

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Mimi Diane Goldberg on June 25, 2014

### INTRODUCTION

On June 25, 2014, at approximately 0008 hours, the Las Vegas Metropolitan Police Department (hereinafter "LVMPD") received a 911 call from a resident at the Manor Suites located at 7230 South Las Vegas Boulevard, Las Vegas, Nevada, reference a white female adult threatening occupants with a knife. LVMPD Officer MPhillips and LVMPD Officer Frey responded to the call. Upon arrival, they found Mimi Diane Goldberg (hereinafter "Decedent") outside apartment F227 yelling and waving a knife in a threatening manner. As officers assessed the situation, Decedent broke through the window of Apartment F227. Once inside, Decedent immediately began stabbing a female occupant with the knife.

Officers MPhillips and Frey attempted to make entry into Apartment F277. Additionally, Officer MPhillips issued a series of verbal commands to Decedent to drop the weapon. Decedent refused to comply with the commands and, instead, continued to attack the female occupant. At that point, Decedent's daughter came out of the bedroom of the apartment. Decedent turned her attention from the female to the child and began walking toward her. Officer MPhillips then discharged his weapon through the open window, striking Decedent five times. Officer Frey and Officer MPhillips were then able to enter the unit to evacuate the female and her three small children.

LVMPD Detective Bunting and LVMPD Detective Jex, of the Force Investigation Team, 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 June 25, 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 MPhillips 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 May 1, 2015. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer MPhillips 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 7230 LAS VEGAS BOULEVARD SOUTH, APT. F227, JUNE 25, 2014**



In the late evening hours of June 24, 2014, numerous concerned residents of the Manor Suites called the LVMPD to report the erratic behavior of a woman wielding a knife. LVMPD officers responded to the complex.

The following section details the events and actions of officers responding to the Manor Suites. The Clark County District Attorney's Office (CCDA) has reviewed all police reports, statements, and Crime Scene Analyst (CSA) reports submitted by the LVMPD. This section highlights the statements of the pertinent officers involved in the use of force, resulting in Mimi Diane Goldberg's death.

## **Officer Bollig**

On June 25, 2014, at approximately 0303 hours, LVMPD Detective Patton conducted a taped interview with LVMPD Officer Bollig in the parking lot of 7230 Las Vegas Boulevard South.

On June 24, 2014, Officer Bollig was dispatched to the Manor Suites to assist another unit on a person with a knife call. As he arrived, he heard "shots fired" over his radio. He immediately responded to Apartment F227. There, he saw two uniformed officers – one male and one female - standing inside the apartment with their guns drawn on a woman lying on the bathroom floor. Officer Bollig saw two apparent gunshot wounds on the woman's chest. The male officer motioned toward a knife on the kitchen floor and said, "That's the knife she had." While medical personnel treated the woman, Officer Bollig and Officer Hernandez drew a circle around the knife to memorialize where it was when they arrived. Officer Bollig then put on a pair of rubber gloves and moved the knife to a silverware container for preservation purposes. Officer Bollig described the knife as a black handled steak knife with a four inch blade covered in apparent blood. According to Officer Bollig, medical personnel arrived and transported Decedent to the hospital.

## **Officer Frey**

On June 25, 2014, at approximately 0432 hours, LVMPD Detective Dosch conducted a taped interview with LVMPD Officer Frey at LVMPD Headquarters. Also present was Police Protection Association representative Bryan Yant and attorney Kathryn Collins.

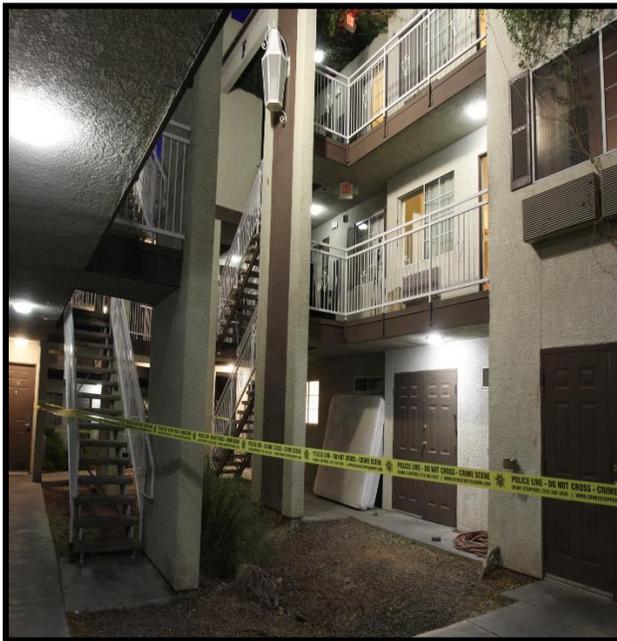
On June 24, 2014, LVMPD Officer Frey and her partner, LVMPD Officer MPhillips, were getting their patrol vehicle washed at the Rebel convenience store located at 7280 Las Vegas Boulevard South, when they heard a dispatch for a person with a knife call at the Manor Suites located at 7230 Las Vegas Boulevard South. They parked their patrol car in the Rebel parking lot and walked next door to the Manor Suites. When they arrived, they were approached by a male resident who reported that a "crazy" woman had

threatened his mother with a knife. While speaking with the male, another resident approached the officers and offered to direct them to Building F.

Once officers arrived, they determined that Officer Frey would provide non-lethal coverage in the form of a taser, while Officer MPhillips would provide lethal coverage. Officers went to Building F and saw Decedent, armed with a large knife, on the second floor of the building in front of Apartment F227. Officer Frey then saw Decedent cut and remove the screen from the apartment window.

At this point, Officers Frey and MPhillips were unsure if Decedent lived in Apartment F227. Officer Frey attempted to deescalate the situation by keeping her taser pointed to the ground as she calmly spoke to Decedent. Decedent became more agitated, cursing at the officers and calling them “pigs.” She then turned back to the apartment, opened the window and climbed inside. Residents of the Manor Suites began yelling, “She’s stabbing her! She’s stabbing her!” Officers Frey and MPhillips ran upstairs, with Officer Frey standing to the right of the window and Officer MPhillips to the left. Officer Frey tried to open the front door to the apartment but found it locked. Officer MPhillips then aimed his handgun through the open window and ordered Decedent to, “Drop the knife.” Decedent did not comply and Officer MPhillips discharged his weapon.

After Officer MPhillips discharged his weapon, a female, who was bleeding from her side, ran out of the apartment. Officer MPhillips entered the apartment and located Decedent in the bathroom. Officer Frey entered the apartment and evacuated three small children. She then returned to Officer MPhillips. She then aimed her firearm at Decedent, who was lying face-up on the bathroom floor, with a knife on the left side of her leg. Officer MPhillips used his foot to slide the knife away from Decedent. Officer Frey then used her foot to slide the knife even further away into the kitchen.



Manor Suites Building F.



Manor Suites Apartment F227. The bag on the left indicates where Officer MPhillips positioned himself and the bag on the right indicates where Officer Frey positioned herself.

### **Officer Joey Hernandez**

On June 30, 2014, at approximately 1720 hours, LVMPD Detective Jex conducted a taped interview with LVMPD Officer Hernandez at LVMPD Headquarters.

On June 25, 2014, Officer Hernandez left an arrest at the Flamingo Hotel to assist officers at the Manor Suites. While en route, he heard “shots fired” broadcast over the radio. Once he arrived at the Manor Suites, he was met by LVMPD Officer MPhillips, who directed him to an apartment at the back of the complex. LVMPD Officer Frey was inside the apartment. Officer Hernandez advised Officer Frey to leave the apartment while he and LVMPD Officer Bollig secured the scene.

Officer Hernandez observed a knife - which he believed was the weapon used by Decedent - on the kitchen floor. He used a black dry erase marker to draw a circle around the area where the knife was and wrote “knife” inside the circle. Officer Bollig then put the knife in a silverware tray on the counter to ensure its preservation. Officer Hernandez waited for Crime Scene Investigators to arrive and advised them of the location of the knife.

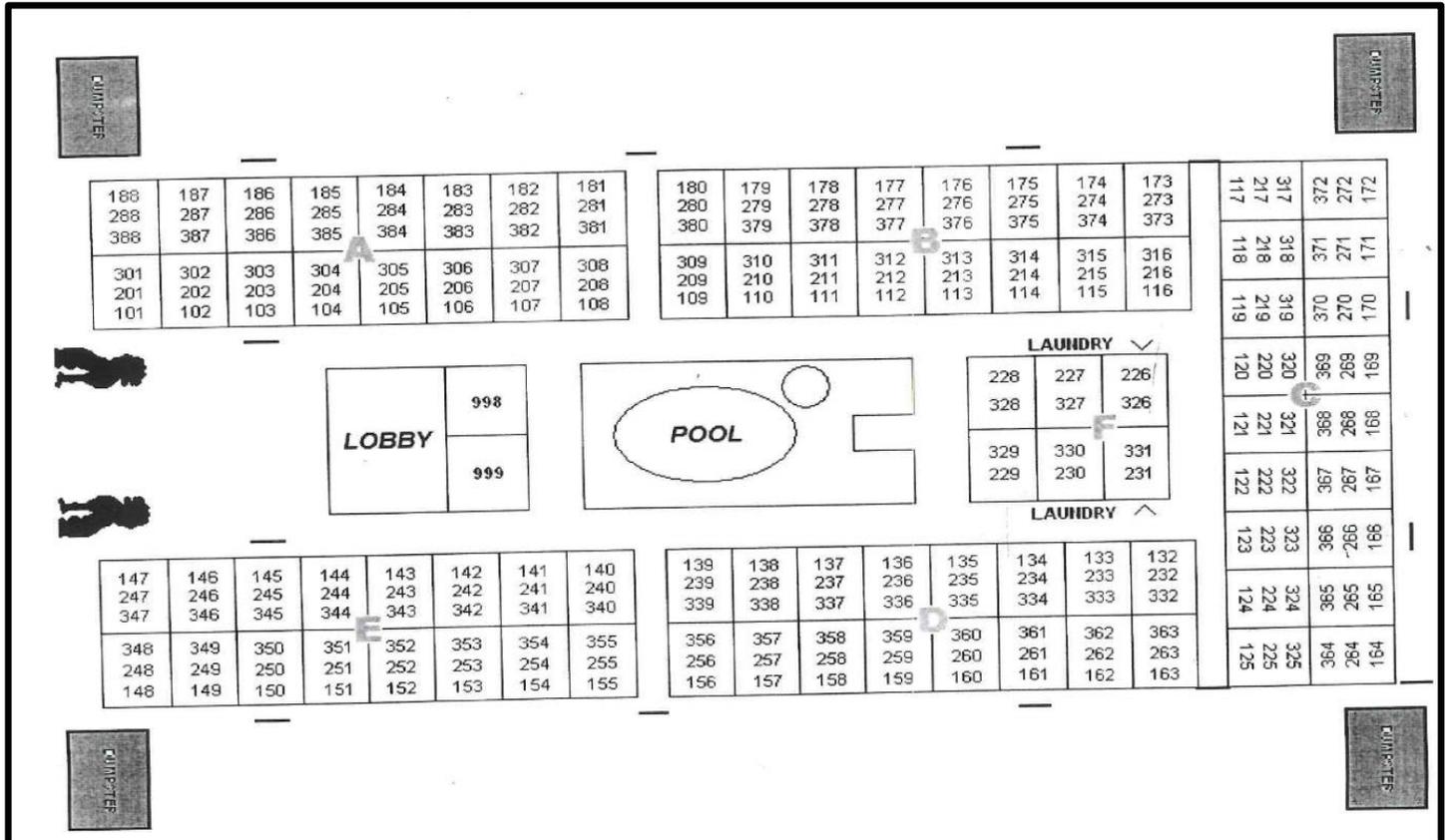
## Officer MPhillips

On June 25, 2014, at approximately 0222 hours, Detective Patton interviewed Sergeant Fama, who, following the shooting, had obtained a Public Safety Statement from Officer MPhillips. During the statement, the following questions were asked and answers given:

1. Is anyone injured?  
**One female stabbed, one female shot.**
- 1a. If so, where are they located?  
**Female was shot in the apartment.**
2. Are there any outstanding suspects?  
**None outstanding.**
3. Were you involved in an Officer Involved Shooting?  
**Yes.**
4. Approximately where were you when you fired the rounds?  
**Just outside the window of the apartment.**
5. Approximately how many rounds did you fire and in what direction did you fire?  
**Five to six shots.**
6. Do you know if any other officer fired?  
**No, just me.**
7. Is it possible the suspect fired rounds at you?  
**N/A**
8. Are there any weapons or evidence that needs to be secured?  
**At the scene.**
- 8a. Where are they located?  
**Didn't ask.**
9. Are you aware of any witnesses?  
**My partner.**
- 9a. If so, what is their location?  
**Question was not asked.**

# CIVILIANS

As part of the investigation, officers interviewed Stabbing Victim as well as a number of witnesses who were present on the evening of June 24, 2014. The following section details a summary of those witnesses.



On June 25, 2014, at approximately 0247 hours, LVMPD Detective Jaeger conducted a taped interview with Stabbing Victim. The interview took place in an LVMPD vehicle in the parking lot of the Manor Suites.

In June of 2014, Stabbing Victim and her three small children lived in Apartment F227 of the Manor Suites. The family had lived in the complex since January of 2014. Her mother and step-father lived in Apartment F326, while her grandmother, aunt and uncle lived in Apartment E153.

On June 24, 2014, at approximately 2300 hours, Stabbing Victim was in her apartment, asleep on her couch. Her three children were asleep in the bedroom. Stabbing Victim was awoken when she heard Decedent scream from the third floor, "David don't do this to me! Let me in!" Stabbing Victim called her mother in Apartment F326 to ask if she could hear the screams. Her mother indicated she didn't hear them at that time.

A short time later, Stabbing Victim heard more screaming. She called her mother, who indicated she also heard the screams and would call the front desk. At that point, Stabbing Victim heard Decedent move from the third floor to the second floor. She then heard her outside the apartment windows, banging on the railing and screaming that she had a gun. Decedent then started pounding on the windows, removed the screen, and pulled the living room window open. She then climbed through the window and immediately attacked Stabbing Victim with a knife. Stabbing Victim covered herself with her arms while trying to kick Decedent away.

Stabbing Victim asked Decedent why she was attacking her and she said, "Give me my keys, bitch! Where are my keys? I know you're hiding them!" At that point, Stabbing Victim noticed police officers were outside the window issuing commands to Decedent. At the same time, Stabbing Victim's Daughter came out of the bedroom to see what was happening. Decedent then turned her attention to Stabbing Victim's Daughter, and began advancing toward her with the knife. As Decedent walked away from the couch and toward Stabbing Victim's Daughter, Decedent was shot. Decedent then ran into the bathroom and shut the door.

Once Decedent was in the bathroom, officers were able to enter the apartment and evacuate the three minor occupants. Additionally, medical personnel examined Stabbing Victim and found she had sustained superficial stab wounds from the attack.

## **Stabbing Victim's Daughter**

On June 25, 2014, at approximately 1703 hours, Forensic Child Interviewer Faiza Abraham conducted an interview of Stabbing Victim's Daughter. The interview took place at the Clark County Child Advocacy Center at 701 N. Pecos Road, Building K, Las Vegas, Nevada.

On June 24, 2014, Stabbing Victim's Daughter was asleep in her bedroom with her brother and sister. She was awoken when she heard someone trying to get into the apartment through the bedroom window. She left the bedroom and went to her mom, who was sleeping on the couch in the living room. She then saw an "old and big lady" come into the apartment through the living room window. The woman started telling her mom that the kids in the apartment were hers and that "she needed to get out of her house."

Stabbing Victim's Daughter then saw the woman repeatedly stab her mom with a knife. Her mom was able to fight back. The woman then turned her attention toward Stabbing Victim's Daughter and came toward her with the knife. Stabbing Victim's Daughter said that an officer shot the woman before she was able to stab her. She said that when the woman was shot, blood splashed onto her arm.

## **Apartment F326 Tenant**

On June 25, 2014, at approximately 0247 hours, LVMPD Detective Jaeger conducted a taped interview with Apartment F326 Tenant. The interview took place in an LVMPD vehicle in the parking lot of the Manor Suites.

On June 24, 2014, Apartment F326 Tenant was inside her apartment when she heard her neighbor, Decedent, screaming, "Leave alone. I need help." Based upon previous negative interactions with Decedent, Apartment F326 Tenant was scared of Decedent and stayed inside her unit. Shortly thereafter, her daughter, who lived a floor below in Apartment F227, called to tell her there was a woman outside her unit who was banging on the railing and causing a disturbance. Her daughter was worried because she didn't want the noise to wake her children.

Based upon her daughter's concerns, Apartment F326 Tenant phoned the front desk to report the incident. She then called her daughter back, who stated she was very scared because the woman had removed the screen from the window and was pounding on the glass. Her daughter said the woman was threatening to shoot her. Apartment F326 Tenant yelled for her husband to go downstairs to help their daughter. As she was putting her shoes on to follow her husband, she heard gunshots. Fearing her daughter had been shot, she ran downstairs and saw her husband and her daughter, who had blood on her face, arms and legs. She then realized Decedent had been shot.

According to Apartment F326 Tenant, Decedent had lived in Apartment F327 for approximately three weeks prior to the shooting. A few days after Decedent moved in, she accused Apartment F326 Tenant of banging pans on the walls. Apartment F326 Tenant explained that it couldn't be her because she wasn't home during the day. Decedent became aggressive and the conversation ended. Additionally, the weekend before the shooting, Apartment F326 Tenant and her husband were in California, when they received a call that their dog was loose. She called her sister, who also lived in the Manor Suites, to contain the dog. Her sister told her that she found the dog in Apartment F327 with Decedent and that Decedent would not return the dog. Her sister ultimately had to get assistance from management to retrieve the animal.

The most recent exchange with Decedent had occurred earlier on June 24, 2014, when Decedent confronted Apartment 326 Tenant and her husband, shouting, "They were in her father's room, and they needed to get out." Scared, the two went into their apartment. Later, Decedent confronted Apartment 326 Tenant's husband, demanding, "Give me my uniforms? Where are my uniforms?"

## **Apartment F326 Tenant 2**

On June 25, 2014, at approximately 0403 hours, LVMPD Detective Jaeger conducted a taped interview with Apartment F326 Tenant 2. The interview took place in an LVMPD vehicle in the parking lot of the Manor Suites.

On June 24, 2014, Apartment F326 Tenant 2 was in bed while his wife was talking on the phone with his stepdaughter, who lived a floor below. Suddenly, Apartment F326 Tenant 2's wife screamed for him to go downstairs to help his stepdaughter. As he was heading down the stairs, he heard multiple gunshots. He then saw a police officer and his stepdaughter sitting on the ground outside her apartment. As he got closer, he saw his grandchildren sitting by their mother, who was covered in blood.

Officers instructed Apartment F326 Tenant 2 to take his stepdaughter to the laundry room of the complex to wait for detectives. Apartment F326 Tenant 2 relayed prior incidents he had with Decedent. He described an incident the previous weekend where Decedent broke into his apartment and took his dog. He also described an incident which occurred earlier on June 24, 2014, whereby Decedent screamed at him to give her some uniforms.

### **Manor Suites Employee**

On June 25, 2014, at approximately 0355 hours, LVMPD Detective Patton conducted a taped interview with Manor Suites Employee. The interview took place inside the Manor Suites.

On June 24, 2014, Manor Suites Employee arrived at work and immediately received a number of complaints regarding Decedent and her erratic behavior. Reports indicated Decedent was screaming and running through the complex with a knife. Tenants asked Manor Suites Employee to send security to Apartment F327. The security guard was off for the evening, so Manor Suites Employee called 911 to report Decedent.

Manor Suites Employee was familiar with Apartment F327 because he had received complaints about Decedent yelling and throwing things at her walls on both June 22, 2014, and June 23, 2014.

### **Apartment C222 Tenant**

On June 25, 2014, at approximately 0513 hours, LVMPD Detective Patton conducted a taped interview with Apartment C222 Tenant. The interview took place inside Apartment C222 of the Manor Suites.

Apartment C222 Tenant was inside his apartment when he heard screaming from the complex. He walked outside and saw Decedent with a knife in her hand. She was pointing the knife at people and yelling, "You large headed chicken." Based on her behavior and the nonsensical nature of the statements, Apartment C222 Tenant assumed Decedent was mentally ill.

Apartment C222 Tenant went to the ground floor of the complex and saw three police officers talking to Decedent, who was outside an apartment on the second floor of Building F. Apartment C222 Tenant then heard Decedent enter the second floor apartment, followed by a female screaming, "She's stabbing her, she's stabbing her."

Apartment C222 Tenant then saw the officers run upstairs to the open window of Apartment F227. One of the officers extended his arms through the open window and yelled, "Stop! Freeze" and, "Stop! Freeze or I'm going to have to..." Apartment C222 Tenant then heard approximately four to five gunshots. In Apartment C222 Tenant's opinion, the officer gave Decedent fair warning before shots were fired.

### **Apartment B312 Tenant**

On June 25, 2014, at approximately 0530 hours, LVMPD Detective Jaeger conducted a taped interview with Apartment B312 Tenant. The interview took place inside Apartment B312 of the Manor Suites.

On June 24, 2014, Apartment B312 Tenant heard a disturbance outside his unit. He went outside and saw Decedent screaming at a couple on the second level of Building F. Decedent was yelling that she was going to kill someone. The couple walked away from Decedent. Apartment B312 Tenant then saw Decedent wave a knife in the air, walk to an apartment window, cut the screen off the window, and throw the screen down the stairs. He then saw Decedent stab the window with a knife while beating the window with her other hand. Decedent then opened the window and crawled inside the apartment. Apartment B312 Tenant then heard the woman who was on the outside landing shout, "She is stabbing her in the face!" Apartment B312 Tenant then saw the officer discharge his firearm four times through the open window. Additional officers arrived and evacuated a woman and children from the apartment.

### **Apartment F328 Tenant**

On June 25, 2014, at approximately 0930 hours, LVMPD Detective Jex conducted a taped interview with Apartment F328 Tenant. The interview took place inside Apartment F328 of the Manor Suites.

On June 24, 2014, at approximately 2300 hours, Apartment F328 Tenant was at the pool when he received a call from his wife telling him that their neighbor was screaming and banging on the walls. As he returned to his unit, he heard the screaming from inside Decedent's apartment. Apartment F328 Tenant went inside and called 311.

Shortly thereafter, Apartment F328 Tenant looked outside and saw Decedent yelling at people and banging a window screen against the railing. She then went downstairs to the second level, continuing to scream at residents. Apartment F328 Tenant then saw a female officer on the ground level between Buildings B and F. She was issuing commands to Decedent. Decedent continued to scream until finally Apartment F328 Tenant saw the officer run toward the stairs. He then heard five gunshots from the second level, followed by the arrival of additional officers and medical personnel.

According to Apartment F328 Tenant, Decedent had broken glass in front of his door the Sunday before.

## **Apartment E153 Tenant**

On June 25, 2014, at approximately 0955 hours, LVMPD Detective Jex conducted a taped interview with Apartment E153 Tenant. The interview took place in the parking lot of the Manor Suites.

On June 24, 2014, Apartment E153 Tenant received a call from her daughter, who lived in Apartment F326. Her daughter told her that a woman had gone into her granddaughter's apartment and stabbed her. Apartment E153 Tenant called 911. She then went toward her granddaughter's apartment. On her way, she heard a single gunshot.

## **Apartment C120 Tenant**

On June 25, 2014, at approximately 1400 hours, LVMPD Detective Jex conducted a taped interview with Apartment C120 Tenant. The interview took place on the sidewalk outside Apartment C120.

On June 24, 2014, Apartment C120 Tenant was sitting in her wheelchair outside of her unit, when she heard Decedent yelling and banging a window screen on the third floor of Building F. The window screen fell from Decedent's hand and landed on the ground level between Buildings B and F. Decedent went to retrieve the screen before she approached Apartment C120 Tenant and started screaming at her. Decedent then went to the second level of Building F, yelling at residents along the way.

Shortly thereafter, Apartment C120 Tenant saw two officers arrive, both with their weapons drawn. One officer, who was posted on the ground level between Building B and F, gave several commands to Decedent to, "Stop!" The other officer, who was posted on the southeast corner of Building B, stood against the building with his weapon drawn.

Apartment C120 Tenant then heard various residents yelling that Decedent was stabbing another female. Both officers ran upstairs and screamed, "Stop, stop! Metro! Put the knife down!" Apartment C120 Tenant then heard five gunshots in rapid succession and her husband called 911.

On the Sunday prior to the shooting, Decedent walked into Apartment C120 and accused Tenant and her husband of harboring her children. She demanded to know where they were and wanted them returned to her. The following day, Decedent came back to Apartment C120 and apologized for her behavior, saying she was drunk the night before and that was why she had acted out.

## **Apartment B116 Tenant**

On June 25, 2014, at approximately 1748 hours, LVMPD Detective Patton conducted a taped interview with Apartment B116 Tenant. The interview took place inside Manor Suites Apartment B116.

On June 25, 2014, just past midnight, Apartment B116 Tenant woke to a woman yelling, "Help me, help me." He and his wife looked out the window and saw Decedent acting erratically. Apartment B116 Tenant's wife called security, while he went outside. There, he saw Decedent outside of her apartment holding a window screen. She then walked down to the second floor of Building F, continuing to verbally assault residents. At that point, Apartment B116 Tenant called 911 to report the behavior. Decedent observed this and yelled, "I know you're on the phone people. I'm going to come after you. I'm going to get you."

Apartment B116 Tenant then saw a male and a female officer arrive. At that point, Decedent used a chef's style knife with a six inch blade to cut the window screen of Apartment F227. While officers attempted to talk to Decedent, she continually banged on the apartment window. After approximately two minutes, Decedent opened the window and climbed inside the apartment. Apartment B116 Tenant then heard someone scream, "She's stabbing her! She's stabbing her in the face!"

The officers then ran to the second floor, where the male officer pointed his firearm through the open window. He ordered Decedent to, "Stop" and, "Drop the weapon." Immediately thereafter, Apartment B116 Tenant heard the male officer discharge his weapon four times.

## **Apartment B116 Tenant 2**

On June 25, 2014, at approximately 1750 hours, LVMPD Detective Patton conducted a taped interview with Apartment B116 Tenant 2. The interview took place inside Manor Suites Apartment B116.

On June 24, 2014, Apartment B116 Tenant 2 woke to a woman saying, "Help me, help me." She called the front desk to request security, and exited her apartment. Once outside, she saw Decedent, who was yelling and appeared to be upset, in front of Apartment F227. Apartment B116 Tenant 2 went to the front desk and was told the police had been notified. As she left the office, she saw a male and a female police officer. She approached them and offered to take them to Decedent.

When Apartment B116 Tenant 2 and the officers got back to Decedent, she was still extremely agitated. She refused to comply with orders issued by the officers. Instead, she turned around and climbed through the window of Apartment F227. Immediately thereafter, Apartment B116 Tenant 2 heard a man yell, "She is stabbing her in the head!" Officers ran to the window and drew their weapons. The male officer aimed his handgun

into the apartment and yelled, "Put down the knife!" Apartment B116 Tenant 2 then heard four gunshots.

## **Apartment B201 Tenants 1 and 2**

On June 26, 2014, at approximately 0835 hours, LVMPD Detective Jaeger conducted a taped interview with Apartment B201 Tenants 1 and 2. The interview took place at LVMPD Headquarters.

On June 24, 2014, Apartment B201 Tenants 1 and 2 checked into Manor Suites apartment B316. At approximately 2130, the occupant of apartment B326 started screaming. Due to the cockroach infestation, Apartment B201 Tenants 1 and 2 were relocated to apartment B201 at approximately 2230 hours. While they were switching rooms, Decedent threatened them with a black knife with a six inch blade. According to Apartment B201 Tenants 1 and 2, Decedent appeared to be hallucinating. She tore the screen off of her window and began stabbing the wall. Apartment B201 Tenant 1 called the front desk and then 911 to report the incident.

Moments later, officers responded to the Manor Suites. Apartment B201 Tenant 1 let officers into the complex and directed them to Decedent, who had moved to the second floor landing of Building F. At the direction of officers, Apartment B201 Tenant 1 and 2 went into their apartment. Once inside, they heard gunshots.

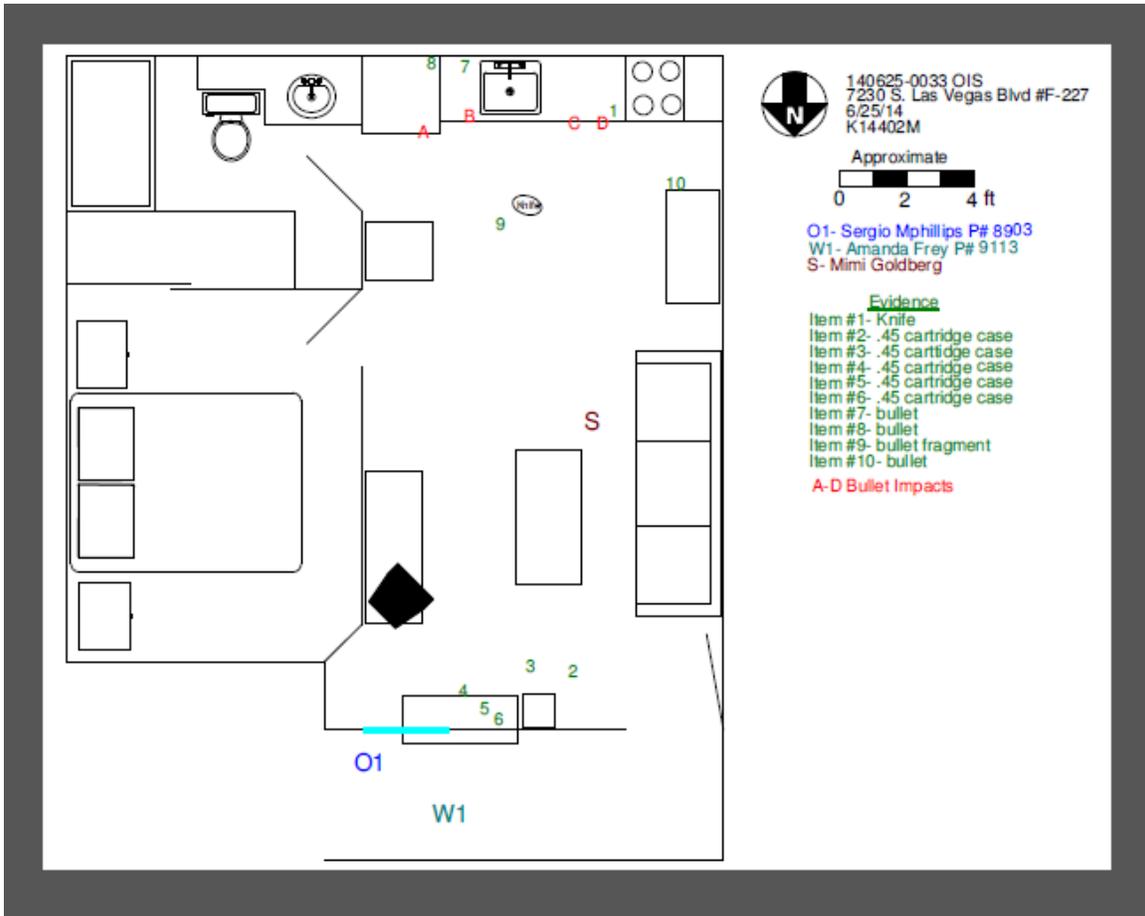
## **Witness**

On July 1, 2014, at approximately 0950 hours, LVMPD Detective Jex conducted a taped telephonic interview with Witness.

On June 24, 2014, Witness was outside Manor Suites Building B when he heard a female screaming and banging on the windows of an apartment. Witness went inside his girlfriend's apartment and again heard the female yelling. Witness looked outside and saw the female had a black handled knife with a four to five inch blade and a window screen. She was screaming at people and threatening a woman in a wheelchair.

Police officers ultimately arrived and began issuing commands to the woman. She then removed the screen from a second floor apartment. Witness could see a female inside the apartment sitting on her couch. Witness then saw the woman open the apartment window and crawl inside. She then immediately attacked the female on the couch by slashing her three to four times.

Witness yelled to officers that the woman was stabbing someone inside the apartment. Officers ran up the stairs, where the male officer posted outside the open window. The officer yelled numerous times for the woman to drop the knife before he fired five shots. The officers then entered the apartment and removed the stabbing victim and her small children.



Incident diagram depicting location of officers and items of physical evidence

## THE INCIDENT SCENE

The incident scene was at the Manor Suites, located at 7230 Las Vegas Boulevard South, Apartment F227, Las Vegas, Nevada. Manor Suites was a multi-building extended stay motel complex. Manor Suites Building F was a three-story building, with exterior walkways and staircases connecting the floors. Apartment F227 was on the second floor of Building F. The front door of the unit faced north and had a living room window just east of the front door. The living room window was half-way open and was missing the screen. Additionally, there was apparent blood on the ground between the stairway and the front door of the apartment.

## APARTMENT F227

Apartment F227 was a one-bedroom unit, with the bedroom to the east, the bathroom and kitchen to the south, a couch to the west and the window, AC unit and front door to the north. Various small pieces of furniture and personal effects were scattered through the apartment. Apparent blood stains were found in the living room,

kitchen and bathroom. There were two cut and bent window screens in the living room. One appeared to be the size of the living room window, while the other appeared to be the size of the bedroom window. The bedroom window on apartment F227 however, was intact.

A knife with hair and apparent bloodstains was recovered from the silverware organizer on the kitchen counter (Item 1). A black circle with the word “knife” was drawn on the linoleum kitchen flooring in front of the sink.



A total of five cartridge cases were found throughout the living room. Two were found near the nightstand by the north living room wall (Items 2 & 3). One was found below the AC unit which sat below the open window (Item 4). Two were found in the vents on top of the AC unit (Items 5 & 6). All five cases bore a “SPEER 45 AUTO” head stamp.

A number of apparent bullet holes and bullets were found throughout the kitchen. One bullet (Item 7) was found on the kitchen counter behind the dish rack. That bullet appeared to have originally ricocheted on the kitchen counter drying mat, before it hit the back of the dish rack and finally the kitchen wall (B). The second bullet (Item 8) was recovered from behind the refrigerator. That bullet appeared to have entered through the door of the refrigerator and exited the back of the refrigerator wall (A). The third bullet (Item 10) was found on the kitchen floor under bags of garbage (Item 10). And finally, a bullet fragment (Item 9) was found on the kitchen floor by the word “knife.” Two

additional apparent bullet impacts were located on the lower kitchen cabinet doors (C and D).

## **APARTMENT F327**

Decedent resided in Apartment F327, which was located on the third floor of Building F, directly above Apartment F227. The living room window of the apartment had a cut window screen that was still covering the window. The bedroom window, however, was missing the screen. The size of the bedroom window was consistent with the screen found in the living room of Apartment F227.

The layout of Apartment F327 was identical to that of F227. Multiple full and empty containers of alcohol were found throughout the unit.

## **REVIEW OF THE WEAPONS**

### **THE COUNTDOWN OF OFFICER MPhillips' WEAPON**

Officer MPhillips stated he routinely carried three spare magazines with thirteen cartridges and a cartridge in the chamber of his Glock Model 21C .45 caliber semi-automatic handgun, serial number GAW371A. A countdown of Officer MPhillips' weapon showed he was missing five "Speer 45 Auto" cartridges from the magazine seated in his weapon. This was consistent with the evidence found at the scene.

## **FIREARMS EXAMINATION**

On September 23, 2014, J. Fried, 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:

The Glock Model 21C .45 caliber semi-automatic handgun was test fired and found to be operational. The cartridge cases recovered at the scene were fired from the Glock Model 21C .45 caliber semi-automatic handgun. One bullet was collected from Decedent's body at autopsy. While it exhibited a similar overall appearance and similar general rifling characteristics to the test fired bullets, a conclusive identification could not be made due to insufficient microscopic detailing.

## **AUTOPSY OF DECEDENT**

On June 26, 2014, at approximately 0700 hours, Clark County Medical Examiner Dr. Lary Simms performed an autopsy on the body of Decedent. During the examination, Dr. Simms noted Decedent was shot a total of five times. Four of the five gunshots were

perforating (through and through) and one was penetrating (lodged). Dr. Simms recovered a large caliber, deformed, partial metal jacket bullet from Decedent's right upper arm. The bullet was turned over to LVMPD Crime Scene Analysts for impound and testing.

After a completed autopsy, Dr. Simms determined Decedent's cause of death was multiple gunshot wounds and the manner of death was homicide. A postmortem toxicological analysis was completed and revealed a Blood Alcohol Concentration (BAC) of 0.049.<sup>1</sup>

## **DECEDENT MIMI DIANE GOLDBERG**

An examination into Decedent's history revealed significant mental health issues. She had been diagnosed with Psycho-Affective Disorder, which caused her to suffer from delusions, paranoia and auditory hallucinations.

## **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

---

<sup>1</sup> For purposes of comparison, a Blood Alcohol Concentration of 0.08 is the level at which a person can no longer legally operate a motor vehicle.

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 the occupants of Apartment F227. When intercepted by officers, Decedent refused to comply with repeated orders to drop the knife. Instead, she used the knife to gain access into an apartment occupied by a female and her small children. Once inside, she attacked the unarmed female by repeatedly stabbing her with the knife. She again refused to comply with officers' orders and refused to relinquish her weapon. Officer MPhillips was confronted by an actual imminent danger of the occupants being killed or suffering great bodily harm, which created in his mind an honest belief and fear that the female was about to be killed or suffer great bodily injury. Based upon those appearances, fears and actual beliefs, Officer MPhillips eventually shot Decedent, ending the threat; as such, Officer MPhillips'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 herself or other persons. Decedent brandished a knife, used it to cut open the screen of an apartment, opened the window, entered the residence, and repeatedly stabbed an unarmed female occupant. Decedent refused to comply with orders to drop the weapon and instead continued to attack the female. These circumstances created probable cause to believe in the officer's mind that the Decedent posed a threat of serious physical harm to the occupants of Apartment F227.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officer was 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.

Submitted May ---, 2015

STEVEN B. WOLFSON  
District Attorney

By

MICHELLE N. FLECK  
Chief Deputy District Attorney