter "TASS") overt camera was mounted on a rooftop north of the store. On January 31, 2014, Detectives reviewed video surveillance from that camera. The TASS footage showed Decedent entering the South Pointe Food Mart at 10:57:18 PM and leaving approximately 40 seconds later. At 11:00:23 PM, Decedent emerged from a lit corridor of the Laughlin Professional Plaza, just behind the Food Mart. Decedent then walked north across James A. Bilbray Parkway. At the same time, Officer Crawford arrived and parked in front of the Food Mart.

At 11:01:41 PM, Officer Solorio arrived and stopped his patrol vehicle in front of Decedent. He exited his vehicle and motioned for Decedent to stay at the front of the car. Officer Solorio moved behind Decedent as Decedent turned to face him. At 11:01:58 PM, Decedent pulled his hand out of his right pocket and put his right hand to his temple. Officer Solorio had his weapon drawn on Decedent and started to back away, eventually going outside the view of the camera. Decedent walked toward Officer Solorio until he too disappeared from the view of the camera. At 11:03:08 PM, Officer Crawford started to cross James A. Bilbray Parkway.

Detectives also reviewed video surveillance from the South Pointe Food Mart. The video showed Decedent, with a firearm in his right hand, entering the store at 22:57:23. The store clerk placed cash on the counter, which Decedent picked up before he fled at

22:58:00. In the video, Decedent was wearing a brown jacket, a gray hooded sweatshirt, gray sweatpants and sunglasses.



Incident diagram depicting location of officers and items of physical evidence

## THE INCIDENT SCENE

The incident scene was located in the travel lanes of James A. Bilbray Parkway, approximately 220 feet west of Needles Highway, in Laughlin, Nevada. The area was just north of South Pointe Food Mart, located at 3675 Needles Highway. A Silver Rider Transport bus was parked against the curb of the westbound lane of James Bilbray A. Parkway. Officer Solorio's department vehicle, LVMPD unit 9513, was parked at an angle in front of the bus. A 20 to 25 foot tall, block wall lined the entire north side of the street.

Decedent was lying on the asphalt of the north travel lane of James A. Bilbray Parkway, approximately 190 feet west of Needles Highway. Just north of Decedent was a .38 blue steel revolver, serial number CPK2783 (item #3 on diagram supra). Two Speer 9MM cartridge cases (items #1&2) were found approximately 26 feet northwest of the suspect.

The secondary scene - - where the robbery occurred - - was located at the South Pointe Food Mart located at 3675 Needles Highway. The Food Mart had gasoline pumps to the east of the store and was attached to the Beside the Pointe Bar to the north. A dirt

service alley lined the back of the complex, separating it from Laughlin Professional Plaza to the west.

Due to the fact that Decedent was wearing different clothes in the surveillance video than those on his person when he confronted Officer Solorio, LVMPD officers, including Officer Webb, began combing the area for discarded clothing. The search led to an open door at the Laughlin Professional Plaza, which led to a small vestibule for suites. Officer Webb remembered serving a Temporary Protection Order at suite 104A some weeks before. He also remembered that Decedent, and his mother Martha Vandenkakker, were the parties named in the order. Detectives contacted Ms. Vandenkakker and asked her to respond to the scene.

When Ms. Vandenkakker met with detectives, she gave them a brief history of her son's pain medication addiction. She also told detectives that her son would frequently go to suite 104A in the evenings to watch television on the office computer. She gave detectives consent to search the suite, which contained multiple pairs of sunglasses, a white shopping bag containing \$28.15 in change, a pair of gray drawstring pants and a gray sweatshirt with "CHIEFS" on the front. Detectives went back to the South Pointe Food Mart and confirmed that the white plastic bag found in suite 104A was the same as those used in their business.



Block wall lining the North side of the scene

## **LOCATION AND DESCRIPTION OF THE BODY**

Decedent was lying on his left side near the center of James A. Bilbray Parkway. Decedent's head was facing east and his feet were facing west. Decedent's arms were behind his back and handcuffed. His left leg was bent at the knee and in front of his body and his right leg was bent at the knee and behind his body. There was an apparent gunshot wound to the front of his right thigh.

Decedent was wearing black sweatpants, brown shoes, and a partially unzipped black jacket with a defect near the front right pocket. Located in the jacket's left interior pocket was \$352 in US Currency.

## **REVIEW OF THE WEAPONS**

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

A countdown of Officer Solorio's weapon - - a Glock model 19 Serial # CTK590 9mm handgun - - revealed a total of fourteen "Speer 9mm" cartridges in the weapon (one in the chamber and thirteen in the magazine). The magazine had a capacity of fifteen cartridges. Officer Solorio normally carried the weapon with the magazine fully loaded and one in the chamber. He also carried two, fully loaded magazines on his duty belt, for a total of forty-six cartridges. The countdown showed two cartridges were missing.

Officer Solorio also had a department issued Taser X26 on his duty belt. The electronic control device (ECD) was not deployed. The ECD was downloaded and returned to Officer Solorio.

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

A countdown of Officer Crawford's weapon - - a Glock model 22 Serial # EYT093 .40 caliber handgun, equipped with an operable Streamlight TLR-1 weapon mounted flashlight - - revealed a total of sixteen "Speer .40 caliber" cartridges in the weapon (one in the chamber and fifteen in the magazine). The magazine had a capacity of 15 cartridges. Officer Crawford normally carried the weapon with the magazine fully loaded and one in the chamber. He also carried two, fully loaded magazines on his duty belt, for a total of forty-six cartridges. The countdown showed no cartridges were missing.

Officer Crawford had a department issued Taser X26 on his duty belt. The electronic control device (ECD) was not deployed. The ECD was downloaded and returned to Officer Crawford.

## **THE COUNTDOWN OF DECEDENT'S WEAPON**

Decedent was in possession of a Smith and Wesson BG Bodyguard five shot revolver. The revolver was loaded to capacity with five Corbon .38+P cartridges. A records check on the handgun revealed that on January 28<sup>th</sup>, 2014, the gun was stolen in an auto burglary under LVMPD event number 140128-0425.

On February 3, 2014, Detective Bunn received a call from Gun Owner, the victim of the auto burglary. She said that her purse and gun were stolen from her car in the early morning hours of January 28, 2014. She said that when she realized she had been victimized, she audibly uttered a statement to herself about the theft. Gun Owner said a man asked her if she was okay and would help her look for her purse. She said the man stayed with her even after she called the police to report the theft. Gun Owner told Detective Bunn that the man who was with her on January 28, 2014, was the same man police shot on January 31, 2014.



Decedent's Smith and Wesson BG Bodyguard five shot revolver

## **FIREARMS EXAMINATION**

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

Both the Smith and Wesson Bodyguard .38 caliber five shot revolver and the Glock model 19 9mm handgun were test fired and found to be operational. The two "SPEER 9mm LUGER +P" cartridge cases recovered at the scene by LVMPD Crime Scene Analyst Olivia Klostermann were fired from Officer Solorio's Glock Model 19 9mm handgun.

Two bullets were collected from Decedent's body at autopsy. While both exhibited a similar overall appearance and similar general rifling characteristics as the Glock pistol, a conclusive identification could not be made due to insufficient microscopic detailing. The Smith and Wesson firearm, however, was conclusively excluded as the weapon which fired the two bullets.

## **AUTOPSY OF DECEDENT**

On February 2, 2014, at approximately 0800 hours, Clark County Medical Examiner Dr. Lary Simms performed an autopsy on the body of Decedent. During the examination, Dr. Simms noted a gunshot wound inside Decedent's mouth and a gunshot wound to Decedent's right hip. Dr. Simms recovered bullets from both wounds and turned them over to LVMPD Crime Scene Analysts for impound and testing.

After a completed autopsy, Dr. Simms determined the cause of death was multiple gunshot wounds and the manner of death was homicide. A postmortem toxicological analysis was completed and revealed numerous positive findings, including Morphine, Oxycodone, Oxymorphone and Tramadol. Individually, possible side effects from these narcotics include agitation, depression, mental or mood changes, or even hallucinations. The synergistic effect of combining these depressants and muscle relaxants certainly would have impaired Decedent's judgment and overall state of mind.

## **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 LVMPD police personnel. When intercepted by Officer Solorio, Decedent pulled a gun from his waistband and pointed it to his own head. He then refused to comply with repeated orders to retreat and drop his weapon. Instead, he continued to pursue Officer Solorio to a large brick wall, essentially trapping him. Officer Solorio had no means of escape and no area to protect himself from potential gunfire. As Decedent refused to comply with the orders and refused to relinquish his weapon, Officer Solorio was confronted by an actual imminent danger of being killed or suffering great bodily harm, which created in his mind an honest belief and fear that he, Officer Crawford, the bus driver and the bus passengers, were about to be killed or suffer great bodily injury. Based upon those appearances, fears and actual beliefs, Officer Solorio eventually shot Decedent, ending the threat; as such, Officer Solorio's actions were justified.

## **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 officer had probable cause to believe Decedent posed a threat of serious physical harm either to himself or other persons. Decedent brandished a firearm, pointed it at his own head, and approached Officer Solorio. He refused to comply with

orders to drop the weapon and instead continued to pursue Officer Solorio. These circumstances created probable cause to believe in the officer's mind that the Decedent posed a threat of serious physical harm to the officers, motorists, and bus passengers. 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 upon 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.