



REPORT ON USE OF FORCE Legal Analysis Surrounding the Death of William Holt on May 4, 2021

INTRODUCTION

On May 4, 2021, William Holt (hereinafter “Decedent”) began firing one or more rifles from his second story apartment located at 2775 Fremont Street, Las Vegas, NV 89104 at residents of an adjoining apartment complex, 3040 East Charleston, Las Vegas, NV 89104. One of the victims drew his own firearm and returned fire. Multiple officers responded to 3040 East Charleston and established containment on Decedent’s apartment. Decedent exited his apartment and fired at least one shot at officers.

As part of an immediate action team, Officer Erik Lindberg deployed his rifle and took up a position covering the balcony area of Decedent’s apartment with Officer Smith as his spotter. Officers Smith and Lindberg observed Decedent exit his apartment. An officer gave a command for Decedent to show his hands. In response, Decedent raised a rifle and pointed it towards the officers. At that point, Officer Lindberg discharged his weapon one time. A short time later, Decedent again pointed his rifle towards officers and Officer Lindberg discharged a second round. At that point, Decedent went down in front of the apartment. Officers approached the apartment, took Decedent into custody, and began lifesaving efforts pending the arrival of medical personnel. Decedent succumbed to his injuries at the scene.

This report explains why criminal charges will not be forthcoming against Officer Lindberg. 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 January 24, 2022.

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 Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

I. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scenes were located in two apartment complexes that were part of a cluster of apartment complexes which were generally bordered by Charleston Boulevard to the North, Mojave Road to the East and Fremont Street to the southwest.



The complex at 3040 East Charleston is the eastern most apartment complex in the cluster. The area where the victims and officers were located was generally on the west side of the complex near buildings F and G. Near building G, there were two expended rifle cartridges with the head stamp "Speer 15 223 REM" as well as eight expended handgun cartridges all bearing the head stamp "WIN 40 S&W".

In the western parking lot, there were six parked vehicles that were struck with gunfire from the direction of Decedent's apartment. A number of bullets and fragments were recovered from the area consistent with shots being fired from the direction of Decedent's apartment.



The complex at 2775 Fremont Street is just west of the complex at 3040 East Charleston. Decedent's apartment was on the second floor of Building 4. His balcony faced building G at 3040 East Charleston. There was a retaining wall between the complexes. Below the balcony were a number of cartridge cases which included head stamp "FC 223 REM", "RP 308 WIN" and "WIN 9mm Luger."

On the balcony to unit 2047 was a bloodstained JLD Enterprise Inc. Model PTR91, 308 caliber rifle. The rifle was loaded with nineteen "Winchester 308 WIN" cartridges. A Sturm Ruger and Company, 223 caliber rifle was upright and propped against some stacked kennels. A stove-piped "FC 223 REM" cartridge was stuck in the ejection port, and the magazine had twenty-seven cartridges of various headstamps.

The decedent was lying supine on the balcony with what appeared to be two gunshot entry wounds in his chest/upper abdomen. Decedent was handcuffed and had apparent blood on his face, torso, and arms.

On the exterior of the building were bullet strikes consistent with return fire and several bullets/fragments were recovered.



II. INVESTIGATION

Law Enforcement Victims/Witnesses

Officer Canales

On May 5, 2021, at approximately 0123 hours, Detective Leavitt conducted an audio recorded interview with Officer Canales at 2775 Fremont Street. Also present for the interview was LVPPA representative B. Grammas. Below is a summary of the interview.

Officer Canales was assigned to the Downtown Area Command FLEX team, wore a standard issue green LVMPD utility uniform and was in a marked LVMPD patrol vehicle. Officer Canales was notified of an illegal shooting via a phone application.

Officer Canales responded to the area of the shooting and exited his vehicle. While checking the area on foot, Officer Canales observed people running away from the area where the illegal shooting occurred. Officer Canales heard yelling from the area where the shooting was supposed to have occurred and continued toward that location.

Officer Canales observed two black male adults who appeared to be arguing and he directed them to put their hands up. As one of the males raised his hands, he dropped a handgun to the ground. Officer Canales and his partner placed the two males into handcuffs and were told by the males that somebody had been shooting at them. The males directed Officer Canales toward an apartment building across from them and stated that a white male had been shooting at them.

Officer Canales directed his attention to another building, and while using his flashlight, observed a white male adult (Decedent) on the upstairs balcony of a building. Decedent looked toward Officer Canales before entering an apartment. He reappeared, and as Officer Canales shined his flashlight at him, Officer Canales observed Decedent with a firearm, that was pointed in his direction. Decedent then fired the weapon. Officer Canales observed the muzzle flash of the firearm as he heard the gunshot. Officer Canales and his partner quickly took cover as they believed the male was shooting at them.

Additional officers were requested, and Officer Canales was never in a position to observe the male again.

Officer Garboski

On May 5, 2021, at approximately 0134 hours, Detective Mendoza conducted an audio recorded interview with Officer Garboski at 2775 E. Fremont St. Also present for the interview was LVPPA representative C. Lyman. Below is a summary of the interview.

Officer Garboski was conducting enforcement in the area of 28th Street and Charleston Boulevard when he and his partner, Officer Canales, received a ShotSpotter notification of shots fired in the area of 3040 East Charleston Boulevard. Officer Garboski and Officer Canales were down the street from the location where the shooting took place. As they entered the complex, several citizens were seen running northbound through the complex. As Officer Garboski walked through the complex, he saw a black male who was holding a firearm. Officer Garboski took the subject into custody after he dropped the firearm on the ground. A second subject was taken into custody who was associated with the first subject. Both subjects informed Officer Garboski that a white male who lived in a second story apartment, located across the complex from their location, had just shot at them with a shotgun.

As Officer Garboski obtained more information from the two subjects, Officer Canales focused his attention at the apartment in question. Officer Canales informed Officer Garboski that a white male exited the apartment. Officer Garboski peeked around the

corner and saw a muzzle flash as the subject fired his weapon. Assisting officers arrived on scene and formed an action team. Officer Canales went to their patrol vehicle and retrieved Officer Garboski's rifle. After obtaining the rifle, Officer Garboski joined a team of officers to address the subject who fired his weapon. As the team repositioned themselves, Officer Garboski heard a gunshot, followed by another gunshot. Officer Garboski was informed of the OIS over the radio. Officers saw the subject was down on the balcony and an additional team of officers approached the subject and took him into custody.

Officer Smith

On May 5, 2021, at approximately 0039 hours, Detective Mendoza conducted an audio recorded interview with Officer Smith at 28th Street and Charleston Boulevard. Also present for the interview was LVPPA representative J. Abel. Below is a summary of the interview.

Officer Smith was working in the downtown area when he was informed of a ShotSpotter notification of shots fired in the area of 3040 East Charleston Boulevard. Additional details were received that a subject (Decedent) was possibly firing shots at the officers. Officer Smith responded to the area to assist. Officer Smith was met by additional officers, and they focused on a residence on the second floor. Officer Smith observed Decedent exit the apartment holding a long gun up in the air.

Decedent then pointed the firearm in the direction of the officers. Officer Smith stated that Officer Lindberg fired a round toward Decedent. Officer Smith was the spotter for Officer Lindberg, who had a rifle deployed. Decedent again pointed the firearm toward the officers' direction and Officer Lindberg fired a second shot. Decedent fell to the ground and Officer Smith held his position with lethal coverage. Officer Smith stated that he was approximately 70 to 80 yards from Decedent's location. Officer Smith held his position as another team of officers approached Decedent and took him into custody.

Sergeant Bauman

On May 5, 2021, at approximately 0053 hours, Detective Ubbens conducted an audio recorded interview with Sergeant Bauman at 2875 East Charleston Boulevard. Also present for the interview was LVPMSA representatives A Beas, C. Hooten, and R. Given. Below is a summary of the interview.

Sergeant Bauman was assisting detectives on an unrelated call when he heard a ShotSpotter call broadcasted nearby. Because members of his squad were responding to

the ShotSpotter call, he also responded to assist. Sergeant Bauman heard an update over the radio that officers were taking someone into custody who was in possession of a firearm. As Sergeant Bauman arrived at 3040 East Charleston Boulevard, he heard Officer Garboski announce over the radio, someone from a neighboring complex was shooting from an elevated position.

Sergeant Bauman arrived with Officer Garboski and obtained updated information regarding the suspect description and location. Sergeant Bauman requested additional officers, including an officer equipped with a rifle. Sergeant Bauman and Officer Canales maintained cover on the suspect's door while Officer Garboski retrieved a rifle from his patrol vehicle. When Officer Lindberg arrived, Sergeant Bauman relieved Officer Garboski with Officer Lindberg as the rifle officer covering the suspect apartment. Officer Smith was the spotter for Officer Lindberg and Officer Bryan Davila, was behind Officer Smith to maintain radio communication.

Sergeant Bauman, along with other officers, went to another location to form a tactical L. As Sergeant Bauman and the officers were getting into position, he heard an officer announce the suspect exited the apartment, then heard a gunshot followed by a second gunshot.

K-9 Sergeant Hutchason assembled a team to approach the suspect apartment. Sergeant Bauman was not able to completely observe the suspect being taken into custody due to a tall wall obstructing his view. As Sergeant Bauman looked over the wall, it appeared the officers were performing CPR while waiting for medical personnel to arrive.

Officer Johnson

On May 5, 2021, at approximately 0156 hours, Detective Colon conducted an audio recorded interview with Officer Johnson at 2775 East Fremont Street. Also present for the interview was LVPPA representative J. Abel. Below is a summary of the interview.

Officer Johnson responded to 3040 East Charleston Boulevard after a shooting event was broadcasted on the police radio. Upon his arrival, he joined a group of officers and formed an action team to approach the area.

Officer Johnson heard shots being fired and as he and other officers ran toward the scene, they were informed it was an OIS and the suspect (Decedent) was down. The team was then assigned to approach Decedent.

Decedent was down at the top of the stairs and Officer Johnson was assigned as a hands-on officer. Officer Inayat rolled Decedent over and they performed CPR until relieved by medical personnel.

Officer Inayat

On May 5, 2021, at approximately 0145 hours, Detective Colon conducted an audio recorded interview with Officer Inayat at 2775 East Fremont Street. Also present for the interview was LVPPA representative J. Abel. Below is a summary of the interview.

Officer Inayat responded to 3040 East Charleston Boulevard after a shooting event was broadcasted on the police radio. Upon his arrival, he joined a group of officers and formed an action team to approach the area.

Officer Inayat heard shots being fired and as he and other officers ran toward the scene, they were informed it was an OIS and the suspect (Decedent) was down. The team was then assigned to approach Decedent.

Decedent was down at the top of the stairs and Officer Inayat was assigned to take Decedent into custody. Officer Inayat had latex gloves on and moved Decedent's gun that was next Decedent's left hand. Officer Inayat rolled Decedent over and started CPR with Officer Johnson until medical personnel arrived.

Officer Lindberg

Officer Lindberg decided not to provide a voluntary statement, however, he did provide a public safety statement to Sergeant Lee shortly after the shooting. Sergeant Lee then memorialized that public safety statement in an interview with Detective Ubbens shortly after midnight on May 5, 2021. The statement was consistent with the other officers, witnesses, and physical evidence. At approximately 2:08 a.m., Officer Lindberg conducted a walk-through of the scene as well.

Lay Victims/Witnesses

Victim #1

On May 5, 2021, at approximately 0026 hours, Detective Colon conducted an audio recorded interview with Victim #1 at 3040 East Charleston Boulevard. Below is a summary of the interview.

Victim #1 was walking his dog around the complex and heard a gunshot. Victim #1 brought his dog back to his apartment and heard a second shot. Victim #1 observed neighbors walking around outside, so he exited his apartment to tell them to get down because someone was shooting.

Victim #1 observed a large male (Decedent), on the second floor of the neighboring complex shooting in his direction. Victim #1 observed Decedent holding a long gun and yelled for everyone to get down. Victim #1 informed a neighbor who was on the phone with police to let them know Decedent was outside on the second floor.

A neighbor had parked his car and was walking toward the complex. Decedent fired several shots at the neighbor. Victim #1 pulled his gun from his holster and returned fire to protect his neighbor. Victim #1 remained behind a wall until police arrived. As the officers approached, Victim #1 put his gun down, raised his hands in the air, and was handcuffed. Victim #1 advised the officers they were in the line of fire.

As the officers realized where the shots were coming from, Victim #1 took cover and heard several more shots, but did not know if they were from police or Decedent.

Victim #2

On May 5, 2021, at approximately 0039 hours, Detective Colon conducted an audio recorded interview with Victim #2 at 3040 East Charleston Boulevard. Below is a summary of the interview; for complete details refer to the interview transcript.

Victim #2 was in his residence watching television when he heard what he thought may be gunshots. Victim #2 looked outside and saw people running. Victim #2 observed a neighbor, Victim #1, that he knew and went outside to talk to him and ask about the gunshots.

While talking to Victim #1, another volley of shots was fired from an unknown direction. Victim #2 and Victim #1 took cover behind a wall. Victim #2 thought about running to his apartment but was afraid to leave his cover position.

Victim #2 saw other neighbors calling 911 so he called his mom to let her know what was happening. Victim #2 remained at his location until police officers arrived. Victim #2 was not sure where exactly the shots were coming from but did see a heavysset male (Decedent) standing on the second floor of a building in the neighboring complex. Victim #1 advised him that Decedent was the one shooting at them.

Police officers arrived and Victim #2 followed their instructions as he was placed in handcuffs. Victim #2 advised officers the location he believed the shots were coming from.

Victim #3

On May 5, 2021, at approximately 0058 hours, Detective Remmers conducted an audio recorded interview with Victim #3 at 2895 East Charleston Boulevard in the complex clubhouse. Below is a summary of the interview.

Victim #3 and his cousin drove into the neighborhood to check on Victim #3's daughter at 3040 E Charleston Boulevard #2126. As they were walking to the apartment, he heard the first three gunshots. Approximately five to ten minutes later, Victim #3 took out the trash. Victim #3 heard people talking about a "crazy guy" up on the second floor with a gun.

Victim #3 walked to his truck to grab a shirt. He looked up and saw a white male (Decedent), 5'7-5'8, 180 to 200 pounds, military style haircut, no shirt, black or blue shorts, and a black rifle. Decedent said "ahhh" and the people told Victim #3 to hurry up because the suspect had the gun pointed at him. Victim #3 ran, and Decedent fired five or six rounds towards him.

One of the neighbors had a concealed handgun and fired five to seven shots towards Decedent. 9-1-1 call was made, and people hid in the complex. When the police arrived, they placed the other two guys in custody because one of them had a gun. Victim #3 told the police that they had just been shot at and the guy saved his life. The suspect then shot one round towards the police.

Victim #3 did not know the other two other lay victims.

Witness #1

On May 5, 2021, at approximately 0032 hours, Detective Remmers conducted an audio recorded interview with Witness #1 at 2895 E Charleston Boulevard in the complex clubhouse. Also present for the interview was Detective Musheno. Below is a summary of the interview.

Witness #1 was on the west side of the property and heard two gunshots. Approximately one minute later he heard four to six more shots from the east side of the property. Witness #1 was making his way to the east side of the property, and he saw two officers with three or four black male adults detained on the other side of the property. Witness

#1 looked over the wall and he overheard one of the black males say to the officer that there is a white male adult on the second floor. Green looked in the direction the black male was talking about and saw a white male (Decedent) in his 50s with a bald head and glasses sitting down on the second floor. Decedent stood up and fired one shot eastbound towards the officers and then went back inside the residence.

The officers and the other citizens got out of the line of fire. Once Decedent fired the round towards the officers, Witness #1 backed away from the wall and did not see any other interactions. Witness #1 saw Decedent fire one round; however, he heard several other rounds.

Witness #2

On May 5, 2021, at approximately 0141 hours, Detective Remmers conducted an audio recorded interview with Witness #2 at 2775 Fremont Street, #1047. Also present for the interview was Detective Musheno. Below is a summary of the interview.

Witness #2 was sitting on his sofa and heard several gunshots. He pulled his phone off the charger and went into the bathroom. He heard approximately three to four gunshots and then a second volley of rounds but was not sure how many. He did not believe the suspect fired any rounds. Witness #2 came out of the bathroom when he did not hear any more gunshots.

Witness #2 stated he spoke with Decedent at approximately 1400 and asked him to help with his car battery. Decedent told Witness #2 that he would not help him because he was "drinking." Witness #2 did not know Decedent very well. Witness #2 believed Decedent had a mental disability due to the way he acted and he believed he did not like African Americans. Witness #2 did not think Decedent ever used any drugs. He further stated Decedent did not make any comments about anything being wrong, he owned an older white car and rarely had any visitors.

Witness #3

On May 5, 2021, at approximately 0050 hours, Detective Remmers conducted an audio recorded interview with Witness #3 at 2895 E Charleston Boulevard in the Club House. Below is a summary of the interview.

Witness #3 was walking his dog at 3040 East Charleston Boulevard. Witness #3 heard four shots and he ran to his friend's house. Witness #3 asked the neighbor if she was okay and then he noticed the suspect (Decedent) point his gun at him. Witness #3 went into

apartment 2062 and closed the door to the apartment and told his friends to get down and get in the closet. He waited a few minutes and went outside and down the stairs. Witness #3 told the officers that Decedent was across the street with a rifle and shooting at them. Witness #3 thought he heard a total of seven shots. He was with two other people but did not know their names.

Witness #4

On May 5, 2021, at approximately 0110 hours, Detective Musheno conducted an audio recorded interview with Witness #4 at 2895 East Charleston Boulevard. Below is a summary of the interview.

At approximately 2000 hours, Witness #4 heard what she believed were fireworks or an explosion. She opened the door to her apartment and spoke with her neighbors, who confirmed the noises were gunshots. Witness #4 went back into her apartment, put her shoes on, and exited the apartment. Witness #4 walked through the apartment complex and observed a white male (Decedent) walking back and forth on his balcony with a rifle. Witness #4 took cover behind a wall and called police when Decedent fired in her direction.

III. VIDEO EVIDENCE

OFFICER BODY WORN CAMERAS

The Axon Flex body-worn camera (BWC) time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero degrees longitude and passes through Greenwich, England.

Officers activated their BWCs at different times during the incident. There is a seven-hour negative difference between the event time and displayed Zulu Time. Axon BWCs also have a “time drift” where the camera’s internal clock drifts from actual time based on when the cameras are synced when the camera is docked. Each BWC can display a different time based on a time drift.

The following are summaries of BWC footage from the subject and witness officers who were on scene at the time of the OIS.

Officers Canales and Garboski

Officers Canales and Garboski were wearing a BWC at the time of the incident and their cameras were activated. The cameras were collected by Sergeant Iacullo and secured. The video footage captured was later viewed by detectives on May 4, 2021, at 2203 hours.

Officer Canales was observed looking at the ShotSpotter application on his phone which showed the apartment complex at 3040 East Charleston Boulevard. As the audio was activated, Officers Canales and Garboski were preplanning their approach. The officers entered the apartment complex and parked their patrol vehicle.

As the officers were walking south, they observed two people running north and asked why they were running. Both officers ran to the south after a brief conversation. Officer Canales drew his firearm and continued south, followed by Officer Garboski who was updating information via the radio.

Loud male voices were heard, and Officer Canales took cover near the corner of a building. Officer Canales issued verbal commands and rounded the corner when a black male adult (Victim #1) was captured by the camera. Victim #1 raised his hands and dropped a black object, which was later determined to be a firearm. As Officer Garboski continued to walk, another black male (Victim #2) was captured by the camera with his arms and hands raised.

As Officer Canales took Victim #2 into custody, Officer Garboski took Victim #1 into custody. Victim #1 and Victim #2 told the officers they were shot at and gave the location of the person shooting at them. Victim #1 and Victim #2 stated a white male (Decedent) was shooting at them from the second floor of another complex and directed the officers towards Decedent's apartment.

Officer Canales drew his firearm and utilized the corner of the apartment building for cover while he observed Decedent's apartment. At one point, Decedent was identified as the person who was shooting by either Victim #1 or #2 when he was outside his apartment.

Officer Canales updated the apartment and Decedent's location over the radio. Officer Canales and Garboski appeared to be looking towards Decedent's apartment. Officer Canales stated Decedent was outside again. A gunshot was heard which startled the officers. Via his radio, Officer Garboski updated they were shot at by Decedent.

Officer Garboski relieved Officer Canales of his position and was subsequently relieved by another officer. Officers Garboski and Canales joined an immediate action team that was organized by Sergeant Bauman. While moving with the action team, a gunshot could be heard on both officer's BWC.

Officer Lindberg

Officer Lindberg was wearing a BWC at the time of the incident and the camera was activated. The camera was collected by Sergeant Iacullo and secured. The video footage captured was later viewed by detectives on May 4, 2021, at 2208 hours.

Officer Lindberg responded to 3040 East Charleston Boulevard. Officer Lindberg was instructed to relieve an officer in Officer Canales' original position. Officer Lindberg took his position and utilized his rifle to cover Decedent's apartment.

After several minutes, an officer was heard stating the door to Decedent's apartment was open and that Decedent had a gun. Officer Lindberg discharged two rounds from his rifle. Officer Lindberg held his position until he was relieved.

Protective Force International (2620 Regatta Drive)

A security officer was wearing a BWC at the time of the incident and the camera was activated. The video footage was provided by Protective Force International. It depicted the following:

The security officer was working in the Ridge Falls apartment complex at 2895 East Charleston Boulevard, which borders 3040 East Charleston Boulevard and 2775 East Fremont Street. The security officer was in the southeast corner of the complex and facing Decedent's apartment.

A voice could be heard saying, "Let me see your hands", and a person (Decedent) was observed on the balcony of apartment 2047. Decedent appeared to be pointing a long object towards the location of Officers Canales and Garboski who were in the complex at 3040 East Charleston Boulevard.

The security officer advised his dispatcher that a WMA was shooting at LVMPD officers. He continued to update his dispatcher of Decedent's location and the location of his apartment. The security officer also stated he heard two gunshots, followed by six to eight more gunshots before Decedent fired at the officers.

IV. OFFICER WEAPON COUNTDOWN

On May 5, 2021, at approximately 0310 hours, Officer Lindberg had his patrol rifle counted down at 2775 Fremont Street to determine the number of rounds he fired during the incident. Officer Lindberg and witness officers were photographed by CSI personnel for appearance purposes and their weapons were photographed for identification purposes.

Officer Lindberg was wearing a blue shirt and blue jeans. Officer Lindberg wore a black tactical vest with attached tools and equipment as part of his position on the DTAC FLEX team. The tactical vest had an LVMPD badge affixed to the front center of the vest and a Las Vegas Metro Police patch attached to the back.

Prior to countdown Officer Lindberg stated he carried 28 cartridges in the magazine loaded in his firearm. At the completion of the countdown, it was determined Officer Lindberg discharged his rifle two times during this incident. When compared to evidence at the scene, detectives concluded Officer Lindberg discharged his rifle two times. Officer Lindberg's rifle and magazine used during the OIS, and cartridges were photographed and impounded by CSA Taylor.

V. AUTOPSY

On May 6, 2021, at approximately 0703 hours, under CCOCME case 21-2831, an autopsy was performed on the body of William Holt at the CCOCME by Doctor Ben Murie.

The following wounds/injuries were noted on Decedent:

- 1) Gunshot wound of the torso.
- 2) Gunshot wound of the torso.
- 3) Abrasion to the right shoulder.
- 4) Abrasions to the left elbow.
- 5) Abrasions to the face.
- 6) Superficial lacerations to the left eyebrow.

Upon the completion of toxicology testing, the following results were noted:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Ethanol	236	mg/dL	001 - Peripheral Blood
Blood Alcohol Concentration (BAC)	0.236	g/100 mL	001 - Peripheral Blood
Caffeine	Positive	mcg/mL	001 - Peripheral Blood
Zolpidem	91	ng/mL	001 - Peripheral Blood
Citalopram / Escitalopram	230	ng/mL	001 - Peripheral Blood

After a thorough review of facts and circumstances and a complete autopsy, Doctor Murie opined Decedent died as a result of multiple gunshot wounds. The manner of death was homicide.

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 SELF OR 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.¹ 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).

¹ 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.

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

In this case, Decedent posed an imminent danger to Officer Lindberg, other officers at the scene and several civilians. Decedent fired multiple rounds at residents of the neighboring apartment complex and when first confronted by police, fired at them as

well. When Officer Lindberg saw Decedent raise his rifle and aim it in his direction, he reasonably believed he needed to fire to protect his life as well as the lives of others. After the first shot, when Decedent raised the rifle again and began to aim, Officer Lindberg was acting under the same state of mind.

Thus, Officer Lindberg was confronted by the appearance of imminent danger, which created in his mind an honest belief and fear that he was about to be killed or suffer great bodily injury. Accordingly, Officer Lindberg was justified in acting upon those appearances, fears and actual beliefs.

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, the facts demonstrate that Officer Lindberg had probable cause to believe that Decedent posed a threat of serious physical harm to himself and others. This probable cause became evident after Decedent fired upon officers and refused commands to lower his weapon. Thus, Officer Lindberg had a reasonable belief that Decedent was a threat to his life or others around him.

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 Officer Lindberg 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.