

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Daniel Hathorne November 2, 2012

### **Introduction**

On the evening of Thursday, November 1, 2012, Daniel Hathorne ("Decedent") was locked out of his Siegel Suites Apartment #348, located at 3825 S. Cambridge Street by management. The following morning, Decedent returned to the apartment, broke out a window and re-entered the residence. The apartment manager went to the room and spoke with Decedent, who made threats about taking her hostage and "going on a killing spree." The manager left the apartment and called 9-1-1. Patrol Officers N. Hamilton, R. Ellsworth and B. Oris responded to the scene. Decedent observed officers arriving in the area and ran southbound on Cambridge Street where he came in contact with Victim, a 65 year old female sitting on the west side of Cambridge.

Officer Hamilton followed Decedent and initiated a person stop in front of 3875 Cambridge Street. During the stop, Decedent grabbed Victim and placed a knife to her throat. Officer Oris and Ellsworth arrived shortly after and verbal commands were given to Decedent to drop the knife and release Victim. Decedent refused to comply with commands at which time Officer Oris and Ellsworth shot him five times, allowing Victim to escape unharmed. Decedent was transported to Sunrise Hospital where he succumbed to his wounds and was pronounced deceased at 0804 hours.

The District Attorney's Office has completed its review of the November 2, 2012, 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 the officers were not criminal in nature. This review was based on all the evidence currently available including the benefit of a police fatality review.

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 officer 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.

## **INVESTIGATION**

### **Interview Of Apartment Manager**

On the evening of November 1, 2012, the manager of the Siegel Suites Apartments (Manager) had locked out the tenant (Decedent) in apartment #348 for non- payment. On the morning of November 2, 2012, Manager learned there was broken glass in front of the unit and had maintenance people respond to clean it up. The maintenance people later informed her that a male was back inside the residence and he had refused to leave. Manager went to the apartment by herself and, as she opened the door, the male forced it shut. While standing outside, Manager talked to Decedent who stated, "If you come in again I'm going to take you hostage. Today's not the day. I'm going on a killing spree. I like you and you need to leave now!" Manager left and called the police to have him removed from the property. Manager joined her coworkers at the dumpsters and heard four or five gunshots. Manager looked down the street and saw Decedent on the ground.

### **Interview Of Other Employees At Apartment Complex**

#### **A. Employee One**

On November 2, 2012, an employee of the Siegel Suites Apartments (Employee One) stated she was working earlier in the morning when she learned there was broken glass in front of apartment #348. Employee One apprised her manager who informed her the tenant had been locked out for non-payment. Employee One and another co-worker walked to the unit and discovered there was a male inside the residence. Employee One briefly spoke with Decedent through the closed door who mentioned something about his shoes. Employee One then informed Manager the tenant was back inside. Manager replied that she would call the police. Employee One cleaned up the glass and walked downstairs where she threw it away in a dumpster.

While standing there with two coworkers, Employee One saw Decedent, wearing a green sweatshirt and black baseball hat, exit the apartment and walk towards the stairs. At that same time, two LVMPD patrol vehicles drove into the parking lot. Once Decedent saw the officers, he immediately ran down the stairs and continued to run through the parking lot onto Cambridge Street. The officers drove after Decedent southbound on the street, and a short time later Employee One heard four to six gunshots. Employee One looked down the street and saw Decedent wearing the same clothing lying on the ground.

### **B. Employee Two**

On November 2, 2012, another employee of the Siegel Suites Apartments (Employee Two) stated he was working earlier in the morning when he learned there was broken glass in front of apartment #348. Employee Two joined his coworker at the apartment and helped clean up the glass. Employee Two heard Employee One talking to someone inside the apartment but, never heard Decedent reply. Employee Two and his coworkers walked downstairs where they threw away the broken glass into a dumpster. While standing there, he saw Decedent, wearing a green sweatshirt, exit the apartment and walk towards the stairs.

At that time, two LVMPD patrol vehicles drove into the parking lot. Once Decedent saw the officers, he immediately ran down the stairs, and continued to run through the parking lot onto Cambridge Street. The officers drove after Decedent southbound on the street, and a short time later, Employee Two heard three to five gunshots. Smith looked down the street and saw Decedent wearing the same clothing lying on the ground.

### **C. Employee Three**

On November 2, 2012, a third employee at the Siegel Suites Apartments (Employee Three) stated he was working earlier in the morning when he learned there was broken glass in front of apartment #348. Employee Three joined his coworker at the apartment and helped clean up the glass. He heard Employee One talking to someone inside the apartment but, only briefly saw Decedent. Employee Three and his coworkers walked downstairs where they threw away the broken glass into a dumpster. While standing there, he saw Decedent, wearing a green hoodie, exit the apartment and walk towards the stairs.

At that same time, two LVMPD patrol vehicles drove into the parking lot. Once Decedent saw the officers, he immediately ran down the stairs and continued to run through the parking lot onto Cambridge Street. The officers drove after Decedent southbound on the street, and a short time later Employee Three heard three gunshots. Employee Three looked down the street and saw Decedent lying on the ground.

## **Interview Of Witness And Victim**

On November 2, 2012, a citizen witness (Witness) stated she was in her vehicle, a GMC Yukon Denali, exiting the Cambridge Towers apartment complex when she observed a marked police car make a u-turn on Cambridge. Witness then saw the police vehicle travel north in the southbound lanes with its emergency lights on. As the patrol car made a u-turn, Witness observed Decedent running across the street from the area of the recreation center onto the sidewalk on the west side of Cambridge and then continued northbound.

Decedent was wearing a green hooded type shirt and blue jeans. Witness observed a white older female standing on the sidewalk next to a green landscaping box on the west side of Cambridge Street in the vicinity of Decedent. Upon seeing the patrol vehicle heading in his direction, Decedent turned around and began running southbound toward the female near the green landscaping box. Decedent then grabbed the woman by her neck and positioned her back to his chest. As Decedent held the woman by her neck with his left hand, he placed a knife to the woman's throat with his right hand. Witness stated that, initially, Decedent appeared to be holding a short knife, but as he moved his hand the knife looked larger, so Witness believed he may have had two knives.

According to Witness, the uniformed officer exited his vehicle with his gun drawn and began to talk to Decedent in a calm voice saying, "Sir, put down the weapon." Witness stated Decedent told the Officer, "Put down your gun, or I will do it," threatening to cut the woman's throat. Witness further stated the Officer continued to tell Decedent to put down the knife while walking backwards away from him. At the same time, Decedent dragged the woman forward toward the officer, while still holding the knife to her throat. As the officer got to the rear of the police car, Decedent was yelling "just shoot me, shoot me in the head" to the officer. Witness stated she heard the officer tell Decedent, "Just put down the knife, you don't want to do this." Witness estimated her distance from the officer's vehicle to be approximately thirty feet away. Witness noticed another officer approaching from the east, possibly from the area of the recreation center, with his handgun drawn and telling Decedent to drop the weapon.

Witness felt she was in the line of fire and began driving forward onto Cambridge in order to move out of the way. As Witness pulled forward, she heard several gunshots, then looked into her rearview mirror and saw Decedent on the ground and the officers handcuffing him. Witness then pulled further down Cambridge and told an officer she witnessed the incident.

On November 2, 2012 the 65 year old victim (Victim) stated she left home at 7:40 a.m., and started walking by herself to the local Vons Grocery Store. A patrol vehicle passed her driving southbound on Cambridge Street. Moments later, Decedent approached her and pulled a large, silver-colored knife from under his shirt. Decedent grabbed her from behind and put the knife to the left side of her

neck. They were then surrounded by several police officers who told Decedent to drop the knife. Decedent replied, "I'll cut her if you don't drop your guns!"

Victim held Decedent's right wrist with her left hand, trying to keep the knife away from her skin. Decedent moved to her right side but kept the knife on her neck. The officers refused to lower their weapons, and after a short period of time, Victim heard three gunshots. Victim thought Decedent would have killed her if the officers had failed to act. Due to her emotional state, Victim was unable to provide any additional details. Prior to the interview, photos were taken of Victim to document her physical condition and clothing.

### **Details Of Police Incident**

On November 2, 2012 at approximately 0735 hours, under event 121102-0921, LVMPD Dispatch received a call from the manager of the Siegel Suites Apartments located at 3825 S. Cambridge Street. Manager stated Decedent, an ex-tenant, was locked out of his Siegel Suites Apartment #348 on the evening of November 1, 2012. Decedent had returned and broke out a window and re-entered the apartment. Manager went to the room and spoke with Decedent, who appeared to be on drugs and made threats about taking her hostage and "going on a killing spree." A disturbance call was generated by dispatch and Patrol Officers R. Ellsworth, B. Oris and N. Hamilton responded to the call and attempted to locate Decedent.

Officer Hamilton arrived at the Siegel Suites apartment complex, but never exited his patrol vehicle. Decedent saw officers arriving in the area and immediately ran southbound on Cambridge Street. Officer Hamilton followed after him in his patrol vehicle, and was joined by additional uniform Patrol Officers, Ellsworth and Oris. After running to the east side of Cambridge Street, Decedent turned around and then ran back to the west side of the roadway near the entrance to the Cambridge Park Towers, located at 3875 S. Cambridge Street. Officer Hamilton was traveling southbound on Cambridge, but upon seeing Decedent change directions, turned his vehicle around and began traveling northbound in the southbound travel lanes in an effort to conduct a person stop. Officer Hamilton then stopped his vehicle facing northbound in the southbound lanes just north of the Cambridge Park Towers. Decedent was just north of the patrol car when Officer Hamilton began exiting his vehicle via the driver's side door.

Upon seeing Officer Hamilton exit his vehicle, Decedent turned and ran southbound past his patrol car and approached Victim, a 65 year old female, standing on the west side of Cambridge just south of Officer Hamilton's vehicle. Decedent pulled a large kitchen knife from under his shirt and placed it to the left side of Victim's neck as he stood behind her. While they were standing by the rear of the patrol vehicle, Officer Hamilton drew his duty weapon and ordered Decedent to drop the knife. Decedent advanced toward Officer Hamilton, who was walking backwards around the passenger side of his vehicle to create distance between them. Decedent followed Officer Hamilton while dragging Victim, eventually

stopping near the middle of the passenger side of the patrol vehicle. Officer Hamilton continued to walk northbound to the front of his vehicle, while giving commands for Decedent to drop the knife.

Officers Ellsworth and Oris took up a position in the roadway approximately 10 to 12 feet away to the east, drew their duty weapons, and likewise ordered Decedent to drop the knife. Officer Oris was standing to the right (north) of Officer Ellsworth. Decedent refused to obey verbal commands given by the officers and kept the knife against the left side of Victim's neck. Decedent told the officers to drop their weapons, and then Decedent shifted to the right side of Victim. Officer Ellsworth fired two rounds and Officer Oris fired five rounds at Decedent who was struck in the right side of his body. Decedent fell to the ground and Victim ran away from him unharmed.

Sergeant Rodriguez, Sergeant Rosenlund and Officer E. Charaska arrived just as the shots were fired. Officers requested medical respond and secured the scene. Decedent was transported to Sunrise Hospital where he expired from his injuries with a pronounced time of death at 0804 hours.

### **History Of Decedent**

Decedent's girlfriend (Girlfriend) stated she had been dating Decedent for eight years and was recently residing with him in room #348. About a year ago, Decedent began using methamphetamine, which seemed to change his behavior causing him to become paranoid. Last June, he was arrested for counterfeit money and had been due to be sentenced in December of 2012. On August 23, 2012, Decedent threatened to kill Girlfriend with a kitchen knife, and he was arrested for Domestic Violence.<sup>1</sup> Since then, Decedent started keeping a knife in a drawer next to his bed.

On the night of November 1, 2012, Decedent left their apartment stating he would pay the rent, but he never did and they were evicted. Girlfriend left the complex and she later saw Decedent that night at a nearby 7-Eleven store. Decedent told Girlfriend he was arrested but she knew it was a lie. Girlfriend stayed the night at her daughter's apartment but she never talked with Decedent. On the morning of November 2, 2012, she heard from Decedent's friend about the shooting and returned to the complex. During a subsequent interview, Girlfriend recalled that Decedent told her he wrote a suicide note two days prior, but changed his mind and threw it away.

A day prior to the shooting, on November 1, 2012, at approximately 8:53 a.m., Officers N. Brigandi P#12933 and M. Peck P#13416 operating as patrol unit 6L93 were conducting proactive enforcement in the vicinity of Twain and Swenson. The officers had been recently briefed on a homicide in the area under LVMPD Event 121101-0529. They learned the suspect of that homicide was described as a black

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<sup>1</sup> The officers who responded to this incident were Officers Oris and Ellsworth.

male, 6 feet tall, wearing a green or black hooded sweatshirt and a baseball cap, who had fled the crime scene.

While on patrol, they observed a black male about the same height wearing a black baseball hat and a green hooded sweatshirt exit the 7-11 located at Swenson and Twain. The subject walked briefly toward the south then eastbound into Shelter Island Apartment Complex located a 3770 Swenson Las Vegas NV, 89169.

Both officers attempted to conduct a person stop to identify the male and complete a field interview card. No lights or sirens were activated on their patrol vehicle. As they approached the male, he stopped then looked at them and fled southbound from the parking lot into a grassy area. The subject then suddenly stopped, and turned around with a "thousand yard stare" and quickly reached his right hand into his front right pants pocket. Officer Peck and Brigandi drew their firearms and issued the male commands to take his hand out of his pocket. The male then quickly pulled his hand out of his pants and threw multiple credit cards to the ground and continued to run southbound through the complex. As the male ran, he kept reaching in his pants and sweatshirt pockets and appeared to be discarding other contraband, possibly narcotics. The male then fled eastbound towards Cambridge where he was taken into custody.

The male was later identified as Decedent. Officers then walked back to the area where the foot pursuit started and retrieved the credit cards thrown by Decedent. All of the cards had his name on them.

Officer Brigandi read Decedent his Miranda rights at 9:00 a.m. Decedent stated he understood his rights. Officer Brigandi asked Decedent why he ran, to which Decedent replied, "I have a phobia of the police." Decedent further stated all of the credit cards he threw on the ground were his. Through a records check and phone calls to the individual banks, it was determined the credit cards were valid and did belong to Decedent. Officers observed that Decedent's eyes were very glassy and had a bluish tint. Officer Brigandi asked Decedent if he uses narcotics and he stated "No." Officer Brigandi asked Decedent what he threw while he was running and he replied, "Crack," referring to rock cocaine. Decedent was acting very strangely and appeared to be under the influence of narcotics and possibly suffering from some type of mental illness. Decedent changed his story multiple times and also stated that he threw a glass pipe containing Methamphetamine. No narcotics were located despite several attempts to retrace Decedent's route by officers.

Decedent informed officers he was depressed and was evaluating how his life in general was going lately. Officer Brigandi explained to Decedent that, even though he may have a phobia of the police, his demeanor and actions elevated their threat perception and they were probably more nervous than him. Officer Brigandi also explained to Decedent the details surrounding the stop and that they just wanted to talk to him. He apologized and seemed receptive to Officer Brigandi's comments. Decedent stated he lived at the Siegel Suites located at 3825 S. Cambridge St. Las Vegas NV, 89169.

Due to the fact there were no narcotics or any other illegal contraband located, Officer Brigandi arrested Decedent for Obstructing A Public Officer based on Decedent's actions leading Officers on a foot pursuit and his admission that he discarded narcotics. Decedent was issued a Class II citation which resulted in Decedent being brought to the Clark County Detention Center for booking followed by Decedent being released from custody.

### **Follow Up Investigation At The Scene**

The scene was located in the southbound lanes of Cambridge Street, just east of the Cambridge Towers, a multi-level apartment complex located at 3875 Cambridge Street. A driveway/entrance was located on Cambridge Street to the southeast of the Cambridge Tower apartment complex. In the area of the scene, Cambridge Street consisted of two southbound lanes and two northbound lanes divided by an asphalt median with a concrete perimeter. A standard concrete sidewalk ran in a north/south direction parallel to the southbound lanes on the west side of Cambridge Street. West of the sidewalk was a rock landscaped area. West of the rock area was a tan cinderblock wall which divided the street from the Cambridge Park Towers.

The Siegel Suites apartment complex at 3825 Cambridge Street was located just north of Cambridge Towers. The Katie Court Apartments, a four story complex, was located on the east side of Cambridge Street across from both the Siegel Suites and Cambridge Tower apartments. Just south of the Katie Court complex on the east side of the street was the Cambridge Recreation/Community Center.

Upon the arrival of homicide detectives, the scene was secured with crime scene tape. Three patrol vehicles were in the area of the crime scene. Vehicle one, driven by Officer Nolan Hamilton, was positioned in the number two southbound lane on Cambridge, facing toward the north. The engine was running and the emergency lights were activated.

Vehicle two, driven by Sergeant Rodriguez, was positioned over the dividing line in both the number one and two southbound lanes and facing south. The vehicle was running and its emergency lights were activated. Vehicle number three, driven by Sergeant Rosenlund, was positioned north of Sergeant Rodriguez's vehicle, facing toward the south/southeast, predominantly in the number one lane. The vehicle was turned off and none of its emergency lights were activated. Officer Oris and Ellsworth vehicles were not located in the scene. Both officers parked in the northeast side of the Cambridge Recreation Center and ran to the scene. Their vehicles were both documented.

The scene was primarily contained around Officer Hamilton's vehicle. Two apparent pools of blood were located east of the right (passenger side) rear tire of the vehicle. Two apparent impact marks were located east/northeast of the right (passenger side) rear tire of the vehicle. A third apparent impact mark was noted



under the vehicle to the northwest of the right (passenger side) rear tire. The right rear (passenger side) tire rim appeared to have three apparent impact marks. An apparent bullet fragment was located to the south/southeast of the right rear (passenger side) tire. The rear driver side tire was flat and had an apparent bullet hole on the inside portion of the tire. A crime scene analyst cut a small segment out of the tire and a bullet fragment was recovered from inside.

On the ground east of Hamilton's vehicle, just to the side of the front passenger door, was a 14 inch knife with a black handle and a 9 inch silver blade. An unknown substance (possibly blood) was located on the blade along with the inscription "Mercer M20609." The black handle had a silver emblem of a knife and knife sharpener crossing one another. A second 13 inch knife was located on the ground north of the vehicle just in front of the bumper. The knife had a silver 8 inch blade with "China" inscribed on it and a black handle with three silver circles on it.

Two expended cartridge cases with head stamp "Speer 9mm Luger + P" and five expended cartridge cases with head stamp "Speer 40 S&W" were located on Cambridge Street and the median east/northeast of Officer Hamilton's vehicle. Crime scene analysts estimated the distance between Officers Oris and Ellsworth and Decedent at the time of the shooting to be approximately 12 feet. A black "Lids" size 7 hat was located to the north of the scene in a grassy area on the southeast corner of the Siegel Suites located at 3825 Cambridge Street.

Detectives also entered Decedent's apartment. A detective asked Girlfriend if she knew where the knives were in the residence that she spoke of during their recorded interview. Girlfriend led a detective to a pile of property that had been boxed and placed on the living room floor. It appeared as though the items were placed there in preparation of moving. Among the items was a small cream colored trash can which contained knives in a knife block along with other miscellaneous items. These knives appeared to be consistent with the style of the 13 inch knife recovered at the scene.

### **Autopsy**

On November 3, 2012, Dr. Alane Olson conducted an autopsy upon Decedent. Dr. Olson opined that the cause of death of Decedent was multiple gunshot wounds and the manner of death was homicide. In Decedent's possessions, an apparent suicide note was located. Toxicology on Decedent's blood collected at autopsy revealed the presence of Methamphetamine (110 ng/ml) as well as Amphetamine (16 ng/ml).

## **FORENSIC ANALYSIS**

### **Firearms**

On November 2, 2012 at approximately 10:35 a.m., Officers R. Ellsworth, B. Oris and N. Hamilton were transported to Convention Center Area Command where

a weapons countdown was conducted. Upon completion of the countdowns, Officer Ellsworth and Officer Oris's firearms, magazines and ammunition were documented and impounded.

Officer Ellsworth carried his Glock 9mm handgun with 17 in the magazine + 1 in the chamber. He carried two spare magazines containing 17 cartridges each. The countdown showed 17 cartridges in each spare magazine, 15 cartridges in the magazine in the gun and 1 cartridge in the chamber.

Result of countdown: 2 CARTRIDGES FIRED

Officer Oris carried his Glock .40 Caliber handgun with 13 cartridges in the magazine + 1 in the chamber. He carried two spare magazines with 13 cartridges each. The countdown showed 13 cartridges in each spare magazine, 8 cartridges in the magazine in the gun and 1 cartridge in the chamber.

Result of countdown: 5 CARTRIDGES FIRED

Officer Hamilton carried his Glock 9mm handgun with 16 cartridges in magazine + 1 cartridge in the chamber. He carried two spare magazines containing 17 cartridges each. The countdown showed 17 cartridges in each spare magazine, 16 cartridges in the magazine in the gun and 1 cartridge in the chamber.

Result of countdown: 0 ROUNDS FIRED

On December 12, 2012, the Forensic Laboratory Firearms Unit completed a report of examination reference Officer Ellsworth's Glock 9mm and Officer Oris's Glock .40 caliber. Function testing and comparisons with the cartridge cases and bullet from the scene, as well as bullets recovered from Decedent, were conducted. Both firearms were examined and test fired and found to be operational with no noted malfunctions. Test fired cartridge cases and bullets from both firearms were microscopically compared to the evidence cartridge cases and bullets. Three bullets recovered from the Decedent were consistent with being shot from Officer Oris's Glock .40 caliber and two bullets recovered from Decedent were consistent with being shot from Officer Ellsworth's Glock 9mm. One bullet from the scene recovered from the rear driver side tire was consistent with being shot from Officer Oris's Glock .40 Caliber.

## **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.

### **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 Victim by placing a deadly weapon at her throat and indicating his intent to utilize the weapon to kill her. The immediacy of the danger justified the officers' use of deadly force to save the life of Victim.

### **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 the instant case, the officers involved were confronted by a situation where Decedent was engaged in the unlawful commission of a felonious attack upon an innocent victim. During the course of such an attack, Decedent indicated his intent both verbally and by his actions to commit serious physical harm upon Victim. When Decedent refused to obey a lawful command to cease with his actions and surrender to police, Officers Oris and Ellsworth were authorized by Nevada law to use deadly force to end the threat of serious physical harm to Victim.

## **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 Officers Russell Ellsworth and Brandon Oris 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.

Submitted June 18, 2013

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