



# OFFICE OF THE DISTRICT ATTORNEY

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April 19, 2012

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

**Re:** Officer Involved Shooting Death of Anthony James Brenes (hereinafter Decedent) which occurred on November 15, 2010, and is referenced as 101115-0722.

Dear Sheriff Douglas C. Gillespie:

The District Attorney's Office has completed its review of the November 15, 2010, death of Decedent which involved Officers Sean **Miller**, Jeffrey **Chamberlin** and Theodore **Snodgrass**. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, that the actions of these officers were not criminal in nature. It should be noted that this review was made based on all the evidence currently available but without the benefit of an inquest proceeding.

## FACTUAL SUMMARY

### Background

On November 15, 2010, Private Citizen #1 (hereinafter PC), the wife of Decedent, and Decedent walked to the area of McCleod and Desert Inn on their way to Mojave Mental Health. PC #1 knew they had walked in the wrong direction, but she did not correct Decedent due to her fear of him and the fact that he had hit her on the shoulder and legs with his stick.

At approximately 5:49 am, PC #2 reported that, while on his way to work and stopped at the traffic signal near McCleod and Desert Inn, he saw a man, later identified as Decedent, carrying a large club. PC#2 saw the man throw the club into some landscaping and then pick up a large rock about the size of a basketball which he also threw. PC #2 then noticed a woman (later identified as PC #1) who appeared paralyzed with fear standing motionless in the same landscaping area. PC #2 then saw the man pick up the rock or a similar rock and throw it again. PC#2 decided that, based on his observations, the situation appeared dangerous and domestic in nature and he decided to flag down the first police officer he saw to report what he saw. PC#2 saw Officer **Miller** who was stopped on the side of the road near Eastern and Desert Inn and reported that he had seen what he believed to be a domestic disturbance down the road at the Speedee Mart.

### **Contact with Law Enforcement**

On the early morning of November 15, 2010, Officer **Miller** was in the area of Eastern and Desert Inn talking with a homeless man on the side of the road when he heard a motorist (later identified as PC#2) yell to him. According to Officer **Miller's** statement, PC#2 reported that a man was having a fight with his girlfriend, was throwing rocks and waving a stick around near the Speedee Mart. Officer **Miller** reported to dispatch that he would investigate and Metro's dispatch sent another unit to the scene.

Due to the early hour, there were only two (2) people that fit the description of the involved couple and the man (later identified as Decedent) did indeed have a walking stick that appeared to be about three (3) to four (4) feet long in his hand that he was waving in the air.

Officer **Miller** instructed Decedent to drop the stick and come to the patrol vehicle. Instead, Decedent started yelling at Officer **Miller**, waved the stick in the air and yelled, "You want this?" several times. Officer **Miller** removed the safety from his taser and informed him that if he did not drop the stick that he would use the taser. Decedent yelled, "Go ahead. Tase me," several times and starts taking steps toward Officer **Miller**. The taser was deployed and hit Decedent but had no visible effect on him. Decedent continued to walk toward Officer **Miller** who had removed his firearm from its holster and was retreating behind his patrol vehicle. Decedent continued to follow, stick still in his hand and refusing to obey the commands to drop it, despite the firearm being pointed at him. Officer **Snodgrass** pulled up and saw Officer **Miller** pointing his firearm at Decedent who was chasing him and ignoring the instructions. According to the statements of Officers **Miller** and **Snodgrass**, Decedent yelled, "Shoot me," and Officer **Snodgrass** heard him say, "If you don't shoot me, if you don't kill me, I will kill you."

Officer **Chamberlin** then arrived, conducted a visual assessment of the situation, and told his fellow officers that he was going to deploy his taser. Officer **Chamberlin** gave commands to Decedent to drop the stick. Decedent directed his attention to Officer **Chamberlin** for a brief time and the taser was deployed but again had no effect.

While Decedent was distracted by Officer **Chamberlin**, Officer **Snodgrass** went to his patrol vehicle and retrieved his low lethal bean bag shotgun. He yelled commands to Decedent to drop the stick that he was waving and threatened to shoot if the commands were ignored. The commands were in fact ignored and Officer **Snodgrass** fired one round into his chest. The second command was for Decedent to get on the ground or a second low lethal bean bag shot would be taken and that command was also ignored and Officer **Snodgrass** fired a second low lethal shot hitting him in the chest area. The impact had no apparent effect except to agitate and anger Decedent who then redirected his attention to Officer **Miller** who still had his firearm out and pointed at him.

Officer **Snodgrass** dropped the low lethal bean bag shotgun as it had no effect and drew his firearm and pointed it at Decedent. Officer **Chamberlin** threw the taser to the ground as it had no effect either. All the while, Decedent continued waving the stick and threatening the officers, especially Officer **Miller** who was backing up while still pointing his firearm and ordering Decedent to stop and drop the stick. As Decedent closed in on Officer **Miller**, stick still in hand and commands ignored, Officer **Miller** fired one (1) round from his firearm into Decedent who fell to the ground and was disarmed and handcuffed.

### **Contact with Private Citizens**

PC#3 provided a statement wherein he described that while in the driveway of the McDonalds he heard yelling from police officers coming from the parking lot of the Speedee Mart. He saw a Caucasian male who looked about 6'2" swinging a large four (4) foot stick at an officer who looked about 5'6" and issuing commands to drop the stick.

According to PC#3, a second officer arrived and issued similar commands that were ignored. The tall Caucasian man with the stick was told that if he didn't obey he'd be tased and, based on the non compliance, the second officer used his taser. By the time the third officer arrived, PC#3 had crossed the street and was observing the situation and noting that the tall Caucasian man appeared to have a blank stare with a "look of aggression." He noted that the tall Caucasian man did swing the stick at the officers numerous times. PC#3 noted that tasers were used with no apparent effect and that the bean bag rounds also had no effect.

In a statement provided by PC#4 he described that while walking to work he heard a police officer yell, “Get down on the ground. Get down on the ground” to a burly man holding what looked like a pipe and who was aggressively moving toward the officer. Despite commands and threats that a taser could be used, the man did not comply and the taser was deployed. He saw what he believed to be a “pistol firing or a bullet, but nothing happened.”

He saw an officer backing away from the man with the pipe and noted that “He was waving it up and down and coming very aggressively, very menacing toward the policeman.” PC#4 believed that the man intended to hit the officers based on his actions in swinging the pipe and in his constant approach despite the commands to “Get down on the ground.”

PC#5 described in a statement that he was at work when he heard an officer commanding someone to “Drop it. Drop it.” He described seeing a taser deployed with no effect and that the man was approaching the officer who was backing up with his firearm drawn. The man was “like attacking him with the, whatever he, he was carrying, his cane.” PC#5 saw the low lethal bean bag shotgun and noted that it had no effect on the man. His observations were consistent with PC#3 and PC#4.

In a statement provided by PC#6 he described that he saw the flashing lights of the patrol vehicle and heard an officer issuing commands to put down the weapon and get on the ground. A white male PC#6 had seen briefly in the Speedee Mart minutes before was ignoring the commands and charged at the officer who appeared to be pointing a taser. PC#6 saw two (2) other officers arrive and more commands were issued to put down the weapon and get down on the ground, all of which went unheeded by the white man. PC#6 said, “He’s, ah, egging the cops on. Basically, you know, ‘Come on’ you know, ‘Let’s go.’ With da,da the stick up in kind of a threatening manner.”

PC#6 saw tasers and bean bags deployed with no effect on the man and heard what he believed to be a “pop” and shortly thereafter, the man was on the ground.

PC#7 also saw the lone officer pointing a taser at a man and demanding that the man drop his club. Instead, the man chased the officer through the parking lot yelling, “Just shoot me, just shoot me, just shoot me.” She saw the club which she described as being three (3) or four (4) feet long and curvy with an end that looked pointy. PC#7 heard the commands from the officer to put the stick down and saw the officer run from the man who kept moving closer to the officer and disregarded the orders. PC#7 saw the man get within a few feet of the officer who kept moving back.

The observations of PC#7 were consistent with the other civilian witnesses, including the fact that the man was tased and just removed the prongs and kept advancing

without any effect from the tasers or the bean bags.

PC# 8 was driving past the scene and saw a man with a crow bar or something metal in his hand walking aggressively toward the officers as if he wanted to hit the officers. PC#8 turned away and then heard shots.

### **Opinions of Private Citizens and Officers**

The officers involved and the numerous private citizens who witnessed all or part of the incident commented that the man, Decedent, not only refused to obey the commands to drop the stick and go to the ground, but that he aggressively pursued Officer **Miller** and taunted him and later Officers **Snodgrass** and **Chamberlin** by yelling that they ought to shoot or kill him. PC#6 and PC# 7 each stated that the officers did all they could to diffuse a dangerous situation.

Officer **Miller** and PC#3 stated that they feared that a hit from the stick Decedent was swinging would have knocked a man to the ground. PC#4 believed the man's actions were menacing and fearless as he kept moving forward. The available witnesses believed that the resulting action was necessary to protect the officers and the citizens who had gathered during the incident. The statements of the officers echoed that assessment in that they used various methods of low lethal devices to subdue Decedent but nothing had the desired effect and the threat of harm was continuing.

## **FORENSIC REPORTS**

### **Findings from the Scene**

On November 15, 2010, Investigator Nancy Dahl of the Clark County Coroner's Office examined the body of Decedent and noticed the gunshot wound that went through the clothing and body of the decedent and also noted that a taser projectile was in the chest and one was in the clothing of the decedent. Round bruises consistent with bean bag strikes were identified on the right back and left chest area.

### **Findings from the Autopsy**

On November 16, 2010, Dr. Larry Simms of the Clark County Coroner's Office conducted an autopsy on the body of Decedent. Dr. Simms performed an external, internal, and ordered a toxicological examination of the body of Decedent. He identified the gunshot wound and also identified numerous abrasions and bruises on the body.

### **Opinions from the Autopsy**

**Cause of Death:** The cause of death of this 32 –year-old white male, Anthony Brenes, is GUNSHOT WOUND OF THE CHEST.

**Manner of Death:** HOMICIDE.

Dr. Simms’ opinion and use of the word “homicide” is not a legal opinion but rather a medical opinion that the death was caused at the hand of another. It in no way expresses an opinion as to whether the homicide was intentional, accidental, criminal, justified, or excusable.

### **LEGAL ANALYSIS**

The District Attorney’s Office has assumed the task of 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). In reviewing the various species of justifiable homicide within the framework of the facts of this case, it is clear that the relevant statute for our consideration is NRS 200.140, which states:

Homicide is justifiable when committed by a public officer, or person acting under the command and in the aid of the public officer, in the following cases:

1. In obedience to the judgment of a competent court.
2. When 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.
3. When necessary:
  - (a) In retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony;
  - (b) In attempting, by lawful ways or means, to apprehend or arrest a person; or
  - (c) In lawfully suppressing a riot or preserving the peace.

(NRS 200.140).

Police officers are public officers under the statutes of the State of Nevada (NRS 169.164; AGO NO. 1985-11) and they are given authority to make arrests and where a person “either flees or forcibly resists, the officer may . . . use all necessary means to effect the arrest.” (NRS 171.122).

According to the facts of this case, the officers encountered a man who was aggressive and waving a long stick around as if to strike one or more of the officers. Despite numerous commands to drop the weapon and get to the ground, he continued to advance on the officers, threatening them with the stick and yelling at them to shoot or kill him or he would kill one of them. The officers used tasers on him and bean bags from a non lethal shotgun but none of the strikes had any effect except to further anger the man who kept moving toward the officers. The officers back peddled away from the man, continued to issue verbal commands, but nothing changed the man’s course of conduct. As this was taking place, citizens from the area began to gather, making the actions of the man more volatile as he could have retaliated against one of them as well as the officers. The man chased and aggressively approached Officer **Miller** who backed up and, fearing for his safety and the safety of others, fired one (1) shot into the chest of the man which brought the man down.

A review of the instant case does not indicate that the officers engaged in the gratuitous use of force in effectuating the attempt to disarm and/or arrest Decedent. The United States Supreme Court has given some guidance in the area of what constitutes the 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].

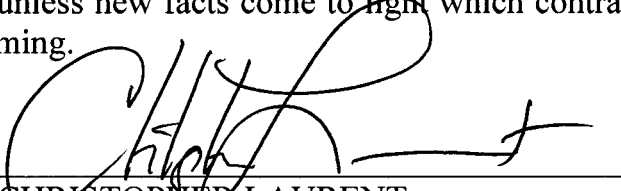
*Graham v. Connor*, 490 U.S. 386, 396-397, 109 S. Ct. 1865, 1872 (1989). Under the reported circumstances of the instant case it appears that the officers' actions were objectively reasonable.

It light of all the evidence reviewed to date, the State would be unable to prove that the force used was in fact unjustified "in attempting to, by lawful means, apprehend or arrest a person."

### CONCLUSION

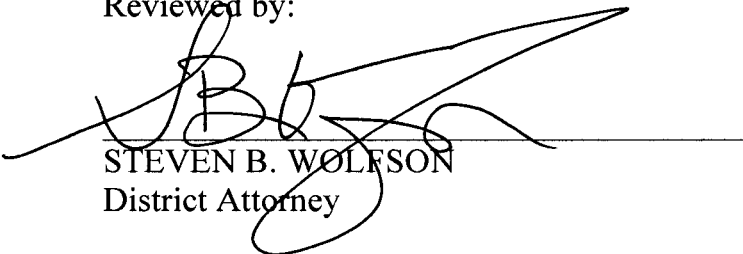
Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved shooting death of Decedent, it has been determined that the actions of Officers **Miller**, **Snodgrass** and **Chamberlin** were reasonable and that the ultimate shot fired by Officer **Miller** was justified to stop the advancement of Decedent and protect both the officers on the scene and those private citizens who had gathered. There is no evidence that the officers acted unlawfully, or with malice aforethought.

The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190) "The homicide appearing to be justifiable or excusable, the person indicted shall, upon trial, be fully acquitted and discharged." (NRS 200.190) As there is no factual or legal basis upon which to charge Officer **Miller** based on the totality of the circumstances, and unless new facts come to light which contradict these findings, no charges will be forthcoming.



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Reviewed by:



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