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August 20, 2012

Sheriff Douglas C. Gillespie
Las Vegas Metropolitan Police Department
400 Martin Luther King Blvd
Las Vegas, NV 89106

**Re: Officer Involved Death of Jason Baires, which occurred on February 1, 2012,
and is referenced as LVMPD Event #120201-0077**

Dear Sheriff Douglas C. Gillespie:

The District Attorney's Office has completed its review of the February 1, 2012 death of Jason Baires ("Decedent") which involved LVMPD Detectives Gregory Theobald and Thomas Faller, and Henderson Police Department Detective David Rowlett. Based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of these officers were not criminal in nature. It appears that the decedent was running away from the officers as they attempted to contact him because he was the suspect in a murder that was committed on January 31, 2012. The decedent held a firearm in his hand as he was fleeing the officers, and fired shots at the officers, wounding one of them even as decedent was pinned down by a patrol vehicle. The officers responded to decedent's actions with reasonable force. It should be noted that this review was made based on all the evidence currently available but without the benefit of an inquest proceeding.

This letter is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. This letter is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of

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

FACTUAL SUMMARY

Background

On February 1, 2012 members of the Criminal Apprehension Team (“CAT”) were searching for the decedent, who was wanted as a suspect in the January 31, 2012 murder of Rudolpho Velasco-Bayardo.¹ CAT began an active search for decedent and learned of his possible whereabouts. The decedent was alleged to be in a vehicle along with his girlfriend in the area of 1944 Saylor Way in Las Vegas. When they arrived at that address, detectives found the suspected vehicle, a Nissan Xterra SUV bearing Nevada plate # 32PENNY. They observed that someone was inside the vehicle. The vehicle began to move and the CAT detectives followed it. In the vicinity of 5300 West Carmen Boulevard, detectives attempted to pull the vehicle over by activating the police lights on their undercover vehicles. Detectives maneuvered their vehicles alongside and in front of the vehicle to prevent it from driving off.

Almost immediately, the passenger door of the Nissan opened and decedent fled the vehicle, running eastbound toward Michael Way.² CAT detectives chased the decedent in their vehicles and attempted to block his path. Decedent maneuvered around the vehicles. When he continued to flee, detectives noticed that the decedent was running with a gun in his hand. Detective Faller drove his vehicle at the decedent and hit him with the front of the car. The detective got out of his undercover vehicle and moved toward the front of the vehicle. The decedent fired shots and Detective Faller engaged the decedent with gunfire.

At the same time that shots were being fired, Detective Theobald, who was on the sidewalk to the north of Detective Faller, was hit by gunfire fired from the decedent’s weapon. Detective Theobald fell to the ground and Detective Rowlett fell on top of him. Both of these detectives returned fire at the decedent, who was now face down on the

¹ On January 31, 2012 LVMPD Homicide detectives responded to the residence at 4613 Stacey, Las Vegas, NV regarding the discovery of a deceased male, Rudolpho Velasco-Bayardo. Velasco-Bayardo was killed by sharp force trauma. The investigation revealed that the victim was killed by his girlfriend’s son, Jason Baires. The victim’s body was found in Jason Baires’ room. Officers located what appeared to be a grave dug in the backyard. Detectives observed various cleaning utensils at the residence as well as evidence of blood and footwear impressions in blood throughout the home. Detectives located various firearms, machetes and other sharp objects, as well as a large cooler, chainsaw, charcoal and lighter fluids at the residence.

² LVMPD CAT Team Det. Eric Collins approached the Xterra and got the driver (later identified as decedent’s girlfriend) out of the vehicle. Collins placed her in handcuffs and cleared the vehicle. When he heard shots being fired, he pushed decedent’s girlfriend to the ground and shielded her from the gunshots.

sidewalk with his left arm pinned under the tire of Detective Faller's undercover vehicle. LVMPD CAT Team Sgt. David Stansbury pulled his vehicle to the right of Detective Faller's vehicle, opened his driver's side door, and prepared to engage decedent in gunfire. Stansbury did not shoot because another detective was in his line of fire. Sgt. Stansbury's vehicle was hit with a round shot by the decedent. When the gunfire ended, Detective Faller kicked a revolver from the decedent's hand. The revolver came to rest in the rock area west of the sidewalk.

Fearing that Detective Theobald had been hit in his femoral artery, CAT Team members began to give him medical aid and transported him to the hospital. The decedent died at the scene.

Contact with Law Enforcement

On February 2, 2012, LVMPD Detective Eric Collins gave a statement regarding the shooting. Present during the interview was PPA General Counsel Cathy Collins and PPA representative Darryl Clodt. Also on that date, LVMPD Sergeant David Stansbury gave a statement regarding the shooting. Present during that interview were PMSA General Counsel John Aldrich and PMSA representative Noah Grimm.

HPD Officer Rowlett, LVMPD Detectives Richard Hart, Thomas Faller, Troy Radke, Special Agents Daniel Coxon, Christopher McInnes and Scott Hendricks declined to give statements to LVMPD Homicide/FIT section. At a later date, FBI Special Agent Hendricks gave a taped statement to LVMPD Detectives.

Contact with Private Citizens

Interview of decedent's girlfriend

Decedent and Girlfriend were in a dating relationship. They had been in a verbal disagreement for the past few weeks before February 1, 2012. On January 31, 2012, decedent started calling Girlfriend at about 5:00AM. Girlfriend did not answer his calls. At about 7:30AM, Girlfriend answered one of decedent's calls. He asked her for a ride. Girlfriend hung up on decedent, turned off her phone and went back to sleep. At about 5:00PM, Girlfriend turned her phone back on. Decedent called her again several times, but she did not answer. At about 6:00PM, Girlfriend answered a call from decedent. He told Girlfriend that he was in trouble and needed her to pick him up at the Circle K convenience store at Vegas Drive and Michael Way. Girlfriend agreed and had her sister drive her to the Circle K where they picked up the decedent.

The decedent, Girlfriend and Girlfriend's sister went to the drive through window of Carl's Jr. on Vegas Drive and Buffalo. Then they drove to the east side of Las Vegas, where they dropped off Girlfriend's sister. Girlfriend then drove back toward her house at 1944 Saylor Way. She tried to get decedent to tell her what had happened, but decedent would not tell her. He said "The less you know the better." Decedent asked

Girlfriend if he could spend the night at her house, but Girlfriend said no. Girlfriend told decedent that he could sleep in her vehicle in front of the residence. Decedent and Girlfriend got some blankets from Girlfriend's house, folded down the backseats of Girlfriend's SUV and laid down in the makeshift bed. Girlfriend was lying with decedent when he saw someone walk by the vehicle. He told Girlfriend to get in the driver's seat and drive. Girlfriend noticed several vehicles following her. Decedent gave her directions on where to go from the back seat. Girlfriend saw red and blue "police lights" from a vehicle behind her. Another vehicle passed her and stopped in front of her. Decedent told Girlfriend to keep driving, but she refused. Decedent began to yell at Girlfriend, saying that she "snitched him out." He exited the SUV and ran eastbound towards Michael Way. Girlfriend saw several plainclothes officers chasing decedent and heard an officer giving her commands to get out of the vehicle and lay on the ground. Girlfriend did so, and was taken into custody. Girlfriend heard gunshots from the area to which the decedent had run.

Findings from the Autopsy

On February 2, 2012, a complete autopsy was performed by Dr. Timothy F. Dutra on the body of decedent. The autopsy revealed multiple gunshot wounds, grazing gunshot wounds, abrasions and lacerations. Five apparent bullets and several bullet fragments were recovered and impounded during the autopsy. Dr. Dutra determined that the cause of decedent's death was gunshot wounds to the head and chest and the manner of death was ruled homicide.

The toxicology report determined the existence of Delta 9 -THC (1.8 ng/mL) and Delta-9 Carboxy THC (16 ng/mL) in the decedent's system at the time of his death. Delta 9-THC is the active ingredient of marijuana. Delta-9 Carboxy THC is the inactive metabolite of marijuana.

Findings from the Scene

The incident took place in two separate locations. The first was the 5300 block of West Carmen Boulevard, west of Michael Way. The second location (and the primary scene) was at 1111 N. Michael Way.

The initial car stop occurred at 5300 West Carmen Boulevard, a public roadway that connects with Michael Way to the east. The street is bordered by school athletic fields to the south and a utility building to the north. Four vehicles were parked at that scene, facing eastbound about 110 feet west of the intersection of West Carmen Boulevard and Michael Way. The eastern-most vehicle was a gray, 2005 Chevrolet Silverado truck that was registered to LVMPD. It was parked at an angle facing in the southeast direction. Behind it was a gray 2006 Nissan Xterra SUV that was registered to Girlfriend's parents. The driver's door and the right rear passenger's door were opened.

Directly behind it was a 2006 Chevrolet registered to the Henderson Police Department. The last vehicle was a 2009 Chevrolet SUV registered to the FBI.

The second site was at 1111 N. Michael Way, the address of Saint Francis De Sales Catholic School and Church. To the center and east of the property is a large paved parking lot. To the north of the parking lot is a fenced-in grass athletic field belonging to the school. There is a fence running the length of the athletic field from the north border of the parking lot to Carmen Way. Bordering the fenced area to the east is a rock landscaped area, then a sidewalk, curb, and the roadway of Michael Way. The shooting scene was to the north of the northern entry to the parking lot into the sidewalk and landscaped area.

There were six vehicles at the Michael Way scene. All six were unmarked police cars. The first vehicle was a gray Nissan Titan pickup truck. This vehicle was facing southwest and was almost completely on the sidewalk except for the left rear tire. The right front tire of the truck was atop the decedent's left arm. The decedent lay under that tire. There were bullet holes noted through the passenger window, in the "A" pillar, the bottom right front quarter panel, the right front bumper and the right front wheel/rim of the Nissan truck. There was also blood on the front bumper, hood, roof and passenger side of the vehicle. There was an apparent fabric impression on the front bumper of the truck.

Vehicle #2 was a white Buick to the north of Vehicle #1 and slightly to the rear of it. This vehicle was faced southwest. This vehicle was mostly on the sidewalk with the exception of its left rear tire. The driver's door was open and had an apparent bullet hole to the exterior of that door. A bullet fragment was later discovered in the interior door panel. A bullet fragment was recovered from the sidewalk area to the south and front of Vehicle #2. Several cartridge casings were recovered in the area of Vehicle #2.

A silver Taurus five-shot revolver was recovered from the landscaped area west of Vehicles #1 and #2. The gun had been kicked out of the hand of the decedent by Detective Faller. All of the cartridges had struck primers; however, one was not fired and appeared to have been a misfire.

Vehicle #3 was a blue Dodge located on the roadway of Michael Way, positioned facing mostly south to the rear of Vehicle #1. Vehicle #4 was a gold Dodge Durango that was positioned to facing southwest, and behind Vehicle #2. Detective Theobald's handgun, a Glock model 26 semi-automatic pistol with serial #LMZ813, was located on the front driver's seat of Vehicle #4. The gun was put there by another detective after Det. Theobald was transported to UMC. The chamber of the gun was empty, as was the magazine that was in the gun.

Vehicle #5 was a Chevrolet Tahoe that was positioned to the north of Vehicles #2 and 4 and was pulled up onto the curb area. The back hatch of the vehicle was opened along with the passenger door. Vehicle #6 was a Dodge Durango that was in the

southbound lane of Michael Way beside the curb facing south. It was north of the other five vehicles.

LEGAL ANALYSIS

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

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

A. The Use of Deadly Force in Self-Defense and Defense of Another

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

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

NRS 200.160(1).

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

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

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

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

....

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

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

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

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

From the evidence available, it appears the officers were lawfully in search of the decedent, who was a suspect in the murder of his mother's boyfriend. That murder was reported to have been committed with use of a deadly weapon. During the course of the discharge of their lawful duties, CAT detectives obtained information regarding the decedent's whereabouts. The decedent was alleged to be in a vehicle in the area of 1944 Saylor Way in Las Vegas, with Girlfriend. When detectives arrived at the Saylor address, they discovered a Nissan Xterra SUV. Detectives noticed someone inside the vehicle. The vehicle began to move and CAT detectives followed it. When the detectives attempted to pull the vehicle over, they maneuvered their vehicles alongside the Xterra and in front of it to prevent it from driving off. Almost immediately, the passenger door of the SUV opened and decedent fled the vehicle, running eastbound. CAT detectives chased decedent and attempted to stop him with their vehicles. Decedent maneuvered around the vehicles. While he continued to flee, detectives noticed that he was running with a gun in his hand. Detective Faller drove his vehicle at the decedent and struck him with the front of the undercover vehicle. When Detective Faller got out of his vehicle and moved toward the decedent, the decedent fired shots and Faller engaged the decedent in gunfire. CAT Detective Theobald, who was on the sidewalk to the north of Detective Faller, was hit by gunfire fired from the decedent's weapon. The wounded detective fell to the ground and Detective Rowlett fell on top of him. Both detectives returned fire at the decedent, who was now pinned under the tire of Detective Faller's undercover vehicle. Sgt. Stansbury then pulled his vehicle to the right of Detective Faller's vehicle; he opened his driver's side door in order to engage the decedent, but held his fire because another detective was in the line of fire. The sergeant's vehicle was hit with one round shot by the decedent. When the gunfire ended, Detective Faller kicked a revolver from the decedent's hand. At that point the threat to the detectives and Girlfriend was neutralized, and no further use of force occurred.

Based upon these facts, the force utilized by the officers was necessary to protect them, other detectives who were close to the scene and Girlfriend from imminent serious bodily injury from decedent's gunshots. As such, the actions of the officers were necessary self-defense or defense of others.

B. Justifiable Homicide by a Public Officer

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

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation omitted]. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, [Citation omitted], nor by the mistaken execution of a valid search warrant on the wrong premises. [Citation omitted]. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” [Citation omitted], violates the Fourth Amendment. The calculus of reasonableness must embody allowances for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. [Citation omitted].

Graham v. Connor, 490 U.S. 386, 396-397, 109 S. Ct. 1865, 1872 (1989).

When the CAT team went to the area of 1944 Saylor Way in the early hours of February 1, 2012, they were in search of decedent who was a suspect in the murder of Rudolpho Velasco-Bayardo. When the detectives found him, the decedent fled from the scene with a weapon in his hand. The decedent at first evaded capture but, even when he was physically pinned down, fired gunshots at the detectives, striking Detective Theobald in his leg.


Based upon all the evidence reviewed to date, it is evident that Detectives Theobald, Faller and Rowlett were confronted with a desperate subject, who threatened the lives of Girlfriend and the detectives at the scene. Decedent actually shot Detective Theobald in the leg. Detectives Theobald, Fowler and Rowlett had the right to arrest the decedent and when he responded with deadly force, the detectives had no alternative but to respond in kind.

CONCLUSION

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved death of Jason Baires, it is determined that the actions of Detectives Theobald, Faller and Rowlett were reasonable. The shots fired by Detectives Theobald, Faller and Rowlett were justified to stop the escalation of violence by the decedent and protect the officers and others at the scene. There is no evidence that the officer acted unlawfully or with malice aforethought.

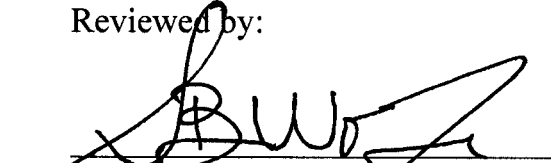
The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. According to NRS 200.190, “[t]he homicide appearing to be justifiable or excusable, the person indicted shall, upon trial, be fully acquitted and discharged.” Therefore, there is no factual or legal basis upon which to charge Detectives Theobald, Faller and Rowlett based on the totality of the circumstances. Unless new facts come to light which contradict these findings, no charges will be forthcoming.

Very truly yours,



LYNN M. ROBINSON
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney