

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Alejandro Sanchez-Escoto on September 7, 2012

Introduction

On Friday, September 7, 2012, at approximately 0424 hours, Nevada Highway Patrol (“NHP”) dispatch received several calls from motorists regarding a male walking in the southbound travel lanes of CC-215. NHP Trooper Nicholas Montgomery was dispatched to the area. He located a Hispanic male adult, later identified as Alejandro Sanchez-Escoto (“Decedent”), on the north side of the freeway near the Decatur Boulevard overpass. Trooper Montgomery parked his patrol vehicle on the right side of the roadway where he saw Decedent jump a short jersey wall and run eastbound through a construction access/bridge extension area. Trooper Montgomery issued commands for Decedent to stop, but he refused. The trooper fired his department-issued Taser at Decedent; however, Decedent apparently was not struck and continued to run. Ultimately, while being pursued by Trooper Montgomery, Decedent jumped over a second jersey wall and fell more than 26 feet onto the southbound travel lanes of Decatur Boulevard. There is no evidence to suggest that there was any physical contact between Decedent and Trooper Montgomery during the entire incident.

Paramedics transported Decedent to the University Medical Center where he was pronounced dead from the injuries he sustained from the fall.

The District Attorney’s Office has completed its review of the September 7, 2012, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Trooper Montgomery were not criminal.

This report explains why criminal charges will not be forthcoming against the trooper 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 7, 2013. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Trooper Montgomery was not criminal.

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

The Events at CC-215 and Decatur Boulevard on September 7, 2012

Interviews of Motorists

In the early morning hours of September 7, 2012, several motorists called 9-1-1 after they saw a male subject walking on the CC-215 freeway. Motorists placed the 9-1-1 calls between 0427 and 0430 hours. Law enforcement officers contacted and interviewed the motorists after the incident. Below is a summary of their interviews:

Motorist #1 was driving with his wife eastbound on the CC-215 freeway. The couple saw a person walking northbound across the freeway. Motorist #1 described him as a Hispanic male adult, shirtless, with tattoos on his back. The subject appeared to be nervous or paranoid. He was looking around and making quick movements. The subject was grabbing his pants and standing near the middle freeway barrier as Motorist #1 and his wife passed him. After passing the subject, Motorist #1 looked in his rear-view mirror and saw the male walk southbound across the freeway. Motorist #1's wife called 9-1-1.

Motorist #2 was driving to work on the CC-215 freeway when she saw a subject walk northbound across her travel lane. Motorist #2 described the subject as a Hispanic male, wearing a grey tank top and dark, baggie pants. He had a "mad expression" on his face and was swinging his right arm back and forth. The subject stopped on the roadway as if he wanted to be hit. Motorist #2 honked her horn and was forced to swerve to avoid hitting the subject. After passing him, Motorist #2 stated the subject turned around as if he was going to walk southbound across the freeway. Motorist #2 believed the male was "on something" and wanted to kill himself. After passing him, Motorist #2 called 9-1-1.

Motorist #3 was driving eastbound on CC-215. He saw a Hispanic male wearing a tank top walking eastbound on the median that separates opposite lanes of travel. Motorist #3 called 9-1-1.

Motorist #4 was driving eastbound on the CC-215 freeway. She observed a male walking in the middle of the fast lane. He was walking westbound and "waving his hands in the air from side to side." Motorist #4 was forced to swerve into a different lane to avoid hitting the man. She was

unable to determine his race. Based on Motorist #4's observations, the subject appeared to have no fear or regard for his own safety. He acted as if he was drunk or on drugs. She thought the subject possibly wanted to get hit by a car. Motorist #4 called 9-1-1.

Motorist #5 was driving eastbound on the CC-215 freeway when he saw a Hispanic male walking in the #2 travel lane. The male was wearing a grey tank top and baggie pants. The subject was waving his arms around "as if he was mad" at the passing vehicles. Motorist #5 believed the subject was showing gang signs with his hands.

Interview of Pedestrian

In the early morning hours of September 7, 2012, Pedestrian took the bus to the area of Decatur Boulevard and CC-215 to begin his 0500 work shift. After getting dropped off by the bus, Pedestrian was sitting on the west side of Decatur Boulevard sometime after 0400 hours. He was waiting for his friend/co-worker to arrive to drive him the remainder of the way to work. Pedestrian was contacted by a uniformed police officer because Pedestrian generally matched the description provided by the 9-1-1 callers of the subject on the freeway. Pedestrian was asked to stand in front of the officer's vehicle. The patrol vehicle was parked on the west side of Decatur Boulevard just north of the CC-215 freeway. Pedestrian and the officer turned their attention to the top of the freeway overpass. Pedestrian saw a Nevada Highway Patrol trooper running after a Hispanic male, who was approximately ten (10) feet in front of the trooper. Pedestrian heard the trooper yell for the subject to stop just as the trooper and the male left his field of view. Pedestrian then heard the sound of a Taser. A second later, Pedestrian saw the subject place both hands on the top of the concrete barrier, swing his feet over the edge, and jump off the overpass. Pedestrian saw no hesitation. It was apparent to Pedestrian that the subject wanted to jump. No one was near the male when he jumped, and he landed in the middle southbound travel lanes of Decatur Boulevard. Pedestrian saw the officers immediately run to Decedent and render aid.



Aerial view of CC-215 and Decatur Boulevard.

Interviews of Responding Law Enforcement Officers

Trooper Nicholas Montgomery

On September 7, 2012, at approximately 0830 hours, LVMPD Detectives Christopher Bunting and Clifford Mogg met with NHP Trooper Nicholas Montgomery at the LVMPD Detective Bureau. Also present was Richard McCann, the Executive Director and Labor Representative for the Nevada Association of Public Safety Officers (NAPSO) and NHP Sergeant Anthony Bandiero, the Executive Director of the Nevada State Law Enforcement Officers Association (NSLEOA). Trooper Montgomery declined to give a statement based upon advice given to him by McCann; therefore, no interview was conducted.

Trooper Montgomery was clad in a standard issued NHP uniform with a duty belt around his waist that held the following items: a Sig Sauer model P229 firearm, three loaded magazines, a radio, a pair of gloves, two pair of handcuffs, a cuff key, a baton, a Taser on the left side of his hip, and a Voice Link Plus audio device on his right shoulder. According to Sergeant Bandiero, the device stores audio recorded information via equipment mounted inside Trooper Montgomery's patrol vehicle. This audio device is paired with two video cameras mounted inside the patrol vehicles. One camera is located near the rear view mirror and faces the front of the vehicle and the second is located above and behind the driver's seat and faces the rear passenger seat. Both the audio and video are activated after use of the emergency lights.

Crime Scene Analyst (CSA) Robbie Dahn responded to the office and took overall photos of Trooper Montgomery, as well as his equipment to include an X26 Taser bearing serial #X00-

318051. There was one cartridge inserted in the grip (serial # T-06-1133094), however no cartridge was in the firing end of the unit. Detective Mogg took possession of the Taser to download its internal data, and later impounded it into evidence. Detective Bunting noticed dust/dirt on Montgomery's left lower pant leg. Upon lifting the pant leg, Detective Bunting observed an abrasion on Montgomery's left shin area and redness on his left knee. The origin of the injury was unknown.

Officer Robert Bell

On September 7, 2012, at approximately 0840 hours, Detectives Daniel Long and Matthew Gillis conducted a taped interview with LVMPD Patrol Officer Robert Bell at the LVMPD Detective Bureau. Also present was Detective Kirk Hooten, acting as Officer Bell's Police Protective Association representative. Officer Bell was furnished with a satellite photograph of the area of Decatur Boulevard and CC-215 that was used for clarification during the interview.

At approximately 0427 hours, Officer Bell heard a call for service broadcast on his radio regarding a suicidal male running in and out of traffic on the freeway at CC-215 and Decatur Boulevard. The call had been initiated by numerous people calling 9-1-1, who described the male as wearing a grey tank top and dark blue jeans, pants or shorts. Officer Bell was working patrol when assigned, and immediately responded to CC-215 and Decatur Boulevard. Officer Bell was driving northbound on Decatur when he saw a Hispanic male with a grey tank top and dark shorts, standing on the west side of the street just north of the freeway. Officer Bell stopped adjacent to the male, whom he described as calm, cooperative and not sweating.

Traffic Officer Diebold arrived in the area just afterward and pulled up to assist Bell. Officer Bell was facing south when he saw a marked Nevada Highway Patrol vehicle parked along the north side of the CC-215 freeway, facing west with its emergency lights activated. Officer Bell then saw a Hispanic male running east from a uniformed NHP Trooper. The man was at least ten feet in front of the trooper on the bridge, east of the trooper's vehicle. Officer Bell could hear the trooper issuing commands, but could not discern what his commands were. Officer Bell could only see the chest and head of the suspect and the waist and head of the trooper, deducing the trooper was closer to the north wall of the bridge.

Officer Bell saw the trooper extend his right hand and heard what appeared to be a single Taser deployment. The male did not appear to respond, continuing to run further east and then north on the bridge. The male then climbed over the barrier and hung from the street level ledge by his hands for two or three seconds, while facing south toward the bridge. As the male was hanging from the ledge, the trooper ran up to his location and looked over the barrier at him.¹ The male then fell from the ledge onto the paved travel lanes of Decatur Boulevard. Officers Bell and Diebold ran over to the male and checked on his welfare. Officer Bell immediately requested medical personnel to respond.

Officer Bell opined that if the Taser had struck the male at the time it was deployed, Decedent would have immediately fallen to the ground on the bridge, and not over the bridge, since his momentum was eastbound and not northbound toward the north barrier. Officer Bell learned

¹ This may explain the scuffmark seen on Trooper Montgomery's pants, and the minor injury to his left leg.

the male was acting suicidal earlier, by running into traffic prior to police arriving and not complying with the trooper's commands. The male could have run back into traffic, causing an accident and thereby endangering other lives. When he climbed over the barrier wall on the north side of the CC-215 bridge, Officer Bell thought it was quite possibly a suicidal act.



View of CC-215 from Decatur Boulevard.

Officer Chad Palmira

On September 7, 2012, at approximately 0830 hours, Detectives Dean Raetz and Mitchell Dosch conducted a taped interview with LVMPD Patrol Officer Chad Palmira at the LVMPD Detective Bureau. Also present were Police Protective Association (PPA) Attorney Kathy Collins and Detective Rory Neslund, acting as Officer Palmira's PPA representatives. Officer Palmira was furnished with a satellite photograph of the area of Decatur Boulevard and CC-215 that was used for clarification during the interview.

Officer Palmira stated he responded to the area of CC-215 and Decatur Boulevard after hearing the radio broadcast of a Hispanic male wearing a grey tank top running in traffic on the freeway. He arrived and saw other officers speaking with a Hispanic male wearing a grey tank top on the west sidewalk of Decatur Boulevard, just south of the traffic signal for the westbound on-ramp for CC-215. He pulled his marked patrol vehicle to the curb, south of the other vehicles, even with the north end of the guard rail. Officer Palmira exited his vehicle and walked north to assist the other officers. As Officer Palmira approached them, he saw one of the officers looking up at the overpass. Officer Palmira stated he turned around to look in the same direction as well.

Officer Palmira saw another Hispanic male wearing a grey-colored tank top running eastbound along the inside of the barrier on the north side of the overpass. As an unknown Nevada Highway Patrol trooper was chasing the man, Officer Palmira heard the familiar sound of a Taser being discharged. The Hispanic male turned to his left, placed both hands on the top of the barrier wall, and swung both of his legs sideways over the barrier. The male turned his body around as he deliberately vaulted the wall and hung from the overpass for one to two seconds. The male fell onto the asphalt of the southbound lanes of Decatur Boulevard. Officer Palmira got into his patrol vehicle and pulled it out into the middle of the southbound lanes to block oncoming traffic. He then heard someone call for medical assistance on the radio.

Officer Kenneth Mancour

On September 7, 2012, at approximately 0850 hours, Detectives Raetz, Bunting and Dosch conducted a taped interview with LVMPD Traffic Officer Kenneth Mancour at the LVMPD Detective Bureau. Also present were Attorney Collins and Detective Neslund, acting as Officer Mancour's PPA representatives. Officer Mancour was furnished with a satellite photograph of the area of Decatur Boulevard and CC-215 that was used for clarification during the interview.

Traffic Officers Mancour and Diebold had just cleared a traffic stop at Warm Springs Road and Arville Street. They heard a radio broadcast that the Nevada Highway Patrol was responding to a call in reference to a Hispanic male wearing a grey tank top, running into traffic on CC-215 near Decatur Boulevard. The two traffic officers responded to the area to assist after hearing other officers were already assigned by dispatch.

They arrived and saw Patrol Officer Bell speaking with a Hispanic male wearing a grey tank top on the west sidewalk of Decatur, south of the traffic signal for the westbound on-ramp to the CC-215. Officer Diebold parked his motorcycle in front of (south) Officer Bell's marked patrol unit, and Officer Mancour parked his motorcycle behind (north) the patrol unit. Officer Mancour saw a backpack near the north end of the guard rail to the south of the vehicles and walked over to it.

As Officer Mancour did so, he saw another Hispanic male wearing a grey tank top, on CC-215 at the west end of the overpass. The male ran eastbound on the inside of the barrier on the north edge of the overpass, as an unknown NHP trooper was chasing him. Officer Mancour got on his motorcycle with the intention of riding up the off-ramp to cut off the male's escape from the trooper. He again looked up and saw the male put both hands on the top of the barrier wall on the north edge of the overpass. The male swung both of his legs to the east, jumped over the wall, and turned his body 180 degrees so he was now facing south.

The male caught onto the ledge at street level of the overpass with his hands, and hung for at least two to three seconds, before falling to the asphalt of the southbound travel lanes of Decatur Boulevard. Officer Mancour moved his motorcycle to assist in blocking southbound vehicular traffic, and saw Officers Bell and Diebold approach the man, with one of them calling for medical assistance on the radio.

Officer Justin Diebold

On September 7, 2012, at approximately 0920 hours, Detectives Long and Gillis conducted a taped interview with LVMPD Traffic Officer Justin Diebold at the LVMPD detective bureau. Also present was Detective Kirk Hooten, acting as Officer Diebold's Police Protective Association representative. Officer Diebold was furnished with a satellite photograph of the area of Decatur Boulevard and CC-215 that was used for clarification during the interview.

According to Traffic Officer Diebold, he was on a traffic stop when he heard a radio broadcast of a suicidal person walking in the travel lanes of traffic on the CC-215 at Decatur Boulevard. Officer Diebold responded to the area along with Traffic Officer Mancour, when they heard additional radio traffic advising of the suspect possibly, being a Hispanic male, tattoos on the upper body, wearing a grey tank top with black pants. As Officer Diebold was arriving in the area traveling northbound on Decatur Boulevard, he noticed LVMPD Patrol Officer Bell on a person stop on the west side of the street just north of the CC-215, which matched the male's description. Officer Diebold crossed over the median and parked just south of the patrol car when he heard Officer Bell yell out, "[u]p there!"

Officer Diebold looked up and saw a Nevada Highway Patrol vehicle with its emergency lights on, parked on the westbound shoulder of the freeway. Officer Diebold then saw a person running eastbound in the westbound side of the freeway from an unknown NHP trooper. Officer Diebold ran to his motorcycle in an attempt to drive to the trooper's location to assist him and prevent the subject from hurting himself or someone else. As Officer Diebold got to his motorcycle, he saw the subject had made it to the area of the overpass just above the number two travel lane of southbound Decatur Boulevard, with the trooper twelve (12) to fifteen (15) feet behind him.

Officer Diebold heard the trooper yelling commands but could not hear specifics. Officer Diebold described the subject as being out of it, having a thousand yard stare, looking like he was on a mission to jump. He then saw the trooper draw his Taser as the subject was running eastbound on the freeway. Officer Diebold heard it being deployed, and estimated approximately one to two seconds later, the subject intentionally jumped off the overpass. As the male jumped over the wall of the overpass, he then rotated facing the barrier wall. The subject grabbed a ledge as he was falling, which stopped him for approximately one to two seconds. As the subject was hanging onto the ledge, the trooper was just reaching the area just above the male.

The subject then fell onto the southbound travel lanes of Decatur Boulevard. Officer Diebold ran up to the subject in order to render assistance, and noticed he was not breathing and blood was on his face. Officer Diebold stated he could hear radio traffic requesting medical assistance and began blocking off the area of Decatur Boulevard and the CC-215. Officer Diebold thought that if the Taser had made contact with the subject with both probes, he would have collapsed on the overpass road and not fallen over the wall. Officer Diebold felt that from his perspective, the subject was attempting to commit suicide.

Interviews of Decedent's Family Members

Brother 1

UMC Security informed Detective Fred Merrick that two males were at the waiting room asking staff about the identity of the man who jumped from a bridge, thinking the victim might be the sibling of Brother 1. Detective Merrick, Coroner Michael Murphy and Coroner Investigator Tiffany Brown met with them.

Brother 1 of Decedent stated that Decedent was acting strangely the previous evening and he believed Decedent was on drugs. Brother 1 had been sleeping in his room and did not witness Decedent's behavior personally, but was told about it when his mother woke him in the morning. Decedent's mother stated that Decedent ran from her and his sister while they were walking to the store. The family saw news coverage of a man, who jumped or fell from a bridge, and thinking it might be Decedent, Brother 1 and Friend came to the hospital.

Detective Merrick asked Brother 1 why he thought Decedent was using illegal drugs. Brother 1 said he had found a glass pipe in Decedent's bedroom in the past. Brother 1 also said that Decedent currently has money and girlfriend problems.

A Friend of Brother 1 showed Coroner Murphy and Detective Merrick a photo of Decedent, which revealed two tattoos on his left arm that appeared to be the same as those observed on the left arm of the man who had gone over the overpass. Coroner Murphy told Brother 1 and Friend that the photo did look like the decedent and the tattoos matched.

Brother 2

On the afternoon of September 7, 2012, Detectives Bunting and Merrick visited Decedent's last known address of 4975 Duneville, Las Vegas, Clark County, Nevada. The Duneville address is a few miles from the site of the incident. The detectives met several of Decedent's family members.

Brother 2 of Decedent stated that on Thursday evening at approximately 2000 hours, Brother 2 saw Decedent walk into the living room of their apartment, look out the window and state, "[t]hey're looking at us." Decedent then went into the kitchen, drank some water and returned to his room. While walking back and forth between rooms, Decedent was frequently shaking his head "no", and drinking an excessive amount of water. This odd behavior continued every 20 minutes until approximately 0200 hours.

At some point during the evening, Decedent picked up the telephone and called 9-1-1, but then hung up. LVMPD dispatch called back and Brother 2 answered the phone, telling the dispatcher his little brother accidentally dialed the number (Event# 120907-0482 at 0239 hours). A short time later, Decedent left the residence with their mother to walk his dog, and Brother 2 went to bed. The next morning Brother 2 woke up to his sister crying, saying Decedent may be dead. The family watched the news and learned an unknown Hispanic male had jumped off the Decatur

overpass. Brother 2 learned Sister 1 and Mother took Decedent for a walk the previous night and he ran off toward Decatur Boulevard. After hearing the news, Brother 2 went back to sleep.

Brother 2 stated Decedent has no girlfriend or a vehicle, and he recently got a new job as a cook at an unknown restaurant. Brother 2 was unaware of Decedent ever attempting to take his own life or having a history of depression. Brother 2 did state that approximately three years ago, Decedent exhibited similar behavior. Although Brother 2 has never seen Decedent take illicit drugs, he believed they were responsible for his odd behavior. After hearing about Decedent, Brother 2 grabbed Decedent's cell phone and listened to a voice message, where an unknown male indicated he and Decedent could meet later that day, but that the unknown man did not want to come to Decedent's house, because his mother would be around. Upon completion of the interview, Brother 2 provided Decedent's cell phone to Detective Bunting.

Mother

On September 7, 2012, at approximately 1300 hours, Detective Merrick and Interpreter Katrina Bradasch contacted and conducted a taped interview with Mother of Decedent. Mother stated that the previous evening Decedent was home drinking alcohol, but she did not know if he was also using narcotics. At about 0200 hours, Mother, Decedent and Sister 1 decided to walk to a nearby Albertson's grocery store. As they were walking, Decedent took off running, for no apparent reason, and never came back. They looked for Decedent, but never saw him, and later returned home. While watching the news the next morning, Mother learned a male had died on the freeway. Brother 1 and (his) Friend went to the hospital to ascertain if it was Decedent.

Sister 1

On September 7, 2012, at approximately 1315 hours, Detective Bunting conducted a taped interview with Sister 1. Sister 1 stated that around midnight, Decedent entered her bedroom, and began shadow boxing and mumbling while facing her window. It appeared as though he was trying to provoke the window. Decedent grabbed Sister 1 and shook her while stating, "[g]et up, get up!" He exited her bedroom, walked into the kitchen and began drinking water. Decedent was acting aggressive and stated he wanted to fight police. He called 9-1-1, but Mother hung up the telephone. After, LVMPD Dispatch called back and was told it was a mistake, Sister 1 and Mother took Decedent for a walk to prevent him from getting in trouble with police.

While walking, Sister 1 was trying to hold Decedent's hand, but he walked so fast she had trouble keeping up with him. Decedent stated, "[w]e have to find something!" Eventually, Decedent broke away, jumped a wall and ran toward Decatur Boulevard, which was the last time Sister 1 saw him. Decedent was last seen wearing a grey tank top, jeans and black shoes with orange and red designs. Both Sister 1 and Mother walked around and looked for Decedent, but were unable to locate him and headed home. Later, after returning to their apartment, they turned on the news and learned of a Hispanic male in his twenties who had jumped off the Decatur overpass. Sister 1 and Mother went back outside to look for Decedent, while Brother 1 and Friend went to the hospital to see if they could locate him there.

Sister 1 stated approximately 2 years ago, another brother had been deported. Decedent was close with this brother, and, ever since his deportation, has acted in a similar, bizarre manner every two to three months. The last time it occurred was approximately one month ago, which

lasted for three or four days. In the past, Decedent has threatened to call the police and have them come and get him so he would be deported too, but he never followed through. Sister 1 believes Decedent's behavior was due to illicit drugs, but she was not sure what kind. According to Sister 1, Decedent has no history of depression or suicide attempts.

Sister 2

On September 7, 2012, at approximately 1405 hours, Detective Bunting contacted and conducted a taped interview with Sister 2. She stated that on Thursday evening, she saw Decedent drinking five Modelo beers. At 2300 hours, Sister 2 was sitting in the living room watching TV, when she saw Sister 1 and Mother go outside with Decedent in order to walk to an Albertson's grocery store. A lot of time passed and Sister 2 began to worry. Eventually, Sister 1 and Mother came home and told her Decedent ran off.

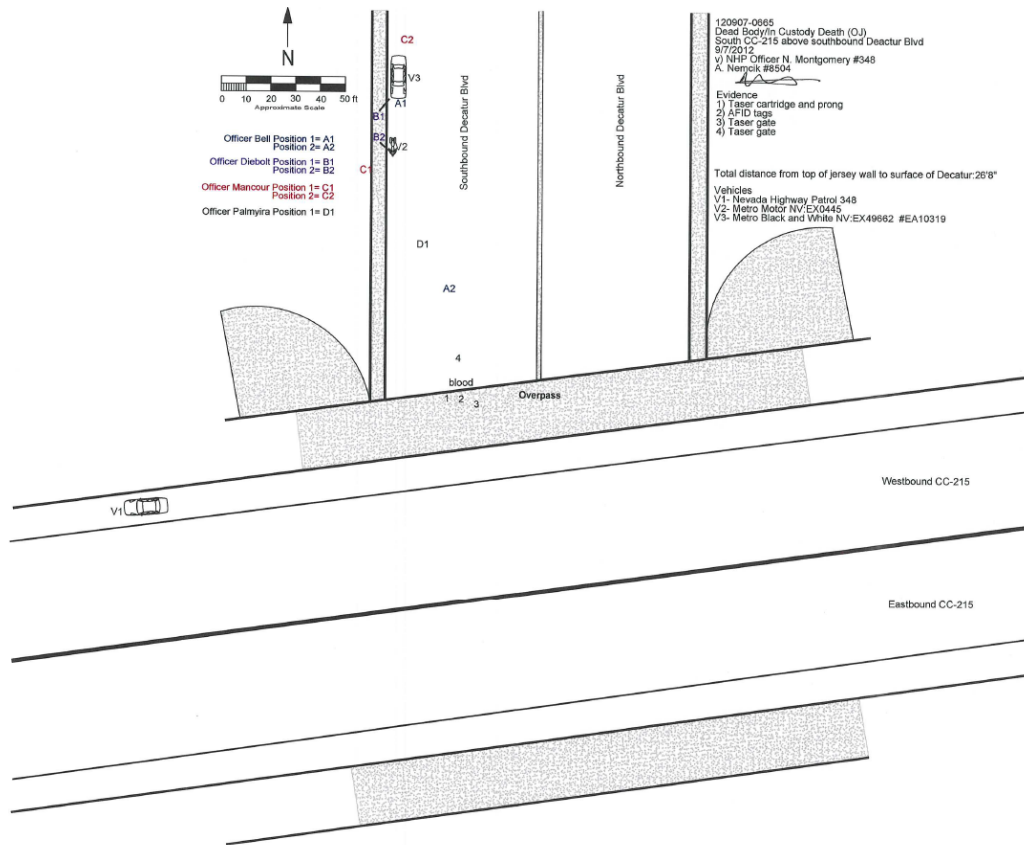
The Scenes of the Incident

The primary scene was located in an isolated area adjacent to the westbound travel lanes of the CC-215 freeway and elevated above the southbound travel lanes of Decatur Boulevard. This area included a construction access/bridge extension section of the freeway, which was enclosed by two east/west jersey walls measured at 2'9" tall and approximately 25 feet apart. Investigators found a "Taser" cartridge with one attached wire and a probe (item #1 on diagram infra) on top of the northern most jersey wall overlooking the street below. They also located several Taser AFID tags (item #2) and a Taser door/gate (item #3) on the ground to the east of this cartridge, also in the freeway construction access/bridge extension area. They noted no visible signs of disturbance to this area, and that it was generally free of any road debris. Nevada Highway Patrol (NHP) Trooper Montgomery's marked vehicle was parked facing westbound in the storage/parking lane of the freeway, approximately 118 feet west of the Taser cartridge.



Construction access/extension bridge area on CC-215.

The secondary scene was the southbound travel lanes of Decatur Boulevard underneath the freeway bridge. Investigators found a matching Taser door/gate (item #4) and a pool of blood on the ground in the center travel lane where the decedent fell. The ground was measured at 26'8" below the top of the northern most jersey wall. They found no other visible signs of disturbance to this area. Two LVMPD marked patrol vehicles and two LVMPD marked motorcycles were parked to the north on Decatur Boulevard. All four vehicles were facing south on the southbound travel lanes, and had been driven to the scene by their respective officers.



Incident diagram depicting location of items of physical evidence.

Location and Description of the Body

Decedent was lying naked on a hospital gurney wrapped in a blue plastic sheet at University Medical Center/Trauma. A pair of cut boxer shorts and a tank top were wedged under the body. Also on top of the gurney was a bag containing a pair of jeans, athletic shoes, socks, an empty wallet, and a pen. A Taser wire with an attached probe was wrapped around the lower legs, and a second section of wire was around the chest. There were obvious signs of medical intervention, consisting of monitoring pads attached to the chest and tubes inserted into the mouth. UMC Trauma Doctor John Fildes pronounced the time of death at 0504 hours, and copies of his hospital medical records were later provided by a nurse.

Clark County Coroner Murphy and Coroner Investigator Brown responded to the hospital, initially identifying the decedent as John "215 Bridge" Doe. A cursory examination of the body revealed severe injuries to the head and numerous tattoos on the body.

Autopsy

On September 8, 2012, at approximately 0915 hours, Dr. Lisa Gavin performed an autopsy on the body of Decedent at the Clark County Coroner's Office under case# 12-8154.

After a completed autopsy, Dr. Gavin concluded Decedent died from blunt force injury of the head due to leaping off the freeway overpass, and the manner of death was an accident. Other significant contributing factors include toxic psychosis due to methamphetamine (120 ng/mL) intoxication.

In her report, Dr. Gavin noted that methamphetamine has been associated with bizarre behavior in acute and in chronic users. She stated that although methamphetamine intoxication contributed to Decedent's death, the lack of a significantly elevated body temperature and the lack of a physical altercation prohibit the case being labeled as one of "excited delirium."² Ultimately, Dr. Gavin concluded that because no physical altercation occurred between Decedent and law enforcement, the electronic control device did not engage, Decedent had no reported suicidal ideations, and Decedent attempted to hang onto the overpass wall, the manner of death was best classified as an accident.

On September 7, 2012, at approximately 0600 hours, Detective Merrick responded to University Medical Center (UMC) Trauma Unit. Detective Merrick obtained the UMC hospital medical records from the head trauma nurse. Doctor Fildes had already pronounced the time of death at 0504 hours. During a subsequent conversation, Doctor Fildes told Detective Merrick that he saw a Taser wire with an attached probe lying between the male's legs, and another wire was wrapped around the torso. The probe was not lodged in any part of the body. Doctor Fildes wrapped the first wire around the Decedent's ankles, so the probe and wire would not be lost.

Video and Taser Evidence

Investigators obtained three (3) DVDs of the video surveillance systems from the vehicles driven by Trooper Montgomery and two other troopers who arrived at the scene. These recordings were designed to capture video from the cameras mounted inside the respective vehicles, as well as any audio recordings of the troopers. At the conclusion of the scene investigation, the freeway and roadway were opened to pedestrian and vehicular traffic.

The video camera inside Trooper Montgomery's vehicle showed a male, believed to be Decedent, standing on the north side of the CC-215 freeway in the westbound lanes. He was briefly seen jumping over the adjacent short jersey wall, and then running eastbound out of the camera's view. The video surveillance from the other troopers' vehicles provided no additional information, since they had arrived after the encounter.

² This has been described as a condition which manifests as delirium, psycho-motor agitation, hallucinations, anxiety, speech disturbances, disorientation, and bizarre behavior.

A Metro forensic multimedia analyst extracted the audio portion from the DVDs for transcription. Although it was difficult to hear with the background noise of passing motorists, some parts were discernible. Trooper Montgomery was heard talking to another trooper, who asked if he was alright and if he “hit” (tased) Decedent. Trooper Montgomery replied, “I tried to.” When asked what happened Trooper Montgomery stated, “[u]m, I pulled up. He was, um, I showed up,_____.³ Went over the wall and started coming up this end. The guy got out and jumped over the wall_____. He ran down that way and he went over the wall. I was trying to tase him and, uh, uh.”

When asked if any of struck him, Montgomery replied, “I wondered why he ended up over the wall. I don’t know if that actually_____ and literally_____ trying to get over the wall. I mean it was right then.” When the other trooper asked, “[b]ut you had nothing to do with it?”, Trooper Montgomery replied, “[y]eah.” He later stated, “[y]ou know he was trying to get_____he jumped right here.” Although Trooper Montgomery never provided a formal statement, it appeared he unsuccessfully tased Decedent as evidenced by his utterance to the other trooper.

On September 7, 2012, at approximately 1225 hours, Detective Mogg downloaded Trooper Montgomery’s model X26 Taser. It revealed a five (5) second discharge on September 7, 2012, at 04:40:13. The internal temperature was 30 degrees centigrade and the battery life was at 87%.

Legal Analysis

The District Attorney’s Office is tasked with assessing the conduct of members of law enforcement involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the trooper existed at the time of the killing.

In this case, the coroner has identified the death as an accident, not a homicide.

Since the Taser was not equipped with a camera or an audio recording device and Trooper Montgomery elected to not provide a statement, some of the details surrounding the incident remain unclear. Nonetheless, several witnesses saw Decedent jumping off the overpass on his own volition while Trooper Montgomery was nowhere close to him. In addition, Trooper Montgomery’s attempts to use his Taser were proper as Decedent presented a deadly risk to himself and motorists. Moreover, had Trooper Montgomery’s Taser deployed properly, Decedent would not have been able to jump over the wall due to the effects of the Taser. As there is no evidence that Trooper Montgomery had any physical contact or Taser contact with Decedent, his actions did not *cause* the death of Decedent. See *Lay v. State*, 110 Nev. 1189, 1193, 886 P.2d 448, 450 (1994); *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991); *Bostic v. State*, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988). Simply put, in order for the crime of homicide to have occurred, there must have been a criminal act causing death. In this case, the actions of Trooper Montgomery did not cause the death.

³ A blank space indicates an inaudible portion of the recording.

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 Trooper Montgomery were reasonable and legally justified.

As there is no factual or legal basis upon which to charge the trooper, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Submitted November 25, 2013

STEVEN B. WOLFSON
District Attorney

By

PAMELA WECKERLY
Chief Deputy District Attorney