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December 5, 2012

Chief Patrick E. Moers
Henderson Police Department
223 Lead Street
Henderson, NV 89015

Re: Officer-Involved Death of Andy Soto which occurred on July 23, 2012, at Warm Springs Road, West of Boulder Highway, Henderson, NV, under Henderson Police Department Event # 12-12842.

On July 23, 2012, members of the Criminal Apprehension Team (“CAT”) were conducting undercover surveillance on a residence at 53 West Pacific Avenue #11, Henderson, Nevada. CAT is a multi-jurisdictional taskforce made up of members of the Las Vegas Metropolitan Police Department (hereinafter “LVMPD”), Henderson Police Department (hereinafter “HPD”) and the F.B.I. CAT is tasked with apprehending wanted fugitives from these jurisdictions who have felony warrants for violent offenses. The following CAT members were present during the events in question: HPD Detective Dave Rowlett; LVMPD Detectives Linda Theobald and Eric Collins; and Special Agent Dan Coxon from the F.B.I. CAT members were conducting surveillance of the residence in an attempt to locate Andy Soto (hereinafter “Decedent”). Decedent had an active Las Vegas arrest warrant for murder. One male matching Decedent’s description was observed leaving the residence and entering a white 2000 Nissan Maxima bearing Nevada plate 192MMN.

CAT members followed the Maxima after it left the residence. The vehicle subsequently drove through a red light and CAT members activated their emergency lights and sirens in an attempt to stop it. The Maxima failed to comply and a high speed chase ensued. The driver ultimately appeared to lose control as the Maxima attempted to complete the west bound turn from Boulder Highway onto Warm Springs. The Maxima lost the front driver's side tire and became disabled after driving over the raised center median at the intersection. Decedent, the sole occupant of the vehicle, then exited the driver's side door with his right hand hidden in his front waistband and proceeded to walk west bound.

CAT members repeatedly ordered Decedent to show his hands and drop his weapon. Decedent failed to comply. At that time, HPD Officers Daniel Medrano and Shawn Thibeault also arrived on scene to assist. Decedent continued to ignore commands to show his hands and drop his gun. At one point during the stand-off with officers, Decedent attempted to enter a vehicle belonging to an 82-year-old citizen. However, the citizen was able to drive away. Decedent continued to conceal his right hand in his waistband, leading officers to believe he had a gun or other weapon hidden there. Decedent then made a quick movement with his right hand as if he were going to remove a firearm or other weapon from his front waistband. In response, HPD Detective Rowlett and Officer Medrano fired their weapons at Decedent in defense of themselves and others. Decedent was struck multiple times and fell to the ground. Decedent was immediately handcuffed and paramedics were requested to the scene. Decedent was declared deceased at the scene by paramedics. No weapons were located near Decedent.

The District Attorney's Office has completed its review of the July 23, 2012, 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 the officers were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

This letter explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. This letter is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal.

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

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BACKGROUND

Decedent's Prior Criminal History

At the time CAT members came into contact with Decedent, he had an active Las Vegas arrest warrant for murder. CAT members had information that the murder warrant was for a stabbing death that occurred on July 4, 2012. The general facts of the murder are that on July 4, 2012, Decedent was present with a friend, hereinafter "Friend," at a residence in Las Vegas. Victim #1 and his friend, Victim #2, arrived at the residence to drop off a truck that Victim #1 had borrowed. Victim #1 asked Decedent and his friend to assist him in collecting a debt. Decedent became upset and accused Victim #1 of trying to "set him up." Decedent then pulled out an approximately 12" knife and repeatedly struck Victim #1 with the butt of the knife. Decedent then stabbed Victim #1 one time in the torso, killing him. Decedent and Friend then tied up Victim #2 and held him against his will for several hours in the residence. They stole Victim #2's credit card, cell phone and credit card. He was also beaten. Victim #2 was then ordered by Decedent and Friend to assist in loading Victim #1 into a vehicle. Decedent ordered Friend to take Victim #2 and have Victim #2 assist Friend in disposing of Victim #1's body. Decedent told Friend to kill Victim #2 afterwards. Friend and Victim #2 then drove out into the desert and dumped Victim #1's body in the desert. Friend did not kill Victim #2 and let him go. Friend told Decedent that he had killed Victim #2 and was ordered by Decedent to never discuss the murder again.

Letters Recovered from Decedent

Two letters were recovered from the body of Decedent. In both letters, Decedent professed his love for an estranged girlfriend whom he indicated did not love him back. In one letter, Decedent stated that she and his family would not see him again until they identified his body. In the other letter, Decedent stated that he could not live without her and that he had nothing left to give her but his life.

Interview of Decedent's Friend

On July 30, 2012, HPD Detective Mark Hosaka interviewed a friend of Decedent (hereinafter "Friend"). Friend had known Decedent over twenty years. The two never really discussed anything personal until the last time Friend saw Decedent. The discussion was about two weeks before the shooting. Decedent told Friend that he was having problems with his girlfriend and they were breaking up. Decedent told Friend that his girlfriend had tried to get a restraining order against him and that Decedent wanted to see his kids. Decedent was concerned that he would not see his kids again. Decedent would stay with Friend and Friend's girlfriend off and on after that conversation. Approximately

a week after he started staying at Friend's residence, Decedent had his vehicle repossessed. The day of the shooting, Decedent took Friend's Nissan Maxima and cell phone without his permission. Friend identified the knife found on the front passenger floorboard of the Maxima as his, but stated that he always left it in the trunk.

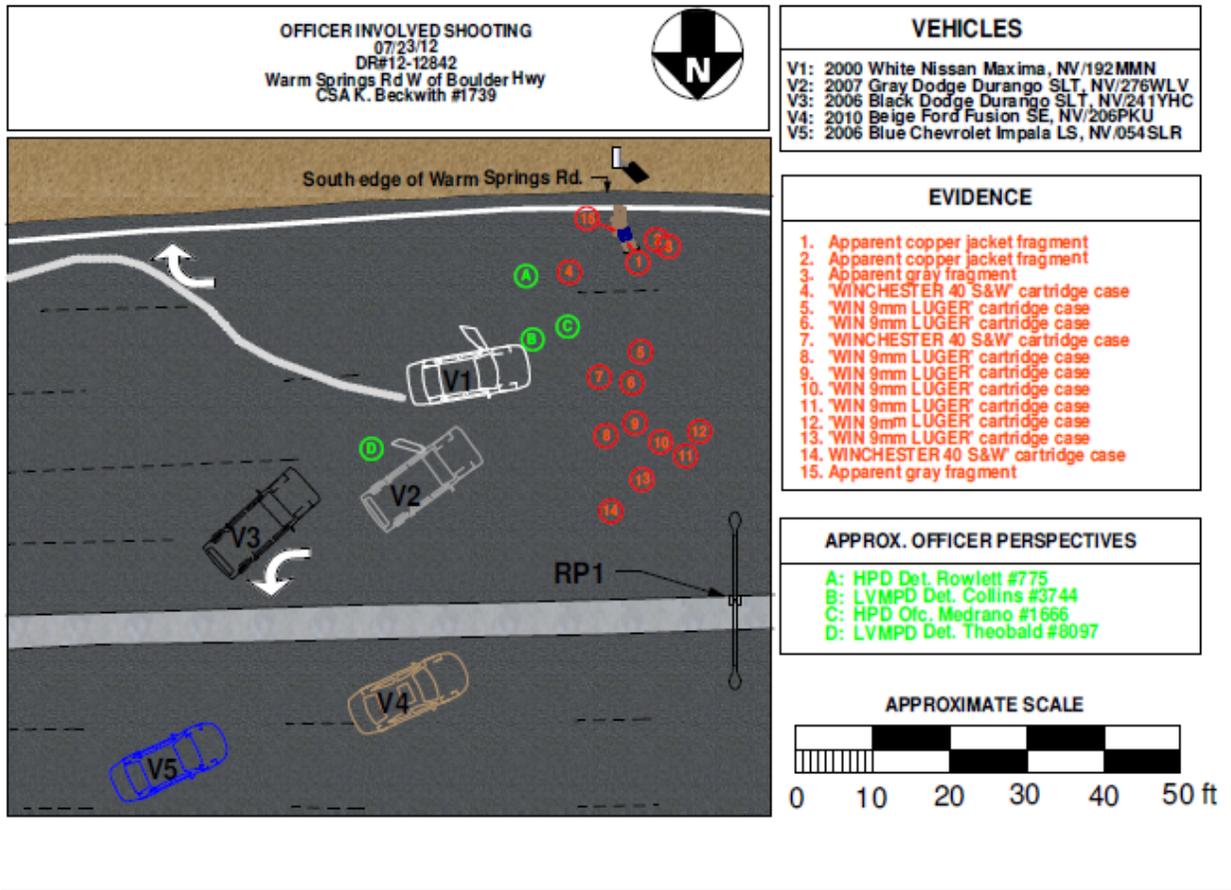
Interview with Girlfriend of Decedent's Friend

On July 30, 2012, HPD Detective Mark Hosaka interviewed the girlfriend of Friend (hereinafter "Girlfriend"). Girlfriend knew Decedent through her boyfriend. Decedent's girlfriend had recently kicked Decedent out of his residence and taken his kids and Decedent had no place to stay. Decedent had been staying with them for a couple of days. She did not know him that well, but he seemed depressed. Decedent had her read a letter that he had written to his girlfriend and he seemed heartbroken because she had left him. She believed it to be a different letter than the one shown to her by police. The morning of the shooting, Decedent seemed a little more distraught than usual. He had asked for a ride that morning, but she and her boyfriend had refused because they were tired. They went to sleep and when they awoke, their Nissan Maxima was missing. They found out from police that Decedent had taken it and was then shot and killed.

Interview with Decedent's Girlfriend

On July 31, 2012, HPD Detective Mark Hosaka interviewed the girlfriend of Decedent (hereinafter "Decedent's Girlfriend"). Decedent's Girlfriend had been in a relationship with Decedent for approximately seventeen years and he was the father of her three children. The two resided together for most of the time they were together. She stated that Decedent had not been living with her since September of 2011. She stated that problems in the relationship stemmed from Decedent's drinking and that they were in a cooling-off period. Decedent's Girlfriend stated that she had no intention of keeping Decedent from his children and that his children were the most important thing in his life. The last time she spoke with the Decedent was June 29th. Decedent had texted her and told her how much he loved her and that he wanted her back. He had told her in the past that he could not live without her. Decedent seemed very depressed. She did not believe he was depressed about their relationship. Instead, she believed Decedent to be clinically depressed. She tried to convince him to go to a doctor to talk about his depression. Decedent had not talked to her about the murder.

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THE EVENTS AT WARM SPRINGS ROAD, WEST OF BOULDER HIGHWAY, HENDERSON, NEVADA, ON THE MORNING OF JULY 23, 2012

HPD Detective Dave Rowlett

Detective Rowlett did not make a taped statement. Detective Rowlett drove an unmarked blue Chevrolet Impala to the scene.

HPD Officer Daniel Medrano

Officer Medrano did not make a taped statement. Officer Medrano drove a marked Chevrolet Tahoe patrol unit to the scene.

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F. B. I. Special Agent Daniel Coxon

Special Agent Coxon was in route to assist in surveillance on Decedent's suspected location, when he heard over the radio that an individual matching Decedent's description had left the residence in a vehicle. Special Agent Coxon drove his unmarked beige Ford Fusion to the area of Warm Springs and Boulder Highway and observed Decedent's vehicle being pursued by the vehicles of Detectives Eric Collins and Linda Theobald. The Detectives had on their lights and sirens. Special Agent Coxon did a u-turn and by the time he reached the other CAT members, all the vehicles were stopped. He also pulled up to the location and stopped. He observed Detective Collins out of his vehicle, but did not see Detective Theobald. Special Agent Coxon explained:

"I arrive. I see suspect seated in his car at gunpoint giving him commands, "Let me see your hands. Let me see your hands. Get out of the car. Get on the ground." I remember him looking right at me and not obeying commands at all. And he was looking around his car, just looking around. Turned around. I kept yelling commands, yelling commands, "Get out of the car. Let me see your hands. Police. Police."

Detectives Collins and Theobald were also issuing similar commands, with Detective Collins also issuing them in Spanish. Approximately thirty seconds to a minute went by and Decedent did not comply. He came up alongside of Detective Collins to assist. There was not much cover for them. Around that time, he recalls Detective Rowlett and patrol units arriving. The Decedent exited the vehicle and walked towards another vehicle. Special Agent Coxon continued to command Decedent to stop and show his hands. He would not let them see his hands. Decedent then used one hand to try to enter the other vehicle and kept the other hand in his waistband. Special Agent Coxon explained:

"I believe he had a gun. I never saw a gun but I believe, you know, the motion he was making to his waistband that he had some type of weapon there. And we continued to give him commands, you know, the same commands over and over. It's so repetitive. He would just look at us..."

The other vehicle was able to flee the scene and at that point, Decedent was virtually surrounded. Detective Collins was behind him with a ballistic shield and he was with and a little behind Detective Rowlett. Almost immediately after the vehicle left, Decedent made a quick movement. He remembered thinking he was going to car jack the vehicle or pull something out on them. He saw Decedent's upper body, but never saw his hands. One hand was by his waist. He did not have 100 percent visual, but Detective Rowlett did. He heard four to six shots being fired and heard Decedent yell out something like "Fuck" or "What the fuck?"

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Detective Eric Collins

Detective Collins was conducting surveillance at a residence where he and other CAT members believed that Decedent might be staying. He was in his unmarked black Dodge Durango and undercover. The vehicle was equipped with lights and siren. He was given information that an individual matching Decedent's description had left the residence in a vehicle. He joined the pursuit, which quickly escalated into a high speed chase. He, along with other CAT members, had on his lights and sirens. He pursued Decedent's vehicle until it crashed and became disabled at Warm Springs and Boulder Highway. He and Detective Theobald immediately began yelling orders to Decedent to get out of the vehicle and to show them his hands. Detective Collins also issued the orders in Spanish. Decedent did not comply and ignored them. More officers arrived at the location at that time. Detective Rowlett took up a position on his passenger side. After a minute or two of ignoring their commands, Decedent exited the vehicle. He would not show them his hands. Decedent began to walk towards another vehicle occupied by an elderly male. He, Detective Rowlett and Detective Theobald approached Decedent. Detective Collins realized that he did not have a vest on and quickly retreated and retrieved his ballistic shield. He then approached Decedent again. Decedent attempted to enter the occupied vehicle with his hand still concealed up to his wrist in his waistband. The elderly male began to drive forward and Decedent tried to jump on the trunk. Believing that Decedent was trying to escape, Detective Collins kicked Decedent away from the vehicle. Decedent turned towards Detective Rowlett and away from him and Detective Collins heard shots being fired. He assumed at least two people fired. After Decedent fell, Detective Collins handcuffed him. Decedent never took his hand out of his waistband that he could see. Detective Collins explained:

“I have never seen someone so adamant about not taking their hands out of their pants in my life. I still assumed he had a gun... he just ignored everything, like I said, in English and in Spanish. He just was completely defiant. I mean I was literally thinking that whole suicide-by-cop thing the entire time because he was not compliant at all, and now he's trying to do a carjacking of this elderly man and get away.”

Detective Linda Theobald

Detective Theobald was conducting surveillance at a residence where she and other CAT members believed that Decedent might be staying. She was in her unmarked grey Dodge Durango and undercover. Her vehicle was equipped with lights and siren. She observed an individual matching the description of Decedent exiting the residence and enter a white Nissan Maxima and then leave the area. She and other CAT members followed the vehicle. The vehicle then ran a red light and quickly gained speed. She then turned on her lights and sirens and pursued the vehicle. Officers pursued the vehicle until it crashed and became disabled at Warm Springs and Boulder Highway. She and Detective Collins issued commands for Decedent to exit his vehicle and show his hands. He ultimately left his

vehicle, but did not comply with their orders to put his hands up and get on the ground. Detective Collins issued the commands in English and Spanish. Special Agent Coxon arrived at that time. Decedent then approached an occupied vehicle and tried to enter it. She heard an officer yelling to the occupant to lock the doors. A few seconds later, the vehicle began to drive off. It looked to her as if Decedent was trying to get on the trunk of the vehicle. She observed Detective Collins push Decedent off the vehicle with his ballistic shield. She did not see Decedent fall down. Decedent's vehicle was between herself and Decedent. The other vehicle drove off and she heard more commands for Decedent to show his hands and drop his weapon. She observed Detective Rowlett and some patrol officers present at that time. Detective Theobald then heard shots being fired. Decedent's right hand was in his waistband the entire time. Detective Theobald explained:

“He never moved it. He just was -- had, like, he was holding on to something, grabbing on, would not listen, and he just -- everywhere he moved, that hand did not move ...Never once did he put his hand up. Never once did he move it to the side. It was on his waistband every second that I saw him.”

Based on Decedent's actions and her training and experience, she believed Decedent had a handgun concealed in his waistband.

Officer Shaun Bouchte

HPD Officer Bouchte was a uniformed officer in a marked Chevrolet Tahoe patrol unit. HPD Officer Robyn Keep was riding along with Officer Bouchte. Officer Bouchte received a call over the radio from Detective Rowlett seeking assistance from marked patrol units in a traffic stop of a murder suspect in the area of Warm Springs and Boulder Highway. When he arrived at Warm Springs and Boulder Highway, he observed a white Nissan disabled on the highway. Officer Bouchte then parked sideways blocking Warm Springs westbound at Boulder Highway. He exited the vehicle and observed six to seven undercover officers and the suspect. He recognized Detective Rowlett and Officer Medrano. He also saw an officer with a ballistic shield and a female officer. He then heard six to eight shots being fired.

Officer Robyn Keep

HPD Officer Keep was a uniformed officer riding passenger in a marked Chevrolet Tahoe patrol unit being driven Officer Bouchte. Officer Bouchte received a call over the radio from Detective Rowlett seeking assistance from marked patrol units in a traffic stop of a murder suspect in the area of Warm Springs and Boulder Highway. They drove to the location operating lights and sirens. When they arrived at the location, she observed a couple of unmarked patrol vehicles and one marked patrol vehicle. Both she and Officer Bouchte got out of the vehicle and moved closer to the location. That is when she heard

four to six gunshots. As the shots were being fired, she observed Decedent with his arms going forward around his mid-section and Decedent falling to the ground. She also observed a plain-clothes officer with a ballistic shield. When the firing stopped and Decedent fell to the ground, the plain-clothes officer handcuffed him.

Officer Shawn Thibault

HPD Officer Thibault was a uniformed officer in a marked Crown Victoria patrol unit. He received a call over the radio from Detective Rowlett seeking the assistance of a marked patrol unit in a traffic stop of a murder suspect at Warm Springs and Boulder Highway. He followed Officer Medrano to the location. Both vehicles had on lights and Officer Thibault had his sirens on. Officer Thibault pulled up to the location and observed a group of police officers, one of whom had a ballistic shield. He observed Officer Medrano run towards them. He approached the officers and could hear the officer with the ballistic shield yelling something. He definitely heard, "Put it down!" He came up next to the officer with the shield. At that time he could see Detective Rowlett and Officer Medrano next to a vehicle occupied by an elderly male. Officers were yelling at the elderly male to drive away. The vehicle slowly began to creep away. He observed Decedent at the trunk of the vehicle with his right hand buried in his waistband. Decedent was wearing very baggy shorts. He heard someone ask if Decedent had a gun and heard someone respond yes. Officer Thibault was face to face with Decedent with his weapon drawn. He ordered Decedent to put his weapon down. Officer Thibault explained:

"He looks at me and he gives me the last -- what I call the last courage breath. He goes (makes sound). He does that. And I'm thinking to myself oh, no, it's going to happen right now with this old person with a citizen in the vehicle. And all these things are going through my head. So I say -- I'm saying to myself I can't fire at him because if I do, all these other officers may squeeze off a round and the citizen or the bystander is going to get hurt..."

The vehicle began to speed off and Decedent tried to grab the trunk. Detective Collins kicked him off the vehicle. Detective Collins was between him and Decedent. Officer Thibault observed Decedent fall down sideways with his back to him. Decedent then stood up and turned and he heard a gunshot. The gunshot was fired from the direction that Decedent turned. After the first shot, he heard Decedent say, "Fuck you, motherfuckers!" Decedent fell with his hand in his waistband and he heard a barrage of firing and then it stopped.

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CIVILIANS

Citizen #1

On the date of this incident, Citizen #1 was eighty-two (82) years old. Citizen #1 was driving down Warm Springs towards Boulder Highway, when he observed a vehicle get into an accident at that intersection. He observed Decedent get out of the vehicle and it appeared that Decedent was holding his side and holding something else. His left hand was free and his right hand was to his side. Decedent began beating on his window to let him in. He tried to open the front and back doors. His doors were locked. Citizen #1 noticed a bunch of police officers and saw that Decedent was not giving up. He observed one of the officers to have a shield. The officers cleared the front of his vehicle and were waiting for him to move. He drove off and saw Decedent fall down by the rear of his vehicle. He believed Decedent was trying to get into his vehicle to take him hostage. The officers grabbed Decedent when he ran and knocked him down. He had his music up loud because he was hard of hearing and did not hear the police officers or any gunshots.

Citizen #2

Citizen #2 was driving West on Boulder Highway and was about to turn onto Warm Springs when he noticed a traffic accident and a number of unmarked police vehicles with their emergency lights on. He observed Decedent attempt to “carjack” another vehicle. He observed the vehicle speed off and Decedent attempt to flee. The only other civilian that Citizen #2 saw was the person in the vehicle Decedent had attempted to “carjack.” Decedent was then surrounded by police officers, but failed to comply with officers’ orders to surrender and he observed Decedent being shot. He heard approximately four shots. Citizen #2 videotaped a portion of the incident on his cell phone.¹

Citizen #3

Citizen #3 just left the Omelet House on Boulder Highway and was heading towards Warm Springs. A Henderson patrol vehicle with lights flashing passed him heading towards Warm Springs. As he approached the intersection, Citizen #3 observed a traffic accident and heard a “pop, pop.” He was not sure, but it appeared that Decedent was swinging his arm around and had a gun when the shots were being fired. He could not tell whether Decedent had already been shot when he saw his arm swinging around.

¹The cell phone video was taken approximately 200 feet from where the incident occurred. The video shows Citizen #1’s vehicle leaving the scene. Decedent cannot be seen on the video because he is hidden by stopped vehicles on Warm Springs Road. There is no sound of the incident on the video.

THE COUNTDOWN OF OFFICERS' WEAPONS

A countdown of HPD Detective Rowlett's primary weapon - - a Sig Sauer P229 .40 handgun - - revealed a total of 9 cartridges in the weapon (one in the chamber and eight in the magazine). Det. Rowlett did not carry a back-up weapon. He also carried one additional magazine containing 12 cartridges. Det. Rowlett fired his primary weapon three times during this incident.

A countdown of HPD Officer Medrano's primary weapon - - a Springfield XD9 9mm handgun - - revealed a total of 9 cartridges in the weapon (one in the chamber and eight in the magazine). Officer Medrano did not carry a back-up weapon. He also carried four additional magazines (each containing 16 cartridges). Officer Medrano fired his primary weapon eight times during this incident.

THE AUTOPSY OF DECEDENT

On July 23, 2012, an autopsy was performed on the body of Decedent at the Clark County Coroner's Office. Doctor Olson determined Decedent died as a result of "multiple gunshot wounds." Doctor Olson also made a finding of methamphetamine intoxication. The toxicology report from the autopsy revealed 7200 ng/g of methamphetamine in Decedent's liver tissue. The report noted that methamphetamine is a D.E.A. Schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational actions. It further indicated that high doses of methamphetamine can elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

THE SEARCH OF DECEDENT'S VEHICLE

During the follow-up investigation, HPD Detective Craig Ridings obtained a search warrant for Decedent's Friend's white Nissan Maxima bearing Nevada plate 192MMN. The warrant was approved by Justice of the Peace Stephen George. During the execution of the search warrant, a brown-handled, straight-blade knife was recovered on the front passenger floorboard.

FORENSIC REPORTS

On September 6, 2012, LVMPD Forensic Scientist James Krylo (P#5945) completed an examination of the weapons and firearms evidence recovered during the follow-up investigation.

HPD Detective Rowlett's Sig Sauer semi-automatic .40 handgun was test fired and found to be in normal operating condition with no noted malfunctions. The handgun

and one magazine had a maximum capacity of 13 cartridges. The test-fired bullets and cartridge cases from Detective Rowlett's handgun were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that the three "WINCHESTER" .40 S & W cartridge cases recovered from the scene were fired by Det. Rowlett's handgun. Two bullet jackets and two bullets recovered at the autopsy were consistent with being fired from Detective Rowlett's handgun, although there was insufficient detail to conclusively identify them as being fired from the handgun. Those items were not fired from Officer Medrano's Springfield 9mm handgun.

HPD Officer Medrano's Springfield semi-automatic 9mm handgun was test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a maximum capacity of 18 9mm cartridges. The test-fired bullets and cartridge cases from Officer Medrano's handgun were microscopically compared to the evidence recovered at the scene and autopsy. Based on these comparative examinations, it was determined that the eight "WIN" 9mm Luger cartridge cases recovered from the scene were consistent with being fired from Officer Medrano's handgun, although there was insufficient detail to conclusively identify them as being fired from the handgun. One bullet jacket recovered at the scene along with five bullets recovered at the autopsy of Decedent were consistent with being fired from Officer Medrano's handgun although there was insufficient detail to conclusively identify them as being fired from the handgun. Those items were not fired from Detective Rowling's Sig Sauer .40 handgun.

The remaining recovered bullet cores and fragments were of no value for testing.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent was justifiable under two theories: (1) The killing of a human being in self defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

A. The Use of Deadly Force in Defense of Another

The authority to kill another in defense of others is contained in NRS §§200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony ...” against the other person. NRS §200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished

NRS §200.160(1).

The Nevada Supreme Court has refined the analysis of self defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

....

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

Id. at 1051-52.

In this case, Decedent posed an objectively reasonable imminent danger to the CAT members on scene, additional responding officers and citizens in the immediate area. Decedent had an active warrant for his arrest for murder. Decedent failed to pull over for CAT members and engaged in a high-speed chase endangering everyone along the route of pursuit. The chase only ended after Decedent wrecked his vehicle at a major intersection. Decedent then exited his vehicle and failed to comply with direct and repeated orders to stop and remove his hand from his waistband. Decedent's failure to comply led officers to reasonably believe he was in possession of a handgun or other deadly weapon. Decedent then attempted to enter the vehicle of an elderly citizen, who was able to flee the scene. It was at that point, after continuously failing to comply with officers' orders to remove his hand from his waistband and surrender, Decedent made a motion with his hand which led officers to believe he was drawing out a handgun or other deadly weapon. As a result, Detective Rowlett and Officer Medrano were confronted by the appearance of imminent danger, which created in their minds an honest belief and fear that they, or others, were about to be killed or suffer great bodily injury. They, therefore, opened fire. Accordingly, the officers were justified in acting upon those appearances, fears and actual beliefs.

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B. Justifiable Homicide by a Public Officer

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

In this case, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to the officers themselves or other persons. Decedent had an active warrant for his arrest for murder. Decedent failed to pull over for CAT members and engaged in a high speed chase endangering everyone along his route. The chase only ended after Decedent wrecked his vehicle at a major intersection. Decedent then exited his vehicle and failed to comply with direct and repeated orders to stop and remove his hand from his waistband. Decedent’s failure to comply led officers to reasonably believe he was in possession of a weapon. Decedent then attempted to enter the vehicle of an 82-year-old citizen, who was able to flee the scene. It was at that point, after continuously failing to comply with officers’ orders to remove his hand from his waistband and surrender, Decedent made a motion with his hand, which led officers to believe he was drawing out a weapon. All of these circumstances created probable cause in the officers’ minds that Decedent posed a threat of serious physical harm either to the officers or others.

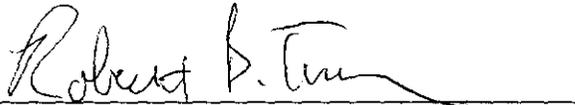
In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* “in the discharge of a legal duty.” This is true even though it was later determined that Decedent was not in possession of a weapon. Decedent’s actions leading up to the shooting led the officers to reasonably believe that he was in possession of a weapon and would use it.

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of HPD Detective Dave Rowlett (P#775) and HPD Officer Daniel Medrano (P#1666) 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).

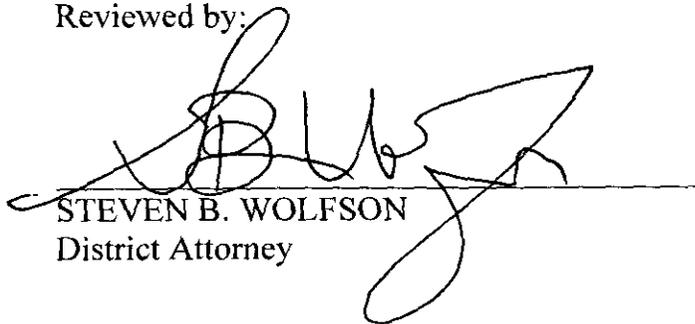
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As there is no factual or legal basis upon which to charge the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.



ROBERT B. TURNER
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney