

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Stanley Gibson December 12, 2011

Introduction

In the early morning hours of December 12, 2011, numerous members of the Las Vegas Metropolitan Police Department had gathered in response to an individual who had been stopped by police officers following several 911 calls by concerned citizens. He was driving a 1991 white Cadillac Brougham. The vehicle was pinned precariously between two patrol cars and, at times, was revving its engine in an obvious attempt to break free. The driver, later identified as Stanley Lavon Gibson, was not responding to officers' commands to exit the vehicle.

Concerned that the white Cadillac might break free and significantly harm individuals in the immediate area, initial patrol division responders devised a plan to remove Mr. Gibson, a United States veteran and participant in the Gulf War, (hereinafter "Decedent") from the vehicle. That plan, as first envisioned, was never executed. A series of failures ensued. Ultimately, Las Vegas Metropolitan Police Department Police Officer Jesus Arevalo fired seven rounds from his Olympic Arms .223 caliber assault rifle into Decedent's Cadillac. Decedent was struck four times. He died as a result of his injuries. This report explains why the actions of Officer Arevalo were not criminal.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Arevalo was not criminal. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police

Fatality Public Fact-Finding Review held on February 28, 2013. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

To reach this opinion, this Office relied upon the criminal investigation conducted by the Las Vegas Metropolitan Police Department. In addition, we conducted our own independent investigation, wherein fifteen witnesses were interviewed. These interviews were of lay witnesses and members of law enforcement. Some interviewees were represented by counsel and some were not. In either case, every witness who was asked to submit to an interview agreed and, similarly, every witness answered all questions asked of him or her.

Background

Less than thirty days prior to December 12, 2011, Decedent and his wife, Rondha Gibson, moved from their home at 2009 Michael Way to an apartment at 2701 North Rainbow Boulevard. Decedent was not entirely familiar with the new area in which he lived and, on at least one occasion, mistakenly drove into the Alondra Condominium Apartments, located at 2451 North Rainbow Boulevard, which is where the shooting ultimately occurred.



Decedent's apartment complex was directly next to the Alondra Condominium Apartments which is where the shooting occurred.

Officers Respond to Decedent's House – 37 Hours Before Shooting

On December 10, 2011, at approximately 12:14 p.m., Decedent placed a 911 call from his residence. The call began when Decedent told the call taker that he was sitting with his wife and he would not be signing a contract. He explained that his wife was "tripping." He wanted "Metro" to come to his house. When the 911 operator began to ask him questions, he became quarrelsome and belligerent. He expected a police officer to immediately respond to his location.

Las Vegas Metropolitan Police Officer Steven Pace was one of several officers who was assigned to the call. While in the parking lot, Decedent balled up his fists and lunged at Officer Pace. Surmising that Decedent struggled with mental challenges, police officers decided the best course of action was to arrest him for resisting a public officer. The officers hoped Decedent would receive a complete psychiatric evaluation at the jail and would be treated for his mental condition before he was released.

Instead, Decedent received an "Intake OR," which is a method used to administratively reduce the population of the jail by releasing low-level offenders. Decedent was released within hours of his arrest which was not what was contemplated by Officer Pace.

Decedent Cited for Petit Theft – 26 Hours Before Shooting

Decedent was detained at the Golden Nugget located at 129 East Fremont Street on December 10, 2011. At approximately 11:00 p.m. Gaming Control Officer Kenneth Yurelon arrived at the casino and learned that Decedent entered the gambling area, grabbed a hand full of chips and threw them across a roulette table. After that, he walked over to a black jack table, snatched \$100 in chips and then placed a \$5 wager with the chips he had taken. Security arrived shortly thereafter and took him into custody.

When Officer Yurelon advised Decedent of his rights, he replied, "From this point forward there will be no more conversation." Decedent also said, "I just had to try it once to see what it was like. I've lived in this town my whole life and seen these casinos being built, and people throwing money on the tables, and I didn't get the reaction I was expecting. I thought people would stand and cheer." Decedent was cited for petit theft and released.

Decedent Found Walking in Active Traffic – 16 Hours Before Shooting

On the morning of December 11, 2011, the Las Vegas Metropolitan Police Department began to receive 911 calls regarding a man who was walking in and out of moving traffic at the intersection of Jones Boulevard and Vegas Drive. The first call was at 8:34 a.m: the man was in the middle of the travel lanes. A second call described the man as “dazed.” Coincidentally, Officer Steven Pace, the same officer who arrested Decedent the day before, responded to the intersection. There, much to his surprise, he encountered Decedent, who he found wandering in and out of traffic.

Officer Pace was concerned for Decedent’s safety. He spoke to Decedent and realized he did not appear lucid and had a blank look on his face. Officer Pace made the decision to psychiatrically detain Decedent pursuant to the Legal 2000 process.¹ Officer Pace summoned an ambulance and Decedent was transported to Mountain View Hospital.

The paperwork completed by the ambulance workers contradicted the paperwork completed by Officer Pace in the Legal 2000 documentation. Officer Pace reported Decedent was acting in a manner that posed a danger to himself by walking up to moving vehicles. According to Officer Pace, Decedent did not know what day it was or where he lived. The AMR (American Medical Response) run sheet indicated that Decedent had a history of cancer, depression, seizures, Posttraumatic Stress Disorder, anxiety, and suicidal ideation with three prior attempts. The AMR paramedic wrote in his narrative that the patient said he was walking in the middle of the road to get arrested so that he could go to jail or a hospital to get out of the cold. The paramedic also wrote that the patient stated he currently was not feeling suicidal, had no plans to hurt himself, and that he just wanted to get warm.

Decedent was seen by Doctor Alan Marino at Mountain View Hospital. Doctor Marino concluded there were insufficient grounds upon which to detain Decedent pursuant to a Legal 2000. Decedent was released from Mountain View Hospital at approximately 9:45 a.m. on December 11, 2011. He arrived back at his home some time around 11:00 that same morning.

Decedent Makes Multiple Calls to 911 – 13 Hours Before Shooting

At 11:53 a.m. on December 11, 2011, according to dispatch records, a person at 2701 North Rainbow Boulevard, Apartment Number 1006, was suffering from chest pain. An ambulance arrived at Decedent’s residence at approximately 11:59 a.m.

¹ A Legal 2000 is the document used to initiate an involuntary commitment to a Nevada psychiatric facility. The document can be initiated by a police officer, licensed mental health clinician or physician. A person can be placed on a Legal 2000 when he is considered to be a danger to himself or others as a result of a mental illness.

The AMR paramedic arrived and treated Decedent. Records noted Decedent was suffering from “acute onset of anxiety / stress feelings.” According to the AMR paramedic, Decedent was emotionally upset and in mild distress. The paramedic noted that he was anxious and agitated because his wife was trying to antagonize and lie to him. Decedent reported to the paramedic that he had been without his medication and needed to return to Mountain View Hospital where he had previously been treated.

Upon being placed in the ambulance, Decedent exhibited signs that he was having an anxiety attack. However, prior to departing for the hospital, he told medical personnel at the scene that he felt better and no longer wished to be transported. Eventually, he executed a Refusal of Service form, was discharged from the ambulance and left at his residence.

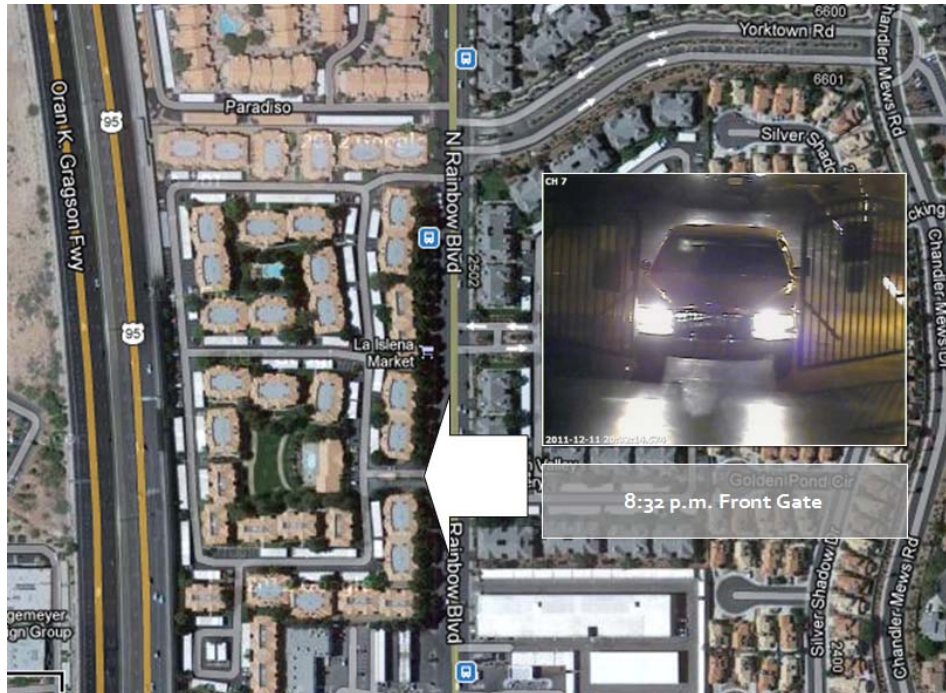
Later that same day, just before 6:30 p.m., Decedent again called 911. He told call takers that he needed an ambulance sent to his residence. When they began to ask him questions, he became irate and demanded that Metro respond to his residence within three minutes. He warned the call takers not to “fucking play with me” and eventually claimed that he was having a heart attack. He wanted security. He warned that if anyone touched him, he would take it as a hostile threat and he would have them arrested. He wanted Metro to respond and he told the operator that he would leave the front door open. “I want them over here now. I want to see two Metro officers over here now. Get your ass off your fucking white ass [sic] and get the goddamn officers.”

Rondha Gibson also called 911 and said she needed an ambulance at her residence because her husband was “flipping out” and suffered from Posttraumatic Stress Disorder. Decedent could be heard screaming in the background.

AMR Ambulance Unit 1133 responded to the Gibson residence. Decedent informed them that he wanted to be taken to Mountain View Hospital because he had not taken his anxiety medicine for three weeks. However, he refused to be placed on a gurney and insisted on walking to the ambulance. Once inside the ambulance, when medical personnel were trying to measure his vital signs, Decedent became agitated and said, “No, we don’t need that, just get this truck moving.” Decedent requested the paramedics take him to University Medical Center; however, when the driver began to walk to the front of the ambulance, Decedent began to curse at the crew. He said, “Fuck this, I can get there faster myself. I will fucking walk if I have to.” Decedent got out of the ambulance, ran to his car, and drove away. The AMR paramedic notified his supervisor and cleared the call.

Decedent Forces Cadillac Through Gate – 4 Hours Before Shooting

On December 11, 2011, at approximately 8:30 p.m., Decedent's white Cadillac was captured on Alondra Condominium Apartment surveillance video at the complex entrance gate pushing its way through. After forcing his way into the complex, Decedent turned and headed in a northerly direction.



Video from the Alondra Condominium Apartments shows Decedent's Cadillac forcing its way through the front gates.

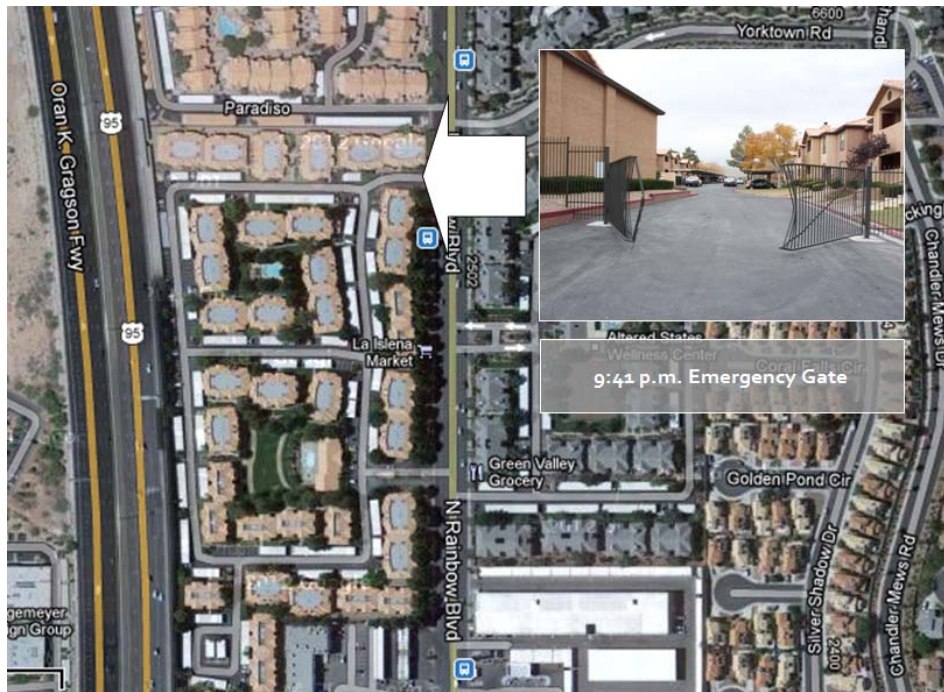
Attempted Burglary Call – 94 Minutes Before Shooting

On December 11, 2011, at 11:22 p.m., Metro dispatch received a panicked 911 call from Debra R., who lived at the Alondra Condominium Apartments. Debra R. related to dispatchers that two black males were kicking her front door and turning the knob in an attempt to gain entry to her apartment. She did not know or recognize either of these two men.² Fearing for her personal safety, Debra R. called 911.

It appears from the evidence that Decedent had confused the Alondra complex for his own, as he had done in the past. Additionally, because of the location of Debra R.'s apartment in the Alondra complex and the location of Decedent's apartment in his own complex, it is likely the person attempting to make entry into Debra R.'s apartment was Decedent.

² No additional information has been obtained that would identify or verify that indeed a second person was outside the front door to Debra R.'s residence.

Nearly contemporaneously with Debra R.'s call, three citizens called 911 to report a white Cadillac driving on the wrong side of the road with its lights out. These citizens described the vehicle purposefully seeking to strike other vehicles head on. Based upon the descriptions of the vehicle given by the citizens, it is apparent they were describing Decedent's white Cadillac. Metro dispatch broadcast these events to patrol units in this area command. Most of the officers who ultimately responded to what became the shooting incident were aware of these dispatches and believed that the occupant of the white Cadillac was the person involved.



Damage to the emergency gates of the Alondra Condominium Apartments caused when Decedent exited through the locked gates.

Officer Anja Highsmith was near the Alondra complex when she heard the “priority” call from Metro dispatch as a burglary in progress. En route to this call, Officer Highsmith was advised that the suspect had left the area in a white, later-model Cadillac. Officer Highsmith recalled that this description matched an earlier incident involving a white Cadillac damaging one of the east gates at the Alondra complex.

Officer Highsmith was the first officer to arrive at Alondra and was immediately hailed by a citizen who informed her that a white Cadillac had just rammed another east gate³ at Alondra. Driving to Debra R.'s apartment, Officer Highsmith passed the damaged gate but did not see the white Cadillac at that location.

³This gate was the northern “Emergency” gate at the Alondra Condominium Apartments.

Officer Highsmith contacted Debra R. at her apartment. Debra R. appeared to be frightened and scared when she was relating the events to Officer Highsmith. Officer Chad Vensand arrived at Debra R.'s apartment. After leaving the apartment, Officers Highsmith and Vensand were in the parking lot outside, discussing how upset and scared Debra R. appeared. Suddenly, a white Cadillac, matching the earlier dispatch descriptions, drove into a parking space immediately to the west of where the officers were located. This information was related to Metro dispatch by Officer Highsmith. As a result, other units in the area command began to drive to that area to provide backup to Officers Highsmith and Vensand.

The windows of the Cadillac were darkly tinted and officers were unable to determine who or how many persons were inside the vehicle. Officer Highsmith was able to see a silhouette of the driver. The driver of the white Cadillac turned off the engine and then, a short while later, started the engine again. Based upon the description of the vehicle, its location to Debra R.'s apartment and the unusual behavior, Officers Highsmith and Vensand determined that further investigation of the vehicle and the potential occupants was appropriate.

For safety reasons, Officer Vensand positioned his patrol vehicle behind the white Cadillac to prevent it from leaving the scene and provide a position of cover for Officer Highsmith and himself. While behind the patrol vehicle's doors, Officers Highsmith and Vensand gave repeated verbal commands to turn the engine off and exit the vehicle. They received no response. Officer Highsmith notified Metro dispatch that there was no response to verbal commands and advised of the license plate information on the Cadillac.

Officer Highsmith broadcast that she had another police officer with her and they needed to clear any occupants from the white Cadillac. The dispatcher asked Officer Highsmith if she needed additional officers, and she said "that would help." Officers Shane Witham and Praise Cowman were assigned to the call. Officer Highsmith took up a position on the passenger side of Officer Vensand's car. When the officers ordered the driver of the Cadillac to show his hands, the driver started the vehicle. The officers ordered the driver to turn the car off, roll his window down, and show them his hands. The driver did not comply.

Officer Highsmith broadcast the vehicle license plate as Nevada 896XSM. The dispatcher ran the license plate number and announced the registered owner as Stanley Gibson at 2009 North Michael Way. The police dispatcher relayed that he had prior arrests for resisting a police officer and battery with a deadly weapon.



The positions of the various police vehicles and Decedent's vehicle between them.

Officer Highsmith broadcast that the Cadillac was driving right at her. At approximately the same time, Officers Witham and Cowman arrived. Officer Witham pulled his patrol car up to the right side of the Cadillac, placing his right front bumper into the right front wheel well of the Cadillac, pinning the Cadillac against the front bumper of Officer Vensand's patrol car. Officer Vensand's patrol car was in contact with the rear bumper of the Cadillac.

The Events Leading to Shooting of Decedent

Officer Vensand broadcast that he needed more officers because the driver had rammed a police car, was spinning his tires, and had barricaded himself inside the Cadillac. During this time, K-9 Officer Scott Murray and several other officers were assigned to the call, and Sergeant Michael Hnatuick arrived at the scene. As Sergeant Hnatuick got out of his vehicle, he heard the engine revving on the Cadillac and saw smoke from the tires billowing into the air. Sergeant Hnatuick ran to the Cadillac, ordered the driver (Decedent) out of the vehicle but he did not comply.

As officers continued to arrive, Decedent went through several phases where he revved the engine and spun the tires, then turned the car off and repeated the process. Officers continuously used public address systems, attempting to communicate to Decedent and direct him to exit from his vehicle; he never complied. Sergeant Hnatuick questioned whether the Cadillac could break free. Out of abundance of caution, he ordered that a "spike strip" be deployed behind Officer Vensand's patrol car in case the

Cadillac were to dislodge and head in that direction. Sergeant Hnatuick also ordered officers to begin evacuating the apartments north of the Cadillac. He directed these actions because he believed Decedent was a person of interest in the attempted burglary of Debra R.'s home and was a suspect in an assault with a deadly weapon upon Officer Highsmith.

During the time Decedent was barricaded in his vehicle, he did not communicate with the officers. At various times throughout the standoff, officers reported that Decedent was moving around in the front seat of the vehicle. Officers also reported seeing him taking off his seatbelt and reaching for something in the passenger seat before completely lying down in the front seat.

The Hnatuick Plan

When Decedent refused to comply with the officers' orders to exit the vehicle, Sergeant Hnatuick devised a plan to remove him. He felt that a low lethal option was suited for the situation because there was no information that Decedent was armed with a firearm and the suspect had not given any indication that he had a weapon other than the vehicle. Sergeant Hnatuick felt the reason Decedent was revving his engine was to break free from the police vehicles that had, thus far, been pinning his vehicle in and preventing his vehicle from leaving the area. Sergeant Hnatuick believed Decedent would be a threat to the officers at the scene and other drivers on the road because he had already tried to ram cars on the street.

Sergeant Hnatuick thought the Cadillac was fairly stationary so he developed a plan to use a small team of officers and himself to approach the Cadillac from the rear and, using a low lethality shotgun, shoot a hole in the back window of the car. Sergeant Hnatuick chose the back window because it would afford the team the element of surprise and cover. If Decedent were armed with a weapon, it would make it harder for him to shoot at the approaching officers. After the hole was shot in the rear window, Sergeant Hnatuick along with lethal cover officers would approach the rear of the Cadillac and discharge a large canister of Oleoresin Capsicum (OC) spray into the passenger compartment. Hnatuick believed the introduction of a large amount of OC spray would force Decedent out of the vehicle where he could be taken into custody. Hnatuick also had K-9 officers and patrol officers with tasers deployed in the area in case Decedent attempted to flee on foot.



The path officers would take while employing the “Hnatuick Plan” when extricating the Decedent from his vehicle. The dotted line represents the path that OC spray would be shot into Decedent’s vehicle.

Sergeant Hnatuick’s team consisted of himself, Officer Malik Grego-Smith, Officer Arevalo, Officer Witham and Officer John Tromboni. Sergeant Hnatuick was armed with an OC Devastator spray canister, Officer Grego-Smith was armed with a low-lethality shotgun, Officer Arevalo was armed with an AR-15 rifle, Officer Tromboni was armed with a shotgun and Officer Witham was armed with a taser.



This diagram shows the officers who would participate in the “Hnatuick Plan” as well as the weapons they would employ and their respective positions in the “stack.”

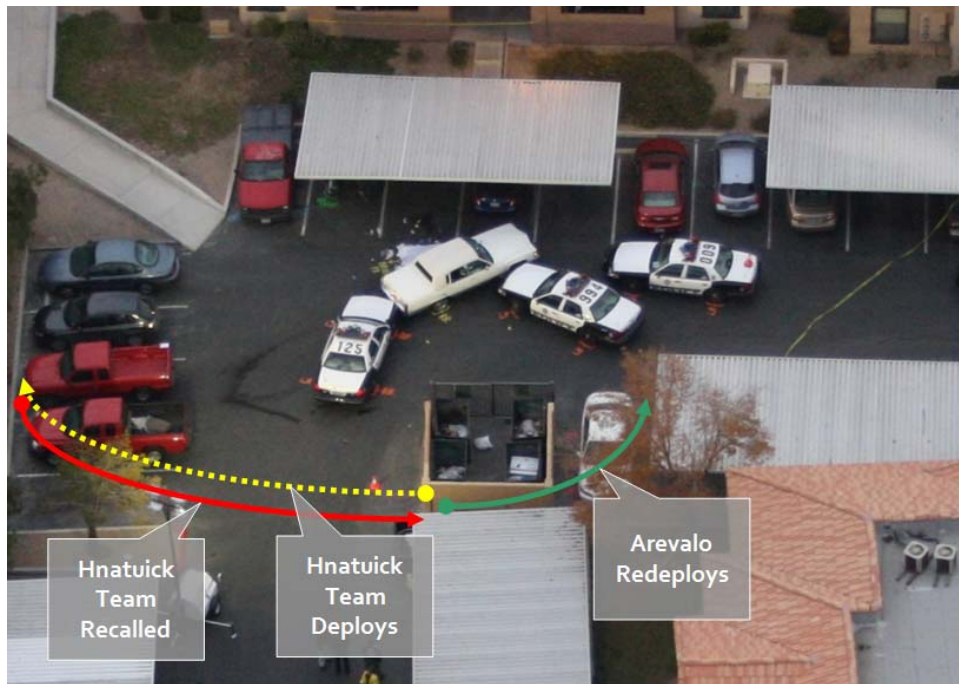
Immediately after the briefing of Sergeant Hnatuick’s team, Officer Witham and Sergeant Hnatuick had a short but direct conversation about the importance of communication when the plan was to commence. In particular, they both agreed it was absolutely crucial, that prior to the team being deployed to approach Decedent’s vehicle, all officers at the scene be advised of that fact. This was critical to prevent other officers at the scene from reacting with “sympathetic gunfire.” They did not want other officers at the scene to attribute the low lethal shotgun fire to the occupant of Decedent’s vehicle and, in turn, mistakenly fire at the Cadillac. It was agreed that prior to the patrol assault upon the vehicle, they would ensure proper communication of the plan to other officers on scene either by radio, cell phone or Metro dispatch, or a combination of all three.

Lieutenant Dockendorf Arrives at the Scene

At approximately 12:43 a.m. on December 12, 2011, Lieutenant David Dockendorf arrived at the scene. After Lieutenant Dockendorf and Sergeant Todd Mueller arrived, Sergeant Hnatuick briefed them on his plan, received their approval to proceed, and finalized his arrest team. While Sergeant Hnatuick was preparing his team, Lieutenant Dockendorf assigned Sergeant Mueller to address other officers at the scene and advise them of the plan.

At approximately 12:52 a.m., Lieutenant Dockendorf called the dispatch supervisor and requested to speak to Lieutenant Mike McCrimon, the SWAT Commander. Lieutenant McCrimon was not immediately available and Lieutenant Dockendorf was busy talking with other officers, so the dispatcher agreed to call Lieutenant Dockendorf back once Lieutenant McCrimon was on the line. The shooting occurred approximately four minutes later.

At approximately 12:53 a.m., Officer Witham broadcast that units in front of the Cadillac should move south because officers were going to approach from the rear of the vehicle. Shortly after Officer Witham's broadcast, Sergeant Hnatuick began moving his team west of the Cadillac and north along a concrete wall behind the Cadillac. As Sergeant Hnatuick's team staged near the rear of the Cadillac, they were called back to the dumpster area south of the Cadillac by Lieutenant Dockendorf. The team was told they would no longer be executing the plan and, instead, that SWAT would be summoned to the scene to extricate Decedent from the vehicle. After returning to the dumpster area, Officer Arevalo received Sergeant Hnatuick's permission to separate from the team and move to a position east of the dumpster. After separating from the team, Officer Arevalo took up a position at the left rear wheel well of a white Toyota sedan which was parked on the east side of the dumpster enclosure. Officer Arevalo's position was approximately 29 feet southeast of Decedent's Cadillac.



The deployment and callback of the Hnatuick Team. Thereafter Officer Arevalo is redeployed as lethal cover.

At approximately 12:55 a.m., Lieutenant Dockendorf and Sergeant Hnatuick's team, minus Officer Arevalo, were positioned on the west side of the dumpster enclosure, approximately 36 feet south of the Cadillac. The Air Unit radioed that Decedent was

sitting back up, holding the steering wheel and was attempting to start the vehicle. Then, the Air Unit reported that the Cadillac was spinning its tires and was blocked in. Lieutenant Dockendorf decided to re-implement Sergeant Hnatuick's low-lethality plan because he was concerned that if the Cadillac were to break free from the two patrol cars that were pinning it in, it would be a hazard to the officers in the area, and the incident would turn the area into a "shooting gallery."

At approximately 12:56 a.m., video footage recorded by a neighbor showed smoke pluming from the rear tires of the Cadillac; the engine could be heard revving in the background. At approximately 12:56:36 a.m., Lieutenant Dockendorf, who had never seen Decedent exhibit this behavior from within the vehicle before, broadcast over his radio, "Alright units, we're moving in, shoot." Realizing what he had just said over the radio, Lieutenant Dockendorf paused for a moment to see if any of the officers had interpreted his comments over the radio as an order to shoot. Lieutenant Dockendorf had not meant to make that last radio transmission. He only intended to direct Officer Grego-Smith to fire his low-lethal round at Decedent's vehicle. He had inadvertently kept his hand-held microphone keyed for too long and the entire phrase was relayed via the radio. He was relieved no one had fired.

At this point, Lieutenant Dockendorf and Officer Grego-Smith stepped up to the northwest corner of the dumpster enclosure, approximately 31 feet south of the Cadillac, and Lieutenant Dockendorf directed Officer Grego-Smith to fire. Officer Grego-Smith fired one low-lethality beanbag round from his shotgun, striking the right rear passenger door window on the Cadillac. When Officer Grego-Smith fired at the window, the tires on the car were spinning and the engine was revving.

Less than a second later, Officer Arevalo fired seven rounds from his AR-15 rifle. Officer Arevalo's rounds penetrated the right front passenger door, the window, and the "B" pillar, striking Decedent as he was sitting in the driver's seat, killing him.

The Aftermath of the Shooting

Countdown of the Weapons

The low lethality shotgun used by Officer Grego-Smith was a 12 gauge Remington pump-action shotgun, model 870 bearing serial number C383201M. The shotgun had an orange slide grip and an orange stock. The shotgun had one 12 gauge drag stabilized beanbag shell in the chamber, one in the magazine tube, and six on the installed side saddle shell holder. The capacity of the magazine tube was four, and the capacity of the side saddle was six. The low lethality shotgun was normally loaded with four beanbag shells in the magazine tube and six on the side saddle.

Based on the countdown, it appears that Officer Grego-Smith fired one beanbag round during this incident. The one-round-fired conclusion is based on the countdown and the fact that one unfired beanbag shell was found at the scene near where Officer Grego-Smith staged prior to the shooting. It is also consistent with witness statements and video collected during the investigation. Officer Grego-Smith was not present during the countdown of this shotgun, but he was photographed. This shotgun was assigned to Sergeant Hnatuick's vehicle and removed from the vehicle by Officer Grego-Smith prior to the shooting. After the countdown, the low lethality shotgun was impounded by Crime Scene Analyst Amy Nemcik.

Officer Arevalo was using his personal Olympic Arms, model MFR .223 caliber assault rifle, serial number H0491.⁴ Arevalo said he carried each of his five magazines loaded with 28 rounds each. The magazine in his weapon contained twenty rounds and there was one round in the chamber. This would indicate that he fired seven rounds from his weapon during the incident. The remaining four spare magazines contained 28, 28, 29 and 28 rounds respectively.

Seven .223 caliber cartridge cases were recovered at the scene. The seven cartridge cases recovered at the scene, and the 21 cartridges installed in Officer Arevalo's rifle during the countdown also are consistent with him firing seven shots. After the countdown, the rifle was impounded by Crime Scene Analyst Olivia Klosterman.

Fourteen other police officers present during the immediate vicinity of this shooting had their weapons analyzed by crime scene analysts and investigating detectives. The countdowns of each of their respective weapons indicated that no other weapons were discharged during this event. Video of this incident taken by various citizens confirms this conclusion. Moreover, no other cartridge cases were found at the scene.

Autopsy of Decedent

On December 13, 2011, at approximately 9:25 a.m., Doctor Alane Olson, M.D., with the Office of the Clark County Coroner Medical Examiner, performed an autopsy on the body of Decedent. Doctor Olson observed that he suffered the following injuries (which are listed in no particular order):

1. Gunshot wound A, of the right upper back;
2. Gunshot wound B, indeterminate range, of the distal right abdominal area;

⁴ Metro officers are allowed to use their own rifles on duty provide they obtain prior authorization and are able to qualify with the weapon. Officer Arevalo did these things.

3. Gunshot wound C, indeterminate range, partially exiting, involving the right proximal forearm;
4. Gunshot wound D, indeterminate range, which affects dorsal right hand.

After performing a complete autopsy Doctor Olson determined that Decedent's cause of death was multiple gunshot wounds to the torso. The manner of death was homicide, meaning death caused by another person.

The toxicology report indicated that Decedent had Citalpram, a prescription anti-depressant, in excess of therapeutic levels. In addition, Diphenhydramine (typically used to treat allergies) and marijuana metabolites (indicating recent use of marijuana) were also present.

Problems with the Radio System

The Las Vegas Metropolitan Police Department's Radio Systems Bureau conducted a technical analysis of how its radio system performed during this incident. Radio transmissions were analyzed from the time that Officer Highsmith announced she had a vehicle matching the description of the suspect vehicle in sight (December 12, 2011, at 12:17 a.m.) until officers advised that there were shots fired (December 12, 2011, at 12:56 a.m.). During this thirty-nine minute period, there were 218 push-to-talk transmissions made by officers at the scene. The technical review identified the following issues:

- Four transmission were garbled, partially or completely unreadable transmissions;
- Three transmissions were unreadable, likely due to echoing;
- One transmission was unreadable due to choppy audio or the audio going in and out;
- One transmission was unreadable, perhaps due to background noise; and,
- Twenty-three zero second push-to-talks from officers. After the incident, it was discovered that many officers had attempted to speak over the radio but the radio system would not allow them to do so.

There was a more serious problem with Metro's radio system that dealt with the ability of an individual officer's radio to maintain connection with a radio site. The problem was identified when a Radio Systems Bureau technician was actually sent to the location of the shooting. In a Memorandum dated December 19, 2011, Officer Conrad Sobonik wrote:

On 12/13/11, I went to 2451 N. Rainbow Blvd. Las Vegas, NV in reference to the radio troubles reported there. One of my preliminary findings is the portable radio has a relatively weak signal at this location. My portable radio switched sites a total of six times, likely due to those relatively low signal strengths. These six site changes encompassed four different sites ... and occurred within a total of nine minutes.

This problem was linked to an inferior roaming algorithm. The practical effect of this issue is that radio signals continually bounce from one radio site to the next without locking onto a single site. The result is garbled or degraded or inaudible audio. Another problem associated with the roaming algorithm is dropped audio. When this happens, a person does not receive a radio transmission at all.

Legal Analysis

This Office is tasked with assessing the conduct of an officer involved in a killing which occurred during the course of his or her duty. That assessment includes determining whether any criminality on the part of the officer existed at the time of the killing. As this case has been deemed a homicide by the Clark County Coroner-Medical Examiner, the actions of Officer Arevalo will be analyzed under the State's jurisprudence pertaining to homicides. In this case, the shooting of Decedent by Officer Arevalo was not criminal due to his right of self-defense and defense of others. The legal analysis of both legal theories is virtually identical.

The right of self-defense and defense of others is found in Nevada statutory law. "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).

Although it is so in every case, it is worth emphasizing here that it is the State's burden, when self-defense is suggested, to prove beyond a reasonable doubt the absence of self-defense. The approved jury instruction articulated by the Nevada Supreme Court in *Runion v. State*, 116 Nev. 1041, 1052 (2000), reads:

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

If this case were to proceed to trial, the State would bear the burden of proving beyond a reasonable doubt that Officer Arevalo was not acting in self-defense or defense of others.

The self-defense analysis set forth in *Runion* continues as follows:

The killing of another person in self-defense 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 him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, 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.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

Runion, 116 Nev. at 1051.

Ultimately, the investigation by the Las Vegas Metropolitan Police Department revealed that Decedent neither fired nor possessed a gun while inside his Cadillac. Thus, no

actual danger – at least in terms of being shot – existed either to Officer Arevalo or other officers on scene. Arguably, though, Officer Arevalo believed that the occupant of the Cadillac was firing a gun from inside the vehicle when he saw the rear, passenger side window of the Cadillac shatter. This is because the only plan communicated to Officer Arevalo involved an officer shooting out the *rear window* of Decedent’s Cadillac, not the *side passenger window*. Therefore, the question presented is whether Officer Arevalo had the right to defend himself or others when no *actual* danger of being shot existed, but when Officer Arevalo mistakenly believed the occupant was shooting at him or other officers.

The Nevada Supreme Court makes it perfectly clear that the mere *perception of danger*, as opposed to *actual danger*, is sufficient to warrant a killing in self-defense:

Actual danger is not necessary to justify a killing in self-defense. 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 he 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 himself to be in like danger.

Runion, 116 Nev. at 1051-52.

When Officer Arevalo left the Hnatuick team to take up a position by the white Toyota, he was informed that the assault upon Decedent’s vehicle was not going to be done by patrol units and that SWAT would be called for that purpose. There is nothing to suggest he would have expected anything different.

The *only* communication that a patrol assault would take place upon Decedent’s vehicle to officers situated away from Lieutenant Dockendorf and Officer Grego-Smith was via Metro’s radio system. This was a catastrophic error, which likely resulted from Lieutenant Dockendorf’s concern upon seeing, for the first time, Decedent’s efforts to free his vehicle. The fact that Lieutenant Dockendorf was operating under the challenge of the stress is highlighted by the fact that he announced “shoot” over an open microphone for all of the officers at the scene to hear, many of whom had weapons aimed in the direction of Decedent.

Lieutenant Dockendorf's ineffectual attempt to inform officers at the scene that "We're moving in" was likely heard by no one. Sergeant Hnatuick did not hear it. Sergeant Mueller did not hear it. Officer Grego-Smith did not hear it. Officer Highsmith did not hear it. Officer Witham did not hear it. Officer Tromboni did not hear it. Moreover, Metro's Radio Systems Bureau scientifically confirmed, that due to the inferior roaming algorithm, the likelihood is that few, if any, officers heard the radio comment. Under the circumstances, it would be unreasonable to believe that Officer Arevalo was alerted via the radio that patrol units were undertaking an assault upon Decedent's vehicle. The very fact that none of the officers fired their weapons in the face of Lieutenant Dockendorf's command to "shoot" uttered over his open microphone underscores the fact that no one likely heard the radio transmission.

Moreover, Lieutenant Dockendorf's execution of the Hnatuick plan departed from its original construction in several, significant ways. First, under the Hnatuick plan, there was a stack of five officers who would approach Decedent's vehicle. Dockendorf used just himself and Officer Grego-Smith. Under the Hnatuick plan, officers would approach the vehicle from the rear. Lieutenant Dockendorf approached it from the right. Finally, and perhaps most importantly, under the Hnatuick plan, the *rear* window of Decedent's vehicle was to be shot out. At Lieutenant Dockendorf's direction, a *side* window was shot out. All of these factors would have caused the patrol assault to look unfamiliar to Officer Arevalo, thereby causing a reasonable belief in his mind that the occupant of the Cadillac was shooting at him or at other officers.



Officer Arevalo's view of Decedent's Cadillac and obstructed view of the area from which Officer Grego-Smith fired the low-lethality round.

In addition, from where Officer Arevalo was positioned, he could not see the patrol officers staging as they began their assault on Decedent's vehicle. His view of those officers was completely obstructed by the trash bin enclosure.

All he would have perceived as he was providing lethal coverage of Decedent's vehicle was a gunshot explode the side window of the car. Because of the unusually dark tint of the windows of the vehicle, he could have reasonably believed there was a gunshot being fired from Decedent's vehicle rather than into the vehicle. If this were the case, Officer Arevalo had the right to discharge his weapon at the Cadillac in self-defense or in defense of others.

It is a fact, however, that Decedent possessed no weapon. He was unarmed when shot by Officer Arevalo. Yet, if Officer Arevalo reasonably believed that Decedent was firing shots at other officers at the scene or at him, he was entitled to a legal analysis of self-defense as though that fact existed. If the criteria for self-defense are met, the "killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger." *Runion*, 116 Nev. at 1052.

Conclusion

Based upon the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Officer Arevalo, while tragic, were not criminal. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. 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.

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