

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Roberto Torres on February 8, 2013

INTRODUCTION

On February 8th, 2013, at approximately 3:31 p.m., members of the Las Vegas Metropolitan Police Department (hereinafter "LVMPD") Repeat Offender Program (hereinafter "ROP") and Problem Solving Unit (hereinafter "PSU"), including ROP Detective Scott Thomas, PSU Officer Joe Parra, and PSU Officer Clyde Villanueva, were attempting to arrest Roberto Torres (hereinafter "Decedent"). Decedent had an active felony arrest warrant for Attempted Murder with Use of a Deadly Weapon and Battery Domestic Violence with Use of a Deadly Weapon. At the time officers came into contact with Decedent, he was standing behind a vehicle near the entrance to the apartment complex at 4156 Pennwood Avenue. Present with Decedent were two innocent bystanders, later identified as Citizen #1 and Citizen #2. The two were trying to sell a vehicle to Decedent.

The officers approached Decedent and ordered him, Citizen #1 and Citizen #2 to raise their hands and get onto the ground. Decedent did not comply with the commands of the officers. Instead, he pulled a handgun from his waist, pointed the weapon at Officer Parra, and fired. Detective Thomas and Officer Parra both returned fire at Decedent. Officer Parra fired one time, striking Citizen #2, who was standing in front of and slightly to the right of Decedent, in his torso. Detective Thomas fired six shots. Four shots struck Decedent. One shot grazed Citizen #1's left ankle and then ricocheted into her vehicle's left front tire. The other shot struck Citizen #1's vehicle in the left rear quarter panel. Citizen #1's wound was superficial and she refused transport

to a hospital. Decedent and Citizen #2 were transported to UMC Trauma Center. Decedent was pronounced dead shortly after arrival. Citizen #2 remained in the hospital for several days before being discharged. LVMPD Homicide Detective Clifford Mogg was assigned to conduct the investigation of the incident with the assistance of other members of his Homicide squad.

The District Attorney's Office has completed its review of the February 8th, 2013, 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 officers were not criminal.

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 citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Fact-Finding Review conducted on November 15th, 2013. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the actions of the officers were 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.

BACKGROUND

Decedent was, at one point, a member of the "Eastside Trece" or "Eastside 13" criminal street gang out of Los Angeles, California.

Decedent had a number of arrests for violent and weapons-related offenses in California, including: Robbery in 1995, Having a Firearm at a Public School in 1998, Carrying a Loaded Firearm in a Public Place in 1998, Carrying a Concealed Weapon on Person in 1998, Force/Assault with Deadly Weapon Not a Firearm: Great Bodily Injury Likely in 1998, and Carrying a Concealed Weapon: Criminal Street Gang in 1999.

In 1999, Decedent was convicted, also in California, of the felony offenses of Taking Vehicle Without the Owner's Consent and Possession of a Narcotic Controlled Substance. Decedent was sentenced to prison. In 2006, while out on parole for the above listed felonies, Decedent was convicted of the felony offense of Felon in Possession of a Firearm. Decedent was sentenced to prison again.

On February 6th, 2013, while residing in Las Vegas, Decedent shot his pregnant girlfriend (hereinafter "Girlfriend") in the head with a black semi-automatic handgun

inside the apartment they shared. Decedent then fled the scene with the handgun in his silver Dodge Stratus. Girlfriend was transported to the hospital and then released. She and her three children were subsequently sent to Shade Tree to reside for their protection. However, Girlfriend left Shade Tree shortly thereafter and moved back into the same apartment complex.

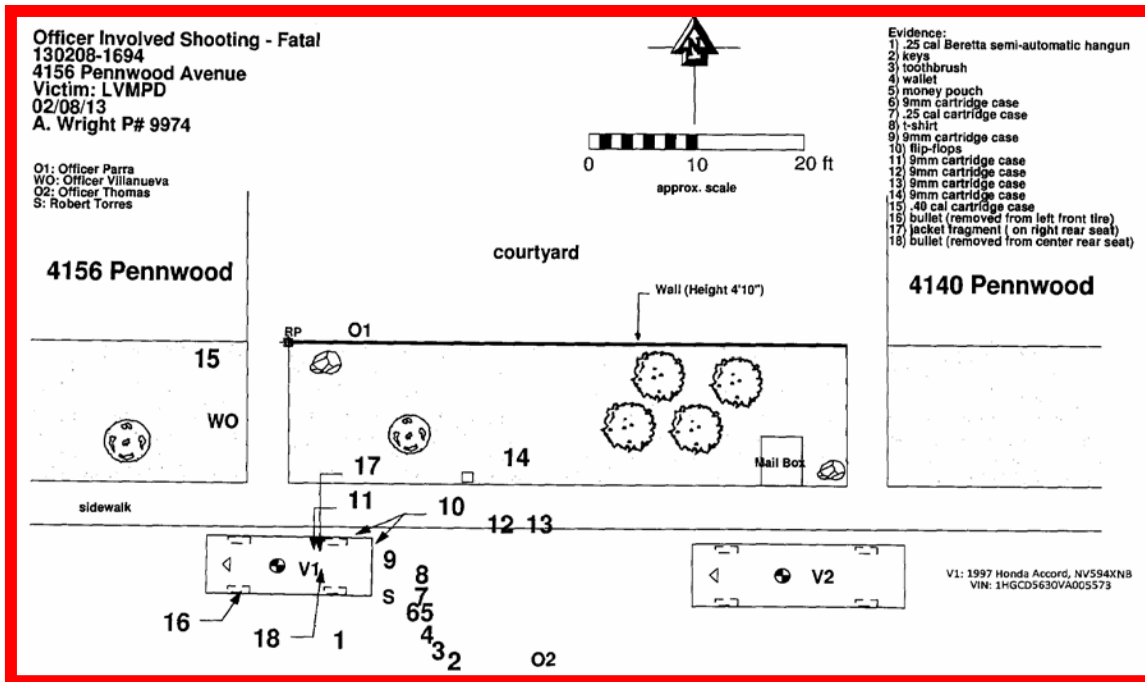
On February 7th, 2013, at approximately 2:32 a.m., LVMPD officers were involved in a high-speed pursuit of Decedent's silver Dodge Stratus. Officers ultimately lost sight of the vehicle. At approximately 2:42 a.m., officers located the Dodge Stratus abandoned one block west of Decedent and Girlfriend's apartment. The occupant, described as a white male adult, was not located. The vehicle was towed and impounded. On that same date, a felony arrest warrant was issued for the crimes of Attempted Murder with Use of a Deadly Weapon and Battery Domestic Violence with Use of a Deadly Weapon related to Decedent's shooting of Girlfriend.

The handgun Decedent used to shoot Girlfriend in the head was later identified as the handgun he used to shoot at Officer Parra. It was a Beretta Model 950BS .25 caliber handgun bearing serial number BU54375V. The handgun was stolen at the end of October of 2012, out of its registered owner's vehicle.

THE EVENTS AT 4156 PENNWOOD AVENUE ON THE AFTERNOON OF FEBRUARY 8, 2013



AERIAL MAP



INCIDENT SCENE

POLICE OFFICERS

Sergeant Mark Misuraca

On February 8th, 2013, at approximately 7:26 p.m., Homicide Detective Dan Long conducted a recorded interview with PSU Sergeant Misuraca. PSU does not maintain a specific caseload, but instead assists other LVMPD units in the investigations of their cases. Sgt. Misuraca stated that on February 6th, 2013, at approximately 6:10 p.m., his PSU team, including Officer Joseph Parra, responded to Girlfriend's residence to assist in the attempted murder investigation involving Decedent. Ultimately, his PSU team was assigned to investigate the case and locate Decedent. Sgt. Misuraca was briefed on the facts of the shooting and tasked Officer Parra with interviewing Girlfriend. Over the next two days, his team attempted to locate and apprehend Decedent. On February 8th, 2013, at approximately 9:00 a.m., Sgt. Misuraca's team met with and briefed members of ROP Sergeant Dave Valenta's team who had agreed to assist in the location and apprehension of Decedent. The briefing included Decedent's criminal and gang background, the facts of Girlfriend's shooting, and that Decedent might be armed with a handgun. Sgt. Misuraca was also aware that Girlfriend was still residing in the same apartment complex where she was shot. He was concerned that Decedent might return to the apartment complex and confront Girlfriend and/or her children. A photograph of Decedent was distributed to team members during the briefing. Sgt. Misuraca assigned

PSU Officers Paul Lewis and Maurice Collins to conduct surveillance at Girlfriend's apartment complex in the event Decedent returned. He also directed Officer Parra to pick up Girlfriend and drive her to locations where she thought Decedent might be hiding. Girlfriend directed Officer Parra to an apartment complex at 4124 Pennwood Avenue. When they arrived, Girlfriend identified a white Chevy Impala on the south side of the apartment complex as belonging to a friend of Decedent. The Chevy Impala was registered to the girlfriend of an individual later identified as a friend of Decedent (hereinafter "Friend"). Friend was also believed to be a member of Decedent's "Eastside Trece" gang. PSU officers determined that Friend was living at 4124 Pennwood Ave, Apt. "A." At approximately 2:00 p.m., Officers Parra and Villanueva were assigned to conduct surveillance at that location. Sgt. Misuraca was not at the scene at the time of the incident.

Officer Joseph Parra

On February 8th, 2013, following the incident, Officer Joseph Parra conducted an unrecorded "walkthrough" of the scene with Detective Mogg and assisting Homicide detectives. During the walkthrough, Officer Parra stated that he was riding with PSU Officer Villanueva and that the two had parked their unmarked white van in the alley on the north side of 4156 Pennwood Avenue. Officer Parra then walked through the courtyard towards the wall which runs along the north side of Pennwood Avenue between 4140 and 4156 Pennwood Avenue. When he reached the wall, he observed Decedent standing near the rear of a Honda Accord with two other people. Officer Parra then ordered Decedent to raise his hands. Decedent responded by pulling out a handgun and firing one time at Officer Parra. Officer Parra was standing on the courtyard side of the wall, which was approximately 4'10" high. Officer Parra's position was approximately 10 feet away from the southeast corner of 4156 Pennwood Avenue. Officer Parra was in a black tactical vest that had the word "POLICE" in large yellow letters across the front and a LVMPD badge hanging from his neck. On February 13th, at approximately 1:13 p.m., Detective Dan Long conducted a recorded interview with PSU Sergeant Mark Misuraca. Sgt. Misuraca obtained a Public Safety Statement from Officer Parra following the shooting. Sgt. Misuraca asked Officer Parra questions off of the Public Safety Statement card. Sgt. Misuraca provided Officer Parra's responses, which were as follows:

1. Is anyone injured? If so, where is the person located? Officer Parra replied, "Yes...4156 Pennwood westbound lanes."
2. Are there any outstanding suspects? If so, what are their description, direction and mode of travel? How long have they been gone? Officer Parra replied, "No."
3. For what crime(s) are they wanted? What type of weapons did they possess? Officer Parra replied, "Attempt murder, BWDW [battery with a deadly weapon] and a .25 caliber semi-automatic."

4. Were you or another officer involved in a shooting? Officer Parra replied, "Yes."
5. Where were you when you fired your weapon? Officer Parra replied, "Behind the block wall at 4156 Pennwood...North side of the wall."
6. How many rounds did you fire and which direction did you shoot your firearm? Officer Parra replied, "One and it was southbound."
7. Is it possible the suspect fired at you? If so, which direction did the suspect fire his weapon? Officer Parra replied "Yes, two to three rounds northbound."
8. Are there any weapons or evidence that we should secure? If so, where are they located? Officer Parra replied, "Suspect's handgun is by the Honda... license plate of 594XNB."
9. Are you aware of any witnesses to the event? If so, where are they located? Officer Parra replied, "Two. The HMA and the HFA with Paul [Lewis] and Clyde [Villanueva] and the RD [identity unknown] guy."

Officer Clyde Villanueva

On February 8th, 2013, at approximately 8:56 p.m., Homicide Detective Buddy Embrey conducted a recorded interview with PSU Officer Clyde Villanueva. Officer Villanueva stated that earlier that day he was partnered with Officer Parra and the two were conducting surveillance in an unmarked vehicle parked in the alleyway north of 4024 Pennwood Ave, Apt. "A." They were attempting to locate and apprehend Decedent, who had an active arrest warrant for Attempt Murder. His team was responsible for the investigation of the attempt murder and he was fully aware of the underlying facts of case. Officer Villanueva observed Decedent come out of the target apartment and then walk westbound on the north side of Pennwood Avenue. He heard radio traffic from ROP detectives stating that now would be a good time to take Decedent into custody. He and Officer Parra drove westbound down the north alley and stopped. They placed on their tactical vests which had "POLICE" and a yellow Metro badge on the front. Officer Villanueva could see the top of Decedent over the wall south across the courtyard. He also observed a ROP detective exit his vehicle. Officer Villanueva approached southbound through the courtyard towards Decedent and Officer Parra was behind him. They proceeded towards the opening between the 4156 Pennwood apartment building and the wall. When they reached the wall, Officer Parra was closest to the opening and Officer Villanueva was on his left-hand side. At that time, Decedent was facing westbound with two people in front of him. All three were behind a Honda Accord. Both he and Officer Parra then announced, "Metro Police get on the ground." They both had their handguns drawn and aimed at Decedent. At that time, Decedent reached into his waistband and Officer Villanueva observed him pull out a handgun with his right hand. Decedent began to move towards the brake light of the Honda. Officer Villanueva believed Decedent was going to run and shoot, so he moved to his right, paralleling Decedent heading westbound. Officer

Villanueva had the Honda directly in front of him and he could hear Officer Parra on his left, yelling. At that point, approximately six to eight shots were fired. Officer Villanueva did not fire because he had the Honda and the two people in the way. He then headed back left or eastbound towards where he had last seen Decedent and the other two individuals. Officer Villanueva observed a ROP detective facing northbound in the street and on his left. The Decedent fell to the ground and he observed Decedent's small, dark-colored semi-automatic handgun on the ground. He did not see Decedent shoot, but stated that if Officer Parra had not fired, Officer Parra would have been dead. He stated:

“Because when I saw him – him reach for the gun the first thing I’m thinking is that he’s gonna shoot and run and we’re – we’re right there as in like we’re in such a close proximity.”

Officer Villanueva estimated that he was only approximately ten feet away from Decedent when the shots were fired.

Officer Paul Lewis

On February 8th, 2013, at approximately 9:32 p.m., Detective Long conducted a recorded interview with PSU Officer Paul Lewis. Officer Lewis stated that on February 6th, 2013, he and other members of his PSU team were assigned to investigate an attempt murder involving Decedent and Girlfriend. In the morning of February 8th, 2013, members of his PSU team and an assisting ROP team were briefed regarding Decedent and were provided with his photograph. From approximately 10:00 a.m. to 2:00 p.m., he and his fellow PSU team member, Officer Maurice Collins, assisted in the surveillance of Girlfriend's apartment to see if Decedent returned to that location. The two were then asked by another member of his team, Officer Villanueva, to assist in surveillance at an apartment building located at 4124 Pennwood Avenue. He drove their unmarked vehicle to that location and the two began to conduct surveillance from southeast of 4124 Pennwood Avenue on Wing Street. Approximately five minutes after setting up surveillance, Officer Lewis observed Decedent leave the target residence and ultimately begin to walk westbound on the north sidewalk of Pennwood Avenue. Decedent walked up to the back of a car and the people that were standing there. It was confirmed over the radio that the individual was, in fact, Decedent. At that time, Officer Lewis drove his vehicle and stopped at the intersection of Wing and Pennwood Avenue. He then heard the order to “take them.” Officer Lewis could see the Decedent, another male, and a female at the back of the vehicle. Officer Lewis then turned westbound on Pennwood Avenue and he continued to drive slowly towards Decedent. He observed a ROP detective come out from an opening in the wall by 4140 Pennwood Avenue and into the street. Decedent turned and faced northbound with his back to Officer Lewis and the ROP detective. The ROP detective then opened fire. Officer Lewis was east of the Decedent when he began to see rounds being fired. However, he could not see who was firing first from his position in

his vehicle and he could not hear the shots because his windows were rolled up. Officer Lewis did not see Decedent firing. However, when he exited his vehicle he did see a firearm on the ground next to Decedent's left ankle. Decedent was further south and closer to him than the other male behind the vehicle.

Officer Maurice Collins

On February 8th, 2013, at approximately 8:37 p.m., Homicide Detective Rob Wilson conducted a recorded interview with PSU Officer Maurice Collins. Officer Collins stated that he and his partner, Officer Paul Lewis, were assigned to conduct surveillance of an apartment building located at 4124 Pennwood Avenue in an attempt to locate and apprehend Decedent. The two were in an undercover vehicle just south of Pennwood Avenue on Wing Street. He then observed Decedent walk southbound from the apartment building and ultimately head westbound on Pennwood Avenue along the north sidewalk. Decedent then stopped by the rear of a Honda Accord with two other individuals. It was confirmed over the radio that the individual was, in fact, Decedent and an officer he believed to be from ROP gave the order to take him down. They then pulled up to the intersection at Pennwood and Wing and waited approximately fifteen seconds. As they observed officers approaching Decedent on foot, they began to go westbound on Pennwood Avenue towards Decedent. He observed an officer come around a vehicle into the street at which point he could hear approximately four to five gunshots. He and Officer Lewis jumped out of their vehicle and proceed to run towards Decedent. He observed Decedent down and the other male was also on the ground. He observed a small .22 or .25 caliber semi-automatic handgun at Decedent's feet and he pushed it away from Decedent with his foot.

Sergeant Dave Valenta

On February 8th, 2013, at approximately 8:55 p.m., Homicide Detective Samuel Smith conducted a recorded interview with ROP Sergeant Dave Valenta. ROP is tasked with apprehending repeat offenders with multiple felony convictions. ROP also assists in locating suspects with active warrants for various crimes. Sergeant Valenta stated that he had received a call from Sgt. Misuraca the day before requesting his team's assistance in locating and apprehending a suspect wanted for the attempted murder of his girlfriend. The suspect was considered armed and dangerous. That morning, at approximately 9:00 a.m., his ROP team was briefed by members of Sgt. Misuraca's PSU team regarding Decedent and they were provided with his photograph. At approximately 3:00 p.m., he received a call from Sgt. Misuraca requesting the assistance of a couple of his officers in conducting surveillance at an address on Pennwood Avenue. He, and six of his officers, drove to the location and began to conduct surveillance on 4124 Pennwood Avenue, Apt. "A." Sgt. Valenta was in an unmarked vehicle and his position

was in the alley north of Pennwood Avenue and east of Wing Street. He had his other officers set up from all directions. Approximately twenty minutes later, he was notified that Decedent had been identified walking out of the target apartment and was walking westbound on the north sidewalk of Pennwood Avenue. He instructed officers to let Decedent get away from the apartment to avoid a potential barricade situation. He was also concerned about the school to the south of Decedent. He had officers start to move in position, including officers covering the alleyway. Sgt. Valenta then drove down Pennwood Avenue past Decedent, who was standing at the back of a Honda with a male and female. He stopped approximately twenty yards west of Decedent. Officers began to converge on Decedent from various directions. Sgt. Valenta stopped his vehicle and was in the process of getting out when he heard multiple individuals from the courtyard area yelling "police, police, police" and then he heard gunshots. He saw the suspect down and Detective Thomas approaching him. Sgt. Valenta grabbed the female and told her to sit on the curb. There were two men on the ground. They were handcuffed and medical was called.

Officer Travis Cord

On February 8th, 2013, at approximately 8:32 p.m., Detective Long conducted a recorded interview with ROP Officer Travis Cord. His ROP team had been requested to assist Sgt. Misuraca's PSU team in locating a suspect wanted for the attempted murder of his girlfriend. At approximately 9:00 a.m., his team was briefed regarding the facts of attempted murder and the concern that Decedent might return to his apartment and harm the pregnant victim. Decedent's criminal and gang background was discussed as well as the fact that he might be armed. A photo of Decedent was also distributed during the briefing. Later that afternoon, Officer Cord was asked to assist PSU officers in conducting surveillance at 4124 Pennwood, Apt. A. He arrived at the location off of Pennwood Avenue and waited. He was in an unmarked vehicle parked south of the target apartment on Wing Street. After approximately twenty minutes, he was informed by officers over the radio that Decedent was walking from the target apartment and heading westbound on the north side of Pennwood Avenue. Officer Cord then observed Decedent stop at a Honda that was parked by the sidewalk at 4156 Pennwood Avenue. Officer Cord drove past Decedent and positively identified him. He observed Decedent approach a male and female standing behind a Honda. Decedent shook hands with the male and the three began to talk. Officer Cord called over the radio that he had positively identified Decedent. As he observed Detective Thomas driving past Decedent, Officer Cord heard him say over the radio, "I see him." Officer Cord stated over the radio to "take him" because Decedent was talking and not paying attention. Officer Cord then drove into the alleyway north of Decedent to cut off Decedent's avenue of escape to the north. He observed two PSU officers on the north side of the courtyard heading south towards a wall that was roughly chest height. He was unable to identify the PSU officers from his location. On the other side of the wall he could observe Decedent and the male and female talking by the rear bumper of the

Honda. Officer Cord exited his vehicle and heard, "Metro Police. Metro Police. Get on the ground." He then heard three small "pop-pop-pop" from a smaller caliber weapon and then he heard a "pop-pop-pop-pop" from a larger caliber weapon. He could not see anything from where he was standing. As Officer Cord came into the courtyard, he observed two PSU officers. One officer in a black tactical vest was just standing up from behind the wall as if he had either been shot at or he had returned fire and was ducking down. That officer and the other officer then exited the west opening of the wall heading south out towards the street. Officer Cord ran up behind them and into the street where he observed two males laying face down on the ground behind the Honda. The female was at the front of the vehicle. Officer Cord observed a .25 semi-automatic handgun on the ground next to Decedent's feet. There were also multiple shell casings on the ground. He observed Detective Thomas and then other officers begin arriving. Two medical units were contacted.

Detective Scott Thomas

On February 8th, 2013, following the incident, Detective Scott Thomas conducted an unrecorded "walkthrough" of the scene with Detective Mogg and assisting Homicide detectives. During the walkthrough, Detective Thomas stated that he had parked in the alley north of 4156 Pennwood Avenue and then approached Pennwood Avenue southbound through the courtyard. When he reached the wall that ran along the north side of Pennwood Avenue, he observed Decedent standing near the rear of a Honda Accord with two other people. Detective Thomas made his way through the opening in the wall near the southwest corner of 4140 Pennwood Avenue and out into the street. Detective Thomas approached Decedent, who was still standing near the rear of the Honda. As he approached, officers were ordering the three people to raise their hands. He observed Decedent draw a handgun and point it in the direction of officers who were to the north of Decedent. Detective Thomas fired at Decedent until he went down. He fired from a location on Pennwood Avenue which was approximately 36' feet south of the brick wall and 18' east of Decedent. Detective Thomas had a LVMPD badge hanging from his neck.

On February 11th, 2013, at approximately 3:12 p.m., Homicide Detective Terri Miller conducted a recorded interview with ROP Sergeant Dave Valenta. Sgt. Valenta had obtained a Public Safety Statement from Detective Thomas following the shooting. Sgt. Valenta asked Detective Thomas questions off of the Public Safety Statement card. Sgt. Valenta provided Detective Thomas's responses, which were as follows:

1. Are there any outstanding suspects? Detective Thomas replied, "No."
2. What crime or crimes are they wanted for? What weapons are they armed with? Detective Thomas replied, "The subject had a warrant for attempted murder with deadly weapon. A firearm."

3. Were you involved in an officer-involved shooting? Detective Thomas replied, "Yes."
4. Approximately where were you when you fired? Detective Thomas replied, "Approximately 10 to 12 feet slight northeast of the suspect's body."
5. How many rounds did you fire and which direction did you fire? Detective Thomas replied, "Approximately four to five, but I'm not 100% positive, in the southwestern direction at the suspect."
6. Do you know if any other officer fired? Detective Thomas replied, "I believe a PSU Officer fired."
7. Is it possible the suspect fired at you? If so, from what direction were the rounds fired? Detective Thomas replied, "I did not believe the suspect fired at me, but I do know the suspect fired in a northern direction into the apartment courtyard."
8. Are there any weapons or evidence that need to be secured, protected and if so, where are they located? Detective Thomas replied, "Yes. A firearm in the street at 4156 Pennwood, right next to a vehicle and it had already been protected and marked off with a cone."
9. Are you aware of any witnesses? If so, what are their locations? Detective Thomas replied, "The only known witness were the officers at the scene and an unknown female."

Officer Robert Kinch

On February 8th, 2013, Detective Long conducted a recorded interview with ROP Officer Robert Kinch. Officer Kinch stated that earlier that morning he and his fellow ROP members were briefed and then tasked with assisting the PSU team in locating and apprehending Decedent for an active felony warrant for attempted murder. At approximately 3:30 p.m., his team was contacted by PSU and their assistance was requested in conducting surveillance of an apartment at 4124 Pennwood Avenue, Apt. "A." When he arrived at the location, he roamed the area around the target apartment in his undercover vehicle. ROP Detective Giannone was the primary surveillance on the apartment and he was situated to the south on Wing Street. He was informed by PSU officers over the radio that Decedent had left the apartment. Detective Giannone then announced on the radio that he observed Decedent walking westbound on the north sidewalk of Pennwood Avenue. Decedent then met up with two individuals at the back of a vehicle approximately two buildings to the west of 4124 Pennwood. Officer Kinch then drove by the suspect heading east and was able to definitely identify him as their suspect. He informed other officers of that fact over the radio. There was concern amongst the officers that Decedent might return to the apartment and create a barricade situation. Therefore, a decision was made at that time to take Decedent into custody which was when everyone converged on him on foot. Officer Kinch continued

driving eastbound away from Decedent and was in the process of making a U-turn when he heard three gunshots. When he looked west towards Decedent, his view was obstructed by vehicles in the street. He did not see who fired. When he heard the shots, he exited his vehicle and ran towards Decedent. By the time he arrived, Decedent was already on the ground and in custody. He observed a dark-colored .25 semi-automatic by the rear tire of the vehicle in the street.

Detective Richard Meyers

On February 8th, 2013, Detective Wilson conducted a recorded interview with ROP Detective Richard Meyers. Detective Meyers stated that earlier that morning he and his fellow ROP members were briefed and then tasked with assisting the PSU team in locating and apprehending Decedent for an active felony warrant for attempted murder. At approximately 3:00 p.m., he was contacted by ROP Sergeant Valenta and asked to assist in the surveillance of an apartment at 4124 Pennwood Avenue, Apt. "A." Detective Meyers arrived at the location approximately twenty minutes later. He drove around the area to familiarize himself with it and then positioned himself in the northeast parking lot of Clark High School, which was just south of the apartment complex. He was informed that Decedent had exited the apartment and was heading westbound down Pennwood Avenue. At that time, he was able to observe Decedent and was able to identify him as their target. As he began to drive towards Decedent, he heard on the radio, "Let's take him. We're coming from the alley." Detective Meyers accelerated his vehicle and opened his door for a quick exit. As he was exiting his vehicle, Detective Meyers heard individuals screaming, "Police, get on the ground." He observed Decedent facing northbound and Detective Thomas coming from east of the suspect, discharging his handgun. Detective Thomas was firing at Decedent. He could not see Decedent's hands because his attention was on Detective Thomas. When he looked towards Decedent, he was falling on the ground. Based upon his observations of Detective Thomas, if Decedent had not fallen, he would have run Decedent over. There was a male and female with Decedent by a Honda. He also observed what he thought to be a .25 or .22 caliber semi-automatic handgun near the left rear tire of the Honda. There were multiple cartridge cases on the ground, one of which he identified as being a .25 caliber cartridge case.

Detective Joseph Giannone

On February 8th, 2013, Detective Embrey conducted a recorded interview with ROP Detective Joseph Giannone. Detective Giannone stated that earlier that day he was conducting surveillance in an effort to locate and apprehend Decedent who had an active warrant for attempt murder. He was positioned on Wing Street, just south of the target apartment at 4124 Pennwood Avenue, Apt. "A." He had a direct view of the apartment door. He observed Decedent exit the apartment and head westbound on Pennwood Avenue. He informed the other officers on surveillance and another officer drove by Decedent and confirmed that he was their target. At that time, a decision was

made to take Decedent into custody. Detective Giannone drove his vehicle to the intersection of Pennwood Avenue and Wing Street. He could observe that Decedent had met up with a male and female behind a Honda Accord on the north side of Pennwood Avenue. As he turned west onto Pennwood Avenue towards the Decedent, Detective Giannone heard gunshots. He exited his vehicle and ran towards where he last observed Decedent and saw Decedent laying on the ground with a handgun lying next to his left hand.

CIVILIANS

Girlfriend

On February 6th, 2013, at approximately 9:01 p.m., Officer Parra conducted a recorded interview with Girlfriend at University Medical Center. Girlfriend stated that she was in a dating relationship with Decedent and that the two were living together in an apartment with Girlfriend's three children. The two had been living together for approximately a month and Girlfriend was pregnant with Decedent's child. Decedent had been arguing with Girlfriend throughout the course of the day regarding his belief that she was cheating on him with other men. Decedent had been drinking and she believed he was intoxicated. Later that afternoon, Girlfriend fell asleep on the couch and was awakened by a loud bang. She awoke with pain to her forehead and Decedent standing over her with a black semiautomatic handgun in his right hand. Girlfriend felt her head, saw blood everywhere, and realized that she had been shot. Decedent then fled the scene in his silver Dodge Stratus with the handgun. Girlfriend ran next door and called 911. She was then transported to University Medical Center where she was treated for a gunshot wound to her forehead. The bullet was removed after being discovered lodged between the skin of her forehead and her skull.

On February 12th, 2013, at approximately 2:17 p.m., Girlfriend was re-interviewed by Detective Mogg. The interview was also recorded. Girlfriend stated that she and Decedent had been dating for almost two years. Decedent had been in a gang in California, but she was not aware of him still being in a gang after he left prison. Decedent had only been violent with her one other time in the past. He had given her a black eye when they were living in California. In the months leading up to February 6th, 2013, Girlfriend had noticed a change in Decedent's behavior. Decedent began repeatedly accusing her of cheating on him and he would never let her leave his side. He would question neighbors in the surrounding apartments regarding whether they were in a relationship with her. Starting some time in mid-January, Decedent told Girlfriend that he could hear people talking in the walls and that he believed there were one-way mirrors in the bathroom and master bedroom. He also thought someone might come down into the apartment from the attic, so he taped up the attic entrance. She told Decedent that he was probably schizophrenic. She asked him to get checked, but he never wanted to go to the doctors. Girlfriend knew that Decedent had used methamphetamine in California, but

did not know if he was using drugs in Las Vegas. She knew he was drinking a lot more. Girlfriend did not have anymore contact with Decedent following the shooting. Girlfriend identified the .25 Beretta handgun Decedent used to shoot at Officer Parra as the handgun Decedent used to shoot her in the head.

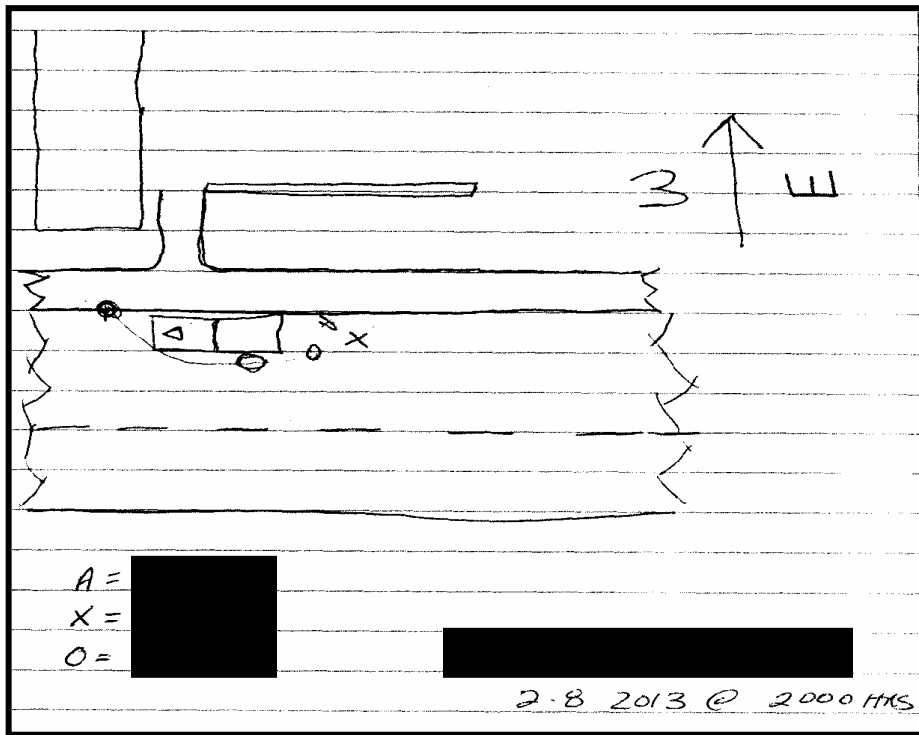
Friend

On February 8th, 2013, at approximately 7:26 p.m., Detective Embrey conducted a recorded interview with Friend. Friend stated that he resided at 4124 Pennwood, Apt. A. He knew Decedent for approximately seventeen years and the two knew each other from Los Angeles. Both were members of the "Eastside 13" gang. He was not aware if Decedent was still in the gang. At approximately 7:50 a.m., Decedent arrived at his apartment. Decedent was on foot and had two Wal-Mart bags with clothes. It was not unusual for him to visit. The two spent that day at his apartment watching television. Decedent had one beer while he was at the apartment. Friend knew Decedent's girlfriend, but had not seen her for several weeks. Decedent did not discuss her that day. At approximately 2:50 p.m., before the shooting, Friend left his apartment to go pick up his kids. Decedent was still in his apartment. Friend noticed several police officers outside, but did not notify Decedent. When he returned, Decedent was gone. He had never seen Decedent with a gun and had no idea that he had intended to buy a car.

Citizen #1

On February 8th, 2013, at approximately 7:44 p.m., Detective Embrey conducted a recorded interview, in Spanish, with Citizen #1. During the course of the interview, Citizen #1 sketched a diagram of the relative positions of herself, Citizen #2, and Decedent during the incident. Citizen #1 labeled herself as "O," Citizen #2 as "A," decedent as "X." Her diagram is provided below. Citizen #1 stated that she lived with her daughter and her son-in-law, Citizen #2. On February 6th, 2013, they had placed an advertisement on Craigslist attempting to sell her 1997 Honda Accord. Citizen #1 received several calls and texts between February 6th and February 8th from a male, later identified as being Decedent, who was interested in buying her car. On February 8th, 2013, at approximately 8:03 a.m., Citizen #1 called Decedent to schedule a meeting to sell her vehicle. They scheduled the meeting for 3:30 p.m. Decedent asked Citizen #1 if she could meet him at his address because he did not have a vehicle. At approximately 8:35 a.m., Decedent texted Citizen #1 and provided his address as being 4124 Pennwood Avenue, Apt. #1. At approximately 3:01 p.m., Citizen #1 called Decedent and told him that she was on her way to his location. Citizen #2 accompanied her to Decedent's address. At approximately 3:28 p.m., Citizen #1 called Decedent and told him that they had arrived. Decedent came out to meet them. Citizen #2 got out of the passenger side and she got out of the driver's side. Decedent approached from the east and met them at the back

of the car where they spoke briefly. Citizen #2 was in front of her and to her left. Decedent was in front of her and to her right. She saw uniformed police officers arrive from the direction of the apartment complex. Citizen #1 did not know how many there were. The officers were in front of her and they were yelling in English, which she did not understand. At that moment, Decedent pulled out a weapon and fired it. She heard approximately five gunshots that were loud and very close to her. In response, Citizen #1 began to run around the driver's side of the Honda. She did not know who fired first or get a look at Decedent's weapon, because it happened so fast and she was trying to get away. She felt something hit her ankle. Citizen #2 and Decedent had stayed towards the back of the car. After the shots were fired, Citizen #2 and Decedent fell to the ground. She went around the car and sat on the curb of the sidewalk.

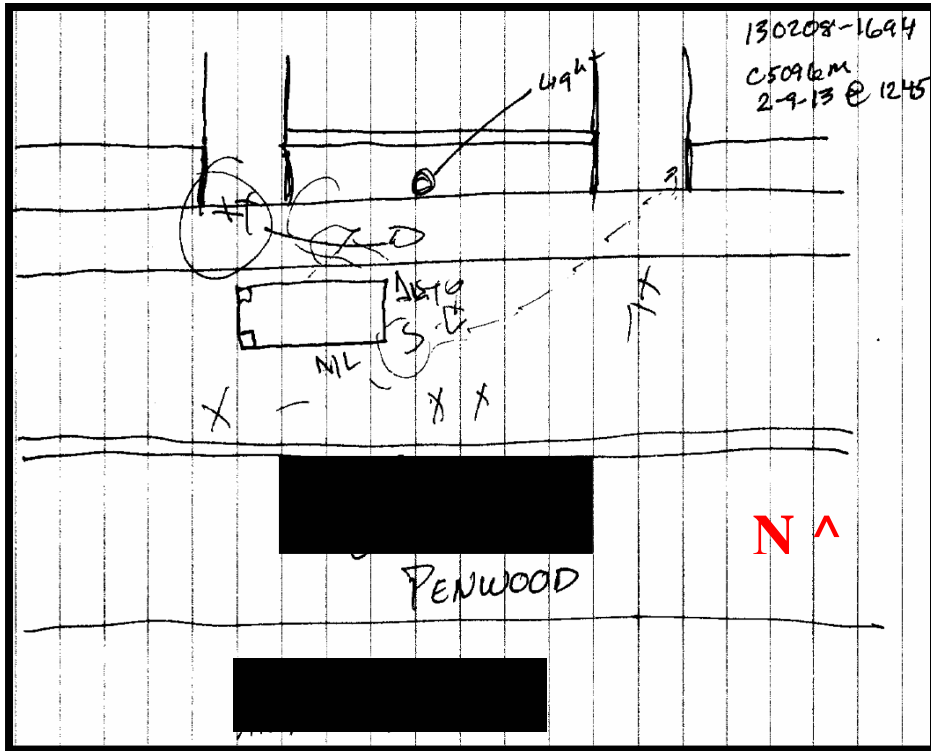


Citizen #1 Diagram

Citizen #2

On February 9th, 2013, at approximately 12:43 p.m., Detective Mogg conducted a recorded interview of Citizen #2. During the course of the interview, Citizen #2 sketched a diagram of the relative positions of himself, Citizen #1, Decedent, and police officers during the incident. Citizen #2 labeled himself as "AL," Citizen #1 as "ML," Decedent as "S," and police officers as "X's." His diagram is provided below. Citizen #2 stated that on February 8th, 2013, a man, later identified as Decedent, had asked his mother-in-law, Citizen #1, to drive a Honda Accord they were selling to Decedent's address because he did not have a vehicle of his own. Citizen #2 agreed to go with Citizen #1 to meet with Decedent. The

address Decedent provided was 4124 Penwood Avenue. At approximately 3:00 p.m., the two drove to the address and then called Decedent when they arrived. Decedent walked out to their car approximately ten minutes later. The three spoke briefly about the car before they were approached by several police officers wearing windbreakers that said "police." He immediately recognized them as police officers. They were surrounded very quickly. There were officers facing Citizen #2, northwest of where he was standing. Decedent was positioned behind him and slightly to his right and Citizen #1 was further back to his left and on the driver's side of the Honda. There were also officers behind him and to the southeast of him. The officers who were facing him yelled "freeze" and commanded them to "put your hands up." Citizen #2 immediately complied and put his hands up. All three were ordered to "get on your knees." However, Decedent was not cooperating with officers and that was when he pulled out his gun. He heard what he believed to be Decedent cocking a pistol. As Citizen #2 heard the cocking sound and was getting on his knees, he was shot by one of the officers facing him. He saw Decedent's gun fall right next to him. He believed it to be a small revolver. As Citizen #2 was getting on his knees, the officers opened fire. Once police arrived, the whole incident lasted less than thirty seconds.



Citizen #2 Diagram

THE REVIEW OF THE WEAPONS

THE COUNTDOWN OF DETECTIVE THOMAS'S WEAPONS

A countdown of Detective Thomas's weapon - - a Sig Sauer P-226 9mm handgun - - revealed a total of nine "Speer 9mm Luger+P" cartridges in the weapon (one in the chamber and eight in the magazine). Detective Thomas normally carried one cartridge in the chamber and fourteen in the magazine. Detective Thomas fired his weapon six times during this incident.

Six spent "Speer 9mm Luger+P" spent cartridge cases were recovered at the scene and their exact locations are depicted in the "Incident Scene" diagram above.

THE COUNTDOWN OF OFFICER PARRA'S WEAPON

A countdown of Officer Parra's weapon - - an HK GMBH/Compact .40 caliber handgun- - revealed a total of ten "Speer .40 S&W" cartridges in the weapon (one in the chamber and nine in the magazine). Officer Parra normally carried one cartridge in the chamber and ten in the magazine. Officer Parra fired his weapon one time during this incident.

One spent "Speer .40 S&W" cartridge case was recovered at the scene and its exact location is depicted in the "Incident Scene" diagram above.

THE COUNTDOWN OF DECEDENT'S WEAPON

A countdown of Decedent's weapon - - a Beretta Model 950BS .25 caliber handgun - - revealed a total of seven "WIN .25 Auto" cartridges in the weapon (one in the chamber and six in the magazine). Decedent fired his weapon one time during this incident and the hammer was in the cocked position.

One spent "WIN .25 Auto" cartridge case was recovered at the scene and its exact location is depicted in the "Incident Scene" diagram above.

FIREARMS EXAMINATION

James Krylo, of the LVMPD Firearms/Toolmarks Unit, conducted an examination of the firearms, bullets, and cartridge cases recovered during the investigation of the incident. He reached the following conclusions:

Four of the six spent "Speer 9mm Luger+P" cartridge cases recovered at the scene were fired by Detective Thomas's Sig Sauer handgun and the two remaining spent

“Speer 9mm Luger+P” cartridge cases were conclusively associated with Detective Thomas’s Sig Sauer handgun.

The single spent “Speer .40 S&W” cartridge case recovered at the scene was fired by Officer Parra’s HK GMBH/Compact .40 caliber handgun.

The single spent “WIN .25 Auto” cartridge case recovered at the scene bore markings similar to Decedent’s Beretta Model 950BS .25 caliber handgun, but lacked sufficient microscopic detail to be conclusively identified or eliminated as having been fired by that handgun.

There were a total of four bullets recovered during the investigation of the incident. The two bullets recovered from the Honda Accord (one from the left front tire and the other from the central rear seat) were consistent with being fired from Detective Thomas’s Sig Sauer pistol, but due to their damaged condition, they lacked sufficient microscopic detail for conclusive identifications. The two bullets recovered from the body of Decedent were fired from Detective Thomas’s Sig Sauer handgun.

THE INCIDENT SCENE

DETECTIVE THOMAS’S LOCATION



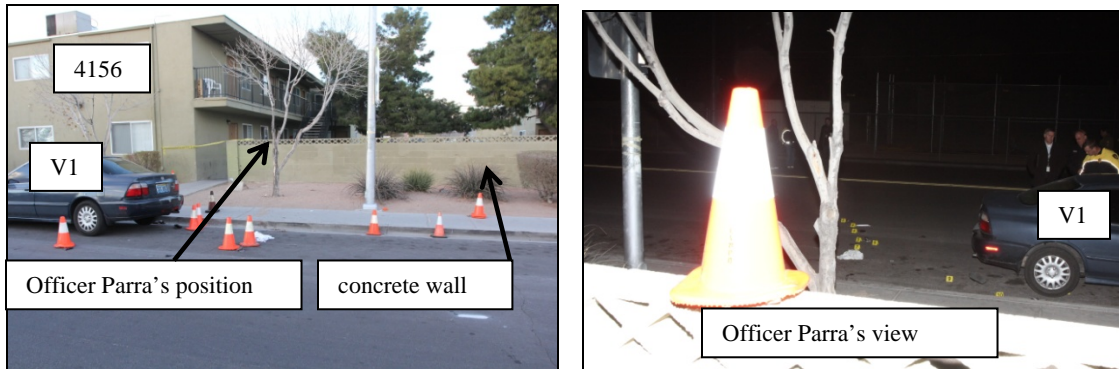
Detective Mogg, along with LVMPD Crime Scene Analysts, conducted an investigation of the incident scene located in the area adjacent to 4156 Pennwood Avenue. In the course of his investigation, Detective Mogg discovered a bullet strike into the left rear quarter panel of Citizen #1’s vehicle or “V1” in the above diagram. The bullet travelled into the rear passenger compartment and lodged in the rear passenger center seat cushion. A 9mm bullet was recovered from the seat cushion. The trajectory of the bullet indicated that it was fired at a slightly downward angle from a position to the left and slightly to the rear (southeast) of the entry hole.

A second 9mm bullet was recovered from inside the left front tire. On the asphalt, a couple inches to the rear and side of the bullet hole, was a ricochet mark.

The ricochet mark was in line with the hole in the tire, consistent with the bullet striking the ground at a low angle from the rear and to the left of the vehicle.

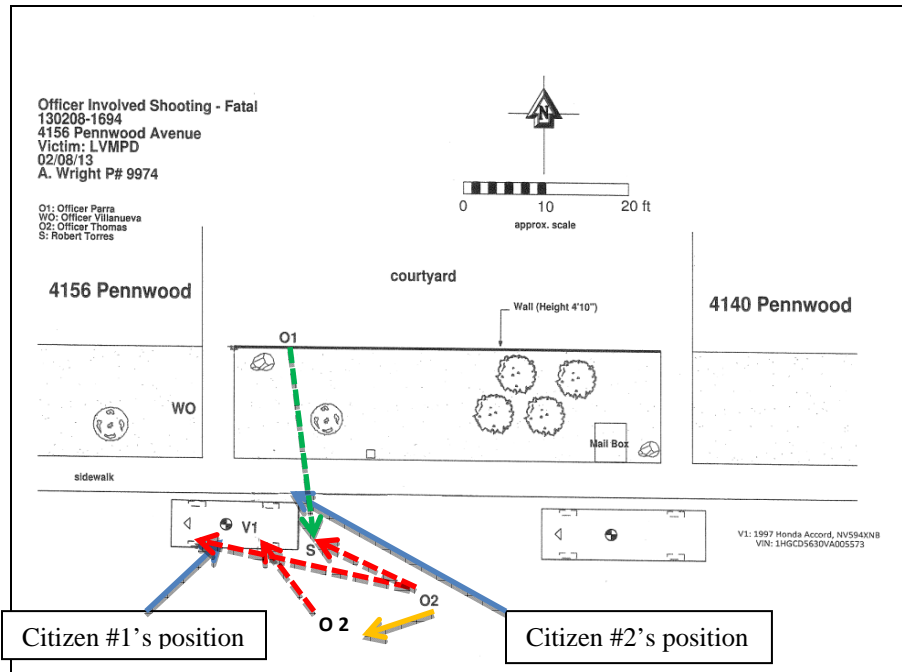
The two bullets were subsequently determined to be consistent with being fired from Detective Thomas's handgun. Based upon the trajectory of the two bullets, Detective Mogg determined that Detective Thomas was approximately 30' south of the concrete block wall on the north side of Pennwood Avenue and he was to the southeast of Decedent (Pos 1) and moving west at the time he returned fire (Pos 2).

OFFICER PARRA'S LOCATION



Crime Scene Analysts determined that an approximately 4'10" high concrete block wall was located approximately 18' north of the north curb line of Pennwood Avenue. The wall ran parallel to Pennwood Avenue, and extended east to west between 4140 and 4156 Pennwood Avenue. On either side of the wall adjacent to the two buildings was an approximately 4' wide pedestrian opening. Based upon witness statements, Detective Mogg determined that Officer Parra fired at Decedent from a position behind the wall approximately 10' east of the southeast corner of 4156 Pennwood Avenue. Officer Parra's firing position was approximately 27' north of Decedent. The .40 caliber cartridge case fired from Officer Parra's handgun was found in the dirt on the southeast corner of 4156 Pennwood Avenue. Detective Mogg believed that the cartridge case was kicked to that location by responding officers after the shot was fired. A uniformed officer had informed Detective Mogg that he had seen a cartridge case lying in the courtyard near the opening in the wall closest to 4156 Pennwood Avenue before other officers began arriving.

SUMMARY



After a review of all the physical evidence and witness statements, Detective Mogg concluded the following:

There was no visual obstruction between Officer Parra (O1) and Decedent's (S) position at the time Officer Parra fired. As Officer Parra fired (green arrow), Citizen #2 was beginning to get on his knees when he stepped into the path of Officer Parra's bullet, and was shot in the left shoulder. The backdrop for Officer Parra's round was the vacant High School baseball field south of the incident scene.

There was also no visual obstruction between Detective Thomas (O2) and Decedent's position at the time Detective Thomas fired (red arrows). Detective Thomas's first shots were fired from his first location southeast of the vehicle (V-1), and a subsequent shot was fired from a position more southerly of V-1 (yellow arrow).

Four of the shots fired by Detective Thomas from his first location struck Decedent. A fifth shot fired from the first location position grazed Citizen #1's inner left ankle, ricocheted off the road and lodged in the right front tire of V-1. As Detective Thomas moved to a position more southerly of V-1 (yellow arrow), he fired one additional shot which went through the left rear quarter panel of V-1 and lodged in the rear seat. The backdrop for Detective Thomas' shots was V-1.

THE AUTOPSY OF DECEDENT

On February 9th, 2013, an autopsy was performed by Deputy Medical Examiner Doctor Gary Telgenhoff on the body of the Decedent at the Clark County Coroner's Office. Dr. Telgenhoff determined Decedent died as the result of multiple gunshot wounds to the back. Decedent had "Eastside" tattooed on his upper chest and "13" tattooed on his stomach.

A toxicology report from the autopsy revealed 20 ng/mL of methamphetamine in Decedent's blood. There was also 8.8 ng/mL of amphetamine in his blood. The report noted that methamphetamine is a D.E.A. Schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions. It further indicated that high doses of methamphetamine can elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

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 imminent danger to ROP and PSU police personnel involved in efforts to take Decedent into custody, as well as Citizen #1, Citizen #2, and any potential bystanders. Officers were attempting to arrest Decedent for an active violent felony warrant. They repeatedly identified themselves and ordered Decedent to raise his hands and get on the ground. Decedent failed to comply with their commands. Instead, Decedent, who was facing Officer Parra, responded by pulling out his .25 caliber handgun and firing at Officer Parra. Citizen #2 was positioned between Decedent and Officer Parra at the time Decedent fired his weapon, but he was not struck. Officer Parra, when confronted by Decedent's use of deadly force, fired one time at Decedent. However, Citizen #2 was struck as he was complying with officers' orders and getting onto the ground. Detective Thomas, seeing Decedent pull out a handgun and aim it at officers, responded by firing six shots and killing Decedent. Thus, the police personnel were confronted by an actual imminent danger which created in their minds an honest belief and fear that they, and others, were about to be killed or suffer great bodily injury. Accordingly, the officers were 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 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, while ignoring commands to raise his hands and get on the ground, pointed his handgun toward police personnel and opened fire as they tried to take him into custody. These circumstances created probable cause in the officers' minds that the Decedent posed a threat of serious physical harm to the officers and others. 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 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 law enforcement involved in the efforts to take the Decedent into custody 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 January 8, 2014

STEVEN B. WOLFSON
District Attorney

By

ROBERT B. TURNER
Chief Deputy District Attorney