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July 30, 2012

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

Re: Officer-Involved Death of Rafael Alonso Olivas which occurred on July 14, 2011, at 301 Firestone under Las Vegas Metropolitan Police Department Event #110714-0742.

Dear Sheriff Douglas C. Gillespie:

On July 14, 2011, Las Vegas Metropolitan Department ("LVMPD") Dispatch received a 911 call from Alma Chavez, at 7704 Musical Lane, requesting the police to respond to her house because her son, Rafael Olivas, was "out of control." Alma also told Dispatch that Rafael, (hereinafter "Decedent"), had a knife and that he told her he was going to make the police kill him. Specifically, during the 911 call, the Decedent could be heard yelling, "Call the fucking police. I am going to kill those mother-fuckers as soon as they fucking get here. I have a fucking knife in my fucking hand and I am gonna fucking stab the shit out of those mother-fuckers. I don't give a fuck." Later during the call to 911, Alma reported that Rafael had left her house and was outside on Firestone Drive.

When LVMPD Officers Grivas, Hager, and Houchen responded to the scene, they observed the Decedent walking south on Firestone Drive towards them with a knife. The officers stopped about 90 yards away from the Decedent on Firestone Drive and issued commands to the Decedent to stop and to drop the knife. The Decedent did not comply and instead continued to proceed towards the officers with the knife still in his hand.

Officers continued to issue commands to the Decedent to stop and to drop the knife. The Decedent did not comply and had closed the distance between him and the officers to approximately 40 feet. At this point, Officer Houchen fired his low lethal shotgun at the Decedent four times. Officer Houchen hit the Decedent all four times with the bean bag rounds, which caused the Decedent to stop briefly. However, the Decedent began again to advance towards the officers, while still holding the knife. Officers Grivas and Hager then fired their weapons at the Decedent, in defense of themselves, striking the Decedent three times and grazing him twice. Officers then approached the Decedent, kicked the knife away, placed him in handcuffs, and called for medical personnel to attend to him. The Decedent was transported to UMC hospital where doctors attempted to revive him, but were unsuccessful.

The District Attorney's Office has completed its review of the July 14, 2011, 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 in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

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

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

BACKGROUND

Interview of Decedent's Mother

On July 14, 2011, Detective Sanborn interviewed Decedent's mother at UMC Trauma. Decedent's mother explained that the Decedent went out the night before the shooting with some friends for drinks and came home drunk around 3:00 am. She explained that the Decedent became angry over something stupid and things got out of control. She tried to get him to calm down but he would not and eventually she called 911. During the call to 911, the Decedent grabbed a knife. Decedent's mother attempted to get the knife away from the Decedent by shutting the dishwasher door on it, which broke the knife. The Decedent then grabbed another knife and walked out of the residence. The Decedent told his mother several times he was going to make the police kill him. His mother explained that the Decedent had spoken of suicide recently. She further explained that

the Decedent was not under a doctor's care and had not been diagnosed with any mental health conditions.

Interview of Decedent's Brother

On July 14, 2011, Detective Ivie interviewed the Decedent's brother. He told Detective Ivie that he was sleeping when he was awoken at 3:00 am by the Decedent and his mother arguing. Decedent's brother fell back asleep but was woken up again at 6:00 am by the Decedent and his mother arguing again. The Decedent said he wanted to die and he could not be calmed down. Decedent's brother explained that the Decedent grabbed a knife and said he was going to fight with the police. The Decedent then left. Decedent's brother told police that the Decedent had been depressed, had a bad temper, and had spoken of suicide.

Interview of Decedent's Other Brother

On July 14, 2011, Detective Ivie interviewed the Decedent's other brother. Decedent's other brother told Detective Ivie that he was awoken at 6:00 am by the sound of gunshots. He did not hear any argument and he later learned that his brother had been shot by police. He told police that the Decedent was often depressed, had a bad temper, and had spoken of suicide.

Interview of Decedent's Female Friend

On July 14, 2011, Detective Ivie interviewed the Decedent's female friend. Decedent's female friend told Detective Ivie that she and the Decedent had gone out drinking the night of July 13, 2011, and arrived back at the Decedent's home at about 3:30 am on July 14, 2011. After returning home, the Decedent and his mother began to argue. The Decedent's female friend had witnessed arguments between the Decedent and his mother before, but she explained this time the Decedent was out of control. She also explained that she was concerned for her safety. At one point the Decedent left the house but later came back and told her that he hated his life and cried himself to sleep.

At approximately 6:00 am, the Decedent's female friend started to pack her belongings to leave because she feared for her safety. The Decedent awoke and began to argue with her and his mother. Decedent's female friend heard Decedent's mother call 911 and she heard the drawers where the knives were kept open and close. She also heard him say that he was going to fight the police when they arrived and she heard the front door close. Shortly thereafter, Decedent's female friend heard five shots. She also told the police that in the years that she has known the Decedent he had a temper, had been depressed, and had spoken of suicide.

INTERVIEWS OF INDIVIDUALS AT THE SCENE

Witness #1

On July 14, 2011, Detective Ivie interviewed Witness #1 who explained that he had arrived in the neighborhood at about 6:55 am to meet a friend. Upon arrival, Witness #1 saw a Hispanic male in front of a neighbor's house pacing back and forth on the sidewalk. The male appeared to Witness #1 to be angry and distraught. Based on the Hispanic male's behavior, Witness #1 locked the doors to his car and proceeded with caution. Witness #1 had not seen the Hispanic male before and did not witness the shooting.

Resident #1

Only July 14, 2011, Detective Ivie interviewed Resident #1 who lived in the neighborhood. Resident #1 explained that he was asleep inside his home when he was awoken at 6:40 am to the sound of someone outside his house giving verbal commands to someone to get down on the ground. As Resident #1 was going downstairs to see what was going on, he heard four to six gunshots, which he believed had been fired from a shotgun. After the shots, Resident #1 heard several more commands to get down on the ground and to put it on the ground. Resident #1 then heard ten to twelve more gunshots. After the gunshots, Resident #1 went outside his home and saw two black and white patrol cars, two police officers, and a Hispanic male handcuffed with zip ties lying on the ground in front of one of the patrol cars.

Resident #2

On July 14, 2011, Detective Majors interviewed Resident #2 who lived in the neighborhood. Resident #2 explained that he was in his home at 6:30 am when he heard four gunshots followed by a loud scream. Resident #2 called 911 and was told police had already been called.

Resident #3

On July 14, 2011, Detective Ivie interviewed Resident #3 who lived in the neighborhood. Resident #3 has video surveillance cameras on the front of his house that face south on Firestone Drive. Police obtained a copy of the video surveillance which showed some of the events of that morning. Specifically, the video showed the Decedent walk south on Firestone to the intersection of Firestone and La Rue, where he paced back and forth until police arrived. The surveillance then showed the Decedent walk south on Firestone towards the police. The police cars are seen in the surveillance video with their lights on but it is unclear from the video if the Decedent had anything in his hand. The shooting itself is too far away from the camera to see what occurred, but Decedent's mother is seen running down the street towards the patrol cars shortly thereafter.

THE ARRIVAL OF OTHER MEMBERS OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Sergeant R. Wood was the first patrol Sergeant on scene after the incident. Sergeant Wood took a public safety statement from Officers Grivas, Hager, and Houchen. Later, Detective Boucher conducted a tape recorded interview of Sergeant Wood regarding the statements of Officers Grivas, Hager, and Houchen. Each officer provided a walkthrough of the scene statement, indicating their location during the shooting and the direction of fire of their weapons. In those statements, the officers explained that Officer Houchen fired his low lethal shotgun and Officers Grivas and Hager fired their handguns. At approximately 9:30, am Detective Rogers supervised the countdown of the officers' weapons at the Northwest Area Command.

THE COUNTDOWN OF OFFICER'S WEAPONS

A countdown of Officer Grivas's duty weapon - - a Springfield Armory model XD 45 semi-automatic handgun - - revealed one live round in the chamber and ten rounds in the magazine for a total of eleven rounds. Officer Grivas indicated that he normally carries his gun with one round in the chamber and thirteen in the magazine. The countdown suggested he fired three rounds during this incident.

A countdown of Officer Hager's duty weapon - - a Glock model 17C 9mm semi-automatic handgun - - revealed one live round in the chamber and twelve rounds in the magazine for a total of thirteen rounds. Officer Hager indicated that he normally carries his gun with one round in the chamber and eighteen in the magazine. The countdown suggested he fired a total of five rounds. The countdown of Officer Hager's additional magazines, however, revealed one magazine with fourteen rounds and one magazine with sixteen rounds. As such, the number of rounds fired by Officer Hager may have been four rather than five. In fact, only four 9mm cartridge cases were found at the scene.

A countdown of Officer Houchen's duty weapon - - a Glock model 21SF 45 semi-automatic handgun - - revealed one live round in the chamber and thirteen rounds in the magazine for a total of fourteen rounds. Officer Houchen indicated that after he fired his low lethal shotgun four times; he pulled out his Glock but he did not fire it. Officer Houchen also indicated he normally carries the Glock with fourteen rounds. The countdown suggested he did not fire his Glock.

THE AUTOPSY OF DECEDENT

On July 15, 2011, an autopsy was performed on the body of Decedent at the Clark County Coroner's Office. Doctor Telgenhoff determined Decedent died as a result of "penetrating gunshot wound of the chest." Additionally, there was evidence of bean bag

strikes to the throat, stomach, lower abdomen, and right hip. Toxicology tests revealed the Decedent's Blood Alcohol Concentration to be 0.102, which is above the legal limit.

THE SEARCH OF DECEDENT'S HOME

During the follow-up investigation, Detective Ivie obtained signed consent to search 7704 Musical Lane. Photographs were taken of the residence. During the search of the Decedent's residence, the police found a broken knife blade sitting on the kitchen counter. This was consistent with what Decedent's mom recounted while she was on the phone with 911. In fact, during the 911 call the Decedent grabbed a knife and his mother closed the dishwasher on the knife in an effort to stop him. The knife broke. The Decedent then grabbed another knife which he took with him outside to confront the police officers.

FORENSIC REPORTS

On August 24, 2011, LVMPD Forensic Scientist Angel Moses completed an examination of the weapons and firearms evidence recovered during the follow-up investigation.

Officer Hager's 9mm Glock pistol was examined, test fired and found to be in normal operating condition with no noted malfunctions. The two bullets recovered at autopsy were consistent with 9mm GDHP bullets, which was the ammunition that Officer Hager had. Those two bullets also had the same rifling type and some similar characteristics as the test bullets fired from Hager's Glock pistol. However, there were insufficient microscopic details for a conclusive identification. The bullet fragments recovered were not comparable. The four 9mm Luger cartridge cases found at the scene were fired from Hager's Glock.

Officer Grivas's Springfield Armory 45 pistol was examined, test fired and found to be in normal operating condition with no noted malfunctions. The three "Speer" .45 Auto cartridges recovered from the scene possessed the same general characteristics and some similar individual characteristics as the test fired cartridge cases from the Springfield Armory pistol. However, there were insufficient microscopic details for a conclusive identification.

Officer Houchen's Remington shotgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The bean bags and wads were similar in materials and design to the components of Defense Technology bean bag shotshells. The four fired 12 Gauge shotshells were all fired by the Remington shotgun.

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, the Decedent posed an imminent danger to the patrol officers as well as to the residents in the area of the shooting. Decedent, while armed with a knife that had a seven inch blade, continued to advance towards officers after he had been told to stop, to get on the ground, and to put the knife down. When the Decedent did not comply with

the orders, the police utilized their low lethal shotgun that hit the Decedent four times with bean bags. Being hit four times with bean bags temporarily stopped the Decedent. However, after a moment he continued to advance towards the officers while still holding the knife and ignoring further commands to stop and get on the ground. All of this was preceded by the Decedent unequivocally screaming during the 911 call that he was going to kill the police when they arrived. Considering these facts and the actions of the Decedent, the police officers were confronted by the appearance of imminent danger which created in their minds an honest belief and fear that they, or 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. Atty Gen. 47 (1985).

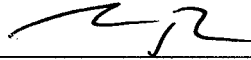
In this case, the officers who fired at Decedent had probable cause to believe that Decedent posed a threat of serious physical harm either to the officers themselves or other persons. The Decedent’s actions that morning prompted his mother to call 911 because, as she described, he was “out of control,” was armed with a knife, and he repeatedly and violently yelled during the 911 call that he did not care and he was going to kill the police when they arrived. The Decedent, while armed with a knife, advanced upon officers and would not comply with their lawful orders to stop. The officers first attempted to stop the Decedent by using a low lethal shotgun with bean bag rounds. Notwithstanding being hit by four bean bags, the Decedent did not relent. He continued towards the officers while still armed with the knife. All of these circumstances created reasonable fear in the officers’ minds that the Decedent posed a threat of serious physical harm either to the officers or 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.” Additionally, a countdown of the officers’ weapons corroborates that the officers stopped firing once the threat ceased to exist. None of the weapons fired by the officers was “emptied”; rather, each weapon contained unfired cartridges. This fact also illustrates the restraint exercised by the officers - - when Decedent no longer posed a threat to officers or civilians, no additional shots were fired.

CONCLUSION

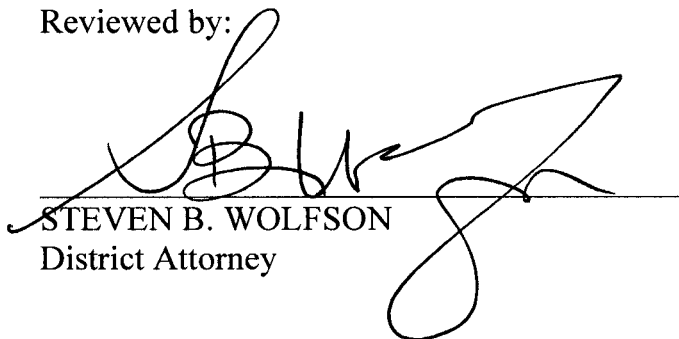
Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Officer Grivas, Officer Hager, and Officer Houchen were reasonable and legally justified. The law in Nevada clearly states that homicides which 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.



GIANCARLO PESCI
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney