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July 30, 2012

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

Re: Officer Involved Death of Alberto Castillo, aka Carlos Renteria, which occurred on May 27, 2011, and is referenced as LVMPD Event #110527-0950

Dear Sheriff Douglas C. Gillespie:

The District Attorney's Office has completed its review of the May 27, 2011 death of Alberto Castillo, aka Carlos Renteria, which involved LVMPD Officer Robert Thompson. Based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of this officer were not criminal in nature. It appears that the decedent was holding a metal object to a woman's neck¹, threatening to kill her when Officer Thompson and other LVMPD officers arrived. Decedent refused to comply with lawful commands of the officers, and threatened the physical safety of the officers and decedent's wife. Officer Thompson responded with reasonable force. It should be noted that this review was made based on all the evidence currently available but without the benefit of an inquest proceeding.

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

¹ The woman is identified as the domestic partner of decedent, and the mother of two children with the decedent. She is commonly referred to by the decedent's family as his wife. As such, she will be referred to in this letter as "Decedent's Wife" and "wife".

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

FACTUAL SUMMARY

Background

On Friday May 27, 2011 at 7:33 a.m., Family Friend called the LVMPD Communications Center via 9-1-1 to report that an incident that was occurring at 2917 Theresa Avenue in Las Vegas. According to Family Friend, a male subject, who was on drugs, was hitting his wife. There were also children in the room. She reported that the male subject had a screwdriver in his hand and was injuring the woman. During the 9-1-1 call, Decedent's Father got on the line and reported that the male subject was stabbing the woman with a screwdriver and trying to kill the woman.

Contact with Law Enforcement

At approximately 7:40a.m., LVMPD Officers Thompson, Gastelum and Corbett arrived at 2917 Theresa Avenue. As the officers approached the residence, they heard screaming coming from inside the house. They were met at the door by Decedent's Father, who spoke to them in Spanish and pointed them toward a hallway on the eastside of the house. While the officers were in the house, they heard screaming coming from the bedrooms. They went to the bedroom from which the screaming emanated. Officer Thompson tried to open the bedroom door, but it was locked. Officer Thompson kicked the door open.

When Officers Thompson, Gastelum and Corbett entered the bedroom, they saw two small children on a bed in the northeast corner of the room. They saw the decedent and his wife on a bed along the north wall of the bedroom. The decedent had his left arm encircled around Decedent's Wife's neck and he was holding a silver-colored object to her neck with his right hand. Officer Corbett guided the children to safety outside the bedroom as Officers Thompson and Gastelum drew their pistols and ordered the decedent, in both English and Spanish, to show them his hands and to release his wife. The decedent refused to comply with the officers' commands.

Officer Gastelum holstered his pistol, drew his X26 Taser ("Taser") and fired it at the decedent. Officer Corbett reentered the room and was able to grab the decedent's foot, pulling him off the bed, away from Decedent's Wife. When he was on the floor, the decedent began to kick the officers and caused Officer Corbett to lose his grip on the decedent. Officer Thompson remained on lethal cover with his handgun drawn until he believed that the Taser strike was having no effect on the decedent. He holstered his

handgun, and drew his Taser. Officer Thompson discharged his Taser at the decedent, who was now on the floor, striking him with two darts in the torso. Despite this fact, the decedent continued to resist the officers.

During the struggle, Officer Thompson then “touch stunned” the decedent in the thigh. The decedent then grabbed Thompson’s Taser, kicked Thompson backward, and pulled the Taser from the officer’s hand. While Officer Thompson was falling backward, he drew his handgun and fired eight times at the decedent. All eight of Officer’s Thompson’s bullets struck the decedent in the torso.

Contact with Private Citizens

Interview of Family Friend

Family Friend was contacted and interviewed and the following was learned: Family Friend is a friend of Decedent’s family, who arrived in Las Vegas at about 1:00 a.m. on May 27, 2011. On that morning, Family Friend was in the kitchen of the Theresa Avenue residence when she heard decedent and Decedent’s Wife arguing in a bedroom. Family Friend heard decedent accusing his wife of being a man and not his wife. Family Friend pleaded with decedent to stop attacking his wife in front of his children. Decedent grabbed his wife by the hair and poked at her body with a screwdriver. Decedent’s Father came into the bedroom and pleaded with decedent to stop. Family Friend returned to the kitchen and was followed there by Decedent’s Father, who told Family Friend to call the police. While Family Friend was on the phone with police, she heard decedent yelling that he was going to kill his wife. Family Friend was in the kitchen when the police arrived and heard the police yelling at decedent to put his hands up. Family Friend heard more yelling, then several gunshots.

Interview of Decedent’s Father

Decedent’s Father was contacted and interviewed and the following was learned: Decedent’s Father lived at the Theresa Avenue address with his wife and the decedent and his family, including Decedent’s Wife and two small children. On the morning of May 27, 2011, Decedent’s Father heard decedent arguing with Decedent’s Wife. The decedent, whom Decedent’s Father reported was high on drugs, apparently believed that Decedent’s Wife was romantically involved with another man named Jose. Decedent believed Jose was on the roof of the residence. Decedent’s Father went into decedent’s bedroom and saw decedent holding his wife down on the bed while pushing a screwdriver into her hand. Decedent was also hitting his wife in the face with his elbow and telling her “You’re Jose, you’re Jose.” The decedent threatened to kill her. Decedent’s Father told Family Friend to call the police. When the police arrived, they told Decedent’s Father to leave the room, and he did. Once outside, he heard gunshots.

Interview of Decedent's Wife

Decedent's Wife was contacted and interviewed and the following was learned: Decedent's Wife lived at 2917 Theresa Avenue with decedent and their two young children, along with decedent's parents. She stated that decedent often used methamphetamine for several days and while he was using decedent became paranoid and fought with her or his father. Prior to the incident of May 27, 2011, decedent had been using methamphetamine for several days and not sleeping. On the evening of May 26, 2011, Decedent's Wife and decedent had an argument about decedent's drug use and his behavior. The next morning, she was in her bedroom with the children when decedent began to walk into and out of the bedroom. Decedent's Wife described decedent as being in a "Zombie" like state, acting abnormally. Decedent accused her of not being his wife. When she tried to reason with decedent, he attacked her. Decedent slammed her head into a wall, then grabbed a pair of pliers and attempted to cut her fingers off. Decedent picked up a screwdriver and began poking her in the neck and shoulder while he threatened to kill her. Decedent told his father to take the children out of the bedroom because he was going to kill Decedent's wife.

At some point, Decedent's Wife heard the police arrive and announce their presence. Decedent closed the bedroom door to keep the officers out of the bedroom. He had a work tool in his hand, twisted his wife's arm behind her back and held her to the bed when police entered the room. The police and decedent began yelling, although Decedent's Wife could not understand what they were saying. The police used their stun guns to try and control decedent, without success. Decedent's Wife said that decedent was resisting the police officers, but she did not see him attack the officers. She said the officers were very close to decedent but they just couldn't get a hold on him. That's when one of the officers fired his handgun at decedent. Decedent's Wife said she heard 3-5 gunshots after which she was taken out of the room.

Interview of Decedent's Sister

Decedent's sister was contacted and interviewed and the following was learned: Decedent's sister reported that over the past couple of years, the decedent had been abusing drugs and alcohol. In particular, after the decedent lost custody of his children to his ex-wife who filed a restraining order against him, the decedent was "basically suicidal."

Findings from the Autopsy

On May 28, 2011, Medical Examiner Dr. Gary Telgenhoff of the Clark County Coroner conducted an autopsy of the decedent and determined the cause of death was multiple gunshot wounds. Dr. Telgenhoff noted three (3) Taser dart wounds on the body as well.

A toxicology report determined the existence of amphetamine and methamphetamine in the decedent's system at the time of death. A specimen of the decedent's chest blood was determined positive for amphetamine at the level of 66 ng/mL and methamphetamine at the level of 620 ng/mL. It was reported that blood levels of 200-600 ng/mL of methamphetamine have been noted in methamphetamine users who exhibited violent and irrational behavior.

Findings from the Scene

The scene was contained to the master bedroom of the residence at 2917 Theresa Avenue. The exterior face of the bedroom door was cracked, and there was a shoeprint near the door knob. This shoeprint was attributed to Officer Thompson when he kicked open the door.

There was a queen sized bed located along the east wall of the bedroom. A twin bed was located in the northwest corner of the room. A small table with a refrigerator on top of it was in the southwest corner of the room and a dresser was on the south wall. There was a closet along the west wall of the bedroom and two suitcases were lying on the carpet in front of the closet. A television and DVD player which had been sitting on top of the dresser was lying face down in front of the dresser.

Several pillows and a quilt covered the queen bed. Seven (7) 9mm Luger cartridge casings were also lying on the bed, as well as a black rubber plug from a Taser cartridge. Pillows, a mattress cover and blue blanket were found on the twin bed. At the top of the twin bed, a silver colored pair of pliers, a brick chisel with an approximately 4" blade, a fired bullet and a VTech brand cordless were found.

Several pink and yellow paper AFID tags were on the beds and scattered about the carpet. The tags are used in the X-26 Taser cartridges to distinguish which cartridge was fired. Officer Thompson's X-26 Taser, Serial Number X00-056564 was lying on the carpet between the decedent's right leg and the front of the dresser. The Taser was in the "fire" position when discovered.

The decedent was lying supine on the carpet in front of the dresser with his right shoulder resting on the corner of the overturned television, his right foot was near the northeast edge of the dresser, and his left foot was near the south side of the queen bed. Based upon video from Officer Gastelum's X-26 Taser, the decedent was initially lying on his back against the television, but was later moved to a supine position by paramedics. Based upon the location of Officer Thompson's 9mm cartridge casings, it was estimated that he was approximately 5'10" away from the overturned television when he fired at the decedent.

Findings from Tasers

On June 6, 2011, detectives brought the two Tasers from this incident to Taser International in Phoenix, Arizona where the devices were examined and found to be operating within normal limits. On July 21, 2011, the probes were examined by Taser International Technical Services Manager.

With regard to Officer Thompson's Taser with serial number X00-056564, it was learned that the Taser was discharged three times during the incident. The examination of the probes from Officer Thompson's Taser revealed that both of the darts completed a circuit of more than 2 seconds but less than 5 seconds.

Taser International also examined Officer Gastelum's Taser with serial number X00-213050. This Taser was discharged six times during the incident. The examination from the probes of Officer Gastelum's Taser revealed that both of the darts deployed by the Taser cartridge did not complete a circuit and thus would not have had an effect on the suspect.

The surveillance video from both Taser cameras was reviewed. Officer Gastelum's Taser was the first device to be discharged. The Officer had his Taser camera and audio on for approximately 7 seconds before he fired the cartridge and deployed the probes. For the first 22 seconds of the recordings, it appears that the camera lens was covered. The audio recorded a male voice yelling "drop it, drop it, get him, get him" and other yelling the background. When the lens cleared, the suspect is pictured lying beside the twin bed. Approximately 53 seconds after the Taser was turned on multiple gunshots were heard, and the video showed the decedent on the floor with his back against the television, holding Officer Thompson's Taser by the barrel. The charge indicator light was illuminated indicating that the Taser was on.

The examination of the probes from Officer Thompson's Taser revealed that both of the darts completed a circuit of more than 2 seconds but less than 5 seconds.

The examination from the probes of Officer Gastelum's Taser revealed that both of the darts deployed by Officer Gastelum's Taser cartridge did not complete a circuit and thus would not have had an effect on the suspect.

The surveillance video from both Taser cameras was reviewed. Officer Gastelum's Taser was the first device to be discharged. The Officer had his Taser camera and audio on for approximately 7 seconds before he fired the cartridge and deployed the probes. For the first 22 seconds of the recordings, it appears that the camera lens was covered. The audio recorded a male voice yelling "drop it, drop it, get him, get him" and other yelling the background. When the lens cleared, the suspect is pictured lying beside the twin bed. Approximately 53 seconds after the Taser was turned on multiple gunshots were heard, and the video showed the decedent on the floor with his back against the television,

holding Officer Thompson's Taser by the barrel. The charge indicator light was illuminated indicating that the Taser was on.

The recording from Officer Thompson's Taser began with the noise of a Taser discharging. One second later, the decedent is seen on the video with the buttocks on the floor, his back against the twin bed and it appeared that decedent was grasping Officer Gastelum's Taser. A male voice is heard to say "stop tasing me" as the decedent kicked at Officer Thompson's Taser. The decedent's hand is seen moving toward Officer Thompson's Taser and a male voice yelled "stop resisting". One second after that, the camera made several quick movements toward the television, the dresser, and the floor. Immediately after the movement of the camera started, several gunshots were fired. After the shooting stopped, the camera showed the decedent moving on the floor with the camera by his right side.

LEGAL ANALYSIS

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

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

A. The Use of Deadly Force in Defense of Another

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

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

NRS 200.160(1).

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

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

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

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

....

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

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

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

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

Id. at 1051-52.

From the evidence available, it appears the officers were lawfully in the residence based upon the request of the owners and engaging in lawful conduct, attempting to intervene in the actions of an irrational man who was threatening to kill his wife. The officers went into the residence and followed the sounds of screaming and yelling to the decedent's bedroom. The bedroom was occupied by two adults and two small children. The children were on the queen bed in the room. The decedent was holding a metal tool to his wife's throat on another bed in the room.

During the course of the discharge of lawful duties, officers were able to separate the decedent from his wife, and a struggle began. Although the officers were very close to the decedent, they were unable to gain control of him. Both Officers Gastelum and Thompson used Tasers in attempts to subdue the decedent. The Taser strikes had no effect. Officer Thompson touch-stunned the decedent in the thigh. At that point, the decedent kicked Officer Thompson backward and gained possession of Thompson's Taser. Once the decedent was in control of the charged Taser, Officer Thompson was in reasonable apprehension of imminent bodily harm to himself, Officer Gastelum, or Decedent's Wife who was still on the bed next to the decedent. Not only was there threat of injury from the charged Taser, but there was the potential that the decedent could touch-stun one of the officers and gain possession of a firearm, using it on the officers or Decedent's Wife. While Officer Thompson was falling backward, he drew his handgun and fired eight times at the decedent. At that point, the threat to the officers was neutralized, and no further use of force occurred.

Based upon these facts, the force utilized by the officer was necessary to protect himself, another officer and Decedent's Wife from imminent serious bodily injury. As such, the action of the officer was necessary self-defense or defense of others.

B. Justifiable Homicide by a Public Officer

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

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

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

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

When the officers entered the decedent’s bedroom at 2917 Theresa Avenue, they saw two small children on one of the beds, and decedent holding a metal object to his wife’s neck, pinning her to a bed. While Officer Corbett guided the children to safety, Officers Thompson and Gastelum drew their firearms in response to the lethal situation. They ordered the decedent, in both English and Spanish, to show them his hands and release his wife. The decedent failed to obey these lawful commands. Even though officers were able to separate the decedent from his wife by pulling him off the bed, the decedent continued to struggle with the officers and failed to obey lawful commands. Officers made non-lethal efforts to gain control of the decedent, but the decedent continued to resist. Ultimately, the decedent gained possession of Officer Thompson’s charged Taser. Because of the close proximity of all people in the room, and the potential for the decedent to use the Taser to obtain one of the Officers’ firearms, he posed a threat of serious harm not only to Officer Thompson and Officer Gastelum, but to his wife as well. The decedent kicked Officer Thompson backward and wrenched the Taser from Thompson. As he was falling backward, Officer Thompson shot eight times into the body of the decedent.

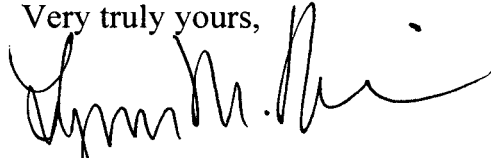
Based upon all the evidence reviewed to date, it is evident that Officer Thompson was confronted with a dynamic mix of evolving facts and circumstances at 2917 Theresa Avenue on the morning of May 27, 2011 and acted in an objectively reasonable manner in response thereto. As such, the State would be unable to prove that the actions of the officers were in fact unjustified “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved death of Alberto Castillo, aka Carlos Renteria, it has been determined that the actions of Officer Robert Thompson were reasonable. The shots fired by Officer Thompson were justified to stop the escalation of violence by the decedent and protect the officers and others at the scene. There is no evidence that the officer acted unlawfully, or with malice aforethought.

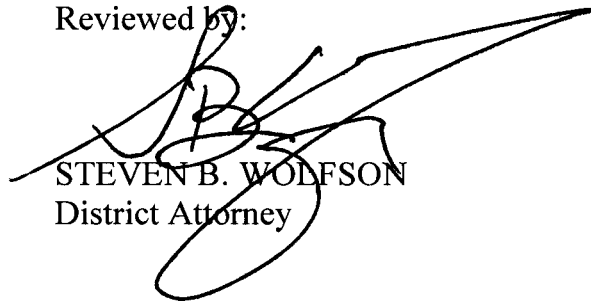
The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. According to NRS 200.190, “[t]he homicide appearing to be justifiable or excusable, the person indicted shall, upon trial, be fully acquitted and discharged.” Therefore, there is no factual or legal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

Very truly yours,



LYNN M. ROBINSON
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney