

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Thomas Domagala on September 19, 2012

### Introduction

On September 19, 2012, members of the Nevada Fugitive Investigative Task Force ("FIST") were conducting surveillance on a residence at 1528 Highfield Court, North Las Vegas, Nevada. FIST is a multi-jurisdictional taskforce made up of members of the Las Vegas Metropolitan Police Department (hereinafter "LVMPD"), United States Marshals (hereinafter "U.S. Marshals") and Homeland Security Investigations (hereinafter "HSI"). FIST is tasked with apprehending wanted fugitives who have active felony warrants. There were a total of eight FIST team members present during the events in question: five Deputy U.S. Marshals, two LVMPD detectives and one special agent from the HSI. FIST team members were conducting surveillance of the residence in an attempt to locate Thomas Domagala (hereinafter "Decedent"). Decedent had active felony arrest warrants out of Arizona. Decedent and two females were observed leaving the residence and entering a white 2008 Toyota Camry, bearing Arizona license plate APG7525. Decedent sat in the front passenger seat. One female, later identified as Decedent's girlfriend (hereinafter "Girlfriend"), got in the driver's seat and the other female, later identified as Girlfriend's friend (hereinafter "Friend"), got into the backseat.

FIST team members followed the Camry after it left the residence. They attempted to stop the vehicle, but the Camry failed to comply and a chase ensued. FIST team members followed the Camry southbound on Martin Luther King Boulevard. The Camry subsequently struck another vehicle that was stopped at a red light at the intersection

of Martin Luther King Boulevard and Cheyenne. The Camry turned right (west) onto Cheyenne and continued on for a short distance before it came to a stop. Decedent exited the passenger side of the Camry. He was brandishing a handgun as he fled north through a nearby gas station/car wash construction site. FIST team member U.S. Deputy Marshal Michael Cavener exited his vehicle with his AR-15 rifle. Deputy Cavener attempted to intercept Decedent on foot. As he was running towards Decedent, Deputy Cavener identified himself as "police" and ordered Decedent to the ground. Fellow FIST team member, U.S. Deputy Marshal Santez Kindred, who was also pursuing Decedent on foot, issued similar commands and ordered Decedent to drop his weapon. Decedent failed to comply. Instead, Decedent continued running while holding a handgun. Decedent and Deputy Cavener were within seconds of running into each other when Deputy Cavener shot Decedent one time. Decedent fell to the ground. Decedent was handcuffed and medical assistance was requested to respond to the scene. Decedent was declared deceased at the scene by paramedics. A loaded H&K .40 handgun was recovered under Decedent. Both females in the Camry were detained and later arrested. North Las Vegas Police Department (hereinafter "NLVPD") Detective Allen Antoniewicz arrived after the incident and conducted the investigation.

The District Attorney's Office has completed its review of the September 19, 2012, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the U.S. Deputy Marshal were not criminal in nature. This review was based on all the evidence currently available.

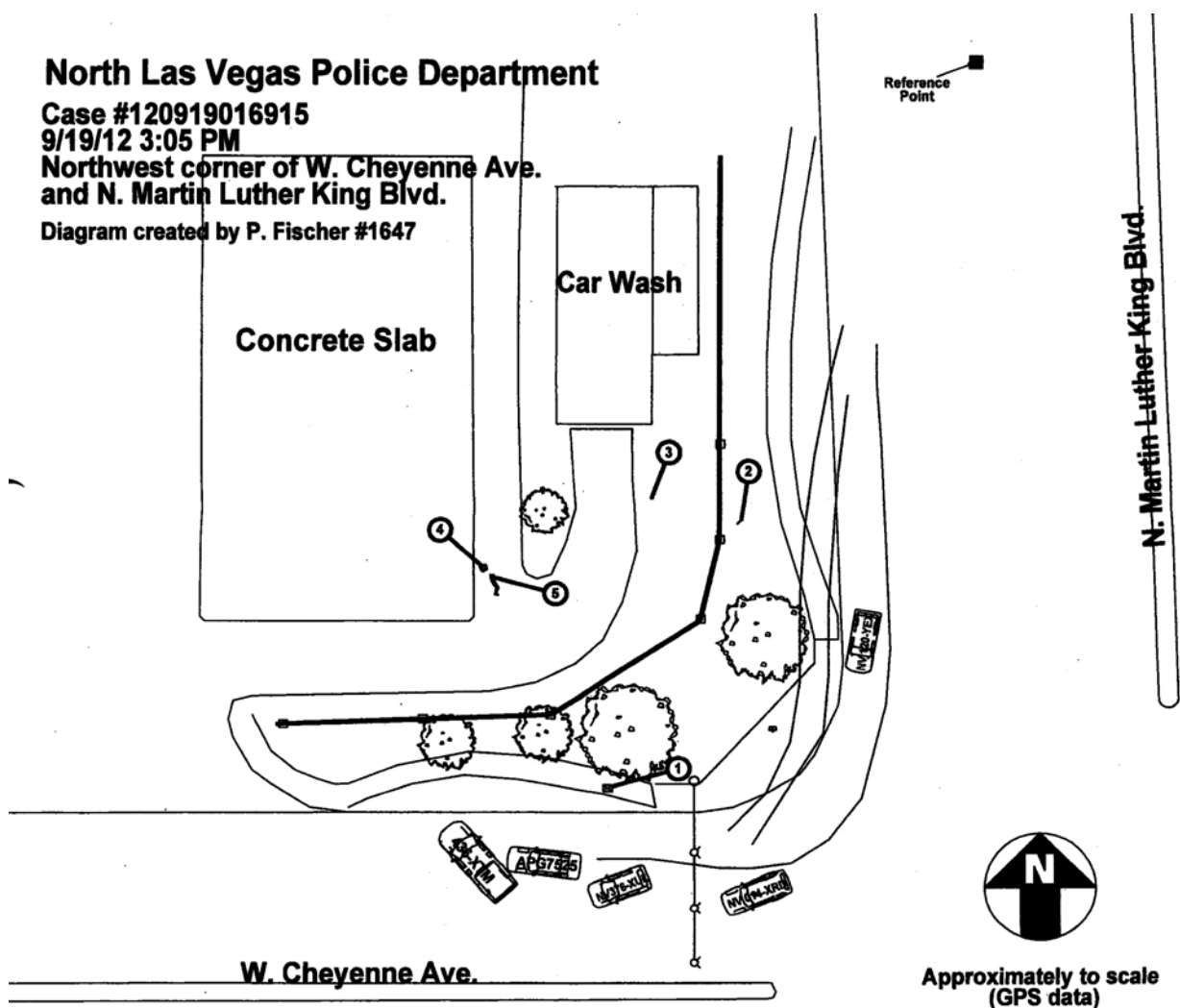
This report explains why criminal charges will not be forthcoming against the U.S. Deputy Marshal involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. This report is intended solely for the purpose of explaining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

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

A Police Fatality Public Fact-finding Review was not conducted in this case. Clark County Code 2.14 mandates such a review when a police-involved death occurs, and the prosecutor preliminarily determines that no criminal prosecution of the officer is appropriate. The definition of "officer" is limited by NRS Chapter 289 to state and local law enforcement personnel. In the instant case, U.S. Deputy Marshal Cavener was acting in his capacity as a federal law enforcement agent; therefore, he was not an "officer" for purposes of Clark County Code 2.14.

## Background

At the time FIST members came into contact with Decedent, he had active felony arrest warrants out of Arizona. The warrants included a warrant for parole violation issued by the Arizona Department of Corrections and a warrant for burglary issued by Pima County, Arizona, Sheriff's Department. Decedent was also wanted for numerous burglaries in and around the Tucson, Arizona area. One of the burglaries involved a home invasion where Decedent had "pistol-whipped" an 85-year-old man nearly to death because the elderly victim had tried to prevent Decedent from stealing his vehicle. FIST team members also had information that Decedent may have been using methamphetamine and be in possession of a Mini-14 assault rifle and a 9mm pistol. They had further information that Decedent had made statements regarding a "shoot-out" with police and that he might attempt a "suicide by cop." The loaded .40 handgun recovered under Decedent was reported stolen out of Pima County, Arizona.



**Item #1-** One black canvas messenger style bag with misc items, Arizona DL Meggan Lee Lecroy.

**Item #2-** One black expandable Autolock Monadnock Asp serial #416172.

**Item #3-** One WCC 11 5.56 MM cartridge casing.

**Item #4-** One tan Marc Ecko purse containing make up bag, black wallet, tan wallet Arizona DL Kelly Ann Jurgenson.

**Item #5-** One black HK USP 40 cal handgun serial #2228112, one HK 40 cal magazine containing ten (10) "Hornady" 40S&W cartridges, two (2) "Federal" 40S&W cartridges and one "Hornady" 40S&W cartridge removed from the chamber of handgun. Reported stolen out of Pima County Sheriff Office Arizona.

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## **The Events at Martin Luther King Boulevard and Cheyenne, North Las Vegas, Nevada, on the Afternoon of September 19, 2012**

Deputy U.S. Marshal Alfredo Despy

Deputy Despy was a FIST team member assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive for parole violation and numerous home burglaries. He was driving an unmarked, copper-colored 2009 Ford Explorer. While conducting surveillance, he was notified that Decedent had entered into the passenger seat of a white Toyota Camry. There were also two females in the vehicle, with one of them driving. When the Camry pulled away from the residence, he pulled in right behind it. There was also a FIST team member vehicle directly in front of Decedent's vehicle. Deputy Despy activated his emergency lights and siren. The Camry did not stop and instead made a right turn and accelerated away from him. He then fell behind two other FIST team members, who were also pursuing the Camry. Both of the vehicles had on their lights and sirens. Deputy Despy followed the Camry as it made its way south on Martin Luther King Boulevard and he observed it make a right on Cheyenne heading west. The Camry struck a black SUV and was then cut off by one of the FIST team member's vehicles, a white Ford pick-up truck. Deputy Despy stopped his vehicle approximately seventy-five feet from the intersection and got out. He was wearing a green ballistic vest that had a U.S. Marshal star on the upper left chest and on the back was written "Police" and "U.S. Marshal." Deputy Despy was then informed over the radio that Decedent had exited the passenger seat of the vehicle and had taken off running north through a gas station construction site. Deputy Despy ran in that direction and observed Decedent running with a handgun in his right hand. He then observed Deputy Cavener raise his rifle and fire one shot at Decedent who then collapsed. Deputy Despy estimated that Deputy Cavener was approximately 50 feet from Decedent and approximately six feet in front and to the left of himself when the

shot was fired. A female, subsequently identified as Girlfriend, then came up to Decedent and was hanging onto him. Deputy Despy, Deputy Cavener, Deputy Kindred and Deputy Montana all surrounded Decedent and Girlfriend, with guns drawn. Both Decedent and Girlfriend were placed in handcuffs and they called for medical assistance. Deputy Despy observed the handgun underneath Decedent where his hands had been. Deputy Despy stated:

“...we had received that he was carrying a Ruger mini-or he was carrying a mini 14 rifle and a nine millimeter pistol of unknown make. Um, and the – the information we had received from Arizona stated that he was going to shoot it out with police or do, ah suicide by cop. Um, when he exited the vehicle and he had the pistol in his hand, I definitely felt in fear for my life and for the lives of, ah, other deputies and for the public.”

It was Deputy Despy’s conclusion that Deputy Cavener ended that threat.

### Deputy U.S. Marshal Santez Kindred

Deputy Kindred was a FIST team member assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. He was driving a white Ford Edge and Deputy Cavener was in the passenger seat. While conducting surveillance, the two were notified that Decedent had entered a vehicle. He and other FIST team members attempted to block the vehicle in an effort to effectuate a vehicle stop. However, the female driver turned off to the right and a chase ensued. Deputy Kindred recalls all of the FIST team member vehicles having on their lights and sirens. As they were heading southbound on Martin Luther King Boulevard, Deputy Kindred observed the vehicle sideswipe a dark colored vehicle as it attempted to turn right (west) on Cheyenne. The vehicle rolled to a stop a short distance on Cheyenne and Decedent jumped out of the car. As Decedent jumped out of the vehicle, Deputy Kindred could see a handgun in his hand. Decedent was running right in front of him and Deputy Cavener. Deputy Kindred stated:

“...as he’s jumping out of the car myself and, ah, Mike Cavener were in my vehicle, ah we’re jumping – as he jumps out I could see his, ah, the handgun in his hand and he’s running right towards, ah, across in front of me and Mike Cavener. And, ah, we’re yelling at him to – ‘Get down. Get down and drop the gun,’ and, um I come up on target but by the time I came – by the time I came up Mike had already got on target and, ah, took a shot and, ah, stopped the threat.”

Deputy Cavener was to his right and they were both running straight towards Decedent. Deputy Kindred had lifted his handgun to engage the threat, but Deputy Cavener fired his AR-15 first. If Deputy Cavener had not fired, the three would have ultimately run

right into each other. Deputy Kindred only heard one shot being fired. He saw Decedent go down and then saw a hysterical female jump on Decedent. Deputies placed her and Decedent in handcuffs. He did not see the handgun after Decedent fell to the ground.

### Deputy U.S. Marshal Michael Cavener

Deputy Cavener was a FIST team member assisting in the surveillance of 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. Deputy Cavener was in the passenger seat of an unmarked, white Ford Edge being driven by Deputy Santez Kindred. The two were informed by FIST team members in a surveillance van that Decedent was observed exiting the residence and entering a white vehicle. They were further informed that Decedent was in the passenger seat and a female was driving. Deputy Kindred, along with other FIST team members, positioned their vehicles in an effort to converge on Decedent's vehicle in the cul de sac where the residence was located. However, Decedent's vehicle was able to drive around their vehicles and accelerated away from them. A vehicle pursuit then occurred. Deputy Cavener recalled four or five vehicles being involved in the pursuit of Decedent. It appeared to Deputy Cavener that most of the FIST team members' vehicles had on their lights and sirens. He observed Decedent's vehicle strike a vehicle that was stopped at a red light. Decedent's vehicle continued for a short distance and then slowly came to a stop. LVMPD Detective Timothy Shoening then pulled his vehicle in front of Decedent's vehicle to block it in. Based upon his training and experience as a patrol officer for five years and a Deputy U.S. Marshal for two years, Deputy Cavener believed that Decedent would flee on foot north into an open area of a car wash that was under construction by the intersection of Cheyenne and Martin Luther King Boulevard. He told Deputy Kindred to stop their vehicle because Decedent was "gonna bail." Deputy Kindred stopped their vehicle and Deputy Cavener exited the vehicle with his AR-15 rifle. He was wearing a green tactical vest with a U.S. Marshal star on the front. On the back, was written "Police" and "U.S. Marshal." Deputy Cavener started running at an angle through the open area of the construction site in an effort to cut off Decedent, if Decedent decided to run. Deputy Cavener observed Decedent coming out of his vehicle and heading exactly where he thought Decedent would run. Deputy Cavener then stated the following:

"...I see him come out, um, I yell 'Police. Get on the ground.' And he doesn't comply – he continues to run. And at that point I – I see the gun in his hand and, um, like I said, you know, we're both kinda running to the – to the same point. I'm kind of at an angle – he's running straight across and, uh, I see the gun in his hand and he's pumping his arms while he's running. And at some point he takes – after I see the gun he probably takes two or three steps. He looks over, uh, at me and I knew Santez Kindred was right by me. He looks over at me, his arms are

pumping and, uh, you know, at that point that gun looks – looks like it’s – it-it’s huge, it looks like the size of a cannon ... And , uh, I believed at that point, that he could and would shoot either me or my team members. And, um, I raised my firearm and I shot him before he had the opportunity to do so. At that point he went – he went down to the ground.”

Deputy Cavener estimated that he was seven to ten yards away from Decedent when he fired his AR-15. Decedent was running right towards him and the two would have been in direct contact with each other in a matter of seconds. The entire incident happened very quickly. It was the totality of the circumstances that caused Deputy Cavener to shoot Decedent: the violent nature of Decedent’s pending charges, the information he was provided regarding Decedent’s statements about a “shootout” and “suicide by cop,” the vehicle pursuit, and Decedent running with a handgun near a busy intersection. All the above factors caused Deputy Cavener to believe Decedent was a threat to himself, Deputy Kindred, his fellow team members, and the general public. Deputy Cavener did not know where he shot Decedent, so he approached Decedent with his gun pointed at him. He observed Decedent’s handgun lying next to him. He then observed a female jump on Decedent, but his attention was focused on the handgun. Other Deputies placed the female and Decedent in handcuffs.

### Deputy U.S. Marshal Concepcion Arzate

Deputy Arzate was a FIST team member assisting in the surveillance of 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. Deputy Arzate was driving an unmarked 2008 silver Dodge Charger. Decedent was identified coming out of the residence and entering a white Camry with two females. An attempt was made by FIST team members to block Decedent’s vehicle within the cul de sac where the residence was located to avoid the vehicle entering the main road. One of the FIST team members pulled their vehicle up and tried to block the Camry in, but the Camry drove around it and pulled into traffic. Lights and sirens were deployed by FIST team members and a chase ensued. Deputy Arzate was in the last vehicle following Decedent southbound on Martin Luther King Boulevard. He believed that Decedent’s vehicle hit one or two vehicles and went onto a curb. Deputy Arzate could not observe what was going on from his location, but heard over the radio that Decedent’s vehicle had stopped and Decedent was running towards a construction site. Deputy Arzate stopped his vehicle, exited and ran towards where he believed Decedent was heading. Deputy Arzate ran approximately 10 to 15 feet and, as he was approaching the corner of a wall, he heard one shot. When he turned the corner, he observed Decedent facedown on the ground. A female, subsequently identified as Girlfriend, was on top of Decedent crying and grabbing him. Another Deputy put Girlfriend in custody while Deputy Azarte and another Deputy placed handcuffs on Decedent. When Deputy

Arzate lifted up Decedent's arm up to place handcuffs on him, he observed a H&K handgun underneath Decedent's stomach. Decedent was not moving.

### Deputy U.S. Marshal Brian Montana

Deputy Montana was a FIST team member assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. Deputy Montana was driving a white Ford Edge, which is a small SUV. He was informed that Decedent had left the residence and was a passenger in a white Toyota Camry. FIST team members attempted to stop the vehicle, but the female driver went around them and took off away from them at a high rate of speed. He activated his lights and sirens and pursued Decedent's vehicle south on Martin Luther King Boulevard. Deputy Montana observed the Camry strike a black SUV stopped at a red light at the intersection of Cheyenne and Martin Luther King Boulevard. The Camry then turned right (west) on Cheyenne. The vehicle came to a stop and the passenger jumped out of the vehicle and began running towards a gas station/car wash construction area. Deputy Montana stopped and jumped out of his vehicle. As he was coming around the back of his vehicle, he heard a shot being fired. He approached the location and as he got closer, he observed that Decedent was down. He then saw the female driver run up to Decedent crying and jump on top of him. He, along with other Deputies, placed the female and Decedent in handcuffs. Deputy Montana believed that Detective LeBlanc called for medical assistance at that time.

### LVMPD Detective Timothy Shoening

Detective Shoening was a FIST team member assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. FIST had as much manpower as they could get to apprehend Decedent based upon the information they had regarding Decedent's dangerousness. Detective Shoening was driving a white Ford F-250 pick-up truck. He was informed that Decedent had left the residence and had entered into a white vehicle with two females. One female was driving, another female was in the backseat and Decedent was in the front passenger seat. When they attempted to stop the vehicle, it drove around them and sped off. FIST team members went in pursuit. Decedent's vehicle hit at least one vehicle and then turned westbound on Cheyenne from Martin Luther King Boulevard. Detective Shoening cut across the northwest corner of the intersection through a carwash construction area in an attempt to block the vehicle. The vehicle did stop and Decedent exited the vehicle and started running in the direction of the construction site. Decedent had something black his hands but he could not tell what it was. Detective Shoening pulled in and blocked the vehicle so that it could not go forward. The two females were in the process of getting out and running as well. Decedent was running



north and was approximately 15 yards from the vehicle when he heard a “pop.” He observed Decedent go down and one of the females run up and jump on top of him. The other female complied with commands and got on the ground. He observed several FIST team members approach Decedent and place the female and Decedent in custody. Detective Shoening requested medical to respond.

### LVMPD Detective Brendan Leblanc

LVMPD Detective Leblanc, along with Special Agent Craig Dumais, were FIST team members assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. He and Special Agent Dumais were in an undercover U.S. Marshal’s van parked close to the target residence. They observed Decedent coming out of the residence along with two females. The females appeared to be going with Decedent voluntarily. Decedent entered the passenger side of a white Toyota Camry. One female got into the driver’s side of the vehicle and the other female got in back. He and Special Agent Dumais informed other FIST team members that Decedent was leaving the location in a white Toyota Camry. They stayed at their location in case Decedent returned to the residence. He and Special Agent Dumais were informed that FIST team members were in pursuit of Decedent. Detective Leblanc recalled being informed that Decedent was running and was armed. He heard FIST team members saying “gun-gun-gun” and a split second later he heard that shots had been fired. He and Special Agent Dumais drove to the scene. When they arrived, Decedent was already down and in handcuffs. Detective Leblanc called for medical assistance and later learned that medical assistance had already been called.

### HSI Special Agent Craig Dumais

Special Agent Dumais, along with LVMPD Detective Leblanc, were FIST team members assisting in the surveillance of a residence at 1528 Highfield Court in an attempt to apprehend Decedent, a wanted fugitive. He and Detective Leblanc were in an undercover U.S. Marshal’s van parked close to the target residence. They observed Decedent coming out of the residence along with two females. The females appeared to be going with Decedent voluntarily. Decedent entered the passenger side of a white Toyota Camry. One female got into the driver’s side of the vehicle and the other female got in back. He and Detective LaBlanc informed other FIST team members that Decedent was leaving the location in a white Toyota Camry. They stayed at their location in case Decedent returned to the residence. He and Detective LaBlanc were informed that a traffic stop on Camry had failed and that FIST team members were in pursuit. They were then informed that shots had been fired. He and Detective LaBlanc drove to the scene. When they arrived, Decedent was already down. He observed a

handgun by Decedent. He and Detective LaBlanc assisted in securing the scene and calling for medical assistance.

## CIVILIANS

### Girlfriend

After the incident, Detective Antoniewicz interviewed Girlfriend. Girlfriend was in custody and her *Miranda* rights were read to her. Girlfriend initially agreed to speak with Detective Antoniewicz. Girlfriend acknowledged that Decedent was her boyfriend. She stated that she was kidnapped by Decedent from Friend's residence in Tucson, Arizona. Decedent had come to Friend's residence with a gun and threatened to kill himself in order to get Girlfriend to come with him. Girlfriend agreed to go with Decedent and Friend also came along to make sure she was okay. Girlfriend then advised Detective Antoniewicz that she wished to speak to an attorney and questioning ceased.

### Friend

After the incident, Detective Antoniewicz interviewed Friend. Friend was in custody and her *Miranda* rights were read to her. Friend initially agreed to speak with Detective Antoniewicz. Friend stated that she had been at a friend's house when Decedent had told her to get in his vehicle. She did not know at the time that they were coming to Las Vegas. Decedent took Friend's phone and would not let her use it. Friend then advised Detective Antoniewicz that she wished to speak to an attorney and questioning ceased.

### Citizen #1

Citizen #1 was sitting in his truck near the intersection of Cheyenne and Martin Luther King Boulevard. He was having lunch behind the wheel of his truck at the time of the incident. He heard the screech of a truck, a white Ford pick-up, and observed it cutting off a white sedan. He saw two people get out of the sedan. One was a woman and he believed the other was Decedent. As soon as Decedent got out of the car, he started running very fast towards a construction area. Decedent got out so fast that Citizen #1 did not get a good look at him. He also saw four cars that were following that white truck. The vehicles had on lights and sirens. There were approximately six individuals with bulletproof vests and big guns. There was no question in his mind that they were all police officers. He heard them tell Decedent to stop running. Decedent tripped in the construction area, fell, and when he stood up to keep running and he "put his hands like doing something" and that was when the shot was fired. Citizen #1 did not see

anything in Decedent's hands, but if he did have something in his hands, the movement that he observed Decedent make would have been threatening. Citizen #1 heard only one shot. He saw the officer who shot Decedent. The officer was approximately 20 to 30 feet away. The other officers were approximately 40 to 50 feet away. Decedent fell and the female came over and was looking at him. He saw a third female subsequently being taken into custody near the white sedan. The whole thing took approximately 10 to 15 seconds.

### Citizen #2

Citizen #2 was sitting in his truck at the intersection of Cheyenne and Martin Luther King Boulevard at the time of the incident. His black Nissan SUV was pointing southbound on Martin Luther King Boulevard when it was sideswiped on the left rear side by a white Toyota. The Toyota then squeezed in between his vehicle and a vehicle to his left. The Toyota then drove in front of him and turned right (west) on Cheyenne. The Toyota went approximately 100 yards and stopped. Citizen #2 heard sirens coming up from behind him and he saw several vehicles stop all around him. The vehicles had flashing lights. Citizen #2 observed three people get out of the Toyota. Decedent was in the front passenger seat and he ran out of the vehicle first. He flung the door open and made a straight run for the carwash/gas station area. There was a gap in time before the other two got out of the vehicle. One was a female who ran after Decedent. He could not tell the gender of the third person. That person got out and laid down on the ground. Citizen #2 also observed a number of plain clothes individuals in police vests exit vehicles behind him and holding large rifles. The vehicles had on their lights and sirens. He heard all of the police yelling, but couldn't hear what they were saying. Then he heard a "pop-pop-pop." Decedent, who was running the fastest, dropped immediately and the female that was running behind him jumped on top of him. The police closed in on the female and Decedent and placed them both in handcuffs. The entire incident happened very fast.

### Citizen #3

Citizen #3 was sitting in her vehicle at intersection of Cheyenne and Martin Luther King Boulevard. She was eastbound on Cheyenne and was going to turn left (north) onto Martin Luther King Boulevard. While sitting at a red light, she observed a white vehicle drive around the corner from Martin Luther King Boulevard heading westbound on Cheyenne. The white vehicle stopped in the middle of the road, approximately a car length away from her. A white truck then drove in front of it. She observed a female jump out of the driver's side of the white vehicle. She looked scared. Then Decedent jumped out of the passenger side of the white vehicle. It looked like he had a gun in his left hand. Decedent started running towards the car wash and the female was running

behind him. Decedent's hands were going up and down as he was running. She observed a male get out of the white truck and chase after them. She also saw four men approaching Decedent from the sidewalk along Martin Luther King Boulevard. Decedent ran a few feet and then she heard a shot. Citizen #3 could not tell where the shot came from. Decedent went down and the female behind him jumped on him and started screaming. She observed the four men approach and saw that they were wearing vests and had guns. She also noticed the flashing lights of their vehicles behind them. She also noticed that the truck had flashing lights. She did not hear anything other than the shot. The four men approached Decedent and placed him and the female in handcuffs. It all happened very fast.

#### Citizen #4

Citizen #4 was 17-year-old student at Desert Rose High School at the time of the incident. He was located at the bus stop on the northwest corner of the intersection of Cheyenne and Martin Luther King Boulevard at the time of the incident. He heard a gunshot, but did not see anything.

#### Citizen #5

Citizen #5 was standing at the bus stop on the northwest corner of the intersection of Cheyenne and Martin Luther King Boulevard during the time of the incident. There was a good amount of traffic on Cheyenne at the time. He observed the Toyota Camry turn onto Cheyenne from Martin Luther King Boulevard and come to a stop near the intersection. He observed a white truck following it. The truck came in right behind the white car and then came in around and blocked it. Citizen #5 observed one female get out of the driver's side door of the white vehicle and run off. He did not see a male exit the white vehicle. He was far enough away not to be able to hear if anyone said anything. He then heard a loud bang and that was all. He then saw officers in vests arresting two females. Citizen #5 was approximately 100 yards west of their location, but he could tell they were police officers.

#### Citizen #6

Citizen #6 lived at 1528 Highfield Court. He owned the residence and would rent out spare rooms to supplement his income. He would advertise rooms for rent on Craigslist. Approximately a week before the incident, Decedent contacted him about renting one of his spare rooms. He agreed to allow Decedent to live there alone and only found out a few days later that there were also two females staying there with him. Citizen #6 also found out later that Decedent was friends with an ex-boyfriend of one of his

daughters. That friend later helped one of the females move out after the incident. He did not recall whether Decedent gave him his full name. He knew Decedent as Thomas or Tom. Decedent said he was from Arizona and he was trying to get his life together. Citizen #6 confronted Decedent about him having two females staying with him. Citizen #6 did not recall the names of the two females, but he did recall Decedent saying he was going to marry one and then send them both back to Arizona. Decedent said he was going to stay in Las Vegas. Citizen #6 recalled them coming in and out of the house in the middle of the night. At one point, he observed Decedent leaving his room with a black semi-automatic handgun that he wore in a holster on his hip. It was the same day that he discovered Decedent also had two females staying in his room. Some time after that, Citizen #6 also observed Decedent with an antique revolver. Citizen #6 told Decedent that he could not have guns in the house. Decedent apologized and he allowed Decedent to stay. Decedent and the females were generally sleeping when he was awake and awake when he was sleeping. He observed no indication that either female was being held against their will. They were free to come and go as they pleased.

### Citizen #7

Citizen #7 lived at 1528 Highfield Court with her mother and her mother's boyfriend, Citizen #6. Citizen #6 owned the residence and would rent out spare rooms. Approximately a week before the incident, Decedent and Girlfriend began renting the third room. She believed Decedent found the room through an advertisement in Craigslist. Decedent and Girlfriend stated that they had moved from Arizona and they brought Friend along with them. Friend was only supposed to stay for a few days. They only had clothes and toiletries with them. Decedent did not say why he left Arizona and did not say how long he was going to stay. Citizen #6 was pretty flexible on rent payments and the length-of-stay. Decedent, Girlfriend and Friend all rode in the white Toyota. Citizen #7 was often not at home. However, from what she observed, she did not believe that any of them worked. It also seemed to her that they rarely left the residence. If they did, they did not leave for very long. Neither of the two females appeared to be under any duress. She last saw the three leaving the residence shortly before the incident. Later, Citizen #7 went to get cigarettes at the Chevron gas station located near the intersection of Cheyenne and Martin Luther King Boulevard and observed the white Toyota and what she believed to be a body. She went home and saw what happened on the news. She packed up the belongings that were left in their room, but did not see any weapons or ammunition.

## THE COUNTDOWN OF DEPUTY CAVENER'S WEAPON

A countdown of Deputy Cavener's weapon - - a Leo tech LWRC M6 5.56mm rifle a.k.a, "AR-15" - - revealed a total of twenty-six "WCC 11" 5.56mm cartridges in the weapon (one in the chamber and twenty-five in the thirty-round-capacity magazine). Deputy Cavener fired his weapon one time during this incident.

One spent "WCC 11" 5.56mm shell casing was recovered at the scene. (See diagram on page 3 of this report).

## THE COUNTDOWN OF DECEDENT'S WEAPON

A countdown of Decedent's weapon - - a H&K .40 caliber handgun - - revealed a total of ten "Hornady" .40 caliber cartridges and two "Federal" .40 cartridges in the magazine clip and one "Hornady" .40 caliber cartridge in the chamber.

## THE AUTOPSY OF DECEDENT

On September 20, 2012, an autopsy was performed on the body of Decedent at the Clark County Coroner's Office. Doctor Lary Simms determined Decedent died as a result of a gunshot wound to the head. A toxicology report from the autopsy revealed 1000 ng/mL of methamphetamine in Decedent's blood. There was also 95 ng/mL of amphetamine in his blood. The report noted that methamphetamine is a D.E.A. Schedule II stimulant drug where blood levels between 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. It further indicated that high doses of methamphetamine can elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

## DECEDENT'S VEHICLE

As a result of the collision, Decedent's white Toyota Camry had damage to its right front side and its right front tire was disabled. The Camry's white side mirror was recovered next to Citizen #2's Nissan SUV.

## THE SEARCH OF DECEDENT'S VEHICLE

During the follow-up investigation, a search warrant was obtained for Decedent's white 2008 Toyota Camry bearing Arizona license plate APG7525. The warrant was approved by Justice of the Peace Natalie Tyrrell. During the execution of the search warrant, one

“Hornady” .40 caliber cartridge, 48 “Federal” .40 caliber cartridges (44 boxed, 4 loose), a black Fobus model HK-1 handgun holster (sized to fit Decedent’s handgun) and a Red Jacket .32 caliber revolver, bearing serial #30070 were recovered. The holster and .32 caliber revolver were located in the center console. Four of the cartridge cases and the box of “Federal” cartridges were found on the front passenger floor board along with one cartridge found on the passenger seat.

## 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.

### A. The Use of Deadly Force in Defense of Another

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

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

NRS §200.160(1).

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

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

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

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

....

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

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

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

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

Id. at 1051-52.

In this case, Decedent posed an objectively reasonable imminent danger to U.S. Deputy Marshal Cavener, fellow FIST team members on the scene and citizens in the immediate area. Decedent had active felony warrants for parole violation and a home burglary which involved the “pistol-whipping” of an elderly victim. FIST team members had information that Decedent would engage in a “shoot-out” and might resort to a “suicide-by-cop” if confronted by law enforcement. Decedent and Girlfriend then failed



to stop their vehicle when surrounded by multiple FIST team members in their vehicles. Instead, they engaged in a vehicle pursuit with FIST team members, who had activated their lights and sirens. Decedent and Girlfriend did not stop until their vehicle struck an innocent citizen's vehicle and their vehicle became disabled. However, Decedent still did not surrender. Decedent jumped out of his vehicle with a loaded handgun, leaving ammunition scattered in his seat and floorboard. Decedent proceeded to run with the handgun in his hand in a high-traffic area. Decedent failed to comply with orders from FIST team members to stop, drop to the ground and drop his weapon. Decedent continued to run in a direction which would have put him into a collision with Deputy Cavener in a matter of seconds. As a result, Deputy Cavener was confronted by the appearance of imminent danger, which created in his mind an honest belief and fear that they, or others, were about to be killed or suffer great bodily injury. It was at that time that Deputy Cavener responded by firing one shot from his AR-15 at a distance of approximately ten yards from Decedent. Accordingly, Deputy Cavener was justified in acting upon those appearances, fears and actual beliefs.

## 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).

In this case, the Deputy who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to himself or other persons. Decedent had multiple active warrants involving violent acts. Decedent and Girlfriend failed to comply with FIST team members' directives and engaged in a vehicle chase endangering everyone along his route. The chase only ended after Decedent's vehicle crashed into another vehicle and became disabled. Decedent then exited his vehicle with a loaded handgun and failed to comply with direct orders to stop and drop his weapon. Decedent's previous statements, his failure to comply with FIST team members and his continued flight with a handgun in the direction of Deputy Cavener, were all circumstances which created probable cause in the Deputy's mind that Decedent posed a threat of serious physical harm either to the Deputy or others.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the Deputy were in fact unjustified "in the discharge of a legal duty." Decedent's actions leading up to the shooting led the Deputy to reasonably believe that Decedent was in possession of a weapon and would use it.

## **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 Deputy U.S. Marshal Michael Cavener 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 Deputy, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Submitted April 18, 2013

STEVEN B. WOLFSON  
District Attorney

By

ROBERT B. TURNER  
Chief Deputy District Attorney