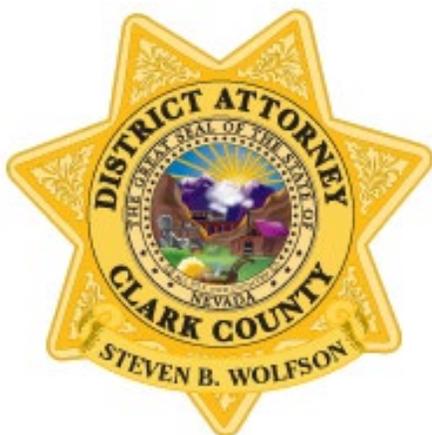


REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jose Hernandez on April 18, 2020

INTRODUCTION

On April 18, 2020, at 10:50 a.m., Las Vegas Metropolitan Police Department (“LVMPD”) Dispatch received a 911 call from Witness # 1 who reported that her son, later identified as Decedent Jose Hernandez (hereinafter “Decedent”) had threatened her. Witness #1 reported that Decedent was armed with a firearm. Patrol Officers Gregory Ludwig, Elvis Morales and Jonathan Miranda responded to 3285 Sandy Lane, apartment # 1 and made contact with Witness # 1. Witness # 1 directed officers to the backyard of the residence where officers observed Decedent with his hands in his pockets.

Officers Ludwig, Morales and Miranda issued commands to Decedent to stop and show his hands. Decedent ignored commands and began to walk north on Sandy Lane. Officers followed behind Decedent using a ballistic shield, a 40mm specialty impact weapon and a low lethal shotgun. Decedent continued north on Sandy Lane eventually reaching 3693 E. Cotton. Decedent produced a firearm and fired at least one round in the air. He then proceeded to jump the fence into the backyard of 3693 E. Cotton. Decedent began walking around the backyard firing at least one additional round from his weapon. Subsequently, Decedent put the handgun to his head and sat down on a couch in the middle of the backyard.

SWAT teams were requested after officers developed a perimeter and declared an open field barricade situation. SWAT and Crisis Negotiators arrived shortly thereafter. SWAT took up several positions including inside and on the roof of 3693 E. Cotton. Crisis Negotiators were able to make contact with Decedent after providing him a phone. Crisis Negotiators spent approximately three hours communicating with Decedent. During the communication, Decedent continuously held the gun to his head with his finger on the trigger, rambled, was erratic and stated he wanted to die.

During the incident, officers became aware that Decedent had been using narcotics since approximately 2018. Decedent had spent a short amount of time in a rehabilitation center, but had left before treatment was completed. Decedent had several interactions with LVMPD in the past, including an incident in 2019 in which he stated he wanted to die and was transported to a medical facility for evaluation.

Officers also learned that not long before the current incident, Decedent had started talking to himself and was paranoid people were going to attack him. Due to these thoughts, Decedent always carried a knife and a gun on his person. Decedent continued to use narcotics, which included marijuana and Xanax. Decedent had mentioned suicide numerous times in the past two years.

Throughout the incident, SWAT personnel developed several low lethal plans to distance Decedent from his weapon so officers could safely take him into custody. After one plan was initiated but failed, Decedent continued to engage in erratic behavior in the backyard. SWAT developed another plan. This plan involved overwhelming Decedent from multiple angles with low lethal rounds and taking him into custody.

SWAT Officers Alyn Goodrich and Coleman Oswald positioned themselves on a neighboring home roof. They then deployed several 40mm non-lethal impacts and pepperballs at Decedent as Decedent still had the gun to his head. As officers deployed their low lethal rounds, Decedent fired one shot from his weapon into his own head. SWAT entered the backyard and found Decedent deceased from a gunshot wound to the head.

The District Attorney's Office has completed its review of the April 18, 2020, 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 SWAT Officers Goodrich and Oswald were not criminal in nature.

This report 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 citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review conducted on May 11, 2021. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of SWAT Officers Goodrich and Oswald were 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.

OVERVIEW OF INCIDENT

INFORMATION RECEIVED FROM VIDEO

LVMPD Air Unit Camera:

Video was obtained from the LVMPD Air Unit Camera. Video shows a male, later identified as Decedent, walking from the side of a residence onto the sidewalk. Decedent is wearing a grey sweatshirt, blue jeans and a backpack. Both his hands are in his pockets. Decedent continues to walk northbound on the west side of the sidewalk. Decedent walks past at least one person and multiple vehicles while on the sidewalk. He appears to be argumentative or agitated with the person he walked past. Decedent then jumps a fence into the backyard of 3693 E. Cotton. As he jumps the fence, a black and white handgun is observed in his right hand. As he goes over the fence, he fires the gun in the air. Upon entering the backyard, Decedent places the handgun to his head. He then momentarily puts the gun in the air and appears to fire another shot. Afterwards he places the gun back to his head. Decedent then sits down on a wicker bench in the backyard and continues to place the gun to the right side of his head.



Officer Ludwig's Body Worn Camera

Officer Ludwig wore a Body Worn Camera at the time of the incident and his camera was activated. His Body Worn Camera was collected and secured. The Body Worn Camera video footage that was captured during the incident was later reviewed.

The following is a summary of what was observed from the Body Worn Camera Footage:

Officer Ludwig was present on Sandy Lane with two other officers. Decedent walked from a residence behind a vehicle. Ludwig and other officers immediately began giving Decedent commands to "come here". Decedent was observed walking northbound on Sandy Lane.

Officers began following Decedent down Sandy Lane. Officer Ludwick was behind two other officers who were utilizing a ballistic shield. Ludwig was equipped with a low lethal shotgun. As officers followed Decedent, they gave Decedent commands to “get your hands out of your pockets” and “come here.” The LVMPD megaphone could also be heard informing Decedent that there was a canine on the street. As officers followed Decedent, a shot is heard. Ludwig radioed that shots were fired.

Bearcat Camera:

The LVMPD SWAT Bearcat tactical vehicle is equipped with a video camera. The Bearcat was positioned east of Decedent outside the east fence of 3963 E. Colton Avenue. FIT Detectives obtained a copy of the video as part of their investigation. The following is a brief summary of the footage captured at the time of the incident.

SWAT Officers were visible on the roof of 3681 E. Colton Avenue which was the west side neighboring house of the target backyard. Two groups of SWAT Officers were on either side of an A-frame roof. A SWAT Officer was visible holding a paintball style gun pointed at Decedent, and a second SWAT Officer had a 40mm specialty impact weapon.

Decedent sat on a white wicker couch positioned in the middle of the backyard. Decedent had a gun in his right hand that was pointed to the right side of his head, and a teddy bear cradled in his left hand. Decedent stood up with the gun still pointed to his head.



Decedent took a few steps away from the couch. It appeared Decedent was hit in his back with one type of low lethal round as he still had the gun to his head. Subsequently, Decedent fired a round into his head causing him to begin to fall down. Simultaneously, additional rounds of low lethal force and distracts are deployed from SWAT Officers toward Decedent. Decedent fell to the ground and all low lethal rounds ceased.



INFORMATION RECEIVED FROM LAS VEGAS METROPOLITAN POLICE DEPARTMENT OFFICERS

SWAT Officer Brice Clements P#14074

On April 18, 2020, SWAT Officer Brice Clements gave a recorded statement to Detectives. Present during the statement was Detective Trevor Alsup and Las Vegas Police Protective Association Representative (hereinafter "PPA") John Abel. During the statement, Officer Clements relayed the following information:

Officer Clements has been with the Las Vegas Metropolitan Police Department since June 18, 2009. At the time of the incident, he was assigned to SWAT Squad Z-32 and worked Sunday through Wednesday 3 p.m. to 1 a.m.

On April 18, 2020, Officer Clements wore his SWAT uniform which included two firearms, several distracts, a helmet, a protective vest and a LVMPD SWAT uniform underneath. At approximately 11:20 a.m. on the 18th, Officer Clements received a call from Lieutenant O'Daniel referencing a call for an open field barricade in the area of Colton and Sandy. Information was provided that a male, later identified as Decedent, had run from police, barricaded himself in an open field and had fired a couple of rounds.

Officer Clements arrived at the scene and positioned himself on the 2/3 side of the SWAT Bearcat vehicle. Initially, Officer Clements was assigned the responsibility of being on shield, and he remained on shield for the majority of the incident that lasted approximately 5 ½ hours. During the incident, several plans were developed to take Decedent into custody. Attempts were made to communicate with Decedent on the phone via negotiators. A phone was thrown to Decedent who was sitting on a bench. Another plan was developed to give Decedent water. During that plan, Officer Clements moved up with his shield while another officer tossed Decedent water. A subsequent plan was made to distance Decedent from the firearm by giving him food followed by deploying distracts and the K-9 dog. During that plan, Officer Clements assisted in attaching food to the ARMOR robot. However, both the water and the

food plan failed when Decedent continued to hold the firearm in his hand and made several comments that he wanted the police to shoot him.

Approximately six hours into the barricade, another plan was developed to bombard Decedent with low lethal rounds and safely take him into custody. The plan was for officers on the roof of a neighboring house to deploy low lethals, while Officer Clements and another officer behind the Bearcat tossed distractives over the fence. The plan proceeded with officers on the roof deploying their low lethals. Officer Kubla then tossed his distract first. A second later, Officer Clements tossed his distract. Officer Clements could not observe much because he was blocked by the Bearcat. Shortly thereafter, Officer Clements heard on the radio that Decedent had shot himself. Officer Clements was then tasked with verifying that Decedent was in fact deceased.

Officer Clements did not witness Decedent fire any rounds but could see that he was holding a semi-automatic handgun during the incident. Officer Clements did not witness Decedent shoot himself.

SWAT Officer Kerry Kubla P#13135

On April 18, 2020, SWAT Officer Kerry Kubla gave a recorded statement to Detectives. Present during the statement was Detective Trever Alsup and PPA Representative John Abel. During the statement, Officer Kubla relayed the following information:

Officer Kubla has been with the Las Vegas Metropolitan Police Department since February 13, 2008. At the time of the incident, he was assigned to SWAT Squad Z-32 and worked Sunday through Wednesday 3 p.m. to 1 a.m.

On April 18, 2020, Officer Kubla wore a tactical Crye, full armored vest, helmet, body camera and gun belt with two pistols. Officer Kubla was notified by phone transponder that a subject, later identified as Decedent, was suicidal and walking in the area of Sandy and Colton. Decedent had fired shots from a pistol and was in an open field barricade. While in route to the location, Officer Kubla heard on the Northeast Area Command radio that multiple shots had gone off. He remembered hearing that at least one shot was in the air.

Upon arrival at the scene, Officer Kubla parked his equipment truck to the rear of the Bearcat vehicle and took a position behind the Bearcat on the 2/3 side. Originally, Officer Kubla was designated as a low lethal officer. However, he was later switched to deploy a distract. During the barricade, several plans were developed to distance Decedent from the firearm. However, Decedent failed to comply.

Subsequently, a plan was developed to deploy the low lethal option of the pepperball gun. Once the pepperball distract went off, Officer Kubla was going to push up along the Bearcat side and throw a 25 distract device. If Decedent became distant from the firearm, the K-9 dog would go in to help take Decedent into custody. The plan was implemented and Officer Kubla threw his distract device. Shortly thereafter, Officer Kubla was notified that Decedent was down with a gunshot wound to the head.

On multiple occasions during the incident, Officer Kubla observed Decedent with a firearm. Decedent was observed pointing the gun at his head with his finger and thumb on the trigger.

Officer Kubla was informed multiple times that Decedent said he wanted to end his life and he wanted officers to take his life.

SWAT Officer Coleman Oswald P#13936

On April 18, 2020, SWAT Officer Coleman Oswald gave a recorded statement to Detectives. Present during the statement was Detective Trever Alsup and PPA Representative Brian Grammas. During the statement, Officer Oswald relayed the following information:

Officer Oswald has been with the Las Vegas Metropolitan Police Department since March 19, 2009. At the time of the incident, he was assigned to SWAT Squad Z-32 and worked Wednesday through Saturday 3 p.m. to 1 a.m.

On April 18, 2020, Officer Oswald wore a SWAT issued Crye Precision combat top and pants, a tactical vest and tactical gear. He was also equipped with a 40mm multi-launcher and two handguns. Officer Oswald was on his way to serve a search warrant when he was notified of an All Call open field barricade in the northeast valley. Details of the call indicated a male, later identified as Decedent, was shooting up in the air, had made threats to harm himself and was pointing a gun off and on to his head.

Officer Oswald arrived and was assigned to be the Bearcat driver. Officer Oswald drove the Bearcat past the target backyard and observed Decedent with a gun to his head. Officer Oswald positioned the Bearcat at the one four corner of the house. During the incident, Officer Oswald was aware that negotiators were talking to Decedent via phone. Through most of the incident, Decedent had the gun to his head. Various low lethal plans were discussed and implemented during the incident, but they were ultimately unsuccessful.

At some point, Officer Oswald's assignment shifted and he was assigned to be an additional low lethal officer using his 40mm launcher at the four side of the backyard. A plan was then developed to go to the roof, wait for a lull in the action and then hit Decedent with low lethal rounds to prevent Decedent from using the weapon. The less lethal plan was to start with the pepperball gun. Then, Officer Oswald would shoot all four rounds from his 40mm low lethal weapon. If this distracted Decedent, the K-9 dog would be sent in to control Decedent.

Decedent stood up to talk to the Bearcat, but he got agitated and aggressive. Officer Oswald observed Decedent to have the gun down by his right side. Officer Goodrich, who was also on the roof, then began to pepperball Decedent in the back. After the second or third pepperball round, Officer Oswald deployed his 40mm rounds. Officer Oswald believed he hit Decedent in the upper back as Decedent went down to the ground. Officer Oswald then shot two more rounds. On the third round, Officer Oswald heard from dispatch that Decedent had shot himself. Officer Oswald then stopped firing. Officer Oswald did not see Decedent actually shoot himself.

SWAT Officer Allyn Goodrich P#9198

On April 18, 2020, SWAT Officer Allyn Goodrich gave a recorded statement to Detectives. Present during the statement was Sergeant Michelle Iacullo. During the statement, Officer Goodrich relayed the following information:

Officer Goodrich has been with the Las Vegas Metropolitan Police Department since May 20, 2007. At the time of the incident, he was assigned to SWAT Squad 032 Silver Team and worked Sunday through Wednesday 3 p.m. to 1 a.m.

On April 18, 2020, Officer Goodrich wore a LVMPD SWAT green utility uniform and a Tier One Entry Vest equipped with ballistic protection and level three armor. Officer Goodrich was also equipped with two pistols and a low lethal pepperball system. Officer Goodrich was notified of an All Call situation from the LVMPD communicator. An All Call situation required both SWAT teams to respond to the scene. Details of the call indicated that a subject, later identified as Decedent, was moving around in an open filed barricade with a handgun and was currently and actively firing the weapon.

Officer Goodrich arrived on scene and assumed a role as low lethal gas specialist. He positioned himself on the inside of the house armed with a single shot 40mm launcher and a multi shot 40 mm launcher. Plans were developed but as the event unfolded, Officer Goodrich was tasked with getting his pepperball device and taking a position on the roof of the residence west of where Decedent was positioned with low lethal specialist Officer Oswald.

The plan was to hit Decedent multiple times with pepperballs and 40mm foam. As that was occurring, other officers would throw distracts at Decedent in attempt to get him to drop the firearm and safely take him into custody. Officer Goodrich went to the roof with his pepperball System and Officer Oswald, who was equipped with his 40mm multi-launcher. Initially, Decedent laid down on a couch in the backyard. Officer Goodrich could not get a pepperball shot of him. During this time, Decedent was continuously holding the gun to his head and extremely agitated.

Eventually, negotiators were able to get Decedent to stand up. As soon as he stood up and presented his back to Officer Goodrich, Officer Goodrich began to fire the pepperball system. After Officer Goodrich fired two or three rounds, Officer Oswald fired the multi launcher at Decedent. Officer Goodrich hit Decedent a couple times. As soon as Officers Goodrich and Oswald shot, Decedent shot himself in the head.

During the four and a half hours of negotiating with Decedent, he had the gun the entire time.

SWAT Officer Ryan Rotta P#13422

On April 18, 2020, SWAT Officer Ryan Rotta gave a recorded statement to Detectives. Present during the statement was Sergeant Michelle Iacullo and PPA Representative M. Hamm. During the statement, Officer Rotta relayed the following information:

Officer Rotta has been with the Las Vegas Metropolitan Police Department since July 7, 2008. At the time of the incident, he was assigned to SWAT Squad 035 Gold Team and worked Wednesday through Saturday 3 p.m. to 1 a.m.

On April 18, 2020, Officer Rotta wore a LVMPD SWAT green utility uniform, a vest, and his duty belt equipped with his SWAT issued Glock 17, additional magazines and a 25 distract. During this event, Officer Rotta was assigned the low lethal 40mm multi-launcher. Officer Rotta was notified via the Northeast Area Command police radio of an open field barricade involving a male, later identified as Decedent, with a gun pointed at his head and randomly

firing it off. Shortly thereafter, Officer Rotta was notified of the same incident from Lieutenant O'Daniel.

Upon arrival at the scene, Officer Rotta grabbed his shield and multi-launcher and took a position at the Bearcat on Sandy and Colton. Decedent was contained in the backyard. For the majority of the incident, Officer Rotta remained positioned at the Bearcat. However, once the ultimate plan was developed, Officer Rotta moved inside the residence at 3693 Colton to the kitchen area back slider door. Throughout the over four-and-a-half hour incident, Officer Rotta was made aware that Decedent had a handgun either pointed at his head or between his legs with his thumb or index finger on the trigger.

A plan was developed for Officers Goodrich and Oswald to deploy low lethal pepperball and a 40mm multi-launcher at Decedent. At the same time, Officer Rotta would open the slider and add 40mm deployment while officers on the two side of the Bearcat would also deploy distracts. The hope was that the low lethals would cause Decedent to drop the firearm and create enough separation for the K9 dog and officers to take him into custody.

Officer John Woosnam P#6236

On April 18, 2020, Officer John Woosnam gave a recorded statement to Detectives. Present during the statement was Sergeant Michelle Iacullo and PPA Representative Brian Grammas. During the statement, Officer Woosnam relayed the following information:

Officer Woosnam has been with the Las Vegas Metropolitan Police Department since January 22, 1999. At the time of the incident, he was a Crisis Negotiator and worked Wednesday through Saturday 3:30 p.m. to 1:30 a.m.

On April 18, 2020, Officer Woosnam wore a LVMPD Crisis Negotiation Team T-shirt with an LVMPD badge on the front and "Police Negotiator" on the back. Officer Woosnam was off duty when he received a call from the LVMPD communicator indicating that a subject, later identified as Decedent, had fired multiple shots and was walking through a neighborhood. Negotiators and SWAT were requested to respond to the scene.

Officer Woosnam arrived on scene and immediately grabbed his negotiator body armor, helmet and gas mask. Due to the dynamic scene, there was no time for a briefing. After donning his gear, Officer Woosnam went to the Bearcat, assumed the role as the Forward Primary and began addressing Decedent though the PA system. From the Bearcat, Officer Woosnam observed a desert landscaped backyard with an outdoor loveseat. Inside the backyard was Decedent with a distinctive black and white pistol. Decedent was holding the gun with his thumb on the trigger. Decedent appeared to be emotionally distressed and was moving around and yelling. As Officer Woosnam addressed Decedent from the PA system and Decedent responded but Woosnam could not hear what he was saying.

Multiple times, Officer Woosnam asked Decedent to put the gun down or take it away from his head. Every time Officer Woosnam asked Decedent to do so, Decedent would shake his head "No." Decedent never put the gun down or put his hands up at Officer Woosnam's request. Officer Woosnam spoke to Decedent for the first few minutes of the over four-hour incident. During the incident, SWAT was able to throw Decedent a phone. Officer Woosnam instructed Decedent how to pick up the phone. Once Decedent picked up the phone, other Negotiators located the tactical operations center began communicating with Decedent on the phone.

Throughout the majority of the incident, Decedent had the gun pointed to his head. At times he would put the gun between his knees but he never sat the gun down. Multiple times throughout the incident, plans were developed to distance Decedent from the gun. However, introducing food and water still did not get Decedent away from the gun.

Eventually, a plan was developed to hit Decedent with low lethal options. Officer Woosnam was able to get Decedent to stand up in the backyard. As Decedent stood up, he began walking towards Officer Woosnam and yelling "is this what you want". Officer Woosnam told him he wanted him to put the gun down and thank you for standing up. Almost simultaneously, Decedent was hit with low lethal rounds and shot himself.

INFORMATION FROM WITNESS #1

On April 18, 2020, at approximately 1900 hours, Sergeant Iacullo and Detective Colon conducted an interview with Witness #1 at the corner of Colton Avenue and Covey Lane. Also present for the interview was Sergeant Miguel Garcia who translated for Witness #1. Below is a summary of the interview.

Witness #1 stated Decedent had been using narcotics for a couple of years. She was not sure which narcotics but had observed him consume marijuana and Xanax. Over the past couple of years, Decedent's mental health had appeared to deteriorate. Witness #1 was not sure if the deterioration was from the narcotics but advised he had received rehabilitation treatment. Decedent did not complete the full rehabilitation program and had gone back to using unknown controlled substances.

Decedent did not have a good relationship with his father, who lived in Texas, and had not seen him for approximately two years prior to the incident. During that visit, Decedent stole money from his father and used it to purchase one or two guns.

Decedent had been extremely agitated and would carry a gun and knife on him because he believed people were trying to get him.

During the morning hours of April 18, 2020, Witness #1 had left her residence to obtain food from the food bank. Decedent sent her a text message requesting she pick him up food from Jack in the Box on her way home. Witness #1 refused, which upset Decedent.

Witness #1 returned to her residence and was confronted by Decedent, who had a firearm on his belt, and the apartment appeared to have been damaged by Decedent. Decedent ordered Witness #1 to leave and get him the food he wanted. Witness #1 left the residence, fearful of Decedent, and called 911.

DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE



The primary scene was located in the backyard of 3693 E. Colton. Ave. The actual residence located at 3693 was a single story, north facing residence with a south backyard. There was damage to the north facing entry door and frame of the residence. There was also damage to the interior blinds over the south sliding glass door that leads to the backyard.

The backyard of the residence was mainly enclosed with a chain link fence with a partial wood fence on the west side. The yard was primarily filled with dirt, shrubs and weeds. A wicker bench was in the middle of the backyard. Decedent was on the ground adjacent to the wicker bench. A helmet, orange peels and a box were on the ground north of the bench. A black cell phone was on top of the bench. Two distracts containers, five black and green 40mm projectiles and multiple pieces of green projectiles were located throughout the yard including around and underneath Decedent. Two black pull tabs were in the southwest corner of the yard. A BARNES 9MM LUGER +P cartridge case was on the ground in the south-central part of the yard. A 9mm semi-automatic handgun was on top of a hose in the yard, southeast of the sliding glass resident door.

Weapon: The weapon was a black and white 9mm semi-automatic handgun with a serial number of 586519. There was a BARNES 9MM LIUGER +P cartridge case and a R-P

9MM LUGER cartridge in the chamber of the handgun. The handgun magazine was in the magazine well and contained three (3) BARNES 9MM LUGER +P cartridges and two (2) R-P 9MM LUGER cartridges.

Additional Scenes:

3681 E. Colton Ave:

3681 E. Colton was a single story, north facing residence west of 3693 E. Colton Ave.

3365 Sandy Lane:

3365 Sandy Lane was a single story, east facing residence that was south of 3693 E. Colton Ave. The residence was enclosed by a chain-link fence that borders 3693 E. Colton Ave to the north. A black and green projectile was on the ground, south of the fence adjacent to 3693 E. Colton Ave.

3285 Sandy Lane:

3285 Sandy Lane was a two story, east facing apartment building. Apartment 1 is a first-floor apartment. The Livingroom was in disarray with miscellaneous items. The bathroom had damage to the door and the west wall with pieces of the door/wall on the floor. The southwest bedroom had damage to the exterior and interior of the bedroom door, the north closet wall and the north, south and west bedroom walls. No door was present between the bedroom and bathroom. A doorway leading into the closet was located between the south cabinet and the toilet room.



LOCATION AND DESCRIPTION OF THE BODY

Decedent was observed on the ground, adjacent to the wicker bench, lying face up. His head was to the south and his legs were to the northwest. His legs were straight out with his right leg over his left leg. His right arm was bent at the elbow with his right hand on his chest and his left arm adjacent to his body. Upon examination of the body, an apparent gunshot wound was located in the back of his head. An additional injury at the bottom of his head near his neck was observed. A folding blade with a red handle was in his right front pants pocket. A stuffed teddy bear was on his left arm. A jacket, blue bag and a cell phone were on the ground between Decedent and the wicker bench. A green powder substance was located on Decedent, the wicker bench, the cell phone and on areas surrounding Decedent.

AUTOPSY

On 04-21-2020, an autopsy was completed on the body of Jose Mario Hernandez by Dr. Christina Di Loreto.

Injuries Noted: Gunshot wound of the head and abrasions/abraded contusions on the neck, and upper/lower extremities.

After the completion of the autopsy, Dr. Christina Di Loreto opined the cause of death was due to a gunshot wound of the head and the manner of death was suicide.

FORENSICS REQUESTS/RESULTS

Firearm Examinations

National Integrated Ballistic Information Network (NIBIN)

On April 27, 2020, an LVMPD Forensic Laboratory Request was submitted by Detective Colon on the three cartridge cases from Decedent's firearm for NIBIN comparison.

No associations were noted.

On May 5, 2020, Forensic Scientist Saffiatu Turay, P# 14931, submitted the Report of Examination: Firearms.

Function Testing and Ballistic Comparison Evidence

On April 27, 2020, an LVMPD Forensic Laboratory Request was submitted by Detective Colon on Decedent's firearm for a function test and ballistic comparison evidence.

On June 10, 2020, Forensic Scientist Claudia Nolasco, P# 17441, submitted the Report of Examination: Firearms.

INFORMATION REGARDING DECEDENT JOSE HERNANDEZ

On February 2, 2019, Decedent was taken to the hospital and placed on a Legal 2000 hold. Details on the request for hold indicated that Decedent had threatened to commit suicide or committed acts in furtherance of a threat to commit suicide. Additional details indicated that when officers made contact with Decedent, he told them to shoot him. Decedent had a history of attempting suicide by cop. Decedent told officers he was trying to light the house on fire. When officers asked Decedent to come outside, he said "Shoot me bitch I want to die".

On June 8, 2018, officers responded to Decedent's residence. Officers learned from Decedent's mother that she had found a rifle in his room. This concerned her because Decedent had threatened to kill her in the past and had also been feeling suicidal for a while. In the past, Decedent had threatened to shoot some of his friends and the police so he could commit suicide by cop. Officers were able to remove Decedent from the house. In the house, they found a 12-gauge shot gun loaded with 7 bullets. Due to Decedent having an outstanding warrant, the gun was impounded for safe keeping and Decedent was arrested.

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 "*may have contributed*" to the cause of death of a person.^[1] Clark County Ordinance §2.14.010.

Under Nevada case law, in order for a person to be liable for the death of another, the State is required to show that the cause of death of the person was a result of criminal agency and that the actions of the accused was the proximate cause of the death. Sherriff, Washoe County v. Middleton, 112 Nev. 956 (1996). An act must be "a substantial factor in causing death and the cause of death must be part of a continuous transaction with the act. Estrada v. State, 415 P.3d 21 (2018). A criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the "proximate cause" of the result.... Any "intervening cause must, effectively, break the chain of causation... Thus, an intervening cause must be a superseding cause, or the *sole cause* of the injury in order to completely excuse the prior act. Etcheverry v. State, 107 Nev. 782, 821 P.2d 350 (1991). NRS 259.053 indicates that the forensic pathologist shall determine the cause of death of the decedent.

^[1] Here, while the autopsy of Decedent revealed that Decedent died due to a self-inflicted gunshot wound to the head, it is at least arguable that the involved officers "may have contributed" to Decedent's death and, therefore, falls within the mandate of Clark County Ordinance 2.14 to hold a Police Fatality Public Factfinding Review.

In this case, Decedent posed an imminent danger to officers and surrounding members of the community when he barricaded himself in an open backyard near multiple residences. The facts illustrate that SWAT Officers were faced with a person who had threatened Witness #1, shot at least two times in the air and who had been holding a gun to his head during a barricade for over four hours. Officers attempted to implement multiple plans to separate Decedent from his weapon. However, none of the attempts were successful. Decedent was told multiple times to drop the weapon and comply with commands, yet he refused to do so. Police negotiators spent over four hours communicating with Decedent to safely take him into custody. Decedent also stated that he wanted the police to kill him. Despite the apparent danger, officers never used deadly force against Decedent. Decedent was struck with low lethal ammunition. At that point, Decedent shot himself with his firearm in the head causing his death. The intervening force that was the sole cause of Decedent's death was Decedent pulling the trigger on a gun he already held to his head. Had Decedent not had the gun to his head and pulled the trigger, he would not have died. His autopsy revealed that Decedent died as a result of a gunshot wound to the head and the manner of death was suicide.

In light of all the evidence reviewed to date, the actions of the SWAT Officers Goodrich and Oswald were not criminal in nature and not the proximate cause of Decedent's death.

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 the officers were not the proximate cause of Decedent's death. A death which is determined to be a suicide does not create criminal liability.

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.