

REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Linda Lush on October 15, 2015

INTRODUCTION

In the morning hours of October 15, 2015, Las Vegas Metropolitan Police Department (“LVMPD”) officers attempted to make a traffic stop on an embezzled vehicle driven by Linda Lush (“Decedent”). Decedent refused to stop her vehicle, brandished a firearm and eventually pulled into a shopping plaza at 3400 South Jones. Officers observed Decedent point a firearm at a pedestrian and barricade herself in her vehicle for close to an hour. During this period of time, Decedent displayed erratic behavior that clearly demonstrated she was a danger to both herself and the community at large. Two (2) LVMPD SWAT teams were called to the scene. SWAT officers developed a plan to “pinch” Decedent’s vehicle in order to neutralize her ability to escape from her location and put more people at risk. During the pinch maneuver, Decedent shot three (3) times at a police vehicle occupied by SWAT officers and she was subsequently shot by four (4) SWAT snipers who fired close in time with each other. Decedent was pronounced dead at the scene.

INCIDENT DETAIL

On October 15, 2015, at approximately 8:36 am, LVMPD Detective Lilienthal was working in plain clothes and driving an unmarked vehicle in a covert capacity. Detective Lilienthal noticed a white Dodge Dart, bearing California license plate 7KSI263, traveling at a high rate of speed westbound on Desert Inn Road near Valley View Boulevard. Detective Lilienthal conducted a records check on the vehicle’s license plate and received an embezzled vehicle hit. Decedent was listed as the suspect for the embezzlement. Detective Lilienthal notified Enterprise Area Command (“EAC”) dispatch that he was behind an embezzled vehicle and requested a marked patrol unit make a felony vehicle stop. At 8:40 am, Officer Lam, operating in a marked LVMPD patrol unit, responded and positioned himself directly behind Decedent’s vehicle when it stopped at a red traffic signal on northbound Rainbow Boulevard at the

Sahara Avenue intersection. When the light turned green, Decedent continued northbound on Rainbow Boulevard and Officer Lam activated his emergency lights and chirped his siren to initiate a vehicle stop. Decedent did not stop and instead sped away from Officer Lam. Officers for community safety reasons chose not to engage in a chase and backed away from Decedent to avoid a high speed pursuit. An Air Unit responded and monitored Decedent's movements from the air while patrol units "bubbled" Decedent's vehicle.

At 8:47 am, while Decedent was stopped at a red light at the intersection of Jones Boulevard and Sahara Avenue, Officer Moss, operating in a marked LVMPD patrol unit, observed Decedent point a silver handgun at the inside roof of her vehicle. When the light turned green, Decedent continued southbound on Jones Boulevard. Officer Moss over dispatch broadcasted that Decedent was armed with a handgun and acting in an erratic fashion.

At 8:50 am, Decedent sped into the parking lot of the Mountain View Plaza strip mall at 3400 S. Jones Boulevard. Decedent drove to the southeast corner of the parking lot at a high rate of speed and almost struck a pedestrian, W. C., a custodian cleaning the parking lot. Decedent pointed a handgun at W.C. and told him to leave the area. Decedent drove away from W.C. and at 8:53 am positioned her vehicle in the center area of the north part of the parking lot.

Detective Lilienthal and several marked patrol units followed Decedent into the Mountain View parking lot. Detective Lilienthal parked his vehicle a few car lengths away from Decedent's position. It was decided by the Incident Commander (Sergeant Richard Barela) that, if Decedent attempted to leave the parking lot, Detective Lilienthal and a patrol officer would ram Decedent's vehicle to prevent her from leaving the area and further endanger the community. Sergeant Barela attempted to have the shopping plaza cleared of civilians and placed a traffic officer in the rear of the strip mall to ensure Decedent did not flee by foot. Officers observed Decedent acting erratically in the vehicle by waving a firearm around and flailing about in the vehicle. During the next thirty minutes, officers, using a PA system, tried to make contact with Decedent and get her to surrender.

At 8:57 am, Decedent called her parole officer. She left a voicemail stating that she's "dangerous and has a loaded .38 in [her] glove box." It was later determined that Decedent had actually called her parole officer earlier in the morning at 7:19 am and said "if cops come looking for me, I have a loaded .38 in my glove box." This information was relayed to the LVMPD crisis negotiation team.

LVMPD SWAT was notified and responded at approximately 9:20 am. At 9:25 am, Decedent shook her head back and forth when asked via the PA system to put the gun down. SWAT officers made contact with Sergeant Barela and took over all inner perimeter positions. SWAT snipers were positioned to the north, south, and west of Decedent's vehicle. SWAT snipers,

using the magnification of their scope, were also able to observe Decedent acting erratically including waving around a knife, waving around a firearm, writing on a piece of paper, drinking from a bottle of alcohol from the passenger side of the vehicle and smoking what appeared to be narcotics.

After approximately an hour into the standoff, with Decedent refusing to exit her vehicle, it was feared Decedent might attempt to drive her vehicle out of the parking lot. SWAT officers developed a plan to neutralize Decedent's vehicle. At 9:53 am, two (2) armored SWAT vehicles ("Bearcats") approached Decedent's vehicle from the front and back to "pinch" Decedent's vehicle. This would prevent it from becoming mobile. A SWAT tactical medic and LVMPD negotiator stationed at a PA station were also in one of the Bearcats. As the armored vehicles approached, Decedent attempted to move her vehicle. She fired her weapon three (3) times through the windshield of her vehicle at the approaching armored vehicle. Four SWAT snipers (Officers Zachary Adams, Jair Brown, Dewane Ferrin and William Marx) discharged their firearms striking Decedent in the head, neck and left arm.

Officers attempted to clear the vehicle with the ARMOR robot for officer safety reasons. However, the ARMOR robot was only able to clear Decedent's left hand. SWAT officers had to break the front passenger window to get inside the vehicle. When SWAT officers were able to open the front passenger window, they discovered that Decedent was no longer holding the firearm but it was pointed in their direction. SWAT officers removed the firearm and a tactical medic was called to check on Decedent. At 10:02 AM, the medic determined that Decedent was deceased.

The Clark County District Attorney's Office has completed its review of the October 15, 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 Z. Adams, J. Brown, D. Ferrin and/or W. Marx 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 Officers Z. Adams, J. Brown, D. Ferrin and/or W. Marx. 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 October 21, 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.

INVESTIGATION

Information from Witnesses

I. Civilian Witnesses

J.E.

J.E. was servicing fire extinguishers inside Wendy's Noodle Café across the street from the Mountain View shopping plaza when he saw several police officers walking around with rifles. J.E. stopped his work on the extinguishers and paid attention to what was happening across the street. From inside the restaurant, J.E. saw Decedent parked in the middle of the shopping complex across the street. He watched the Bearcats attempt to pinch Decedent's vehicle and saw white smoke coming from the area of Decedent's vehicle. Immediately after he saw the white smoke, J.E. also heard a loud boom which caused him to duck. J.E. recorded the above events with his personal cell phone and provided it to detectives.

C.D.

C.D. was working at Wendy's Noodle Café when he saw numerous police officers across the street on the east side of Jones Boulevard. C.D. watched the two Bearcats approach Decedent's vehicle, heard gunshots and saw smoke coming from Decedent's vehicle prior to the Bearcats making contact. C.D. believed he heard two (2) shots then two (2) louder shots immediately afterwards. After hearing the shots, C.D. went back to work in the back of the restaurant and did not witness any other police activity.

W.C.

W.C. was sweeping in the far southeast portion of the parking lot located at 3400 S. Jones when his attention was drawn to the LVMPD Air Unit flying above him. As W.C. watched the Air Unit, Decedent's vehicle sped into the parking lot and almost hit him.

W.C. walked over to the passenger side of Decedent's vehicle to yell at her for almost hitting him. As he approached the vehicle, Decedent pointed a gun at him and yelled, "Go! Go! Go!" W.C. grabbed his broom and dustpan and ran north through the parking lot.

W.C. only heard gunshots, and believed he heard three (3) to four (4).

II. Police Officers Statements

Detective Craig Lilienthal

Detective Lilienthal was on duty in a covert capacity and driving west on Desert Inn Road near I-15 when a white vehicle with California plates sped past him on the far right side of the road at a high rate of speed. Detective Lilienthal ran a records check on the California plate and learned Decedent was driving an embezzled vehicle. Decedent was listed as the suspect. Detective Lilienthal advised EAC dispatch and requested a traffic stop. A short time later, Detective Lilienthal observed marked patrol units unsuccessfully attempt to make a vehicle stop. Officers discontinued an active pursuit, however an air unit updated officers of Decedent's locations over the radio channel. A patrol unit advised over the radio that Decedent was armed with a handgun.

Detective Lilienthal observed Decedent pull into the Mountain View Plaza located at 3400 S. Jones Boulevard. Detective Lilienthal entered the plaza and observed Decedent speaking to a male in the parking lot who quickly ran north through the plaza away from Decedent.

Detective Lilienthal parked his vehicle in the middle of the parking lot so he could watch Decedent. Decedent stayed in the southeast part of the parking lot for a short amount of time and then moved her vehicle just north and east of Detective Lilienthal's location.

Detective Lilienthal had a very good view of Decedent's actions and saw her wave a gun around inside of her vehicle. Detective Lilienthal was able to broadcast real-time information of Decedent's actions over the radio.

Once SWAT arrived, Detective Lilienthal was told to stay in place until SWAT took over the inner perimeter. Detective Lilienthal watched a SWAT Bearcat approach the front of Decedent's vehicle, and a second SWAT Bearcat approached from the south. Detective Lilienthal believed they were going to pinch Decedent's vehicle

As the first Bearcat approached the front of Decedent's vehicle, Detective Lilienthal observed Decedent raise her gun and fire two (2) or three (3) shots in the direction of the Bearcat. The front windshield of the Bearcat was struck by one of Decedent's rounds. Detective Lilienthal took a position of cover inside of his vehicle and heard more gunshots. Detective Lilienthal observed Decedent slumped over in the driver's seat of her vehicle.

Officer Homan Lam

Officer Lam was in a marked patrol unit in the area of Jones Boulevard and Sahara Avenue when Dispatch broadcasted an unmarked unit was following a stolen vehicle and requested a traffic stop. Officer Lam observed the vehicle at Rainbow Boulevard and Sahara Avenue at a stoplight. Officer Lam moved in behind Decedent's vehicle while the traffic light was still red. Once the light turned green, Decedent drove north on Rainbow Boulevard and Officer Lam activated his lights, but soon realized Decedent was not going to pull over for officers.

Decedent sped off, and Officer Lam stopped following her. An air unit took over observing the vehicle and broadcasted over the radio that Decedent pulled into a shopping center in the area of Jones Boulevard and Desert Inn Road. Officer Lam arrived north of the complex that Decedent was in while other officers arrived south of the complex. Officer Lam joined the arrest team on the north side until he was relieved by SWAT officers. Officer Lam did not witness the pinching technique but heard shots.

Officer John Moss

Officer Moss was in the area of Jones Boulevard and Sahara Avenue with Officer Lam when he heard the broadcast of a stolen vehicle located by officers. Officer Moss drove southbound on Jones Boulevard and then westbound on Sahara Avenue. Officer Moss observed officers attempt to stop the vehicle driven by Decedent who did not stop and went southbound on Jones Boulevard.

Stopped at the red light at Jones Boulevard and Sahara Avenue, Officer Moss observed Decedent hold up a silver handgun and point it at the roof of her vehicle. Officer Moss broadcasted the information about the handgun. The light changed and Decedent drove the vehicle southbound on Jones Boulevard and eventually pulled into a shopping center at 3400 S. Jones Boulevard just north of Spring Mountain Road.

Officer Duane Nakagawa

Officer Nakagawa, in a marked patrol unit, pulled behind the patrol vehicles and Decedent at Rainbow Boulevard and Sahara. He observed the patrol officer directly behind Decedent activate his lights and siren to initiate a vehicle stop. Decedent accelerated at a high rate of speed away from the officers. The officers decided to end the pursuit. An air unit continued to follow Decedent and communicated with patrol vehicles.

Officer Nakagawa went to the area of Jones Boulevard and Spring Mountain Road after Decedent had driven into a shopping center parking lot. Officer Nakagawa pulled into the

alleyway behind the shopping center and located an open door to one of the businesses. He went inside and made contact with the employees and advised them of the incident. Officer Nakagawa went to the front window where he had a clear view of where Decedent was parked.

Officer Nakagawa heard an officer talking on the PA system attempting to get Decedent to exit the vehicle. He observed Decedent sitting in the car holding a silver handgun out the window, writing something on a paper and talking on a cell phone.

Officer Nakagawa remained inside the business until SWAT entered the parking lot with the Bearcats and pinched Decedent's vehicle. Officer Nakagawa heard shots fired, but did not know who had fired.

Sergeant Richard Barela

Sergeant Barela was working Bolden Area Command as a patrol supervisor when he heard a broadcast of a woman in an embezzled vehicle. The woman had brandished a gun as officers attempted a vehicle stop on her in the Enterprise Area Command (EAC). Sergeant Barela switched to the EAC radio channel and monitored the radio traffic while en route to the area of Spring Mountain Road and Jones Boulevard where the suspect vehicle had stopped in a parking lot. Upon his arrival, Sergeant Barela parked near Jones Boulevard and Desert Inn Road and made contact with Sergeants Bohanon and Campbell. Sergeant Barela set up an arrest team near the north side of the parking lot where the suspect vehicle was parked. After communicating with the other sergeants, it was decided that if the suspect vehicle became mobile the officers on the scene would conduct either a ramming or pinch of the vehicle.

Sergeant Barela assigned an officer to make verbal contact with Decedent using the PA system on a patrol vehicle.¹ The officer on the PA system identified himself as a police officer and encouraged Decedent to exit the vehicle unarmed. Sergeant Barela saw Decedent in the front seat of the vehicle ignoring the officer's verbal commands.

SWAT was contacted and arrived in the area. SWAT officers made contact with Sergeant Barela and took over his position and all of the inner perimeter locations handled by patrol officers. SWAT positioned Bearcat armored vehicles in the parking lot north and south of Decedent's vehicle.

The Bearcats moved in from the south and north toward Decedent's vehicle to execute a pinch maneuver. As the Bearcats moved forward and made contact with Decedent's vehicle,

¹ Several officers interviewed stated that they heard an officer trying to make contact with Decedent via the PA system and that Decedent ignored the numerous commands to exit the vehicle.

Sergeant Barela heard one (1) shot, which he believed came from Decedent, then several rounds fired by SWAT snipers. Sergeant Barela continued to watch Decedent and thought she was moving inside her vehicle. Several minutes later, SWAT was able to determine Decedent was deceased.

Officer Brett Levasseur

Officer Levasseur was working in a patrol unit and pulled into the parking lot directly across from where Decedent was parked. Other officers were taking cover behind Wendy's Noodle Café. Officer Levasseur deployed with his rifle and moved to the corner of the building. After some time, Officer Levasseur moved to the main entrance on Jones Boulevard where other officers were taking cover behind a patrol vehicle. From this location, an officer utilized the PA system to address the vehicle.

Officer Levasseur saw Decedent sitting in the front seat of the vehicle and she seemed very agitated. He observed Decedent pointing a silver handgun out of the window and holding up a piece of paper, but he could not see what was written on the paper. Officer Levasseur observed SWAT snipers arrive and take a position near his location. After SWAT was in position, all patrol officers with their rifles deployed were advised to secure their rifles.

Officer Levasseur observed the SWAT Bearcats move quickly toward Decedent's vehicle and pinch it in place. Officer Levasseur heard a gunshot come from Decedent's vehicle and believed the round ricocheted up over his head. He heard the SWAT snipers fire their weapons. Officer Levasseur saw the bullets impact the windows of Decedent's vehicle.

III. SWAT Officers



Gunshot defect to the passenger side of the front approaching Bearcat's windshield

Officers in the Front Approaching Bearcat

SWAT Officer Jonathan Collingwood was assigned the task of driving the front approaching Bearcat. He coordinated with the officers in rear approaching Bearcat to pinch Decedent's vehicle at the same time. As Officer Collingwood approached, Decedent's vehicle drove forward. She proceeded to raise her gun and fire at Officer Collingwood and other officers in the Bearcat. Her shots hit the Bearcat's windshield on the passenger's side. Both Bearcats collided with Decedent's vehicle, successfully pinching it. Officer Collingwood observed Decedent's windshield shatter and believed SWAT snipers had fired at her. The SWAT officers in Officer Collingwood's Bearcat remained in the vehicle as the LVMPD ARMOR robot and SWAT officers from the rear approaching Bearcat cleared the vehicle.

SWAT Officer Cody Thompson was inside the front approaching Bearcat and positioned in the back. As the Bearcat approached and collided with Decedent's vehicle, Officer Thompson observed Decedent point and fire her handgun at the Bearcat. Officer Thompson stated he feared for his life, as well as the lives of the SWAT officers who were seated in the front of the vehicle. Officer Thompson advised the occupants of the Bearcat to "tuck in" and take cover.

SWAT Officer Ramon Nakhla was in the front approaching Bearcat and sat in the front passenger seat next to the driver, Officer Collingwood. As the Bearcat approached, Officer Nakhla observed Decedent point and fire her handgun at him, causing him to fear for his life and the safety of all the officers in the Bearcat. Officer Nakhla ducked down in an attempt to get behind the engine block for better cover. The Bearcat collided with Decedent's vehicle and "shot out" was broadcasted over the radio.

SWAT Officer Theodore Carrasco was in the front approaching Bearcat sitting directly behind the driver, Officer Collingwood. As the Bearcat approached Decedent's vehicle, Officer Carrasco observed Decedent in the driver's seat holding a handgun. When the Bearcat was approximately five (5) yards from Decedent's vehicle, Decedent fired her gun at least two (2) times at the armored vehicle causing Officer Carrasco to be in fear for his life and ducked behind the engine block area of the Bearcat for cover.

Officer Jay James

SWAT Officer James deployed in the rear approaching Bearcat positioned in the back. As the Bearcat approached, Officer James observed Decedent's vehicle move forward. Officer James saw rounds fired from Decedent's vehicle hit the front approaching Bearcat's windshield and hood. Simultaneously, both Bearcats collided with Decedent's vehicle.

Officer James heard “shot out” broadcasted over the radio, indicating SWAT snipers had fired their weapons. Officer James was part of the group of SWAT officers who cleared Decedent’s vehicle. He observed Decedent’s right hand south of the gear shift on the center console. The gun was located in front of the gear shift, and using gloved hands, Officer James removed the gun from the vehicle and placed it on the ground.

Officer Karl Knowles

SWAT Officer Knowles joined SWAT Officer Zachary Adam on the roof of the business complex approximately seventy-five (75) yards south of where Decedent’s vehicle was parked. Officer Knowles heard an officer over the PA system trying to de-escalate the situation.

Officer Knowles made contact with Officer Adam. Officer Adam moved to a better location where his view was not obstructed. While Officer Adam moved to a better position on the roof, Officer Knowles provided him with cover. Officer Knowles saw Decedent was armed with a firearm and was moving around inside the vehicle. Officer Knowles watched as Decedent drank from a bottle of liquor and waved around the gun. Officer Knowles noted that the parking lot west of Decedent’s location was not completely evacuated. He saw a news team, as well as several civilians, walking around in the parking lot. Officer Knowles stated that Decedent had the ability to shoot towards the crowd of civilians who were across the street.

Once Officer Adam got into position, Officer Knowles moved a few feet away and found another position on the roof. Officer Knowles grabbed his tripod from his pack while the drivers of the Bearcats pinched Decedent's vehicle. Officer Knowles watched as Decedent fired several times, striking the Bearcat in front of her vehicle. Officer Knowles heard several shots and knew other snipers had fired. By the time Officer Knowles was in a position to fire his weapon, the threat had ended.

Lieutenant John Pelletier

Lieutenant Pelletier was the SWAT commander for the incident. He was notified by Dispatch of an incident of a stolen vehicle where the armed driver wanted to commit suicide.

Lieutenant Pelletier requested to be connected to the incident commander on scene and was connected to Sergeant Barela. Sergeant Barela confirmed the information about Decedent and the vehicle being barricaded in the parking lot. Lieutenant Pelletier determined the call warranted a SWAT call out.

Lieutenant Pelletier arrived and made contact with the crisis negotiators. The negotiators received information on Decedent and passed it on to Lieutenant Pelletier that Decedent had shown she had a handgun and had an extensive criminal record. Lieutenant Pelletier was also informed of Decedent's suicidal actions.

SWAT snipers were in positions monitoring Decedent. The snipers broadcasted on the SWAT channel that Decedent was smoking, drinking and possible hyping herself up while she was sitting in the vehicle. Lieutenant Pelletier determined there was an immediate need to contain the vehicle in the parking lot and decided to use the Bearcat armored vehicles to stop Decedent from leaving in her vehicle.

IV. OFFICERS WHO DISCHARGED THEIR WEAPONS



Position of officers who fired their weapon with trajectory

Officer Dewane Ferrin

Officer Ferrin is a member of SWAT, assigned as a sniper. He arrived to this call and announced over the SWAT radio that he arrived. Officer Ferrin believed he was the first arriving sniper on scene. It was his primary role as a sniper to provide real-time intelligence to other responding SWAT officers and the command post. He also had to ensure other responding snipers got into proper position to cover all areas of the scene.

Officer Ferrin made contact with patrol to confirm the white sedan was the suspect (Decedent's) vehicle. Officer Ferrin took a position lying behind a parked vehicle west of the Decedent's vehicle. From his position Officer Ferrin saw the front of the Decedent's vehicle and into the vehicle through the windshield. He saw Decedent sitting in the driver's seat and used the scope mounted to his rifle to monitor Decedent.

Officer Ferrin saw Decedent place a handwritten note on the dash of the vehicle. Officer Ferrin was not able to read the complete note. Decedent appeared fidgety, nervous, and acted erratically. He witnessed Decedent wave around a silver plated semiautomatic handgun and brandish a large knife. He also witnessed Decedent drink from a coffee mug, finish a large bottle of alcohol and smoke what appeared to be narcotics. At one point, Decedent rolled her window up and down, yelled at someone out the window, and moved her vehicle forward a few feet before stopping.

Officer Ferrin heard Officer Brown announce over the radio he was establishing a position north of Decedent's vehicle. A few minutes later Officer Ferrin heard Officer Adam arrive and ask where he should position himself. Officer Ferrin directed Officer Adam to set up a position south of Decedent's vehicle to cover the driver's side door of the vehicle. Officer Knowles announced over the radio he arrived and Officer Ferrin directed him to join Officer Adam at his position.

A few minutes later Officer Marx walked up to Officer Ferrin's location and asked where he should position himself. Officer Ferrin directed Officer Marx to position himself next to him in case Decedent's vehicle became mobile so they could reposition themselves to keep Decedent in sight.

Officers Ferrin and Marx were positioned eighty (80) yards west of Decedent's vehicle. Directly behind their position, Officer Ferrin noted there was a heavy flow of civilian traffic that had been diverted off Jones. He attempted to direct pedestrian traffic to evacuate the area by informing them there was an armed women directly across the street. Officer Ferrin was met with some verbal resistance and a large number of civilians continued to walk around the parking lot watching the police activity.

As the armored vehicles approached to pinch the vehicle, Decedent put her vehicle in drive and rolled forward a few feet, raised her handgun, and fired one (1) round in a westerly direction at the armored vehicle. Officer Ferrin fired one (1) round at Decedent. After firing his first round, Officer Ferrin saw Decedent move towards the passenger side of her vehicle while still holding the handgun, so he made the decision to fire another round at Decedent. After the second round, Decedent fell out of his view. Officer Ferrin knew Officer Marx, who was positioned a few feet away, had also fired his weapon.

Officer Ferrin took steps to preserve the scene around his location. Officer Ferrin stated he shot Decedent to prevent her from shooting any of the civilians in the parking lot behind him, any other SWAT officers, or any uniformed police officers who were in the area.

Officer William Marx

Officer Marx arrived at the scene and deployed as a sniper unit. Officer Marx crossed Jones Boulevard, and exited his vehicle west of Wendy's Noodle Café. As Officer Marx exited his vehicle, he noticed the parking lot west of Jones Boulevard was still active with vehicle and pedestrian traffic.

On his way to Officer Ferrin's position, Officer Marx directed two (2) women in a vehicle to leave the area because they were in the line of fire from Decedent's vehicle. Officers Ferrin and Marx established a prone position, removing their backpacks and resting their rifles on top of them. Officer Marx used the scope on his rifle to look into Decedent's vehicle.

Officer Marx observed Decedent sitting in the driver's seat of the vehicle. She appeared frantic and waved a large knife around before placing it on the dash of her vehicle. After Decedent put the knife down, she brandished a chrome plated semiautomatic handgun. She also wrote a note and placed it on the dash. Decedent pointed the handgun out of the front windshield towards Officers Ferrin and Marx's position. While Decedent was pointing the gun, Officer Marx took his weapon off safe in anticipation of engaging Decedent when he heard Officer Brown broadcast Decedent's finger was not on the trigger of the gun. Decedent grabbed a large bottle of alcohol from the passenger side of the vehicle and drank from the bottle until it was empty. As the incident progressed, Decedent became more frantic. She rolled her window down and shouted at someone, looked out the back window of her car, leaned over to the passenger seat of her vehicle, and at one point appeared like she was going to get out of the car and run.

A plan was devised to pinch Decedent's vehicle. As the armored vehicles approached, Decedent fired one (1) round west towards the armored vehicle. Officer Marx fired one (1) round from his rifle at Decedent. Decedent was still sitting up and appeared to be firing her handgun, so Officer Marx fired a second round at Decedent. After his second shot, Decedent fell out of Officer Marx's view.

Officer Marx left his rifle in place and took steps to make sure the scene around him was protected.

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Officer Jair Brown

Officer Brown arrived on the call and deployed as a sniper. Officer Brown took his rifle and backpack and climbed on top of the Hachi restaurant. Once on the roof, Officer Brown established a position on the northeast corner on top of an air conditioning unit.

Officer Brown used the scope attached to his rifle to observe Decedent and saw she was armed with a silver semi-automatic handgun in her right hand. Decedent moved her vehicle about a car and a half-length forward which forced Officer Brown to change his position. From this new position, Officer Brown had a vantage point looking into Decedent's vehicle through the windshield and passenger side window. Officer Brown watched Decedent write a note and place it on the dash of her vehicle.

Officer Brown observed Decedent stuff a substance into a glass narcotics pipe and smoke it. Decedent appeared to become more aggravated as officers used a PA system to address her and request she surrender. Decedent finished a bottle of alcohol that she had in the vehicle, put a CD in the stereo and turned up the music. It appeared to Officer Brown that Decedent was hyping herself up to commit suicide. He further observed Decedent hold the handgun in her right hand, placed the barrel of the gun under her chin, placed her finger on the trigger of the gun, took a deep breath and waited a second. Decedent brought the gun down and started crying and shaking her head. Decedent also held the gun up to her right temple area of her head, put her finger on the trigger, and then lowered the gun.

As the armored vehicles approached for the pinch, Decedent appeared to be tracking the rear armored vehicle in her rearview mirror and put her vehicle in drive. Due to Decedent's vehicle moving, Officer Brown's view of Decedent became obstructed by the A pillar of the vehicle. Officer Brown moved a few steps west to maintain his view of Decedent through the windshield. Officer Brown saw dozens of people in the parking lot across the street from the Mountain View shopping plaza. Officer Brown reported clearly seeing a lady with two (2) kids, one on each side of her, holding their hands walking towards a store. As Officer Brown was scanning back to align Decedent in his scope, he heard a pop and saw a cone of glass come out of Decedent's windshield. Looking through his scope Officer Brown saw Decedent's handgun recoil. Officer Brown fired one (1) shot at Decedent. He announced over the radio "shot out" to notify the command post he had fired. Other snipers announced over the radio "shot out," advising they had fired.

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Officer Zachary Adam

Officer Adam responded to this call and arrived at the scene from the south. Officer Adam was directed to set up to the south of the suspect vehicle. Officer Adam climbed on top of a business and set up a firing platform.

Using the scope mounted on his rifle, Officer Adam saw Decedent was armed with a semiautomatic handgun and appeared agitated. Officer Adam learned from radio traffic that Decedent had made suicidal gestures. Officer Adam watched Decedent put a pipe in her mouth and light it. Officer Adam could not tell if it was a marijuana or a narcotics pipe, but when he did not see any smoke coming from the pipe he assumed it was a narcotics pipe.

As the armored vehicles approached for the pinch, Decedent moved her vehicle forward a few feet which caused Officer Adam to stop looking into his scope for a few seconds when he broadcasted over the radio she was going mobile. Officer Adam returned to looking into his scope and saw Decedent raise the gun in her right hand toward the approaching armored vehicle. Officer Adam heard a gunshot and saw Decedent aiming her weapon at the approaching vehicle. Officer Adam heard a second gunshot and fired one (1) round towards Decedent through the driver's side door, just below the window. After firing the round, Officer Adam cycled the bolt of his rifle in case a follow-up shot was needed. Decedent was motionless and a follow up shot was not needed.

OFFICER WEAPON COUNTDOWNS

On October 15, 2015, Officers Adam, Brown, Ferrin, Knowles, and Marx had their rifles counted down at LVMPD headquarters.

At the completion of the countdown, it was determined Officer Adam had four (4) rounds in his magazine and discharged his firearm one (1) time during this incident.

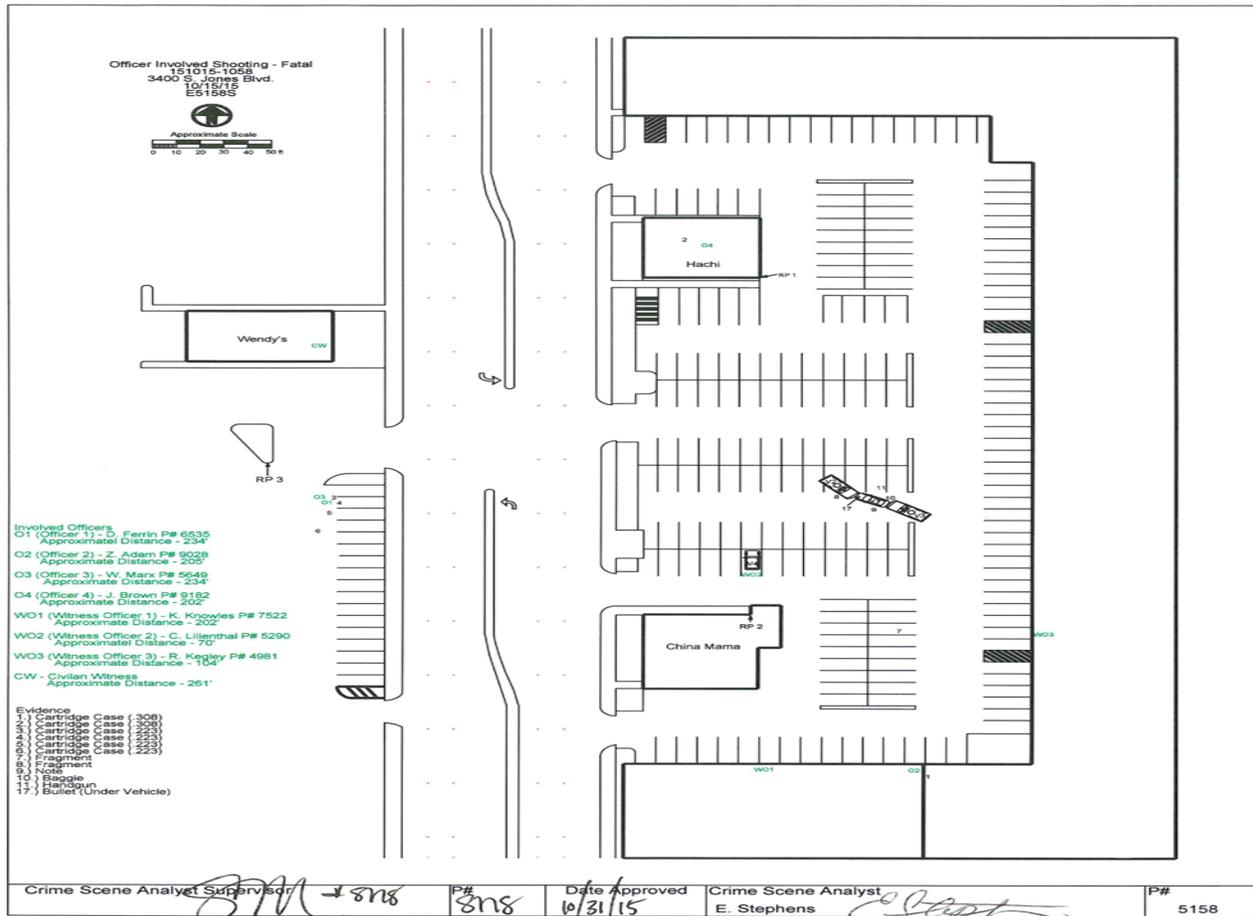
At the completion of the countdown, it was determined Officer Brown had ten (10) rounds in his magazine and discharged his firearm one (1) time during this incident.

At the completion of the countdown, it was determined Officer Ferrin had sixteen (16) rounds in his magazine and discharged his firearm two (2) times during this incident.

At the completion of the countdown, it was determined Officer Knowles had ten (10) rounds in his magazine and did not fire his rifle during this incident.

At the completion of the countdown, it was determined Officer Marx had sixteen (16) rounds in his magazine and discharged his firearm two (2) times during this incident.

EVIDENCE AT THE SCENE



CSA Stephens diagram of the scene

The scene was predominantly located at the Mountain View Plaza strip mall at 3400 S. Jones Boulevard. It was located on the east side of Jones Boulevard with four (4) driveway entrances/exits located throughout the length of the strip mall area. A strip of stores were located along the north, south, and east side of the mall with the central area consisting of an open parking lot. The Hachi restaurant was situated near the northwest corner of the parking lot. The China Mama restaurant building was situated near the southwest corner.

The Spring Mountain Center shopping area located at 3301-3475 S. Jones Boulevard was located directly across the street from the Mountain View Plaza on the west side of Jones Boulevard. Spring Mountain Center had open parking along the east side and four (4)

driveway entrances/exits situated along its length. The Wendy's Noodle Café was located along the east end of the parking lot, directly across from the scene location.

I. Vehicles

- #1: 2015 white 4 door Dodge Dart bearing California plate 7KSL263, VIN 1C3CDFB9FD336562.
- #2: 2005 Lenco BearCat (LVMPD vehicle #9456) bearing Nevada plate EX31560, VIN 1FDAF57PX5ED16773 (front approaching armored vehicle).
- #3: 2006 Lenco BearCat (LVMPD vehicle #9472) bearing Nevada plate EX31646, VIN FDAF57P06EB61460 (rear approaching armored vehicle).



Final position of the three vehicles

II. Officer Positions

Officer Adam was positioned on top of the pony wall on the roof of the south building (Nevada Real Estate Corp.). The distance measured from his location to Decedent was approximately 205 feet.

Officer Brown was positioned on top of the Hachi restaurant building on the north side of the air conditioning unit. The distance measured from his location to Decedent was approximately 202 feet.

Officer Ferrin was positioned at the rear right side of vehicle #5 (see Diagram) in a prone position. The distance measured from his location to Decedent was approximately 234 feet.

Officer Knowles was positioned on the top of the roof of the south building (Nevada Real Estate Corp.) at the west end. The distance measured from his location to Decedent was approximately 202 feet.

Detective Lilienthal was seated inside vehicle #4 (see Diagram) on the front left seat. The distance measured from his location to Decedent was approximately seventy (70) feet.

Officer Marx was positioned at the rear right side of vehicle #5 (see Diagram) in a prone position, on the north side of Officer Ferrin. The distance measured from his location to Decedent was approximately 234 feet.

III. Location of Decedent

Decedent was seated in the front left seat of vehicle #1. She was barefoot and both of her feet were extended onto the floorboard near the vehicle's pedals. Decedent was leaning slightly forward and to her right side with her chin resting on her chest. A brown purse was on her lap with her hands resting on top. There was a black leather jacket tucked between the door and the seat on her left side. There was an injury to the back right side of her head. There were numerous defects located to the front and back of her shirt and it was soaked with apparent blood. Blood stains were present on her face, arms, and hands. A broken glass pipe with a black residue was on her lap underneath the purse.

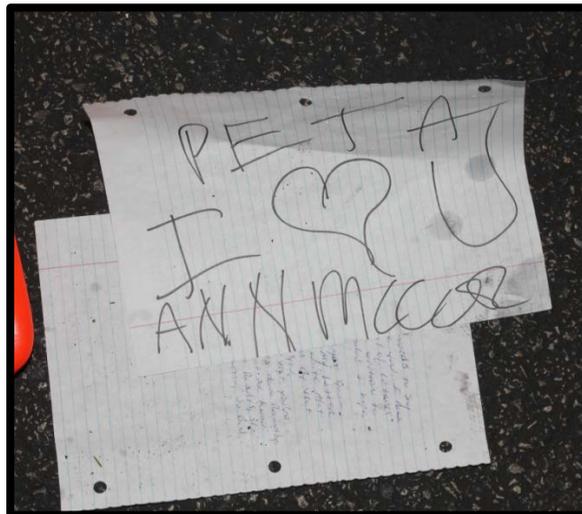
IV. Evidence from the scene

There was damage to both the front and rear end of vehicle #1. The hood of the vehicle was bent upwards in the middle. Both front door windows were shattered and there was broken glass scattered on the ground under both doors. The glass was missing from the left side rearview mirror. There were apparent blood stains present on the front left door. A perforating bullet hole was located through the top center portion of the hood with a bullet impact located in the center of the hood. Three (3) bullet holes were located through the center of the windshield and four (4) bullet holes were located through the left side. A perforating bullet hole was located in the front left door above the door handle. A bullet fragment was located on the bottom edge of the windshield underneath the windshield wiper.



Photograph of Decedent's vehicle with CSA stickers. Pink arrows show where Decedent fired her weapon

Handwritten notes were on the ground on the south side of the vehicle adjacent to the left rear tire. A plastic baggie containing an unknown white substance was on the ground near the right side of the vehicle. A bullet was located underneath the vehicle. A Jimenez Arms J.A. Nine 9mm semiautomatic handgun, serial number 135830, with apparent blood stains was located on the pavement on the north side of the vehicle. The handgun was found to contain a cartridge inside the chamber and a magazine containing four (4) cartridges. A bullet fragment was located on the pavement in the parking lot between vehicle #1 and the south edge of the shopping center.



Note found on the ground by Decedent's vehicle

The gearshift of Vehicle #1 was in the drive position and the keys were not in the ignition. Both the front and rear passenger areas of the vehicle contained miscellaneous personal items. A notebook with handwritten notes, an address book, and two (2) bullet fragments were on the dashboard. Broken glass, an ashtray, an empty bottle of Wild Turkey bourbon,

and miscellaneous personal effects were on the front right seat. A set of vehicle keys was on the front right floorboard along with miscellaneous personal items. Bullet fragments and a knife were on the front left floor board. A bullet fragment was located on the back deck behind the rear left seat. There were apparent blood stains/tissue present on the windshield, steering column, dashboard, interior door panels, headliner, and seats. Decedent was seated in the front left seat.

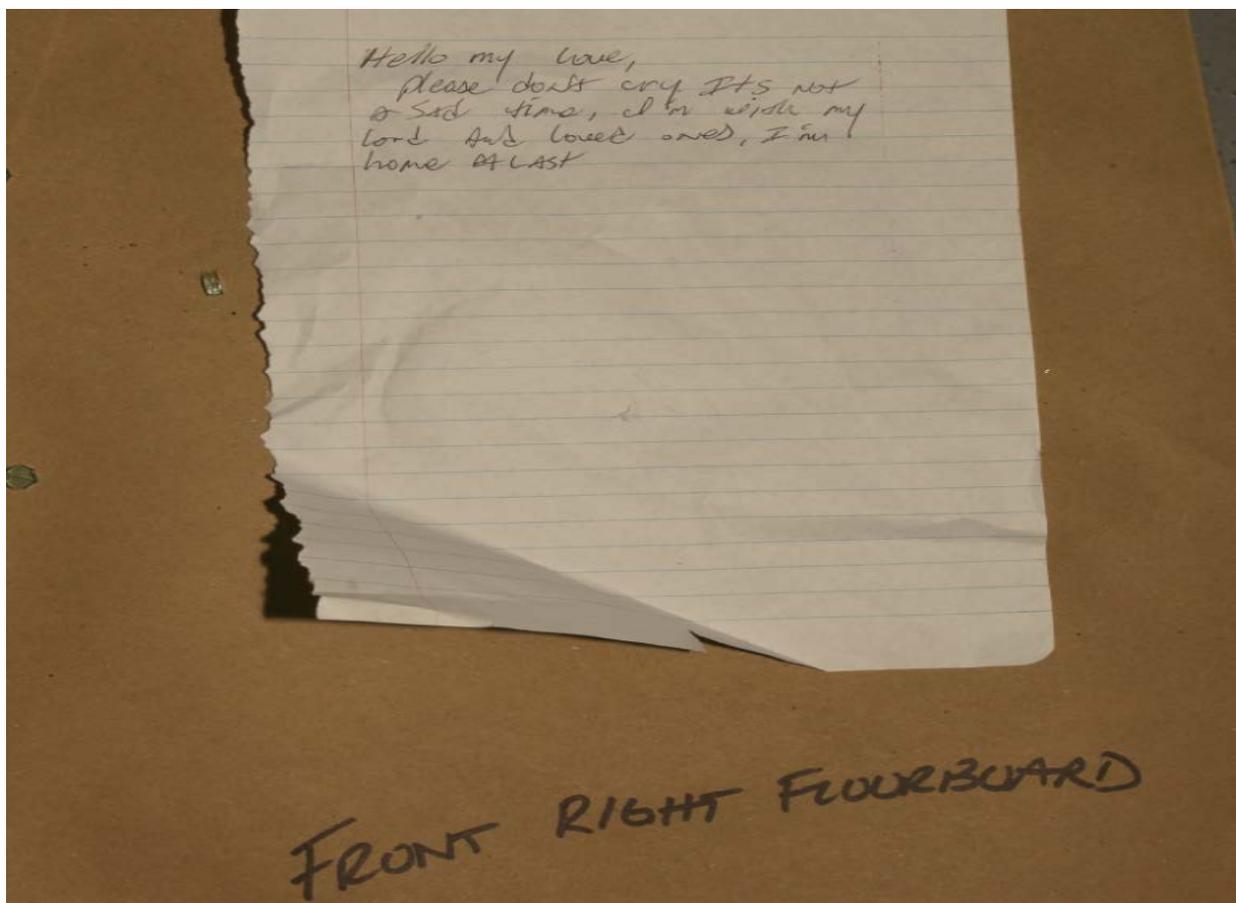
Additionally, CSA Stephens recovered and impounded Decedent's firearm (Jimenez Arms 9mm), one (1) cartridge casing from both Officers Adam's and Brown's position and four (4) cartridge casings from officers Marx and Ferrin position. She also found numerous bullet fragments in the pavement by vehicles 1 and 2. A plastic baggie with an unknown white substance was found near vehicle 1 (Decedent's vehicle) and a glass pipe was recovered from Decedent's lap.

SEARCH WARRANT

A telephonic search warrant was obtained for a white 2015 Dodge Dart bearing California plate 7KSL263. The warrant was first served on October 15, 2015, at 1600 hours while the vehicle was still located at 3400 S. Jones Boulevard. After Decedent's body was removed from the vehicle, as well as some unsecured evidence (bullet fragments and a loose piece of paper containing a suicide note), a decision was made to seal and tow the vehicle to the LVMPD Forensic Laboratory to be processed in a more controlled environment.

Officers found three expended (3) cartridge cases (later tested in a Firearm Examination) and over seventy (70) rounds of intact 9mm ammunition in vehicle. They also found a Shen stainless steel knife with a curved blade with a black handle with nine (9) spikes coming out from the underside, on the front left floorboard. A piece of white paper with a handwritten note was found on the front right floorboard and a spiral bound notebook with numerous handwritten notes with apparent blood stains was found on the dashboard.

Several of the recovered handwritten notes could be categorized as farewell letters and/or "suicide notes".



One of several "farewell" letters found in Decedent's vehicle.

FIREARM EXAMINATION

On February 5, 2016, Forensic Scientist Anya Lester submitted the Firearms & Tool Marks Report. Lester determined that all three 9mm casings found inside Decedent's vehicle were fired from the Jimenez Arms 9mm found in Decedent's possession. The firearm forensics matched the statements made by Officers Ferrin, Marx, Brown and Adams regarding the amount of times they fired their weapon.

VIDEO EVIDENCE

Detectives assigned to this matter were able to recover video surveillance of the incident from several different sources

Mountain View Plaza Surveillance – 3400 S. Jones Boulevard

On October 15, 2015, Forensic Multimedia Analyst Flynn copied footage from Mountain View Shopping plaza. Two of the cameras (cameras 8 and 9) shows significant portions of the

event. Specifically, you can see Decedent's vehicle move forward as the Bearcats move toward the vehicle at 9:52:49-50. Shortly thereafter, both cameras also show what appear to be shots coming from Decedent's vehicle right before the Bearcats make contact.

LVMPD Vehicle #9456 Bearcat video

Videos from the SWAT armored vehicles were also recovered. The most relevant video surveillance came from the Bearcat that approached Decedent's vehicle from the front. The vehicle was equipped with a camera mounted on the driver's side roof of the vehicle. The camera's view was to the front of the vehicle and approached Decedent from the front.

Time (hours)	Description of Event / Action
09:53:07	LVMPD vehicle #9456 approached from the north.
09:53:23	LVMPD vehicle #9472 approached from the south.
09:53:25	Decedent aimed a silver handgun out the front window of her vehicle.
09:53:26.319	Decedent fired her first round out the windshield of her vehicle.
09:53:26.352	Decedent fired her second round out the windshield of her vehicle.
09:53:26.747	LVMPD vehicle #9456 impacted the front passenger side of Decedent's vehicle.
09:53:26.822	Decedent fired her third round out the windshield of her vehicle.
09:53:26.922	The first round from Officers Ferrin / Marx's location impacted Decedent's windshield.
09:53:27.756	The second round from Officer Ferrin / Marx's location impacted Decedent's windshield.
09:53:28.987	The third round from Officers Ferrin / Marx's location impacted Decedent's windshield.
09:53:29.483	The fourth round from Officers Ferrin / Marx's location impacted Decedent's windshield.
09:53:29.524	Officer Adam's round impacted Decedent's driver's door, shattering the window.
10:08:28	A SWAT rescue team from the armored vehicle positioned behind Decedent's vehicle approached Decedent's vehicle on the passenger side.
10:08:39	The rescue team attempted to open Decedent's passenger side rear door, but it was locked.
10:08:46	The rescue team broke the passenger side window to unlock the door.
10:09:14	The rescue team removed Decedent's handgun from her vehicle and placed it on the ground outside the passenger side door.
10:09:37	The rescue team medics examined Decedent.



Still from video surveillance taken from Bearcat #9456 showing Decedent's first gunshot at the SWAT vehicle and smoke associated with the gunshot

There was also video recovered from the rear approaching Bearcat, the ARMOR robot which was activated after shots were fired and a cell phone recovered from civilian witness J.E. who took the video from across the street.

AUTOPSY

On October 16, 2015, an autopsy was performed on the body of Decedent by Doctor Timothy Dutra of the Clark County Corner Office. Decedent had a gunshot wound to her head, three to her neck and one to upper left arm. The cause of her death was gunshot wounds to the head and the neck.

Per the Toxicology Report, Decedent was found to have alcohol, amphetamine, methamphetamine, THC and cocaine in her system. The report noted that the amount of methamphetamine found in Decedent's blood was in the range that methamphetamine abusers have been reported to exhibit violent and irrational behavior.

DECEDENT'S RELEVANT HISTORY

On July 8, 2005, Decedent was convicted of Robbery with the Use of a Deadly Weapon in case C185661. She was sentenced to thirty-five (35) to one hundred fifty six (156) months plus an

equal and consecutive thirty-five (35) to one hundred fifty six (156) months in Nevada Department of Corrections. She paroled out of prison in February of 2014. Her parole was set to expire on May 2, 2017. She was on parole at the time of this incident.

On December 8, 2015, Detectives interviewed C.M. who stated she and Decedent were not legally married, but considered themselves to be married. They met while they were incarcerated in Nevada Department of Corrections and wanted to get married, but were not granted permission by their parole officers. C.M. stated Decedent was very depressed for some time and had attempted suicide in December 2014. Decedent was transported to Sunrise Hospital & Medical Center after attempting to stab herself at her residence. C.M. was not supposed to be with Decedent, but was with her when she attempted suicide. C.M. claims she called 911. When police arrived and conducted a records check on C.M. and found her in violation of her parole she was arrested and was sent back to prison. C.M. told detectives that she believed Decedent committed suicide by cop.

Per a Parole Report on December 10, 2014, Decedent told her out-of-state sister that she was going to commit suicide. Decedent's sister contacted Decedent's parole officer who arrived at Decedent's residence to discover that Decedent had barricaded herself in the bathroom of her residence while Henderson police officers were trying to make contact with her. Officers made forced entry into the bathroom and found Decedent with multiple self-inflicted stab wounds in her abdominal area. She was transported to Sunrise. It was also noted in the report that Decedent was diagnosed with Bi-Polar disorder and refused to take her medication. It was also mentioned that Decedent had made a prior suicide attempt.

On July 27, 2016, a District Attorney Investigator talked with Decedent's sister who told the investigator that she was aware of at least eight (8) prior suicide attempts by Decedent. Furthermore, she told the DA investigator that Decedent had in the months prior to this incident sold her residence and spent all the money associated with the sale. She believed her sister's actions were "suicide by cop."

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.² 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.

² 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.

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 disprove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent was reasonably perceived to pose an imminent danger to the officers and others in the area. Initially, officers attempted to pull Decedent's vehicle over for a felony traffic stop. However, she disregarded the officers' signals and sped off. While at a typically crowded intersection of Jones/Sahara, Decedent was seen waving around a firearm and acting in an erratic fashion. Decedent proceeded to barricade herself inside the vehicle at a strip mall parking lot in the middle of the day. Numerous witnesses stated that, despite the best efforts by police, several civilians were still in the area. On multiple occasions, Decedent brandished a firearm including pointing it at a person who was simply cleaning the area. Decedent ignored officers who used a PA system to get her to leave the vehicle unarmed and even at one point shook her head at the officer's command. Later, when SWAT officers took positions around the car they noticed Decedent acting increasingly erratically, including yelling in her vehicle, smoking what appeared to be narcotics, drinking alcohol and waving around a firearm. At least one officer believed he saw Decedent attempt to commit suicide but was unable to pull the trigger on herself. It was only after a significant period of time of trying to contact Decedent, and seeing her acting dangerously, that SWAT decided to neutralize her vehicle with a pinch maneuver to prevent her from harming anyone in the community. As officers approached in their vehicle, Decedent shot her firearm at officers in the vehicle three (3)

times, thereby causing four of the five surrounding snipers to almost instantaneously fire upon Decedent. The fifth (Officer Knowles) did not fire because he was out of position. Several officers inside the vehicle that Decedent fired upon stated they were in fear of their lives. Moreover, several of the SWAT officers who fired their weapons noted that the shots fired by Decedent were in a direction where numerous civilians were located.

Decedent placed LVMPD officers in fear of being shot, and in fear that she might shoot a member of the general population who gathered to watch the standoff. The SWAT officers had a duty to respond to the perceived deadly threat to the officers and civilians in the line of fire, and to use deadly force to prevent any further harm.

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 in the Bearcat and all the people in the area. The circumstances indicate the officers who fired their weapons had a reasonable belief that Decedent was a threat to the safety of their fellow officers attempting to neutralize her vehicle 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 Officers Z. Adams, J. Brown, D. Ferrin and W. Marx 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.