



REPORT ON USE OF FORCE

**Legal Analysis Surrounding
the death of Patrick Heki on
December 7, 2013**

Introduction

On December 7, 2013, Las Vegas Metropolitan Police Department (“LVMPD”) dispatchers received an open line 911 call. Dispatchers heard a female ask someone named “Pat” to put a gun down. Dispatch established the location of the call at 3950 Mountain Vista, Building P, Apartment P-156. LVMPD officers immediately responded to the Mountain Vista Apartments.

Officers approached Apartment P-156. They observed a male, later identified as Decedent Patrick Heki, hereinafter referred to as Decedent, inside the apartment with two long guns slung on his shoulders. Officers then heard shots being fired from inside the apartment. Officers took positions of cover.

Armed with three guns, Decedent exited the apartment. Officers ordered Decedent to drop his weapons. Decedent had a handgun in one of his hands and pointed the gun at Officer Paul Kunz. Officers Paul Kunz, Justin Marzec and Joshua Giese fired their weapons in an attempt to stop this threat. Decedent fell to the ground, and officers were able to take him into custody. Decedent was transported to Sunrise Hospital where he succumbed to his injuries.

The District Attorney’s Office has completed its review of the December 7, 2013, 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 report 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. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on July 11, 2014. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal.

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

Decedent Patrick Heki's Background

Helpful in understanding the events on December 7, 2013, it is necessary to look into Decedent's recent contacts with the Las Vegas Metropolitan Police Department. The facts and circumstances from these two prior violent incidents shed light into Decedent's intent on the events of December 7, 2013.

Domestic Violence Arrest on July 25, 2010

On July 25, 2010, at approximately 2:24 am, LVMPD officers were dispatched to 5055 S. Jeffreys Street, Apartment B-104 regarding a domestic violence incident. Officers came into contact with Decedent, who was fighting with his father, Daniel Unger. Officers also came in contact with Decedent's mother, Julie Unger. Decedent admitted to officers that he got angry and threw the first punch. Decedent also admitted that he had been drinking 5 to 6 alcoholic drinks. Officers arrested Decedent. On the way to jail, Decedent informed the officers that he had been armed with a knife during the domestic violence incident and received a cut to his hand when he closed the folding knife.¹ Although Decedent was booked at the Clark County Detention



Decedent Patrick Heki's Booking Photo taken after his July 25, 2010, domestic violence arrest

¹ At a May 22, 2014, meeting with Clark County District Attorney Investigator William Falkner, Julie speculated that her son may have cut himself. She indicated that at the time of the domestic violence they were living with and taking care of an elderly man. Everyone was under a lot of stress. Decedent was upset because his father, Daniel, did not spend time with him.

Center, the Clark County District Attorney's Office denied prosecution because there was insufficient evidence to file charges.

Suicide Attempt on January 10, 2012

On January 10, 2012, at approximately 1:30 am, LVMPD Officers were dispatched again to 5055 Jeffreys Street, Apartment B-104. Officers found Decedent on the kitchen floor with a self-inflicted gunshot wound to the chin area. Paramedics arrived and transported Decedent to Sunrise Hospital.

Officers interviewed the two other occupants in the apartment, Decedent's father and mother, Daniel and Julie Unger. Daniel Unger provided a voluntary statement. He wrote that he was going to bed when Decedent stated that he was going to clean his rifle. Daniel did not witness the event, but he heard the gun shot. Daniel ran into the bedroom where he found his son shot. Daniel wrote that Decedent stated that the rifle fell on the floor and went off. Daniel maintained this shooting was an accident. Daniel even wrote that "no-he didn't try to take himself out, this just one (sic), fucked up, accident."

Julie Unger witnessed the ordeal and provided a different account in her voluntary statement. Julie wrote that she and her son went into the bedroom. Julie came out of the bathroom to find Decedent with the rifle on the bed. Julie wrote "he had the gun between his legs-and before I could get there-he pulled the trigger-he had put the gun to his chin." Officers added in their incident report that, prior to the suicide attempt, Julie heard her son state, "I'm going to do it. I don't want to live."

Decedent survived the suicide attempt; however, he sustained a facial deformity. Reports do not mention whether alcohol or a domestic disturbance preceded this early morning suicide attempt. Officers did impound a PW Arms M91/30 7.62 x 54R bolt action rifle with a serial no. 068998. **(This rifle will be one of three weapons Decedent possessed on the night of December 7, 2013, when confronting LVMPD officers)**. Review of the photographs taken at this attempt suicide scene reveals that alcohol consumption may have taken place prior to the incident. Photographs do not show that a gun cleaning kit was near Decedent when the rifle was fired.

Clark County District Attorney Supervising Investigator William Falkner was tasked to contact



Patrick Heki's Photo taken from NV Identification Card issued on Nov. 30, 2012

Decedent's parents to determine whether he underwent any psychological treatment - - or any other type of mental health counselling - - after this suicide attempt.

At a May 22, 2014, meeting at the Clark County District Attorney's Office, Julie stated Decedent was evaluated at Sunrise Hospital by a psychologist prior to being discharged. Thereafter, Julie stated that Decedent was not under the care of any mental health specialist. She encouraged her son, however, to undergo mental health counselling, but he refused. She admitted that her son appeared to be slipping into a state of depression. Contrary to what she told the police back in January of 2012, Julie now maintains that it was an accident when the rifle fell from Decedent's desk, and the rifle accidentally discharged.

Investigator Falkner also received an email statement from Daniel Unger dated May 26, 2014, referencing the attempted suicide. Daniel wrote that he wanted the record to be clear that the January 10, 2012, shooting was an accident and not a suicide attempt. Daniel wrote that the "law came up with their ideas that was not true." Daniel claimed that the police report from that "night no one can find." Daniel wrote that this prior shooting has nothing to do with the shooting on December 7, 2013.

Events of December 7, 2013

On December 7, 2013, at approximately 0158 hours, LVMPD officers were dispatched to the Mountain Vista Apartments located at 3950 Mountain Vista, reference a 911 call. Once the caller made contact with LVMPD Dispatch, there was no immediate voice response; however, an open line was established. Dispatchers heard a female asking someone named "Pat" to put a gun down.

Dispatch was able to establish the location of the call at 3950 Mountain Vista, Building P, Apartment 156. Officers arrived at the location, and they observed a male, later identified as Decedent, inside the apartment with two long guns slung on his shoulders. Officers heard shots being fired from inside the apartment. Officers immediately took positions of cover as the male exited the apartment and walked onto the open walkway. Officers saw Decedent armed with a handgun in one of his hands and two long guns strapped over his shoulders. Officers commanded Decedent to drop his weapons. Instead, Decedent raised the handgun towards Officer Kunz. Officers Kunz, Marsec, and Giese fired their weapons to stop the threat. Decedent was shot and fell to the ground. Officers were able to safely take Decedent into custody. Paramedics transported Decedent to Sunrise Hospital where he succumbed to his injuries.



Photograph details location of officers when Decedent fired his Glock .40 caliber handgun at them

Officer Paul Kunz

Officer Kunz provided a walk-through of the scene. Officer Kunz stated that when he walked past Apartment 156 he saw a white male (Decedent) by a window with two rifles and a handgun. Officer Kunz then took cover behind a large tree which was east of the entrance to the apartment. Due to the details of the call, Officer Kunz had deployed his department issued shotgun. Officer Kunz stated as Decedent walked out of the archway, he saw the handgun in his right hand and two rifles slung over the male's shoulders.

Officer Kunz told the suspect to drop the guns, at which time Decedent pointed the handgun towards him. Officer Kunz fired two rounds from his shotgun in the direction of Decedent. Officer Kunz heard multiple additional gunshots and retreated behind a large tree for cover.

Officer Justin Marzec

Officer Marzec provided a walk-through of the scene. Officer Marzec stated he deployed his AR -15 rifle because of the details of the call which warned that the suspect was armed with a rifle. Officer Marzec took cover behind an electrical box west of the target apartment. Officer Marzec saw Decedent exit the archway east of his location armed with two rifles and a handgun. Officer Marzec heard Officer Kunz issue

commands to Decedent to drop the weapons. Officer Marzec then saw Decedent point the handgun in the direction of Officer Kunz. Officer Marzec then fired six times from his AR-15 at Decedent.

Officer Joshua Giese

Officer Giese provided a walk-through of the scene. Officer Giese stated as he approached the apartment where the 911 call had come from, he deployed his handgun and took cover. Officer Giese heard three or four gunshots from inside the apartment. Then, Officer Giese saw Decedent appear from the apartment's archway with two rifles and a handgun and fire more rounds. Officer Giese saw Decedent point the handgun towards Officer Kunz' location, at which time he fired two rounds at the suspect.

Sergeant Debbie Love

Sergeant Love gave a statement to investigating officers. She was in charge of her squad that responded, and she had been assigned to this Southeast Area Command for 10 years. She was apprised of a gun call in the vicinity of Boulder Highway and Flamingo Road. She responded to the area along with several other uniformed officers. She was then informed that the female 911 caller had disconnected. Upon recall, she learned that the caller commented about someone with a firearm, and it was determined to be at 3950 Mountain Vista Street. As Sgt. Love arrived at the apartment complex, she heard an officer on the radio make a statement to the effect that "he could see through the window and a male was armed with two rifles." She also heard Officer Marzec announce over the radio that he was deploying his rifle.

Sgt. Love parked her patrol vehicle in the parking lot to the north of Building P. Three other patrol vehicles were already parked in front of her location, and all of the officers had already exited their respective vehicles. As Sgt. Love was running towards an enclosed dumpster with her duty weapon in hand, she heard one shot and then a "volley" of additional shots. She was not sure who had fired first.

Sgt. Love saw Officer Kunz standing near a tree in a southeast direction and other officers were near the dumpster. She later learned Officer Kunz was armed with a shotgun, Officer Marzec had his rifle, and Officer Giese had a handgun. Sgt. Love did not recall hearing any commands issued by the officers.

Once closer to the scene, Sgt. Love saw a white male (Decedent) lying on the ground in front of Apartment 156. She noted that he was a white male adult in his 20's with a thin build. She observed that Decedent had rifles slung over both shoulders and a black handgun was on the ground nearby. The rifles were removed, and Decedent was handcuffed. Sgt. Love stated that Decedent never spoke. Medical was immediately

requested to the scene. From her vantage point, she never saw Decedent discharge any of his weapons.

While waiting for paramedics, Sgt. Love stated that the handcuffs were removed and that Officer Keen cut off Decedent's clothing to better assess his injuries. Paramedics transported Decedent to the hospital. Officer Keen rode in the ambulance. Officer Keen later contacted Sgt. Love and apprised her that Decedent had died from his injuries. Sgt. Love learned that Officers Kunz, Marzec, and Giese had all fired their weapons.

Decedent's parents were visible inside the apartment and they were immediately removed. Sgt. Love stated that the parents (Daniel and Julie Unger) admitted to arguing earlier. Sgt. Love learned that their son had commented he was going on a shooting rampage until the officers killed him. She added that the father stated his son was going to either kill himself or have the officers kill him. She learned from the parents that Decedent had been shot in the face in the past, and that he suffered from mental problems. Sgt. Love stated she had never seen Decedent before nor had she been at the apartment in the past.

Officer Jason Rapozo

On December 7, 2013, at approximately 0750 hours, detectives conducted a taped interview with Officer Rapozo at the LVMPD Headquarters. Officer Rapozo was assigned to the Southeast Area Command for the past 8 years. Officer Rapozo's immediate supervisor was Sergeant Love. Officer Rapozo's duty weapon was a Glock 17 9mm handgun; however, he never discharged it during the incident.

Officer Rapozo was on duty the early morning of December 7, 2013. He was apprised of a person with a gun call in the vicinity of Boulder Highway and Flamingo Road. He responded to the area along with several other uniformed officers. Subsequently, dispatch informed him that the correct address was the Mountain Vista Apartments located at 3950 Mountain Vista Street.

Driving through the complex, he was updated with the correct apartment number address. Officer Rapozo stated that Officer Kunz arrived at the complex at the same approximate time. Officer Rapozo parked his patrol vehicle in the parking lot to the north of Building P. Several other patrol vehicles were already parked to the west of his location, and those officers had already exited their respective vehicles.

Next, Officer Rapozo heard a radio broadcast that a male was armed with a rifle. Officer Rapozo exited his patrol vehicle and saw Officer Kunz remove his shotgun from his vehicle's trunk. Officers Rapozo and Kunz walked southbound toward building "P" from different directions. Officer Rapozo had his duty weapon in hand as he walked in front of Building Q.

Looking through a window of Apartment 156, Officer Rapozo saw a male (Decedent) with a rifle pacing inside. He decided to change direction and approach the apartment from the opposite side of Building Q. Officer Rapozo heard Officer Kunz say the male was armed with two rifles. Officer Rapozo then heard one shot that appeared to come from inside the apartment followed by additional gunshots. Due to the angle, he never witnessed the shooting, but shortly thereafter he saw Decedent drop to the ground. Officer Rapozo stated he never heard any verbal commands issued by the officers.

Officer Rapozo walked closer and saw a handgun with its slide back and two long guns on the ground near Decedent. Immediately thereafter, Officer Rapozo was instructed to walk the male's father (Daniel Unger) to his patrol vehicle. Officer Rapozo heard the father state that his son was upset and threatened to kill himself because he (the father) was fighting with his wife. Officer Rapozo heard the father say that his son fired a round through the front window while still inside the apartment and that his son stated that he was "going to have the cops kill me!" The son then walked outside and the shooting happened.

Officer Rapozo also learned from the father that his son had shot himself in the face a few years ago with a rifle. The father handwrote a voluntary statement while sitting inside the patrol vehicle. Officer Rapozo added that he had never seen Decedent before nor had he ever been to the apartment. Officer Rapozo opined that he thought the Decedent would have killed someone.

Officer Ryan Rotta

On December 7, 2013, at approximately 0713 hours, detectives interviewed Officer Rotta. Officer Rotta was working patrol along with Officer Joshua Giese. They were dispatched to a person with a gun call at Boulder Highway and Flamingo Road. While driving to the area, dispatch updated the location of the call to 3950 Mountain Vista Street, Building P, Apartment 156. Dispatch advised they had an open line with a person saying "put the gun down" while on the phone and further advised the person had long guns.

Officer Rotta stated he arrived and observed that other officers had already arrived. He parked his patrol vehicle in the fire lane facing east and just north of Building P. Officer Rotta stated he approached on foot through the parking lot. He detailed that Officer Kunz approached off to the left (north) of a brick enclosed dumpster area. Officer Rotta stated he, along with Officers Marzec and Giese, approached to the right (south) of the dumpster. Officer Rotta approached Building P and stopped by some bushes. Officer Rotta observed Officer Kunz taking cover next to a tree trunk, Officer Marzec by a power box, and Officer Giese in the area of the brick enclosed dumpster.

When Officer Rotta heard the first gunshot, he stated he was next to the bushes just west of the apartment window which had the blinds open. Officer Rotta heard a total of three gunshots while Decedent was inside Apartment 156. Officer Kunz warned that Decedent was armed with a long gun. Officer Rotta moved back to the northwest corner of Building P by a stairway. While at the stairway, Officer Rotta observed Decedent exit the apartment with two rifles, one slung on each shoulder. Officer Rotta observed one rifle to be black and the other brown in color. He saw that Decedent was wearing a camouflage jacket and dark pants.

Officer Rotta observed Decedent looking in his direction. He then heard Officer Kunz order Decedent to "drop the gun." Officer Rotta then saw Decedent turn towards Officer Kunz. Decedent raised his arm and pointed a handgun at Officer Kunz. Officer Kunz then discharged his shotgun. When Officer Rotta took cover behind the wall, he could see Officer Marzec engaging the subject with his rifle. Officer Rotta stated he had his handgun drawn, but he did not discharge his weapon.

Officer Rotta estimated from the time he heard the gunshots from inside the apartment to when he observed Decedent outside the apartment was approximately five seconds. Officer Rotta stated within one to two seconds after exiting the apartment, he observed Decedent pointing a handgun at Officer Kunz.

Officer Rotta stated that lighting was not problematic. He stated that the parking lot and surrounding buildings were lit with street lights. He was able to see the other officers who were all in uniform, and he was able to identify them as police without the need for a flashlight.

After the shooting, Officer Rotta stated he saw Sgt. Love and Officer Brad Vanpamel approach Decedent and then call the occupants out of the apartment. Officer Rotta stated he heard Decedent say, "I'm down" or, "I give up, I quit." Officer Rotta stated he heard Officer Kunz giving the subject commands to roll over but did not see any movement from Decedent. Officer Kunz handcuffed Decedent. Officer Rotta observed both rifles and the handgun with the slide in the locked position on the ground. Officer Rotta, along with Officer Vanpamel, cleared the apartment. While inside clearing the apartment, Officer Rotta observed a brown box on the back bedroom floor which one of the rifles may have come from.

Officer Brandon McFarlane

On December 7, 2013, at approximately 0753 hours, Officer McFarlane was interviewed at the Homicide Office by Detectives Smith and McCarthy. Officer McFarlane was working as a marked patrol unit when he heard via the police radio a call for a person with a gun in the area of 3950 Mountain Vista. Upon his arrival, Office McFarlane entered off the south entrance of the apartment complex and drove east. He saw several officers by a dumpster to the north of Building P.

Officer McFarlane heard one gunshot and immediately saw the officers in front of him react and start to take cover near the dumpster. Officer McFarlane exited his vehicle and ran to the northwest corner of Building O when he heard several more gunshots. Officer McFarlane took cover behind Building O and heard more gunshots. Officer McFarlane waited until the gunshots stopped then looked around the corner to see multiple officers with firearms pointed towards building P.

Officer McFarlane walked towards the subject (Decedent) who was lying on the ground. Officer McFarlane saw officers handcuffing Decedent. Officer McFarlane was ordered to take Julie Unger to his patrol vehicle.

In his patrol vehicle, Officer McFarlane asked Julie what was going on. Julie stated that her son was upset because she and her husband were fighting. Julie stated that her husband went to sleep earlier in the evening, and she and Decedent were in the bedroom drinking alcohol. The more Decedent would drink, the more agitated he became about his parents fighting. She added that Decedent was upset because of his disfigurement.

Julie told Officer McFarlane that her son retrieved a Glock .40 caliber handgun and began pacing around the room which frightened her. Decedent was loading the gun and then would unload it. There were some loose live rounds in the bedroom. At one point, Decedent removed the magazine, and Julie stated she grabbed the magazine and hid it. Decedent became more agitated and placed a live round in the gun. Decedent told Julie to give the magazine back to him or he would shoot himself.

Julie stated that she gave Decedent the magazine back in hopes this would calm him down. Decedent went to the closet and loaded two rifles. Decedent started to exit the apartment and before leaving he stated, "They can never fix my face and I can't look at my face anymore, I'm going on a killing spree and tonight's a good night to die." Decedent exited the apartment and Julie stated she heard gunshots. Julie added that she did not remember when she called 911.

Daniel Unger

Detectives interviewed Daniel Unger on December 7, 2013. Daniel stated that he resided at the Mountain Vista Apartments in Building P, Apartment #156, with his wife Julie Unger and son, Decedent Patrick Heki. Daniel stated he arrived home from work earlier in the day. Daniel brought home a bottle of whiskey for the weekend and stated he and his son had two drinks. Daniel got into a verbal argument with his wife. Decedent became upset that they were arguing. Daniel went to sleep on the couch which is where he normally sleeps.

Daniel stated at approximately midnight his wife was yelling for him to come into the bedroom. Daniel got up off the couch and went into the bedroom. He saw his son with a .40 caliber Glock handgun and the whiskey on the nightstand. Decedent ordered Daniel to sit on the bed. Decedent appeared to be upset and stated he didn't like his parents fighting. Decedent was also upset with doctors because of his deformed face after the attempted suicide incident. During the interview, Daniel maintained that the deformity was caused when the rifle accidentally discharged and shot his son in the face in 2012.

Daniel told investigators that Decedent stated, **"You will know what love means, I bet you will know now,"** and **"I don't want to hurt the officers!"**, **"You will never forgive me"**, and **"This is the day I die!"** Daniel told Decedent if the police responded and saw him with the gun, they would shoot him. Daniel then begged with Decedent to put the gun down. Decedent went to the closet in the bedroom and removed two rifles and loaded them. Decedent put additional rounds for the 7.62 caliber rifle in his pocket and slung both rifles over his shoulder. Decedent told Daniel he was planning to commit suicide by cop. Knowing his wife was calling the police, Daniel continued to plead with his son to put the weapons down.

Decedent walked into the living room and fired one shot through the north living room window. Then, Decedent immediately exited the apartment. Daniel followed Decedent out of the apartment, and upon exiting the front door observed his son stumbling on the walkway. While stumbling, Decedent's body rotated causing him to aim the handgun in Daniel's direction. Daniel then went back into the apartment fearing he would be shot. Daniel then heard three (3) more gunshots, which he believed his son fired in the air. Seconds later, Daniel heard several police officers yelling, "Put the weapon down!" Daniel stated he heard the officers give the command at least three times.

While standing in the living room, Daniel claimed he could see Decedent outside the apartment. Daniel began yelling at Decedent to put the weapon down. Decedent kept repeating, **"It's too late, it's too late!"** Decedent then stated, **"Ok pop!"** Daniel stated his son was facing the officers with the handgun in his right hand. Both of Decedent's hands were in the air when Decedent bent forward toward the officers to get on the ground. Once on the ground, Daniel stated the officers shot. Later in the interview, Daniel stated his son's hands were above his head and the gun was in his right hand. Decedent bent over toward the officer and placed the gun on the ground, then pushed the handgun away to his right. Decedent then began to stand up and was shot by officers as he was almost back to his feet. The officers immediately handcuffed Decedent after the shooting. Daniel was contacted by officers and placed in a police car until the arrival of detectives.

Daniel gave several interviews to local broadcast news agencies. Daniel continued to state that Decedent was following police orders when he was shot. Daniel stated he

planned on suing the LVMPD. Daniel also opined that his son did what he did to help out his father's film career.

The Clark County District Attorney's Office reached out to Daniel Unger to schedule a meeting during the month of May 2014. Daniel was unable to meet in person, but he emailed a self-reenactment video explaining how the shooting took place. He also emailed a lengthy statement dated May 26, 2014, explaining and discounting the police version as to what happened. Both of these items were reviewed for this report.

In the self-reenactment video, Daniel provides a different version of events. Daniel explained how Decedent fired once from inside the home after first making sure it was safe to do so. Daniel claimed Decedent hit a satellite dish located in the courtyard. Daniel then explained that Decedent exited the front door and made his way to the front courtyard. Daniel stated that Decedent fired twice in the air before LVMPD officers arrived.

Once LVMPD arrived, Daniel stated that Decedent became nervous. According to Daniel, Decedent had his hands in the air and slowly dropped his right arm which was holding the Glock. Decedent dropped the gun on the ground and returned to a standing position. Daniel then stated that all of a sudden an officer shot Decedent in the right hip. Daniel Unger stated that Decedent yelled in anger and was thereafter shot multiple times.

In his emailed statement, Daniel wrote that Decedent never pointed the gun at the officers, Decedent never fired at the officers, and Decedent only fired three times before LVMPD arrived. Daniel wrote that Decedent saved his casings from prior shootings, and LVMPD officers, who found these casings, "took shells and place (sic) them all over my apt (sic) to and outside." Daniel added that the officers "shot over 60 rounds hitting everything they could." Daniel wrote that officers that night informed him that "its (sic) are (sic) word good luck to they made fun and they where (sic) happy they killed my boy."

Julie Unger

Julie stated she resides at 3950 Mountain Vista, Building P, Apartment #156, with her husband, Daniel Unger, and her son Decent Patrick Heki. Earlier in the evening, Julie and Daniel were inside their residence drinking rum and cokes. Julie stated her son's demeanor was upbeat, and they were having drinks. Julie and Daniel were talking and Decedent misinterpreted their conversation as an argument. Julie stated Decedent's demeanor changed, and he appeared upset. Julie stated Daniel went to sleep on the couch, and she and Decedent went into the bedroom to talk.

While in the bedroom, Julie and Decedent continued drinking. According to Julie, Decedent had approximately seven (7) rum and cokes. The more Decedent drank, the more agitated and upset he became. Decedent was upset because Julie and Daniel were not getting along and because his face was deformed. Decedent grabbed a Glock .40 caliber handgun which he kept next to his bed and started to manipulate the firearm. At one point, he put the hand gun to his head and stated to Julie, **“If you don’t stop fighting, I swear I’m going to kill myself!”** Decedent continued manipulating the firearm and had removed the magazine. Julie stated she got the magazine from Decedent and hid it under the couch in the living room.

Julie went back into the bedroom and saw Decedent get a .40 caliber cartridge from the closet and load the hand gun. Decedent stated, **“Don’t call the cops. If you call the cops, I’ll kill myself!”** Decedent demanded that Julie get Daniel to come into the bedroom. Julie then yelled for Daniel to come to the room. As Daniel entered, Decedent stated, **“You move toward me or try to take this gun from me I will shoot you! I will kill you and then kill myself!”**

Decedent then went to the closet and got two rifles and slung them over his shoulder. Julie stated she dialed 911 from her cell phone and kept the line open in hopes the dispatcher would hear what was going on and would respond. Decedent stated, **“I’m going to die tonight! This is a good time to die!” “A good night to start killing!” “I’m going to die tonight!”**, and **“This is a night you will never forget!”** Decedent then asked for a hug from Julie and Daniel, and told both of them, **“Do not try to get the pistol or rifles!”**

Julie felt if she or her husband attempted to disarm Decedent, he would have shot them or himself. Decedent then walked into the living room and fired one round. He then exited the apartment. Julie stated she entered the living room and observed police officers outside the apartment through the window. Julie then heard multiple gunshots and saw police officers standing by her son. Julie stated she did not see the actual shooting. Julie exited the apartment after the shooting and was taken to a patrol car by an officer, where she remained until the arrival of detectives.

At a May 22, 2014, meeting with Clark County District Attorney Investigator William Falkner, Julie partially changed her story. Julie repeated the statements Decedent stated before the shooting, and she stated that she was concerned enough to call 911. Julie now claims, however, that she witnessed the shooting. Julie stated that Decedent had dropped the Glock on the ground. Julie stated that Decedent was standing and holding his hands in the air when all of a sudden an officer shot her son. Julie stated that Decedent only fired three times. When asked why LVMPD investigators located 10 .40 caliber casings near and around her son, she could not provide an answer. When asked why her statement had changed, Julie indicated that she was in shock when she gave the first statement.

Crime Scene Description

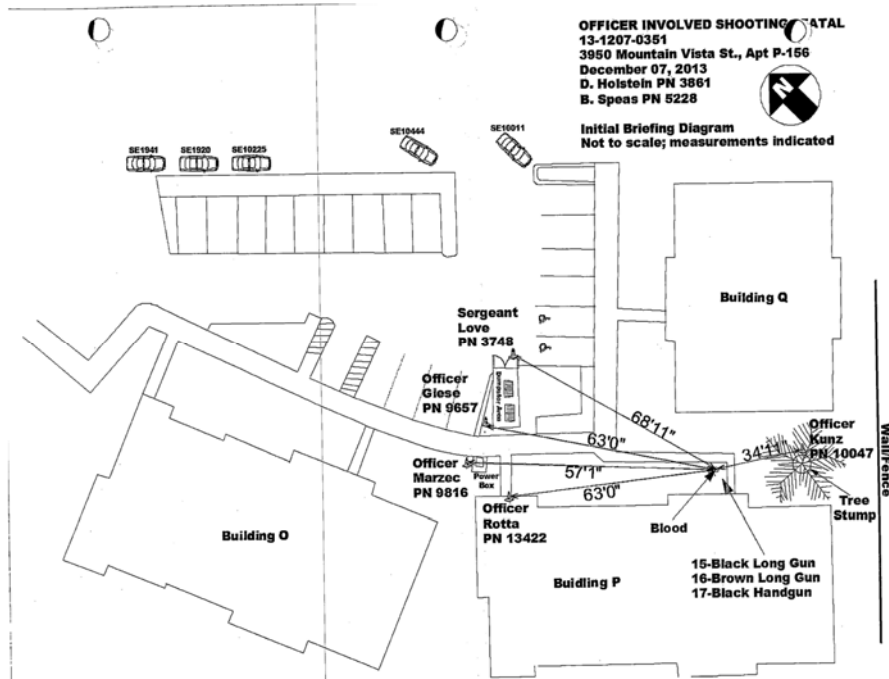
The scene was located at the Mountain Vista Apartments, at 3950 Mountain Vista, Las Vegas, NV 89121. The complex consists of multiple multi-floor apartment buildings with adjacent parking lots for tenant parking. The primary scene is located outside at the southeast corner of the complex north of Building P, south of Building Q, and west of Building O. To the east of the scene is a block wall with rod iron fencing on top of the wall. East of the wall is a parking lot for Johnny Walker RV. The parking lot for the complex was located north and west of the crime scene. Multiple vehicles were parked throughout the parking lot.



Overview, Building Q (top left) and Building P (right)



Blue arrow pointing to Building P



Crime Scene Diagram showing the positions of officers involved in fatal shooting and distances in feet officers were from when confronted armed Decedent

Building P has two north facing archways: One on the west side of the building and one closer to the east side of the building. A concrete walkway oriented east/west between Buildings P and Q, with the east end of the walkway turning south to the east archway of Building P. The property had desert landscaping with bushes on the north side of Building P and a large tree to the east of the walkway. A satellite dish was affixed to a stand and anchored to the ground on the west side of the walkway leading to east archway. An electrical box was in the yard south of the parking lot dumpster area, north of the west archway of Building P. The sidewalk was between the electrical box and the dumpster area.

Apartments 156 and 159 are both ground-floor apartments accessed through the east archway of building P. The archway opens to a hall which is oriented north/south. A stairway is along the east hallway wall at the north end of the hallway. Apartment 156 is located on the west side of the hallway at the north end and has an east facing door. The patio for apartment 156 is on the north side of Building P, overlooking the concrete walkway leading up to the east archway of Building P and the yard area. Apartment 159 is located at the south end of the hall and had a north facing door.



Front of Building P, Apartment 156

Building Q is located north of Building P. Apartment 161 is located at the southwest corner of the building on the ground floor. The bedroom is located at the southwest corner of the apartment and it had a bed along the south wall with night stands on both sides of the bed. A crib was in the southeast corner, dressers were along the west and north wall, a television was in the northwest corner, and the bathroom and closet were to the east.

Visible Firearms Evidence

Officers Marsec, Giese, and Love's Location at time of Shooting



Circled area depicts location of electrical power box where Officer Marsec took cover and dumpster area where Officer Giese took cover at time of shooting

Two cartridge cases with head stamp "SPEER 45 AUTO" were found on the sidewalk between the dumpster area block wall and the electrical box located north of the northwest corner of building P. Seven (7) rifle cartridge cases with various head stamps were found on the ground of the yard south of the electrical box. A plastic shot shell wad was found on the ground by a bush southwest of the electrical box.

Officer Kunz Location at time of Shooting



Location of Officer Kunz' position at time of shooting

Two shotgun shell cases with head stamp "12 GA MADE IN USA" and "FEDERAL PREMIUM HV TACTICAL 9-00 BUCK 2 ¾" printed on the side were found on the ground by the tree located east of the walkway leading to the east archway of Building P.

Decedent Patrick Heki's Location at time of Shooting



Decedent's location at time of shooting

Multiple items were found on the ground north of the patio to apartment 156. A “cold Weather Camouflage Parka” which was cut, soaked with apparent blood and fabric defects and a cut, black, “Starters” t-shirt soaked with apparent blood and with fabric defects were found north of apartment 156 on the concrete walkway leading to the east archway of Building P. Blue “Peerless” handcuffs with apparent blood and “Kunz 10047” engraved on them, along with a key ring with a “Master key” were found on the ground south of the camouflage parka. An open black “Metro Logo” folding knife with apparent blood was found on the ground west of the camouflage parka (this knife belonged to Officer Keen, who used the knife to cut Decedent’s clothing for paramedics).

A black Marlin Firearms Co., Model 917 VRX-17, 17 HMR caliber bolt action rifle with serial #MM852024B and a black sling was found on the ground north of the patio to apartment 156, south of the blue handcuffs and key ring. The Marlin rifle had an empty chamber and a black metal magazine loaded with one .17 caliber cartridge with head stamp “R.” A plastic shot shell wad was found on the ground next to the Marlin Firearm Co. rifle barrel.



Marlin Firearms Co. Model 917 VRX-17 Rifle carried by Decedent

A Russian made PW Arms model M91/30 7.62 x 54R caliber bolt action rifle, serial # 068998, with a green canvas sling was found on the ground north of apartment 156 and south of the Marlin rifle. The M91/30 had an empty chamber and two 7.62 caliber rifle cartridges loaded into a fixed magazine; one with head stamp “17 49” and the second with head stamp “188 75”. **(This is the same rifle used by Decedent in his attempted suicide on January 10, 2012.)**



Russian M91/30 7.62 x 54R Caliber Rifle carried by Decedent

A Glock 23 Gen 4 .40 caliber semi-automatic handgun, with serial # UFE583, was found on the ground east of the Russian M91/30. The slide was found locked in the opened position. The Glock had an empty chamber and an empty Glock .40 caliber, 13 round capacity magazine. Five cartridge cases with head stamp "Federal 40 S&W" were found on the ground north of the patio of apartment 156, between the patio and Decedent's cut clothing. Another cartridge case with head stamp "Federal 40 S&W" was found on the ground underneath Decedent's "Rustler" blue jeans, after they were moved.



Glock 23 Gen. 4 .40 caliber handgun fired by Decedent

One cartridge case with headstamp "Federal 40 S&W" was found on the ground under the stairway of the east archway of Building P.

Inside the living room of Apartment 156, more cartridge cases were located. A cartridge case with head stamp "Federal 40 S&W" and a .17 caliber cartridge with head stamp "R" were found on the floor on the south side of the sofa and north of the front door. Another "Federal 40 S&W" cartridge case and a .17 caliber cartridge with headstamp "R" was found south of the love seat and north of the bedroom door. One cartridge case with head stamp "Federal 40S&W" was found on the green lawn chair inside of the patio north of the living room.

In the bedroom, three additional "Federal 40 S&W" cartridges were found. A 1.75 liter bottle of "Black Velvet" whiskey and two drinking glasses with brown liquid were present. A Glock handgun case and an empty magazine was found in the closet.

One of the bullet /impact holes is noteworthy to document and discuss in this report. Officers detailed that they heard gunshots coming from inside the apartment upon their arrival to the scene forcing them to take cover. Crime Scene Analysts photographed a bullet hole in the living room window of Apartment 156. This bullet coursed from inside the apartment through the living room window and screen and has a corresponding impact hole in the south wall of Building Q, Apartment 161. The travel path of this projectile crosses the walkway used by Officer Kunz as he was responding to the call. The bullet was recovered from a mattress in Apartment Q-161. Forensic Scientist Jonathan Fried in his report dated June 9, 2014, identified this bullet as having the same general rifling characteristics as test fired bullets fired from Decedent's Glock. However, this bullet cannot be conclusively linked to Decedent's Glock. The following three photographs detail this gunshot bullet/impact hole.



Interior view of Apartment 156 and exit bullet hole



Circled area shows the corresponding impact hole into exterior wall of Building Q, Apartment 161. Forensic analysis identified this recovered bullet to have the same rifling characteristics as test-fired bullets Decedent's Glock .40 caliber handgun



Exterior view of Apartment 156 and bullet hole

Countdown of Weapons

Officer Justin Marzec

Officer Marzec deployed his personally-owned Colt AR-15 rifle with serial # LGC011578 with one magazine. Countdown showed 1 round in chamber and 20 rounds in magazine. There were **7, "223" rounds missing**. Accordingly, Officer Marsec fired his rifle seven times.

Officer Paul Kunz

Officer Kunz deployed a department-owned, Remington 870, 12 gauge shotgun which was in the trunk of his vehicle. The shotgun was loaded with 4 rounds of "00" buck in the magazine tube and 6 rounds of "00" buck on the side saddle. Countdown showed 1 "00" buck round in the chamber, 1 "00" buck round in the magazine tube and 6 "00"

rounds in the side saddle. There were **2, “00” buck rounds missing**. Accordingly, Officer Kunz fired his shotgun twice.

Officer Joshua Giese

Officer Giese deployed his personally-owned Glock G21, .45 ACP caliber, semi-automatic handgun with serial # GSK113. Officer Giese carries his firearm with 13 rounds in the magazine and topped off with one round in the chamber and 4 spare 13 round magazines. Countdown showed 1 round in the chamber and 11 rounds in the magazine. Spare magazines were filled to capacity with 13 rounds in each. There were **2 “.45” ACP rounds missing**. Accordingly, Officer Giese fired his Glock twice.

Decedent Patrick Heki

1. GLOCK 23, GEN 4, .40 CALIBER, SEMI-AUTO HANDGUN: Countdown showed chamber and magazine empty with the slide locked back. **Ten cartridge casings were found at the scene**. Forensic Firearms and Toolmarks Examiner Jonathan Fried in his June 9, 2014, identified all ten casings having been fired by Decedent’s Glock. Accordingly, Decedent fired his Glock ten times.
2. RUSSIAN MODEL M9/30 RIFLE: Countdown showed chamber was empty and two 7.62 cartridges were in the magazine. **No 7.62 cartridge casings were located at the scene**.
3. MARLIN .17 CALIBER RIFLE: Countdown showed chamber was empty and one .17 cartridge was in in the magazine. Two .17 cartridges were located in the living room of apartment 156. **No .17 cartridge casings were located at the scene**.

Autopsy of Decedent Patrick Heki

On December 8, 2013, Clark County Medical Examiner Doctor Alane Olson performed an autopsy on the body of Decedent under Coroner’s Case No. 13-11354. Dr. Olson detailed multiple gunshot wounds to the torso, groin area, and right wrist. Dr. Olson determined that the cause of death was multiple gunshot wounds to the torso. She opined that the manner of death was homicide. A toxicology report showed that Decedent had a blood alcohol concentration level of 0.277 g/100 ml and a Delta-9 THC level of 6.4 ng/ml. Decedent was 4.4 ng/ml above the Nevada driving legal limit for marijuana use.

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 under NRS §200.160(1) 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

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 LVMPD officers. Decedent armed himself with three firearms. He was overheard on the open line 911 call threatening that he was going to kill. Decedent, who was dressed in camouflage, was seen armed with two long guns and one handgun posing a significant danger to all responding officers. Decedent opened fire on Officer Kunz - - and possibly other officers - - without warning as Kunz and other officers were approaching the apartment. This gunshot from inside the apartment forced officers to immediately seek cover. It is reasonable to infer that Decedent saw the responding officers when he fired at them, because he immediately thereafter exited the apartment to confront them.

Exiting the apartment, Decedent was firing the Glock .40 handgun. Decedent continued to fire his handgun as he exited the apartment. Decedent stepped onto the walkway where he confronted the uniformed officers. Although ordered to drop his weapons, Decedent refused. Instead, Decedent trained the handgun at the nearest officer, Kunz. This action was witnessed by other officers who were in a position of cover.

At the time of firing, all three officers had an objectively reasonable belief that Decedent posed an imminent danger, which created an honest belief that either the officers or another individual were about to be killed or suffer serious bodily injury. Primarily, Decedent posed a major threat to Officer Kunz' life. Officer Kunz was reasonable in his belief that Decedent was about to shoot. Witnessing Decedent aim the handgun at Officer Kunz, Officers Marsec and Giese were also reasonable in their belief that Decedent posed an imminent danger to Officer Kunz' life, forcing them to fire their weapons. It was during this exchange of fire that Decedent was ultimately shot and killed, ending the threat.

Accordingly, the police personnel were in actual imminent danger of being killed or suffering great bodily harm, which created in their minds an honest belief and fear that they, and/or others, were about to be killed or suffer great bodily injury. The officers were justified in acting upon those appearances, fears, and actual beliefs.

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. Atty. Gen. 47 (1985).

In this case, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to themselves or other persons. Decedent was overheard by Dispatch that he planned on killing. Decedent was armed with three weapons. He fired upon the responding officers as they approached the apartment. Decedent continued to fire the handgun as he exited the apartment. In fact, Decedent would fire the Glock approximately ten times during his confrontation with officers.

Decedent confronted the uniformed officers and refused to drop his weapons. Having already fired the handgun, Decedent trained the weapon on Officer Kunz, who was the nearest uniformed officer. These circumstances created probable cause in the officers' minds that the Decedent posed a threat of serious physical harm to the officers,

residents, and/or witnesses in the area. In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact unjustified “in the discharge of a legal duty.”

CONCLUSION

Based upon 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 law enforcement in response to being fired upon by the Decedent 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.

DATED: October 8, 2014

STEVEN B. WOLFSON
District Attorney

By

FRANK JOHAN COUMOU
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