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June 20, 2012

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

Re: Officer-involved death of Michael Chevalier which occurred on April 4, 2011, at the Sedona Hills Apartments, 2895 East Charleston, Building 3, Apartment 2024, under LVMPD Event #110403-2902.

Dear Sheriff Douglas C. Gillespie:

On April 3rd 2011, at about 1655 hours, the Las Vegas Metropolitan Police Department (LVMPD) dispatch received a 911 call. The caller explained that she was on the phone with her cousin, (hereinafter "Sexual Assault Victim"), when it sounded like someone broke into her cousin's apartment and there was a fight. The caller said it sounded like someone was choking her cousin.

LVMPD Patrol Officers Solomon, Donaldson, Nastase and Downie were dispatched to 2895 East Charleston to make contact with any potential victim on an "unknown trouble" call. Officers arrived and identified building 3, apartment 2024, as the potential victim's apartment.

Officer Solomon knocked on the front door and identified himself as a police officer. A woman, Sexual Assault Victim, began screaming for help and the door opened. Solomon saw a bloody woman being held by an unknown male, Michael Chevalier (hereinafter "Decedent"). Decedent dragged Sexual Assault Victim further

inside the apartment and toward a couch in the living room and pulled out a pistol. Officers retreated from the doorway, set up a perimeter and requested SWAT respond for a barricaded suspect.

While officers were establishing a perimeter and waiting for SWAT units to arrive, Officer Perez saw Decedent exit the apartment. Decedent fired his gun twice at Officer Perez. In response, Officer Perez shot twice at Decedent. Unharmed, Decedent returned to the apartment and closed the door.

LVMPD SWAT officers arrived along with the Negotiation Team. After several hours (over 6) of unsuccessful negotiations, two SWAT teams were ordered to enter the apartment at about 0420 hours on April 4th 2011. Along with the other SWAT team, SWAT Officers Rivera, McCord, Peterson and Sergeant Quick entered the apartment. Sergeant Quick located Decedent and Sexual Assault Victim in the bedroom.

Decedent was lying on the floor between the bed and the window. He had Sexual Assault Victim on top of him, using her as a shield. Sergeant Quick was the first to contact Decedent. As Sergeant Quick was trying to remove Sexual Assault Victim from Decedent's grasp, Decedent produced a pistol in his right hand and pointed it at Sergeant Quick. Due to the close quarters and the position of Sexual Assault Victim, Sergeant Quick placed his duty pistol to Decedent's head and fired one time. SWAT officers removed Sexual Assault Victim from the location.

Decedent was pronounced dead at the scene.

The District Attorney's Office has completed its review of the April 4, 2011, 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 were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

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

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

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BACKGROUND

Interview of Sexual Assault Victim

On April 4th 2011, Detective Hanna contacted and conducted a recorded interview with Sexual Assault Victim while she was at University Medical Center.

She explained that she had moved into the apartment at 2895 East Charleston, with her boyfriend, approximately three weeks earlier. On Sunday afternoon, April 3rd 2011, she was alone at the apartment while her boyfriend was at work. Sexual Assault Victim was talking on her telephone with her cousin and stepped outside the front door of the second floor apartment to have a cigarette.

When Sexual Assault Victim re-entered the apartment, she closed, but did not lock, the door. Moments later, a male subject (Decedent), whom she did not know or recognize, burst through the door. She screamed and Decedent began hitting her over the head with a hand gun. Sexual Assault Victim continued to fight with Decedent, and at one point, gained control of the gun, which she described as a black, mid-sized, nine millimeter. She tried to shoot Decedent, but the safety was on and the trigger just pulled to the rear of the weapon. Decedent regained control of the gun and began choking Sexual Assault Victim, telling her he was going to kill her.

After some time, Decedent stopped choking Sexual Assault Victim and there was a knock at the door. Decedent directed Sexual Assault Victim to ask who was at the door. When she did, the response was, "the police." Sexual Assault Victim began yelling "[h]elp me!" and managed to unlock and open the door for police.

Decedent then grabbed her from behind with his arm locked around her neck and pressed the gun against her side. Sexual Assault Victim heard the officers say, "[h]e's got a gun!" Sexual Assault Victim struggled with Decedent and tried to get out the door. When she reached the door, Decedent grabbed her by her hair and pulled her back into the apartment. Sexual Assault Victim struggled to hold onto the door jamb with her feet, but Decedent pulled her back into the apartment and closed the door.

Once Decedent got her back inside the apartment, he closed all of the blinds, took a pillow case from the couch, tore it apart, and used it to tie Sexual Assault Victim's hands behind her back and her feet together.

For the next several hours Sexual Assault Victim was restrained on the couch. Decedent identified himself as "Michael Simmons" or "Michael." Decedent talked to Sexual Assault Victim about losing his job, his girlfriend throwing him out of their residence, having to live in his vehicle, and his desire to get money for drugs.

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Decedent asked Sexual Assault Victim if she had any drugs or money in the apartment. When she explained that she did not have either, he began drinking beer from the refrigerator. Sexual Assault Victim noticed that Decedent smelled of alcohol even before he started drinking the beer.

Decedent told Sexual Assault Victim he had been outside a nearby convenience store, intending to rob it, but there were too many people around. He then saw Sexual Assault Victim standing outside smoking and decided to go to Sexual Assault Victim's apartment. Decedent said that the police were going to have to break in and kill him.

According to Sexual Assault Victim, approximately an hour after he first broke into her apartment, Decedent stepped out the front door and fired his gun. He told her he did that so the police would know he was serious.

During the passing hours, Decedent would occasionally talk to police negotiators on Sexual Assault Victim's cellular telephone. He would hang up when they said something he did not like. Decedent fortified the inside of the residence by moving the refrigerator in front of the kitchen window and barricading the front door. Decedent told Sexual Assault Victim if the police stormed the apartment, he would kill her and then himself.

At approximately midnight, over six hours after the 911 call, Decedent moved Sexual Assault Victim into the bedroom where he removed her restraints and her clothing. He told her if she moved or made a sound, he would kill her. With the gun in his hand the entire time, Decedent repeatedly sexually assaulted Sexual Assault Victim for two hours. Later, they both fell asleep.

Sexual Assault Victim next heard SWAT officers make entry into the apartment.¹ When the officers made entry into the bedroom, Decedent grabbed Sexual Assault Victim and rolled with her off the bed, onto the floor between the bed and the wall. Decedent held Sexual Assault Victim on top of him as a shield, and pressed his gun to her side. Sexual Assault Victim said the officers repeatedly told Decedent to let her go and to drop his gun, but he did not comply. Sexual Assault Victim intentionally rolled her head away from Decedent to give the officers a "clean shot."

Interview of Cousin of Sexual Assault Victim

On April 4th 2011, Detective Hanna contacted and conducted a recorded interview with the cousin of Sexual Assault Victim. Cousin stated that she was on the telephone with Sexual Assault Victim Sunday afternoon when Sexual Assault Victim began

¹ During a subsequent interview, she explained that after she heard SWAT officers make entry into the apartment, Decedent fired his gun.

screaming. Cousin could tell Sexual Assault Victim was being choked. Thereafter, she heard quiet and the telephone line disconnected. Cousin immediately called 911 to report the incident, and drove to Sexual Assault Victim's apartment where she saw a male subject standing outside Sexual Assault Victim's door. Moments later Cousin heard three gunshots.

Interview of Attempt Murder Victim I

On April 3rd 2011, Detectives Boucher and Hanna conducted an audio recorded interview with Attempt Murder Victim I. Attempt Murder Victim I lived at 2895 East Charleston and was driving to his apartment with his siblings--6 year old brother, 5 year old sister, and a fourteen year old brother, Attempt Murder Victim II. As he pulled into his complex, the police were there and told him he could not enter the complex. Police directed him to park somewhere else and wait out the incident.

Attempt Murder Victim I pulled into a business complex directly in front of the apartments. While sitting in the car, he saw someone he described as a white male (Decedent) exit an apartment, look around and go back inside. A few moments later, the same male came back out, looked at Attempt Murder Victim I's car and pointed a gun at the car. Attempt Murder Victim I grabbed his brother, fourteen year old Attempt Murder Victim II, who was sitting in the front seat and told him to get down.

The male shot at the car, striking it. Attempt Murder Victim I reached into the back seat to get his younger brother and sister, the six and five year old, out of their seat belts and onto the floor. The male kept shooting. Attempt Murder Victim II, the fourteen year old brother, panicked and jumped out of the car. Attempt Murder Victim I grabbed his arm and pulled him back into the car. Attempt Murder Victim I drove out of the parking lot to the nearby 7-11 convenience store where he called police.

Attempt Murder Victim I noted there was a bullet strike in the front passenger side hood of the vehicle he was driving.

Interview of Attempt Murder Victim II

On April 3rd 2011, Detectives Hanna and Boucher completed an interview with, fourteen year old, Attempt Murder Victim II.

Attempt Murder Victim II was the front passenger in Attempt Murder Victim I's car, which was parked in the parking lot at 2885 East Charleston. The car faced south, near the front gates of 2895 East Charleston. Patrol officers had not let them enter 2895 East Charleston due to an ongoing incident.

While they were waiting, a man came out of an upstairs apartment, onto the patio and started to shoot a handgun at them. Attempt Murder Victim II heard four shots. He also saw one bullet strike the ground near them.

ARRIVAL OF INITIAL RESPONDING PATROL OFFICERS

Officer Paul Solomon

On April 9th 2011, Detectives Kisner and Boucher completed an interview with Officer Solomon at Downtown Area Command.

Officer Solomon was working on April 3rd 2011, as a marked patrol officer with Officer Downie as unit 3C. Officer Solomon was dispatched as backup to an unknown trouble call at 2895 East Charleston. Officers Solomon and Downie were the first to arrive.

When they arrived, Officer Downie logged a vehicle's plate that was possibly related to the call when a male bystander pointed towards apartment 2024. Officer Solomon went upstairs to the front door of the apartment. He listened, but did not hear anything. Other officers arrived and Officer Solomon took a position on the covered patio just west of the front door, near a window.

Officer Solomon knocked on the door twice and heard a female ask, "[w]ho is it?" The female's voice was "just low and just out of the ordinary." He identified himself as "the police." There was a short pause and then he heard footsteps and a high pitched scream of "[h]elp! Get in here!"

Officer Solomon checked the door and it was locked. He kicked the door and it flew open. A "few feet away" he saw a female (Sexual Assault Victim) with a male (Decedent) behind her. Decedent had his left arm around Sexual Assault Victim's neck and his right arm was hidden. Officer Solomon noticed Sexual Assault Victim had some blood on her head.

Officer Solomon had his gun out and told the male to "let her go" and to show his hand. Officer Solomon asked another officer to deploy a taser.

Decedent backed up to a couch on the west wall and sat down with Sexual Assault Victim still positioned in front of him. Decedent was "struggling" with his hand and Officer Solomon thought Decedent was trying to get a knife or a gun. Decedent tried "a good five or six times" to get his hand out from his back.

Finally, Decedent produced a gun in his right hand. Officer Solomon saw the gun move "real slow" and started yelling for Decedent to drop the gun. Decedent brought the gun up and "limp-wristed it" towards the female and, in the process, "swept us" with the gun.

Sexual Assault Victim was no longer screaming for help. Decedent never said anything.

Officer Solomon felt he did not have any cover and “shot across the doorway down the stairs, and then everyone else (other officers) came.” The front door was still open when he left his position.

Officer Solomon used his radio to advise dispatch that the situation was now a barricaded suspect. The officers set up a perimeter. Officer Solomon could not observe the front door of Sexual Assault Victim’s apartment from his perimeter position.²

Officer Matthew Donaldson

On April 9th 2011, Detectives Kisner and Boucher completed an interview of Officer Donaldson at Downtown Area Command.

Officer Donaldson was working on April 3rd 2011, as a marked patrol officer with Officer Nastase as unit 3A1. Officer Donaldson was dispatched as the primary unit to an unknown trouble call to 2895 East Charleston.

When Officer Donaldson arrived, Officer Solomon was at the front door of apartment 2024 and was ready to knock at the door. Officer Downie was about half way up the stairs behind Officer Solomon.

Officer Donaldson heard Officer Solomon knock and a female ask, “[w]ho is it?” Officer Solomon said “the police.” He then heard a female screaming and a “bunch of loud stomps” like there was a fight or struggle in the apartment. Officer Donaldson ran up past Officer Downie with his gun in his hand. He thought that Officer Solomon kicked the door open. Officer Solomon yelled to Decedent, “[l]et me see you hands” and told Officer Donaldson to “go to taser.”

Officer Donaldson put away his gun and was trying to get access to his taser as he entered the front door of the apartment. As he entered the living room, he saw a male (Decedent) holding a female (Sexual Assault Victim) in front of him. Decedent had his left arm around Sexual Assault Victim’s neck and he was trying to pull her back towards a couch on the west wall.

Just as Officer Donaldson entered the doorway, Decedent pulled a Beretta 92F pistol forward with his right hand. Decedent pointed the gun directly at Officer Donaldson. At the time, Officer Donaldson was about six (6) feet away from Decedent. Officer Donaldson retreated.

² Later, Officer Solomon identified the flashlight found inside the living room of the apartment by the front door as his. He did not recall how he left the flashlight at the scene.

Officer Donaldson took a position on the first step of the stairs along the east side of the doorway. Officer Solomon was just west of the doorway. Officers Downie and Nastase were able to retreat down the stairs and cover the doorway. Officer Solomon, who was “kinda stuck” was looking at Officer Donaldson like “what do I do kinda. No, he didn’t say that, but as if I needed to get across the doorway.”

Officer Donaldson covered into the living room and told Officer Solomon to “come to me.” Officer Solomon ran across the door, down the stairs and covered Officer Donaldson from the landing below. Officer Donaldson then left his position.

Officer Donaldson retrieved his rifle from his patrol car and took a position east of Sexual Assault Victim’s apartment. From his position, he could only see a little bit of the front patio of apartment 2024.

Several minutes later, Officer Perez, 3B, arrived on the north side of the complex and also deployed a rifle. Officer Perez said on the radio that he saw a male out front of apartment 2024 and Officer Donaldson confirmed that Officer Perez had identified the correct apartment. A short time later, Officer Donaldson heard about five gunshots. Officer Perez stated on the radio that Decedent fired three shots at him and that he fired two shots at Decedent. Officer Donaldson did not see the exchange.

Officer Donaldson could not see any injuries on Sexual Assault Victim. He said he was focused on Decedent and his weapon.

Officer Scott Nastase

On April 9th 2011, Detectives Kisner and Boucher completed an interview of Officer Nastase at Downtown Area Command.

Officer Nastase was working on April 3rd 2011, as a marked patrol officer with Officer Donaldson as unit 3A1. Officer Nastase and Donaldson were dispatched as the primary unit to an unknown trouble call to 2895 East Charleston. The call was about the person reporting talking to someone when there was a scream and the phone disconnected.

Officers Solomon and Downie arrived first. When Officer Nastase arrived, he saw Officer Solomon at the front door of apartment 2024. Officer Solomon was with Officer Downie who was logging a vehicle’s plate. As they were walking towards Officer Solomon’s location to assist, Officer Nastase heard a female screaming “[h]elp! Help! Come in!” Officer Nastase went to attempt to make entry into the apartment. He saw Officer Solomon at the front door, Officer Donaldson’s position was at the east side of the door and Officer Downie was last on the stairs. Officer Nastase’s position was behind officer Donaldson.

Officer Solomon asked someone to use a taser. Officer Donaldson started to transition to his taser. Officer Nastase holstered his pistol as he was expecting to go “hands on” with the suspect. He then heard Officer Solomon yell, “[h]e’s got a gun!”

Officer Nastase looked past Officer Donaldson’s right side and saw a male (Decedent) in the living room holding a female (Sexual Assault Victim) in a head lock in front of him. Decedent had his left arm around Sexual Assault Victim’s neck. Officer Nastase estimated that Decedent and Sexual Assault Victim were about five to seven feet from the door in the middle of the living room. Decedent never said anything during the incident.

They all retreated down the stairs and established a perimeter and waited for SWAT to arrive.

While waiting for SWAT to arrive, Officer Nastase heard about three shots that he thought came from the balcony of apartment 2024. He did not see who was shooting.

Officer Kyle Downie

On April 9th 2011, Detectives Kisner and Boucher interviewed Officer Downie at Downtown Area Command.

Officer Downie was working on April 3rd 2011, as a marked patrol officer with Officer Solomon as unit 3C. Officers Solomon and Downie were dispatched as backup to an unknown trouble call to 2895 East Charleston. Officers Solomon and Downie were the first to arrive.

When they approached the apartment, Officer Solomon was at the door with Officers Donaldson and Nastase behind him. Officer Downie was the last officer down the stairs from apartment 2024.

Officer Solomon knocked on the door. Officer Downie heard a female ask “who was it” in a whisper-like tone. Officer Solomon stated the “police.” Officer Downie heard screaming coming from inside the apartment. Officer Downie moved up toward the landing and made it to about three stairs from the top of the landing. His view was blocked by other officers. He surmised Officer Solomon kicked the front door because it flew open.

Officer Solomon yelled “somebody get a taser.” Officer Downie began to transition to a taser, when Officer Solomon yelled, “[h]e’s got a gun!”

All of the officers then retreated off the stairway because “we were dealing with a hostage situation ... based on what Officer Solomon was telling us.”

Officer Downie noticed that the front door of the apartment was now closed. The officers set up a perimeter and waited for SWAT to arrive.

As they were waiting, Officer Downie heard about five gunshots. He did not see who fired the gun.

Officer Downie never saw into the apartment. He did not see either the male suspect or the female hostage.

Officer Aaron Perez

On April 3rd 2011, Detective Hanna conducted a recorded interview with Sergeant Eric Kerns regarding the Public Safety Statement he obtained from Officer Aaron Perez. Sergeant Kerns made contact with Officer Perez at approximately 1900 hours and asked the specific questions relating to a Public Safety Statement as specified on LVMPD form 613.

The first question asked was if there were any outstanding suspects and, if so, what was their description. Officer Perez described the suspect as a Hispanic male with a grayish shirt, approximately 5'10" to 5'11", thin to medium build, with dark hair.

Sergeant Kerns asked Officer Perez what crime was being investigated or what was suspected, and Officer Perez said he did not know at that time.

Sergeant Kerns asked Officer Perez if he was involved in an Officer Involved Shooting and he acknowledged he had been.

Sergeant Kerns asked Officer Perez his approximate location when he fired and he pointed to a gray SUV in the middle of the parking lot of 2885 East Charleston Boulevard. Officer Perez added further that he was standing in the front of that vehicle firing southbound.

Sergeant Kerns asked Officer Perez approximately how many times did he fire and in what direction did he fire. Officer Perez said he fired two times in a southward direction towards the suspect on the second floor of the apartment building.

Sergeant Kerns asked Officer Perez whether he knew if any other officers fired, and he said he did not know.

Sergeant Kerns asked Officer Perez if it was possible the suspect fired at him, and Officer Perez said the suspect did fire at him.

Sergeant Kerns asked in what direction were the shots fired, and Officer Perez answered north, directly towards him.

Sergeant Kerns asked Officer Perez if there were any weapons or evidence that needed to be secured or protected, and their location. Officer Perez said there were rifle casings in the parking lot near where he was standing when he fired.

Sergeant Kerns asked Officer Perez if he was aware of any witnesses, and if so, their current locations. Officer Perez said there were five to seven occupied vehicles in the parking lot when the incident occurred, but they all drove out of the parking lot before being identified.

PENDING ACTIONS OF HOSTAGE NEGOTIATORS AND SWAT

While SWAT handled the barricade and hostage incident, Officer Perez went to the Homicide Office to be photographed and have his weapon collected.

Officer Perez arrived at the Homicide Office with the Smith and Wesson rifle he used during the incident. The rifle was a LVMPD issued rifle. Officer Perez stated that he did not reload the weapon after he fired and believed that he fired two (2) shots during the incident.³ Officer Perez stated that he carries his magazines with 18 rounds in the one magazine used in the rifle and he carries 28 rounds in his three extra magazines.

CSA Jocelyn Maldonado photographed Officer Perez and the rifle. CSA Maldonado completed a countdown of the rifle and noted that the rifle had one (1) round in the chamber and 15 in the magazine. The three extra magazines that Officer Perez carried were also counted down and had 29 rounds in one magazine and 28 rounds in the other two magazines.

HOSTAGE NEGOTIATION TEAM AND SWAT

Upon SWAT taking over the incident command from patrol, Detective G. King obtained a telephonic search warrant authorized by Judge Stephen George on April 3rd 2011, at 1845 hours.

On April 3rd 2011, the LVMPD Technical Section issued an Emergency PEN request on a phone number that Decedent was using, (702) 481-2479. The Emergency PEN was followed up with a PEN order by Detective King on April 5th 2011.

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³ Two rifle casings were later collected from the parking lot where Officer Perez was located when he fired his weapon.

Lieutenant Michael McCrimon

On April 6th 2011, Detective Kisner and Boucher completed an interview with Lieutenant Michael McCrimon at the SWAT Office. Also present was Captain Brett Primas.

On April 3rd 2011, Lieutenant McCrimon was called to 2895 East Charleston regarding a hostage / barricade incident. He was advised that patrol officers had already fired some shots at a suspect who was holding a female hostage.

Lieutenant McCrimon monitored the negotiations with Decedent over the entire incident. He remembered that Decedent was regularly threatening to shoot Sexual Assault Victim, shoot himself and that he would "suicide by cop." Decedent and Sexual Assault Victim told negotiators that he had been shot by the patrol officer earlier.

Sexual Assault Victim told negotiators that she had been beaten by Decedent and that she was bleeding.

Following the shooting, Lieutenant McCrimon obtained a Public Safety Statement with Sergeant Quick. During the statement, Sergeant Quick indicated that he was involved in a shooting, that he fired one round and that the suspect also had a gun that was left near the suspect. Sergeant Quick said that Officers Rivera, Peterson and Emery were witnesses to the shooting.

Officer Kevin McCord

On April 6th 2011, Detective Kisner and Boucher completed an interview with Officer Kevin McCord at the SWAT Office. Also present was Lieutenant McCrimon.

Officer McCord was part of the entry team into Sexual Assault Victim's apartment on April 4th 2011. He was aware that Decedent was armed and threatening to shoot Sexual Assault Victim and make officers shoot him. Upon preparing to enter the apartment, Officer McCord heard a muffled shot from inside the apartment.

Officer McCord entered and cleared the bathroom as Sergeant Quick and Officer Rivera entered the bedroom. As Officer McCord entered the bedroom, Sergeant Quick identified and was issuing orders to a suspect. Sergeant Quick was standing at the foot of the bed near the north wall and looking at the floor between the bed and the window.

Officer McCord could see a white female (Sexual Assault Victim) struggling to sit up from the floor. The room was too dark and small for Officer McCord to see a suspect. Officer McCord heard a single gunshot and Sexual Assault Victim was handed to him from Sergeant Quick's location. Officer McCord escorted Sexual Assault Victim outside to receive medical attention.

Officer Joseph Emery

On April 6th, 2011, Detectives Hanna and Sanborn completed an interview with Officer Joseph Emery.

On Sunday, April 3rd 2011, he responded to 2895 East Charleston Boulevard regarding a subject barricaded with a hostage. Upon arrival, and throughout the incident, he and his squad members were kept apprised of the negotiations and possible tactical responses.

Officer Emery and his entry team of six officers were ultimately assigned to make entry into the victim's apartment. A secondary entry team also made entry through the front door of the apartment.

Once the entry process started, Officer Emery heard a single gunshot from within the Sexual Assault Victim's bedroom and heard her screaming. He looked into the bedroom and could see the Sexual Assault Victim's feet on the bed.

The secondary entry team entered the bedroom, led by Sergeant Mike Quick, who proceeded to the area of the room they believed was occupied by the suspect and victim. Officer Emery heard someone yell, "[s]top!" then heard a single gunshot. He saw another member of the entry team carry the female victim out of the room.

Officer Emery had his Glock 17 9mm handgun deployed, but did not fire his weapon.

Officer Bryan Peterson

On April 6th, 2011, Detectives Hanna and Sanborn completed an interview with Officer Bryan Peterson.

On Sunday, April 3rd 2011, he responded to 2895 East Charleston Boulevard for a subject barricaded with a hostage.

Upon arrival, and throughout the incident, he and his squad members were kept apprised of negotiations and possible tactical responses.

Officer Peterson and his entry team of six officers were assigned to initiate a breach into the Sexual Assault Victim's apartment. An additional entry team made entry through the front door of the apartment.

At the beginning of the entry process, Officer Peterson heard a single gunshot from within Sexual Assault Victim's bedroom and could hear Sexual Assault Victim screaming. Officer Peterson looked into the bedroom and he could see Sexual Assault

Victim on the bed and she appeared to be trying to roll off the bed, but she was being restrained and pulled to the side out of his view.

The secondary entry team entered the room, led by Sergeant Quick, and immediately began a search for the victim and suspect. Officer Peterson could hear Sergeant Quick call out, “[s]uspect! Suspect! Suspect!” This was quickly followed by a gunshot. Officer Peterson saw one of Sergeant Quick’s entry team carry the female victim from the room.

Officer Peterson had his Glock 17 9mm handgun deployed, but did not fire his weapon.

Sergeant Michael Quick

On April 6th 2011, Detective Kisner and Boucher completed an interview with Sergeant Michael Quick at the SWAT Office. Also present was Lieutenant M. McCrimon.

Sergeant Quick was part of an entry team that entered Sexual Assault Victim’s residence on April 4th 2011. Upon preparing to enter the apartment Sergeant Quick heard a single gunshot from inside the apartment. Sergeant Quick was aware that Decedent was threatening to shoot Sexual Assault Victim and himself. Decedent had also threatened to shoot at officers.

Sergeant Quick and Officer Rivera entered the apartment and entered the bedroom in northeast corner of the apartment. Officer Rivera went to the bed. Sergeant Quick walked to the north wall near the west foot of the bed. It was dark and Sergeant Quick was using a flashlight to see.

Sergeant Quick saw a pile of bedding on the floor between the bed and the north window. Sergeant Quick saw a white female’s (Sexual Assault Victim) face over a male (Decedent). Sexual Assault Victim was trying to pull away but was being held by Decedent. Decedent was using Sexual Assault Victim as a shield. Sergeant Quick was trying to pull Sexual Assault Victim away, when Decedent presented a pistol in his right hand and pointed it at Sergeant Quick. Sergeant Quick recognized the pistol as a Beretta and he grabbed the frame of the weapon. Sergeant Quick tried to maintain control Decedent’s gun but he was losing control over it.

Sergeant Quick was afraid that Decedent was going to shoot Sexual Assault Victim or him. Sergeant Quick saw that his only target was Decedent’s head.

Sergeant Quick placed his pistol to Decedent’s head and fired a single shot. Decedent stopped fighting and Sergeant Quick pulled Sexual Assault Victim towards other officers who removed her from the scene.

Sergeant Quick saw that Decedent was not moving. He did not move Decedent's pistol after he shot him.

TREATMENT OF SEXUAL ASSAULT VICTIM AT UMC

Paramedics removed Sexual Assault Victim from the scene and took her to University Medical Center. A patrol officer accompanied them. A doctor treated Sexual Assault Victim for lacerations to the forehead, an injury to the left forearm and bruising to the throat. Sexual Assault Victim's injuries to her throat were consistent with her being choked. A DNA sample was collected as well.

AUTOPSY OF DECEDENT

On April 5, 2011, Dr. Lary Simms performed the autopsy on Decedent at the Clark County Coroner's Office. Dr. Simms determined that Decedent died as a result of a gunshot wound to the head. He also had alcohol in his system.

FOLLOW UP INVESTIGATION AT THE SCENE

The primary scene was 2895 East Charleston, building 3 in apartment 2024 in the Sedona Hills Apartment complex with an additional scene located in the parking lot of the business complex at 2885 East Charleston.

Parked in the northern-most east/west stall, just south of the trash area, was Decedent's truck.

In the parking lot of 2885 East Charleston, the location of Officer Perez, investigators collected and/or photographed two .223 caliber casings just northwest of an SUV. In the center of the parking lot, just north of the trash area, were projectile fragments and a copper bullet jacket.

In the patio area of Sexual Assault Victim's apartment, investigators collected and/or photographed two 9mm RP Luger casings, a black colored ballistic blanket, a silver colored Halligan tool and a black case containing the negotiator telephone.

Investigators also noted apparent bullet strikes on the west edge of the door frame and an apparent bullet strike on the door itself.

In the living room of Sexual Assault Victim's apartment, investigators collected and/or photographed torn cloth on the floor near the entertainment center, a wallet containing credit cards and identification in the name of Decedent, a silver colored cellular phone and a pair of men's shoes. Located on the carpet west of the couch was a blue colored stripped shirt with apparent blood stains. Several empty beer bottles were

scattered around the area. A men's wrist watch was found on the small table in front of the couch. There was also an apparent blood stain on the carpet northwest of the couch.

Investigators documented apparent projectile fragment strikes on the north side of the hallway wall, separating the living room and the kitchen.

In the kitchen, investigators noted apparent projectile fragment strikes on the south wall near the ceiling and on a "Bob Marley" flag. In addition, they observed a large hole in the south kitchen wall behind the "Bob Marley" flag.

In the bathroom, investigators saw an apparent bullet strike in the north wall of the shower stall and another strike opposite the first strike in the south wall.

In the bedroom, investigators observed a large hole in the east wall between the southern end table and closet door and an apparent bullet strike in the closet door and another strike in the south wall of the closet which leads to the bathroom's north wall.

The body of Decedent was lying on the carpet between the bed and the north window. The body was lying on its back with the head facing in an easterly direction and the feet in a westerly direction. The body was partially wrapped in bedding with some pillows near the head. A black colored Beretta 92F 9mm pistol was located on the deceased's stomach under the left forearm. The gun was pointing in a southerly direction.

The Beretta, serial # BER054805Z , was found with the safety off and the hammer back. No bullets were in the chamber and eight (8) bullets were in the magazine. A 9mm RP Luger casing was lying next to the pistol. The pistol was checked for registration and none was found.

A Speer 9mm casing was located on the carpet just north of the deceased's head.

Bullet fragment strikes that entered the south wall of the kitchen continued south into apartment 2017. Apartment 2017 is at the south west corner of the building and behind apartment 2024. The apartment is the same layout as 2024 but flipped facing south. A projectile was found in the south west corner of the living room and strikes were observed on the west wall.

ANALYSIS OF BULLET TRAJECTORY

Apartment 2023 is located just east of 2024. SWAT used the apartment as a staging area to attempt entry into apartment 2024. There was a hole in the east wall of the living room which led from apartment 2022. Apartment 2023 had holes in the west bathroom and west bedroom walls that corresponded with the holes in apartment 2024.

Bullet trajectories from Officer Perez's two shots were from the northeast to the southwest in a left to right and slightly upward angle. The bullet strikes continued through the living room and kitchen area of Sexual Assault Victim's apartment near the ceiling level and some projectiles were recovered from apartment 2017. The trajectories of the apparent rifle projectiles were consistent with Officer Perez's statement, as well as the evidence from the parking lot where he fired his weapon at Decedent.

Casings from the Beretta on the front patio of apartment 2024 correspond with citizen statements as well as the bullet strikes and fragments in the parking lot of 2885 East Charleston and to Attempt Murder Victim I's car.

In apartment 2024, the bullet trajectory in the bedroom and into the bathroom was south and in a slightly upward angle. A casing located next to Decedent's pistol, which was found with the safety off and the hammer back, is consistent with Sexual Assault Victim's statement that Decedent fired a shot south upon SWAT's entry to rescue her. The projectile's final strike was on the south wall of the bathroom. Investigators searched for the projectile from the Beretta, but did not find it.

The area that Decedent and Sexual Assault Victim were located when Sergeant Quick encountered them was a space 1 foot 8 inches wide between the wall and bed. The room was dark, illuminated by SWAT officers' flashlights. Because of the bedding, which was observed by investigators, and based on Sergeant Quick's and Sexual Assault Victim's statements, the only visible portion of Decedent during the encounter was his Beretta 92F pistol and the left side of his head which was behind Sexual Assault Victim's face and arms. The gunshot wound to Decedent's head was consistent with statements and evidence located around the body.

FORENSIC ANALYSIS

Firearms

On May 2nd 2011, Forensic Analyst James Krylo completed an examination of the firearms related evidence recovered and, in summary, determined the following:

The Smith and Wesson rifle, Beretta pistol and Glock pistol were all functioning properly.

Rifle shell casings recovered from the parking lot of 2885 East Charleston were identified as having been fired from the rifle. (Officer Perez)

A bullet jacket recovered from the parking lot of 2885 East Charleston was identified as having been fired from the Beretta pistol. (Decedent)

9 mm “R-P” casings recovered from the front landing and bedroom of 2895 East Charleston # 2024 were identified as having been fired from the Beretta pistol. (Decedent)

A 9 mm Speer casing recovered from the bedroom of 2895 East Charleston #2024 was identified as having been fired from the Glock pistol. (Sergeant Quick)⁴

A 9 mm projectile recovered from the body of Decedent during autopsy had characteristics consistent with having been fired from a Glock pistol. (Sergeant Quick)

No other items were identifiable.

DNA

On April 15, 2011, LVMPD Forensic Scientist Julie Marschner issued a report regarding the sexual assault kit collected from the Sexual Assault Victim.

Cervical swabs were sperm positive and indicated a mixture of DNA. Assuming the Sexual Assault Victim is a contributor to the mixture of the swabs taken from her, the deduced DNA profile is consistent with Decedent. “The estimated frequency of the deduced DNA profile among unrelated individuals in the general population is rarer than 1 in 650 billion” and thus, identity is assumed.

LEGAL ANALYSIS

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

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

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⁴ A countdown of Sergeant Quick’s gun was consistent with him having fired one shot.

A. The Use of Deadly Force in Defense of Another

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

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

NRS §200.160(1).

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

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

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

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

....

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

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

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

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

Id. at 1051-52.

In this case, Decedent posed an imminent danger to Sexual Assault Victim, bystanders in the area, patrol officers, and SWAT officers. Decedent, while armed with a 9mm handgun, shot at Officer Perez as well as Attempt Murder Victims I and II. Numerous times, he threatened to kill Sexual Assault Victim and he did actually sexually assault her as well. Hostage negotiations illustrated that Decedent had contemplated killing Sexual Assault Victim and himself. At the time Officer Perez fired his weapon, he and Attempt Murder Victims I and II had been shot at by Decedent. Officer Perez's decision to return fire in self-defense was legally justified. At the time of SWAT's entry into the apartment, police had attempted to negotiate with Decedent for hours and had used various means to convince him to release the hostage and surrender himself. All of these efforts failed with Decedent. Moreover, when SWAT did enter the apartment, Decedent fired another time, endangering the officers. When Sergeant Quick entered the bedroom, Decedent pointed a gun at him and could have easily killed Sergeant Quick and/or Sexual Assault Victim. Sergeant Quick knew that Decedent had fired the gun numerous times earlier in the incident and only moments before his direct encounter with Decedent. Even under these circumstances, as reported by Sexual Assault Victim, Sergeant Quick gave Decedent the opportunity to put his gun down. Decedent refused.


Finally, at the time the fatal shot was fired by Sergeant Quick, Decedent had his loaded 9mm handgun raised and pointed toward Quick, with Sexual Assault Victim in

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

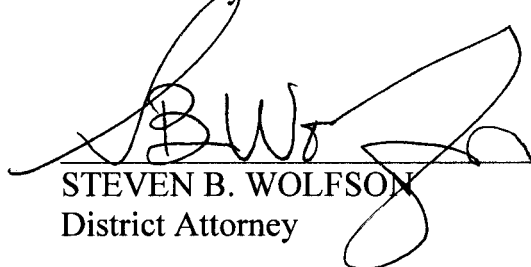
CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Officer Aaron Perez and SWAT Sergeant Michael Quick were reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS §200.190). A homicide which is determined to be justifiable *shall* be “fully acquitted and discharged.” (NRS §200.190).

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.


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Reviewed by:


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