

# **REPORT ON USE OF FORCE**

## **Legal Analysis Surrounding the Death of Danzel Boyd on August 3, 2018**

### **Introduction**

On August 3, 2018, officers of the Las Vegas Metropolitan Police Department, hereinafter “LVMPD”, were working to identify a subject involved in a robbery and kidnapping (Event# 180728-1609), a kidnapping and sexual assault (Event# 180729-3954), and a kidnapping (Event# 180803-1668), which all occurred in the vicinity of the Stratosphere Casino, Hotel & Tower. Officers were conducting follow-up when they learned that a possible suspect, Danzel Boyd, hereinafter “Decedent”, lived at 210 W. Baltimore Avenue, apartment #18. Officers established surveillance around the apartment and, due to the nature of the crimes, notified detectives with the Major Violator Section.

Detectives with the Major Violator Section responded to the area and were given information on the crimes committed, the location of Decedent’s apartment, and a possible phone number for Decedent. It was determined Major Violator Section detectives would replace the patrol officers on the inner perimeter, and a call was placed to the phone number provided. Detectives were able to confirm Decedent was inside the apartment and prepared a plan to take Decedent into custody.

Contact was made with Decedent, via telephone, numerous times and detectives asked him to exit the apartment peacefully. Each time, Decedent would hang up the phone. Detectives also used the public address (PA) speaker on their vehicles to ask Decedent to exit the apartment. Decedent then discharged several rounds from his firearm through the front door and in the direction of the officers who were in the parking lot of the apartment building. Decedent continually stated over the phone he would not come out of the apartment.

Over the course of several hours, Decedent advised officers he was armed with a firearm and would not come out of the apartment. Decedent discharged several rounds from his firearm

inside the apartment. Decedent did allow W.O., a resident of the apartment, to exit with his (W.O.'s) son during the event.

After Decedent discharged his firearm, detectives on scene advised the SWAT commander, Lieutenant William Huddler, of the incident details and requested assistance. A short time later, SWAT personnel, including crisis negotiators, arrived on scene and assumed control of the inner perimeter. SWAT personnel continued to contact Decedent.

Negotiators were able to establish phone contact with Decedent several times, but the contact would end with Decedent hanging up the phone. Several times during the incident, Decedent told negotiators he was coming out of the apartment, but then changed his mind and said officers would have to make entry and come in to get him.

While negotiations continued, SWAT officers evacuated the other apartments in the building. SWAT officers also began breaching the doors, windows, and walls to apartment #18. Each time a breach was conducted, Decedent would discharge his firearm towards the direction of the breach.

After several hours, the interior wall between apartments #17 and #18 was breached. A K-9 dog was deployed into the apartment and alerted on the bathroom door, which had been closed. The bathroom door was breached by SWAT officers, and the dog was deployed into the bathroom. Officers determined the dog was engaged with Decedent when the dog did not return to officers. Officers entered the bathroom and observed the dog engaged with Decedent, who was in the bathtub. Decedent, who was holding a black firearm in his right hand, lifted his right arm and pointed the firearm in the direction of the officers. Officers Ferrante and Marx each discharged their weapons, striking Decedent multiple times. The tactical doctor who had been posted outside of the apartment was requested by officers to make entry into the apartment. The doctor entered the bathroom, assessed Decedent, and determined he was deceased.

The Clark County District Attorney's Office has completed its review of the August 3, 2018, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officers Ferrante and Marx were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officers Ferrante and Marx. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review, which was held on May 13, 2019.

This report 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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

## I. BODY WORN CAMERAS

### **Officer James Ferrante**

Officer Ferrante wore a body worn camera (BWC) at the time of the incident, and the camera was activated. The camera was collected by Sergeant MacDonald and secured. The video footage captured was later viewed by Detective Alsup at approximately 1500 hours on August 4, 2018.

Officer Ferrante was observed holding a ballistic shield while an explosive breach was hung on the bathroom door. When the door was breached, a K-9 dog was deployed into the bathroom and appeared to engage a person in the bathroom (Decedent). As Officer Ferrante entered the bathroom, the bathroom door was off the hinges and partially concealed Decedent, who was lying in the bathtub.

As Officer Ferrante walked into the bathroom, the door was moved and Decedent was observed raising his right arm while holding a firearm in his right hand. As Decedent raised the firearm, Officer Ferrante discharged his firearm six times. Another officer (Officer Marx) entered the bathroom and discharged his firearm two times. The officers then requested medical personnel and exited the bathroom.

### **Officer William Marx**

Officer Marx wore a BWC at the time of the incident, and the camera was activated. The camera was collected by Sergeant MacDonald and secured. The video footage captured was later viewed by Detective Alsup at approximately 1510 hours on August 4, 2018.

Officer Marx was in the bedroom of apartment #18 when the bathroom door was breached. After the breach, a K-9 dog was deployed into the bathroom. Officer Ferrante entered the bathroom holding a ballistic shield. Officer Marx was about to enter the bathroom behind Officer Ferrante when six gunshots were heard. Officer Marx entered the bathroom and advanced towards the bathtub. Decedent was observed in the bathtub with a firearm in his hand and Officer Marx discharged two rounds from his firearm.

## II. SCENE WALK-THROUGHS

### Officer James Ferrante

On August 4, 2018, at approximately 1815 hours, Officer Ferrante provided a walk-through of the scene. During the walk-through, Officer Ferrante stated he intended to give a statement to investigators. As a result, Officer Ferrante was only asked to identify his position at the time he discharged his firearm.

### Officer William Marx

On August 4, 2018, at approximately 1822 hours, Officer Marx provided a walk-through of the scene. During the walk-through, Officer Marx stated he intended to give a statement to investigators. As a result, Officer Marx was only asked to identify his position at the time he discharged his firearm.

## III. PUBLIC SAFETY STATEMENTS

### Officer James Ferrante

On August 4, 2018, at approximately 1604 hours, Detective Hodson interviewed Sergeant Jeremy Hendricks in reference to the Public Safety Statement (PSS) he obtained from Officer Ferrante. Below are the questions asked by Sergeant Hendricks, with the answers provided by Officer Ferrante in italics.

- 1) Did you discharge your firearm? *Yes.*
  - a. If so, what direction? *North.*
  - b. Approximately where were you located when you fired? *In the bathroom.*
  - c. How many shots do you think you fired? *Five.*
- 2) Is anyone injured? *The suspect.*
  - a. If so, where are they located? *In the bathroom.*
- 3) Are there any outstanding subjects? *No.*
  - a. If so, what is their description? *N/A.*
  - b. What direction and mode of travel? *N/A.*
  - c. How long have they been gone? *N/A.*

- d. What crime(s) have they committed? *N/A.*
- e. What type of weapon do they have? *N/A.*
- 4) Is it possible the suspect fired rounds at you? *Yes.*
  - a. If so, what direction were rounds fired from? *From north to south.*
  - b. How many shots do you think the suspect may have fired? *One or two.*
  - c. Approximately where was the suspect located when you fired? *He was in the bathtub.*
- 5) Do you know if any other officers discharged their weapon? *Yes.*
  - a. If so, who are they? *Officer Marx.*
  - b. Approximately where was the officer(s) located when they fired? *To the right of me in the bathroom.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
  - a. If so, where are they located? *In the bathtub.*
- 7) Are you aware of witnesses? *Yes, Officer Marx, Officer Thompson, Officer Hancock, Sergeant Bonkavich, and Officer Malia from K-9 may have been witnesses.*
  - a. If so, what is their location? *Question not asked.*

**Officer William Marx**

On August 4, 2018, at approximately 1608 hours, Detective Hodson interviewed Sergeant Jeremy Hendricks in reference to the Public Safety Statement (PSS) he obtained from Officer Marx. Below are the questions asked by Sergeant Hendricks, with the answers provided by Officer Ferrante in italics.

- 1) Did you discharge your firearm? *Yes.*
  - a. If so, what direction? *At the suspect.*
  - b. Approximately where were you located when you fired? *In the bathroom.*
  - c. How many shots do you think you fired? *Two.*
- 2) Is anyone injured? *The suspect.*
  - a. If so, where are they located? *In the target apartment.*

- 3) Are there any outstanding subjects? *None to my knowledge.*
  - a. If so, what is their description? *N/A.*
  - b. What direction and mode of travel? *N/A.*
  - c. How long have they been gone? *N/A.*
  - d. What crime(s) have they committed? *N/A.*
  - e. What type of weapon do they have? *N/A.*
- 4) Is it possible the suspect fired rounds at you? *Yes.*
  - a. If so, what direction were rounds fired from? *There were fired, uh, towards the south, from north to south.*
  - b. How many shots do you think the suspect may have fired? *At least two.*
  - c. Approximately where was the suspect located when you fired? *He was in the bathroom.*
- 5) Do you know if any other officers discharged their weapon? *Yes.*
  - a. If so, who are they? *Officer Ferrante.*
  - b. Approximately where was the officer(s) located when they fired? *In the bathroom.*
- 6) Are there any weapons or evidence that needs to be secured/protected? *Yes.*
  - a. If so, where are they located? *The suspect would be a source of evidence.*
- 7) Are you aware of witnesses? *K-9 Officer Malia, and SWAT Officers Deel and Thompson.*
  - a. If so, what is their location? *Question not asked.*

#### **IV. OFFICER WEAPON COUNTDOWNS**

On August 4, 2018, Officers Ferrante and Marx had their duty weapons counted down at LVMPD headquarters. Involved and witness officers were photographed by CSI personnel for appearance purposes and their weapons were photographed for identification purposes.

##### **Officer James Ferrante**

Prior to countdown, Officer Ferrante stated he carried 17 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (17+1, 18 total). At the completion of the

countdown, it was determined Officer Ferrante discharged his firearm six times during this incident.

### **Officer William Marx**

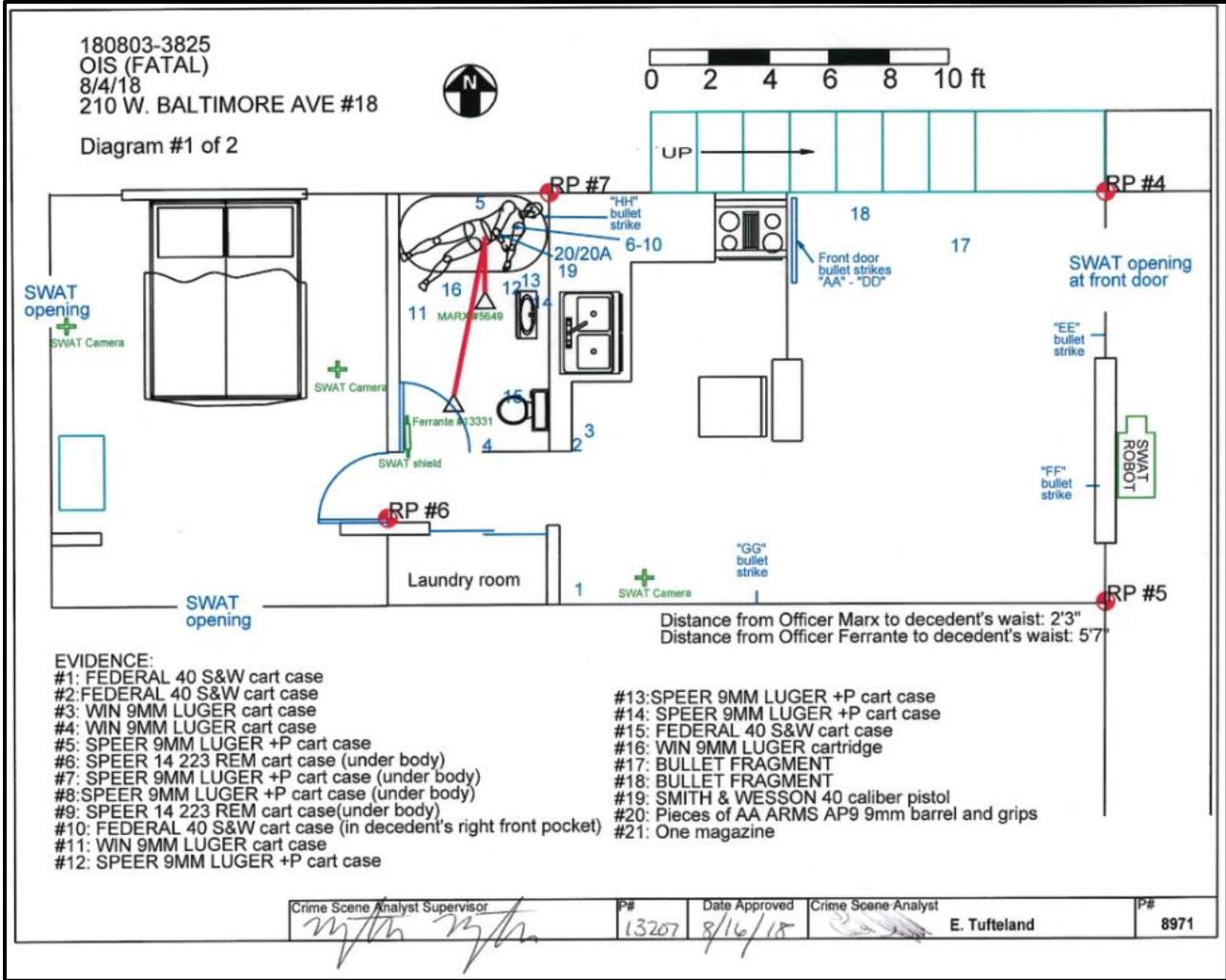
Prior to countdown Officer Marx stated he carried he carried 22 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (22+1, 23 total). At the completion of the countdown, it was determined Officer Marx discharged his rifle two times.

## **V. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE**

The scene was located at 210 W. Baltimore Avenue, which was a two-story, east-facing apartment building located on the northwest corner of W. Baltimore Avenue and Fairfield Avenue. Parking spaces were located along the east side of the building and faced a southwesterly direction. Stair access to the second level of the apartment building was located at the north and south ends of the building, with apartments 1-9 (from south to north) on the first floor and apartments 10-18 (from south to north) on the second floor. Building and breaching debris was located in the parking lot east, west and north of the scene, as well as on the walkway in front of apartments 15-18. Two east-facing buildings were located east of the apartment building, and the Stratosphere parking structure was located on the northeast corner of W. Baltimore Avenue and Fairfield Avenue.

### **Apartments 15-17:**

Apartments 15-17 were one bedroom, one bathroom apartments on the second floor of 210 W. Baltimore Avenue. These apartments were all similarly set up, with the front entry opening up to the living room, and with the kitchen, bathroom and bedroom west of the living room. SWAT gear was located in the living room of apartment 15. Apartment 16 was located directly north of apartment 15 with SWAT gear in the living room and bedroom. Apartment 17 was between apartments 16 and 18. SWAT gear was located in the living room and bedroom, and there was damage to the leading edge of the front entry door, the exterior side of the door, the window on the west wall of the bedroom, the east wall of the bedroom, the ceiling in the northwest corner of the bedroom, and the north wall of the bedroom leading into the bedroom closet of apartment 18.



**Apartment 18:**

Apartment 18 was the northernmost apartment on the second floor of 210 W. Baltimore Avenue. The apartment was secured by Patrol Officer R. Licerio. It was a one bedroom, one bathroom apartment with a broken window on the east exterior wall of the residence and damage to the exterior north wall of the residence. A SWAT robot was on the walkway outside of the residence, in front of the broken window.



### **Living Room:**

The front entry opened to the living room, with access to the kitchen, bathroom, and bedroom by an east-west oriented hallway in the southwest corner of the living room. Wall and SWAT debris were located on the floor throughout the residence. The front entry door was damaged, with the door off the hinges and leaning against the west wall of the living room. A brown blanket with defects was partially underneath the door. The entertainment center was on its side along the north wall. Various boxes, a plastic tub, a suitcase, and children's toys were along the east wall. A black chair was along the kitchen breakfast bar. A black LG cell phone was located on the floor, underneath a children's toy car. A black SWAT camera was located on the floor, in the southwest corner of the living room, along with a "FEDERAL 40 S&W" cartridge case. There was also a bullet fragment on the floor of the living room, near the middle of the north wall and another bullet fragment on the floor, in the northwest corner of the living room.

### **Kitchen:**

The refrigerator was located in the walkway to the kitchen. The oven was on and the oven and cabinets were open. A "FEDERAL 40 S&W" and a "WIN 9mm LUGER" cartridge case were on the floor, in the southwest corner of the kitchen.

**Bathroom:**

The bathroom was located on the north side of the hallway, with the doorway being at the south end of the bathroom. There was a black SWAT shield leaning against the west edge of the door frame to the bathroom. The door and door frame were damaged, with the door off the hinges and leaning against the west wall of the bathroom. The toilet was located in the southeast corner of the bathroom and the damaged sink was by the east wall of the bathroom. The bathtub was located at the north end of the bathroom and the decedent was located inside of the tub. A black cell phone with an attached cord was located on the floor, north of the toilet. The following cartridge cases were located in the bathroom: a "WIN 9mm LUGER" cartridge case on the floor near the south wall of the bathroom; a "SPEER 9mm LUGER+P" cartridge case on the north ledge of the bathtub; a "WIN 9mm LUGER" cartridge case on the floor in the northwest corner; two "SPEER 9mm LUGER+P" cartridge cases on the floor in the northeast corner; a "SPEER 9mm LUGER+P" cartridge case on the floor in the northeast corner; a "FEDERAL 40 S&W" cartridge case on the floor, north of the toilet; and a "WIN 9mm LUGER" cartridge on the floor, south of the bathtub. The laundry closet was directly south of the bathroom.

**Bedroom:**

The bedroom was located at the west end of the apartment. The door to the bedroom was off the hinges. Clothes and wall debris were on the floor throughout the bedroom. The bed was on the north wall and extended south. The mattress was partially on top of the southeast bed post and a blue plastic tub and clothes were on the bed. The window above the bed was shattered and there was a mirror in the northeast corner of the room, leaning against the north wall. An armoire was in the southwest corner of the room and an orange SWAT camera was on the floor, north of the armoire. The closet was along the south wall of the bedroom, with orange SWAT equipment on top of the closet shelf. A black SWAT camera was on the floor underneath a black plastic tub by the east wall of the bedroom. There was damage to the east, west and south walls of the bedroom. There was a black wallet by the west wall of the bedroom that contained a California Driver's license in the name of W.O.

**Bullet Holes and Impacts:**

The following were observed and recorded in apartment 18 to include: bullet impact on the interior side of the front entry door, bullet hole that entered through the interior side of the front entry door and exited through the exterior side of the front entry door, bullet hole that entered through the interior side of the front entry door and exited through the exterior side of the front entry door, bullet hole that entered through the interior side of the front entry door and exited through the exterior side of the front entry door, bullet hole that entered through the interior side of the front entry door and exited through the exterior side of the front entry door.

door and exited through the exterior side of the front entry door, bullet impact on the east wall of the living room, between the front entry door and the broken window on the east wall, bullet impact on the east wall of the living room, below the broken window, bullet impact on the south wall of the living room, and bullet impact on the east interior side of the bathtub, near the faucet.

#### **Officer Locations:**

Officer locations were marked with orange cones and labeled paper bags by CSA Supervisor M. McIntyre. Officer B. Marx was positioned in the bathroom of the apartment, approximately 2'3" south of the decedent's position. Officer J. Ferrante was positioned in the bathroom of the apartment, behind Officer B. Marx, approximately 5'7" south of the decedent's position.

#### **Decedent:**

Decedent wore a white tank top, blue jeans, a gray belt, red socks, and a red/white shoe partially on his right foot. He also had a towel around his shoulders. His head was to the east and his feet were in a southwest direction. The shower curtain rod was detached from the wall and the shower curtain was wrapped around his left ankle. His right arm was bent at the elbow, over his stomach, with his right hand just below his left arm. His left arm was bent at the elbow, with his left hand bent downwards at the wrist. Two firearms and an ammunition magazine were in the tub with Decedent, by his left side.

Coroner Investigator Supervisor T. Brown and Coroner Investigator P. Starr placed Decedent in a clean sheet and a body bag and examined Decedent. He had injuries to the following areas: left eye, left ring finger, top of his left hand, exterior side of his left hand, upper right side of his chest, upper left side of his chest, upper right side of his neck, and the lower right side of his neck. A "FEDERAL 40 S&W" cartridge case was located partially in his right front pocket. The body bag was sealed using seal #143054 and removed from the scene by Hites Mortuary representatives A. Valdez and J. Cushman.

After removal of Decedent from the scene, two "SPEER 223 REM 14" cartridge cases were located in the bathtub, along with two "SPEER 9mm LUGER+P" cartridge cases.

#### **Firearms:**

A black Smith and Wesson M&P 40 Shield semiautomatic handgun (S/N; HKJ9832) bearing apparent blood was in the bathtub with the Decedent. A "WIN 9mm LUGER" cartridge was located in the chamber and a black/silver colored Smith and Wesson M&P ammunition

magazine with seven “WIN 9mm LUGER” cartridges was located in the magazine well of the firearm.

Pieces of a green/black AA Arms AP9 semiautomatic firearm (S/N: Unknown) bearing apparent blood and an empty ammunition magazine was also located in the bathtub with the Decedent.

#### **Additional Information:**

Four possible bullet impacts labeled A, B, C, D (from north to south) were located on the west exterior wall of the Stratosphere parking garage, located east of the scene. Each of these impacts were tested for the presence of lead and copper with negative results. A search for additional firearms evidence yielded negative results.

### **VI. AUTOPSY**

On August 5, 2018, at approximately 0850 hours, under Clark County Office of the Coroner/Medical Examiner case number 18-8033, an autopsy was performed on the body of Decedent by Doctor Roquero. The following wounds/injuries were noted on Decedent: cluster of two gunshot wounds to the head, graze gunshot wound to the head, penetrating gunshot wound to the neck, penetrating gunshot wound to the neck, penetrating gunshot wound to the right chest, penetrating gunshot wound to the left chest, penetrating gunshot wound to the right arm, graze gunshot wound to the left wrist, perforating gunshot wound to the left hand, perforating gunshot wound to the left hand, gunshot wound to the left hand. Additionally, noted were pseudo-stippling wounds on the left side of the nose and left eyebrow, front of the left ear and left ear lobe, right side of the neck, shoulders, upper chest and distal left leg, as well as sharp force injuries on the right upper back.

The following items of evidence were impounded during the autopsy: one “FEDERAL S&W” cartridge case from the front right pocket of the decedent’s jeans, one “FEDERAL 40 S&W” cartridge case from the front right pocket of the decedent’s jeans, one “WIN 9mm LUGER” cartridge case from the front right pocket of the decedent’s jeans, one “WIN 9mm LUGER” cartridge from within the body bag, bullet fragments from within the body bag, one bullet fragment in the hair, adjacent to the gunshot wound to the left side of the head

Toxicology testing revealed positive findings as follows:

<b><u>Compound</u></b>	<b><u>Result</u></b>	<b><u>Units</u></b>	<b><u>Matrix Source</u></b>
Amphetamine	18	ng/mL	001 – Peripheral Blood

Methamphetamine	680	ng/mL	001 – Peripheral Blood
Delta-9 Carboxy THC	41	ng/mL	001 – Peripheral Blood
Delta-9 THC	6.1	ng/mL	001 – Peripheral Blood

After a complete autopsy, Doctor Roquero opined Decedent died as a result of multiple gunshot wounds. The manner of death was homicide.

## VII. INVESTIGATION

### Involved Officers

#### **Officer James Ferrante**

On August 5, 2018, at approximately 1017 hours, Detective Alsup conducted an audio recorded interview with Officer Ferrante. Officer Ferrante received notification of a barricaded subject in the Down Town Area Command (DTAC) area and responded. Upon arrival, Officer Ferrante and other SWAT officers received a briefing detailing the events, which had taken place prior to their arrival. They were told probable cause existed for the arrest of Decedent for several violent felony charges. They were also advised Decedent discharged a firearm in the direction of several Major Violator Section detectives who attempted to take Decedent into custody. After the briefing, Officer Ferrante, along with several other SWAT officers, were tasked with conducting evacuations of citizens on the second floor of the apartment building. After the evacuations were completed, Officer Ferrante maintained a position on the second floor for containment as negotiators attempted to get Decedent to surrender peacefully.

Over the course of several hours, SWAT officers breached several access points to apartment #18 and deployed distract devices in an attempt to get Decedent to surrender. Each time a breach was completed, Decedent would discharge one or more rounds from his firearm. Officers attempted to use a small unmanned aircraft system (drone) to obtain a visual on Decedent inside the apartment. Decedent discharged his firearm multiple times at the drone. SWAT officers were given updates from negotiators via the radio. During the event SWAT officers were notified several times of Decedent's comments that he was going to "shoot it out with officers," and that he stated, "I'm not going back to prison." Negotiators learned from Decedent, and relayed to SWAT officers, that Decedent was in the bathroom of the apartment.



SWAT officers breached the wall between the bedrooms of apartments #17 and #18. After the breach, a K-9 dog was sent into apartment #18 to search for Decedent. The dog alerted on the closed bathroom door, which confirmed the information the officers were given. SWAT officers breached the bathroom door and the dog was deployed. After a short amount of time, Officer Ferrante utilized the ballistic shield and made entry into the bathroom. Officer Ferrante observed Decedent in the bathtub and the dog engaged on Decedent's lower extremities. Officer Ferrante could not see Decedent's upper body because the bathroom door fell from the breach and was concealing him. As Officer Ferrante moved toward the bathtub, the door fell, exposing Decedent. Decedent was holding a black firearm in his right hand and began to raise it. Officer Ferrante stated it looked as if Decedent was squeezing the firearm in an attempt to fire it. Believing Decedent would shoot him or other officers, Officer Ferrante discharged his firearm at Decedent.

**Officer William Marx**

On August 5, 2018, at approximately 1148 hours, Detective Alsup conducted an audio recorded interview with Officer Marx. Officer Marx received notification of a barricaded subject at 210 W. Baltimore in apartment #18. Officer Marx was advised Decedent had fired rounds at Major Violator Section detectives who tried to make contact with him. SWAT officers were also advised that probable cause existed for his arrest on other felony charges.

After arriving and receiving a briefing, Officer Marx and other SWAT officers relieved patrol officers from the inner perimeter. Officer Marx was also tasked with evacuating citizens from the second floor of the apartment building. After the evacuations were complete, Officer Marx held a containment position on the second floor of the building as negotiators talked to Decedent.

SWAT officers received information from the negotiators as they talked to Decedent. Officers were told Decedent was telling negotiators he would not come out and that officers were going to have to make entry and get him. Decedent also told negotiators he did not want to go back to prison. Officers used various tactics in an attempt to get Decedent to exit the apartment. Officers breached several points of the apartment using flash bang grenades, then deployed tear gas. Every time officers would breach the apartment, Decedent would discharge his firearm towards the area that was breached. This occurred several times during the incident.

Eventually, the wall between apartments #17 and #18 was breached, and a K-9 dog was sent into apartment #18. The dog alerted on the bathroom door, which had been closed. The bathroom door was then breached and the dog was deployed into the bathroom. Officers believed the dog was engaged with Decedent and made entry into the bathroom. Officer Ferrante entered the bathroom first holding a ballistic shield, and Officer Marx was behind him. According to Officer Marx, as soon as Officer Ferrante entered the bathroom, he (Officer Marx) heard gunshots. Officer Marx stated he heard two gunshots followed by four more gunshots in quick succession. As Officer Marx entered the bathroom, he observed Decedent holding a firearm in his hand. Officer Marx saw Officer Ferrante shooting his firearm and appeared to be falling into the bathtub. Officer Marx believed Officer Ferrante was falling due to being shot by Decedent, and subsequently, discharged his rifle two times at Decedent.

### Witnesses

#### **W.O.**

On August 5, 2018, at approximately 0740 hours, Detective Alsup conducted an audio recorded interview with W.O. W.O. told police he had known Decedent since they were children. Although they were not related, W.O. referred to Decedent as his cousin. Approximately three to four weeks prior to the incident, W.O. received a call from Decedent who stated he was out of prison and wanted to go to California to visit him. W.O. and Decedent were together for a couple of days in California before deciding to travel to Las Vegas to visit W.O.'s girlfriend, C.B.

According to W.O., he and Decedent stayed at C.B.'s apartment since arriving in Las Vegas. At approximately 0100 hours on August 4, 2018, W.O. received a phone call from a blocked

number. When W.O. answered the phone a person identified himself as a police officer with LVMPD. W.O. thought the call was a joke and ended the call. W.O. then received another phone call and was told the same thing. The officer told W.O. he needed to exit the apartment. W.O. walked into the living room and observed Decedent at the front door, holding a handgun.

W.O. asked Decedent what was going on and Decedent stated he needed to talk to his mother. W.O. also asked Decedent why the police were at the door, but Decedent did not answer. According to W.O., the handgun Decedent held belonged to W.O. and he was not sure how Decedent found it. W.O. then grabbed his son and left the apartment. Decedent remained inside the apartment.

### **C.B.**

On August 5, 2018, at approximately 0744 hours, Detective Colon conducted an audio recorded interview with C.B. C.B. told police that Decedent and her boyfriend, W.O., arrived at her apartment on July 25, 2018. C.B. was told Decedent was W.O.'s cousin and had spent ten years in jail in another state. C.B. also stated Decedent stayed in her apartment since arriving in Las Vegas.

On August 3, 2018, C.B. and W.O. went to a convenience store and were approached by officers who were looking for a suspect in a rape. C.B. stated when they returned home and told Decedent about the interaction with the officers Decedent began acting "antsy."

C.B. stated one day she observed a girl she knows as "Justice" inside her apartment with Decedent. C.B. went into her bedroom and approximately 15 minutes later went to get a drink. C.B. saw Justice performing oral sex on Decedent in the living room. According to C.B., the act seemed consensual and Decedent and Justice left the apartment together.

According to C.B., Decedent told her and W.O. he was running from law enforcement due to a shooting he was involved in. He also stated the person shot may have died. C.B. believed the shooting took place in either Texas or Mississippi. C.B. also believed Decedent may have been involved in a sexual assault, also in Mississippi, after being released from prison.

C.B. observed Decedent inside the apartment with a Tech-9 semiautomatic handgun during the time he stayed in the apartment. C.B. believed the firearm was broken because Decedent used a piece of wire to hold it together, but also believed it could still be fired. After W.O. and his son left the apartment during the incident, Decedent also had access to W.O.'s handgun which was left inside the apartment.

### **Detective Brendan LeBlanc**

On August 4, 2018, at approximately 0817 hours, Detective Alsup conducted an audio recorded interview with Detective LeBlanc. Detective LeBlanc received a notification of a call out and was told to meet in the area of Las Vegas Boulevard and Sahara Avenue for a briefing. Upon arrival, detectives were advised Decedent was wanted for several felonies and was inside apartment #18 at 210 W. Baltimore Avenue.

After the briefing, detectives went en route to the target apartment. Detectives with the Major Violator Section took over coverage of the inner perimeter, and patrol officers remained on the outer perimeter. Detectives made contact with Decedent and asked him to exit the apartment. When Decedent refused to come out, detectives obtained a search warrant for the apartment.

Detectives utilized the PA system on a marked police vehicle to give Decedent commands to come out of the apartment. After multiple attempts with the PA system, detectives utilized the ballistic shield to approach the front door and a device to knock on the door without having to stand directly in front of the door. Decedent did not respond and detectives moved back to the marked police vehicle in the parking lot. As officers again issued commands over the PA system, Decedent fired at least one round through the front door and in the direction of the detectives. After Decedent fired through the door, SWAT officers were requested for assistance. While waiting for SWAT personnel to arrive, Decedent fired several more rounds from inside the apartment.

### **Sergeant Michael Souder**

On August 4, 2018, at approximately 0833 hours, Detective Colon conducted an audio recorded interview with Sergeant Souder. Sergeant Souder and his squad were working a special event within the DTAC border. Sergeant Souder received a phone call from the area swing shift lieutenant asking Sergeant Souder to have his squad help in the apprehension of a wanted subject at 210 W. Baltimore Avenue. Sergeant Souder and his squad were briefed and told probable cause existed for the arrest of Decedent on multiple felony charges. Sergeant Souder was also advised Decedent was in apartment #18.

Sergeant Souder and his squad began surveillance of the apartment in an attempt to positively identify Decedent as one of the people in the residence. Numerous people were observed entering and leaving the apartment during the time of the surveillance, including a person believed to be Decedent.

A decision was made to enlist the help of the Major Violator Section. Once detectives from the Major Violator Section arrived, Sergeant Souder provided them with a briefing. Major Violator Section detectives obtained a search warrant for 210 W. Baltimore, apartment #18, to arrest Decedent based on the information they received. Detectives and officers kept containment on the apartment and attempted to make contact with Decedent via telephone.

Telephone contact was made with Decedent several times but ended when Decedent would hang up the phone. Detectives used the public address (PA) system of a marked police vehicle parked in the parking lot to advise Decedent to exit the apartment. As the officers told Decedent to exit the apartment, Decedent discharged at least one round from a firearm through the door in the direction of the officers. According to Sergeant Souder, he was in fear for his life and the lives of the other officers upon hearing the gunshot.

### **Sergeant Douglas Ericsson**

On August 4, 2018, at approximately 0850 hours, Detective Colon conducted an audio recorded interview with Sergeant Ericsson. Sergeant Ericsson, who was assigned to the Major Violator Section, received a phone call asking for his assistance with a wanted subject. Sergeant Ericsson and his detectives arrived in the area of Las Vegas Boulevard and Sahara Avenue and received a briefing. They were advised probable cause existed for the arrest of Decedent on several felony charges, and that Decedent was at 210 W. Baltimore Avenue, apartment #18. Detectives with the Major Violator Section arrived in the area of the target apartment and took coverage of the inner perimeter, and patrol officers took positions on the outer perimeter.

Detectives were provided a phone number for Decedent. Detectives called the number provided and a male who answered the phone told the detectives he was Decedent and inside the apartment. The male then denied he was Decedent. Decedent hung up on the detectives several times. The PA system on a marked police vehicle was utilized several times to advise Decedent and any other occupants inside the apartment to exit.

During the event, a female (C.B.) approached the officers, advised it was her apartment, and stated her boyfriend (W.O.), W.O.'s son, and Decedent were in the apartment. Detectives then obtained a search warrant for the apartment and the apprehension of Decedent.

As the detectives were in the parking lot utilizing the PA system, Decedent fired at least one round from inside the apartment in the direction of the officers. SWAT personnel were notified of the event and asked to respond. While waiting for SWAT to arrive, Decedent fired several more rounds from inside the apartment. Sergeant Ericsson stated he was in fear for his life and the lives of the other officers when Decedent began firing.

## **Officer Sean Malia**

On August 4, 2018, at approximately 1541 hours, Detective Hodson conducted an audio recorded interview with Officer Malia. Officer Malia and his canine partner, Bear, were requested to the area of 210 W. Baltimore Avenue in reference to SWAT officers responding to a barricaded subject. Upon arrival, Officer Malia learned the Decedent was wanted for several felony crimes. Officers were also notified that Decedent had fired several rounds towards other officers prior to the arrival of SWAT officers.

Officer Malia and Bear were designated to assist SWAT officers in the apprehension of Decedent. According to Officer Malia, several hours passed while negotiators tried, unsuccessfully, to get Decedent to exit the apartment peacefully. During that time, Decedent fired several rounds at officers who covered the perimeter of the apartment.

A decision was made to breach the interior wall between apartments #17 and #18. After a successful breach, Bear was deployed into apartment #18 to locate Decedent. Bear alerted on the closed bathroom door by barking and scratching at the door. Officer Malia called Bear back to him, so SWAT officers could breach the bathroom door.

After the bathroom door was breached, Bear was deployed into the bathroom and engaged Decedent. Officers Ferrante and Marx entered the bathroom next, then Officer Malia heard several gunshots. Officer Malia entered the bathroom and found Bear still engaged with Decedent after the gunshots. Officer Malia then took control of Bear and left the bathroom.

## **Officer Levi Hancock**

On August 4, 2018, at approximately 1619 hours, Detective Ubbens conducted an audio recorded interview with Officer Hancock. At approximately 0300 hours, Officer Hancock received a call from Sergeant Bonkavich notifying him his team would be activated to respond to a barricade. Officer Hancock was assigned as the assistant team leader for the Red team. When Officer Hancock arrived at the staging location, he formulated a plan based on the information he received from the reconnaissance officers.

Officer Hancock was briefed that the Criminal Apprehension Team (Major Violator Section) was attempting to take Decedent into custody. As they identified Decedent's apartment as #18, there were several rounds fired from the apartment. While the SWAT recon officers were arriving at the apartment there were several more rounds fired through the door.

SWAT officers set up containment around the building and began evacuating citizens out of the area. Once evacuations were complete, the SWAT officers began announcements and deploying distract devices. As SWAT officers conducted breaches and deployed distract devices, Decedent fired several rounds from the apartment. After the first breach, which was a window breach, Decedent fired rounds from the front door. More shots were fired from apartment #18 after the second window breach. Shots were also fired after a failed door breach. Officer Hancock described rounds being fired by Decedent as a reaction to any action taken by SWAT officers.

Officer Hancock was notified that negotiators were on and offline with Decedent. Once SWAT officers were notified that negotiators were offline, the decision was made to begin breaching. After multiple failed breaches, a plan was developed to go to apartment #17, which neighbored Decedent's apartment. Apartment #17 had been previously cleared by breaking out the back window. The purpose of entering apartment #17 was to ensure it was unoccupied. Entry was made by Officers Ferrante (who carried the ballistic shield), Deel, Marx, Rothenburg, Hancock, and Sergeant Bonkavich. The team prepared to breach into apartment #18.

Once a positive breach was made into the rear bedroom of apartment #18, Officer Hancock and the team held their position on the door and were able to visually clear most of the bedroom. Due to the bedroom door only being partially open, the SWAT officers were unable to visually clear down the hallway. A K-9 dog, Bear, was deployed down the hallway and alerted on the closed bathroom door.

A charge was placed on the bathroom door to conduct a breach. The breach was unsuccessful, so another charge was placed. While Officer Thompson was placing the charge, he pushed on the door. According to Officer Hancock, the door only opened about six inches and Officer Thompson made a comment that it seemed like Decedent was pushing on the door. Officer Hancock heard Decedent yelling antagonizing comments to the SWAT operators.

After the charge was initiated, there was a lot of smoke. When the smoke cleared, Officer Hancock saw there was a positive breach. Officer Hancock instructed Officer Malia to deploy Bear. When Bear was in the bathroom, Officer Hancock heard Decedent grunting. Officer Hancock instructed Officer Malia to allow the dog to work Decedent with the intent to fatigue Decedent and give officers the advantage when entry was made into the bathroom.

Entry was made into the bathroom by officers in the following order: 1) Officer Ferrante, 2) Officer Marx, 3) Officer Deel, and 4) Officer Hancock. As the officers entered the bathroom, Officer Hancock heard several rounds fired. While Officer Hancock was in the bathroom, he saw Decedent in the bathtub and that Decedent had been shot. Officer Hancock looked at

Officer Ferrante and saw him shaking his left arm as though he was injured. Officer Ferrante also had a hole in the left arm of his shirt. Officer Hancock was concerned that Officer Ferrante had been shot.

Officers Ferrante and Marx held their positions on Decedent while Officer Malia was called up to release the dog. Officer Hancock escorted Officer Ferrante out of the apartment to assess his injuries and it was determined Officer Ferrante was not shot. Officer Hancock returned to the bathroom and saw Officer Marx keeping Decedent secured while Doctor Seibel was requested to assess Decedent.

### **Officer Cody Thompson**

On August 4, 2018, at approximately 1623 hours, Detective Colon conducted an audio recorded interview with Officer Thompson. Officer Thompson was notified of a barricaded subject at 210 W. Baltimore Avenue. Officer Thompson responded to the SWAT hangar and retrieved an armored vehicle. After retrieving the vehicle, Officer Thompson responded to the area where he and other SWAT officers received a briefing.

During the incident, SWAT officers breached the apartment in several places. Every time officers breached the apartment, Decedent discharged his firearm towards the location of the breach. Negotiators contacted Decedent several times over the telephone and Decedent said officers were going to have to come into the apartment to get him. Decedent also stated he wanted to die and officers were going to have to kill him.

The wall between apartments #17 and #18 was eventually breached. Officers deployed a K-9 dog into apartment #18 and the dog alerted on the closed bathroom door. Officers then breached the bathroom door and deployed the dog into the bathroom, and the dog engaged Decedent.

Officer Ferrante entered the bathroom, followed by Officer Marx. Officer Thompson heard gunshots. Officer Thompson entered the bathroom and observed Decedent, who appeared to have been shot, in the bathtub. Officers Ferrante and Marx exited the bathroom, and Officer Thompson stayed in the bathroom for medical personnel. Doctor Seibel entered the bathroom and checked Decedent for vital signs.

### **Officer Jason Deel**

On August 4, 2018, at approximately 1629 hours, Detective Quinteros conducted an audio recorded interview with Officer Deel. According to Officer Deel, he learned of the incident via text message and Communicator notification. He learned that Major Violator Section

detectives had attempted to take Decedent into custody, but Decedent refused to exit his apartment. Decedent also fired rounds through the door towards officers. Officer Deel responded to the command post, which was located at Tam Drive and Cleveland Avenue. His team was provided with additional details about the incident and Decedent.

Officer Deel was positioned inside a tactical vehicle adjacent to the front door of Decedent's apartment. During the initial stages of the operation, SWAT officers deployed a distract device to the front of Decedent's apartment door. Decedent reacted by firing rounds through the door. During the incident, crisis negotiators were able to contact Decedent. Officer Deel advised he and other SWAT officers obtained updates from the Tactical Operations Center (TOC). Officer Deel learned from the updates that Decedent refused to exit the apartment, and made comments that he wanted to die. In addition, Decedent said the police would have to kill him. Throughout the negotiations, Decedent repeatedly said he was going to exit the apartment, but he never did.

SWAT officers intervened and deployed tactical tools to resolve the situation. They utilized distract devices, CS gas, and explosive breaches. Each time they did so, Decedent fired rounds through the apartment and into the public. A tactical robot was also deployed, and Decedent also fired rounds at it.

After SWAT officers exhausted all avenues to resolve the situation, the decision was made to make entry into Decedent's apartment. Officer Deel's team was assigned to move up to the second floor and occupy apartment #16. Officers then breached and entered apartment #17. Explosive breaches were placed on the shared wall of apartments #17 & #18. The breach created a large hole allowing entry into Decedent's apartment. A K-9 unit deployed his dog into the apartment, but the dog did not alert to Decedent's location. Shortly after, the dog was called back to officers. Officer Deel and additional members of his team entered Decedent's apartment through the hole in the shared wall between apartments #17 and #18.

Upon entry into the apartment, the K-9 dog was again deployed. The dog alerted at the door of the bathroom. Decedent then yelled out numerous times, "Okay, I'm ready!" Due to the tight space, an explosive breach was placed on the bathroom door, but was ineffective. An additional explosive breach was placed on the bathroom door. When the smoke cleared, the K-9 dog was deployed into the bathroom. The dog located Decedent and bit him, which caused Decedent to yell. The dog was unable to pull Decedent out, which prompted the team of officers to enter the bathroom. Officer Ferrante, who was equipped with a ballistic shield, and Officer Marx were the first two to enter the bathroom and encounter Decedent, who was armed with a handgun. Decedent pointed the handgun at officers and both officers fired at Decedent. Officers Ferrante and Marx were pulled out of the bathroom and checked for

injuries. At the same time, Officer Malia entered and took control of his dog. The tactical doctor entered the bathroom and pronounced Decedent deceased.

### **Doctor Ross Seibel**

On August 4, 2018, at approximately 1644 hours, Detective Colon conducted an audio recorded interview with Doctor Seibel. At the time of the incident, Doctor Seibel was volunteering with the LVMPD as a tactical doctor. On August 4, 2018, Doctor Seibel responded to the area of 210 W. Baltimore Avenue reference a barricaded subject. After gunshots were heard, Doctor Seibel made entry into apartment #18 to check the status of Decedent. According to Doctor Seibel, he entered the bathroom and observed Decedent in the bathtub, suffering from multiple gunshot wounds. Doctor Seibel evaluated Decedent's condition and pronounced him deceased at the scene. Doctor Seibel then exited the apartment.

### **Sergeant James Bonkavich**

On August 4, 2018, at approximately 1649 hours, Detective Hodson conducted an audio recorded interview with Sergeant Bonkavich at Fairfield Avenue and Cleveland Avenue. Sergeant Bonkavich was notified by Lieutenant Huddler of a barricaded suspect in DTAC. Sergeant Bonkavich was told the suspect was wanted for various felony crimes and had fired shots at officers who were outside the apartment he was barricaded in.

Sergeant Bonkavich notified the members of his team and told them to meet in the area of the call for a briefing. During the briefing, Sergeant Bonkavich and his team were told Decedent was armed with a TEC-9 handgun and had fired several shots towards officers on the perimeter outside the apartment Decedent was barricaded in. After the briefing, Sergeant Bonkavich's team developed a tactical plan and took over the inner perimeter.

Negotiators made contact with Decedent numerous times over the course of the incident. Decedent told negotiators he would not come out and that officers were going to have to enter the apartment. As negotiations failed, SWAT began breaching the apartment to deploy distract devices. Decedent would discharge his firearm whenever a breach or distract device was deployed.

Officers believed Decedent barricaded himself in the bathroom of apartment 18 during the course of the incident and a decision was made to enter the apartment. Officers breached the wall between apartment #17 and #18 and sent a K9 dog into the apartment. The K9 dog alerted on the closed bathroom door indicating Decedent was in there.

The bathroom door was breached and the K9 dog was sent into the room. When the K9 dog did not return, officers believed it was engaged with Decedent. Officer Ferrante entered the room followed by Officer Marx. Sergeant Bonkavich heard multiple gunshots after the officers entered the bathroom. Once Sergeant Bonkavich was advised the officers were not shot, he began to secure the scene.

### **Officer James Rothenburg**

On August 4, 2018, at approximately 1651 hours, Detective Ubbens conducted an audio recorded interview with Officer Rothenburg. At approximately 0245 hours, Officer Rothenburg was notified of a barricaded subject. He was informed the barricaded suspect was a target of Major Violator Section detectives, and had fired rounds through the front door towards officers.

Officer Rothenburg was one of the first officers to arrive at the staging area. He was assigned to conduct reconnaissance on the apartment and ensure proper containment was set on the apartment. While conducting the reconnaissance, Officer Rothenburg was east of the apartment briefing with Major Violator Section detectives when Decedent fired several rounds from the apartment.

SWAT officers and negotiators had negotiated, used the PA system to communicate with Decedent, and deployed distract devices for approximately six or seven hours. Several times throughout the incident, Decedent fired rounds from deep inside the apartment in the general direction of officers. Officer Rothenburg was assigned to the shield and shuttled resources to and from different containment positions.

Officer Rothenburg was assigned to provide cover for K-9 Officer Malia. Entry was made into the target apartment #18 from a hole in the shared wall between apartments #17 and #18. Officer Rothenburg was with Officer Malia when Officer Malia's dog was deployed and alerted on the bathroom door. A plan was made to place a breach on the bathroom door and redeploy the dog after the door was breached. The initial breach did not work, so another was placed on the door.

After the second breach was successful, the dog was deployed into the bathroom. Officer Rothenburg heard Decedent yelling. After the first two officers made entry into the bathroom, Officer Rothenburg heard two to four rapid gunshots. Officer Rothenburg attempted to get into the bathroom to assist Officer Malia with the dog, but it was difficult due to the small space. Officer Rothenburg heard Officer Ferrante say he shot Decedent.

After the shots were fired, Officer Rothenburg was assigned to monitor of Officer Ferrante.

## **VIII. FORENSICS REQUESTS/RESULTS**

### **Firearm Examinations**

On August 17, 2018, an LVMPD Forensic Laboratory Request was submitted on Officers Ferrante and Marx's firearms for function tests and ballistic comparison evidence. Function tests and ballistic comparison evidence was also requested on the firearms found in Decedent's possession.

On October 24, 2018, Forensic Scientist Roy Wilcox submitted the Report of Examination: Firearms & Toolmarks.

The Glock pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 1/2 inches, overall length of approximately 7 15/16 inches without the tactical light attached, approximately 8 7/16 inches with the tactical light attached and a trigger pull of 6 3/4 - 7 pounds. The submitted magazine has a capacity of eighteen cartridges.

The Smith & Wesson pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 1/8 inches, an overall length of approximately 6 5/16 inches and a trigger pull of 7 - 7 1/4 pounds. This pistol was also test fired with 9mm Luger caliber cartridges. The 9mm Luger cartridge would chamber into the pistol from being fed from the magazine, but did not fire, extract or eject reliably. The submitted magazine has a capacity of seven cartridges.

The AA Arms pistol was not operational as received and broken into several pieces. The submitted magazine has a capacity of twenty-two cartridges. No further examination was completed on this firearm.

The Colt rifle was examined, test fired and found to be operational with no noted malfunctions. This firearm has a barrel length of approximately 12 1/2 inches, overall lengths of approximately 27 7/8 inches (with suppressor removed and stock collapsed), approximately 32 1/4 inches (with suppressor attached and stock collapsed), approximately 31 3/16 inches (with suppressor removed and stock extended), approximately 35 7/16 inches (with suppressor attached and stock extended) and a trigger pull of 3 1/4 - 3 1/2 pounds. The submitted magazine has a capacity of twenty-five cartridges.

### **Cartridge Cases**

The evidence cartridge cases were examined and microscopically compared to the test fired cartridge cases from the submitted firearms with the following results:

- Nine cartridge cases (Lab Items 1, 2, 3, 4, 10, 11, 15, 17 and 18) were identified as having been fired from the Smith & Wesson pistol.
- Six cartridge cases (Lab Items 5, 7, 8, 12, 13 and 14) were identified as having been fired from the Glock pistol.
- Two cartridge cases (Lab Items 6 and 9) were identified as having been fired from the Colt rifle.
- One cartridge case (Lab Item 19) was eliminated as having been fired from the Glock or the Smith & Wesson pistols.

## **NIBIN**

Representative images of a cartridge case (Lab Item 19) and test fired cartridge case from the Smith & Wesson pistol were entered into NIBIN. The NIBIN correlation results from Lab Item 19 were reviewed and no associations were noted. The entry of the cartridge case from the Smith & Wesson pistol has resulted in a possible association with Los Angeles Police Department Agency Reference: F1705111000, Case Number: LOS17-12 12770PC, Exhibit Number: EC3. A preliminary screening of the images of these cartridge cases has been performed but this association has not been confirmed. Confirmation requires a microscopic comparison of the actual cartridge cases.

## **Biology/DNA Examination**

On August 17, 2018, an LVMPD Forensic Laboratory Request was submitted by Detective Alsup for biology/DNA analysis. On October 10, 2018, Forensic Scientist Tiffany Adams submitted the Report of Examination: Biology/DNA Forensic Casework. The examination revealed the Decedent's DNA on the Smith & Wesson handgun and the Luger 9 mm rifle.

## **IX. LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide).

The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

#### I. THE USE OF DEADLY FORCE IN DEFENSE OF ANOTHER

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ...” against the other person.<sup>1</sup> 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.

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<sup>1</sup> NRS 200.120(3)(a) defines a crime of violence:

“Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

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

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

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

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent danger to officers and civilians in the area of the apartment complex located at 210 W. Baltimore Avenue. This fact was evidenced as police tried to take Decedent into custody based on his suspected involvement in a robbery and kidnapping event, a kidnapping and sexual assault event, and a kidnapping event that occurred in the vicinity of the Stratosphere, near his apartment. Contact was made with Decedent via telephone numerous times and detectives asked him to exit the apartment peacefully, but each time Decedent would hang up the phone. Detectives also used the public address (PA) speaker on their vehicles to ask Decedent to exit the apartment. Decedent discharged several rounds from his firearm through the front door in the direction of the officers who were in the parking lot of the apartment building. Decedent continually stated over the phone he would not come out of the apartment.

After Decedent discharged his firearm, detectives on scene called for SWAT personnel, including crisis negotiators. Negotiators attempted to talk Decedent into coming out but Decedent continued to hang up the phone. When negotiations failed, SWAT officers evacuated the occupants of the other apartments in the building. SWAT officers also began breaching the doors, windows, and walls to apartment #18. Each time a breach was conducted, Decedent would discharge his firearm towards the direction where the breach

occurred, endangering the officers' lives. During the standoff, Decedent commented that he was going to "shoot it out with officers," and, "I'm not going back to prison."

After several hours, the interior wall between apartments #17 and #18 was breached. A K-9 dog was deployed into the apartment and alerted on the bathroom door, which had been closed. The bathroom door was breached by SWAT officers, and the dog was deployed into the bathroom. Officers determined the dog was engaged with Decedent when the dog did not return to officers. Officers entered the bathroom and observed the dog engaged with Decedent, who was in the bathtub. Decedent, who was holding a black firearm in his right hand, lifted his right arm and pointed the firearm in the direction of the officers. Officers Ferrante and Marx each discharged their weapons, striking Decedent multiple times. Thus, Officers Ferrante and Marx 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. Accordingly, Officers Ferrante and Marx were 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 Officers Ferrante and Marx had probable cause to believe that the Decedent posed a threat of serious physical harm to himself and to the people in the area. This probable cause was based on the fact that the Decedent had repeatedly shot at officers as they had tried to get him to come out of the apartment, and based on the Decedent firing at the areas where the police tried to breach the apartment to make entry, and based on Decedent raising a gun in his hand at the officers as they made entry into the bathroom. Believing Decedent would shoot them, the officers discharged their firearms at Decedent.

Thus, Officers Ferrante and Marx had not only a duty to respond to the perceived deadly threat to others in the area, but also could act on their reasonable fear of a threat to their lives and use deadly force.

The circumstances indicate the Officers Ferrante and Marx had a reasonable belief that Decedent was a threat to their safety as well as the other people in the area.

In light of this evidence, the actions of the officers were legally justified and appropriate “in the discharge of a legal duty.”

### **CONCLUSION**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the actions of Las Vegas Metropolitan Police Department Officers Ferrante and Marx were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” (NRS 200.190).

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