

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Michael Lopez on August 19, 2019

### INTRODUCTION

On August 19, 2019, 69-year-old Michael Lopez, Jr. (hereinafter “Decedent”) was shot and killed after Lopez, who was in the midst of an hours-long barricade situation with Las Vegas Metropolitan Police Department Special Weapons and Tactics (hereinafter referred to as “LVMPD” and “SWAT”) and Crisis Negotiation Team (hereinafter referred to as “CNT”) personnel, suddenly picked up his handgun and ran towards SWAT officers. The shooting took place at approximately 7:40 a.m. in Laughlin, Nevada in the parking lot of the Aquarius Casino Resort (hereinafter referred to as “Aquarius”) located at 1900 S. Casino Drive.

At 12:49 a.m., hours before the barricade situation with SWAT and CNT, Decedent attempted an armed robbery of the casino cage at the Golden Nugget Laughlin Hotel & Casino (hereinafter referred to as “Golden Nugget”) at 2300 S. Casino Drive. When that armed robbery attempt failed at the Golden Nugget, Decedent traveled to the Aquarius. At 1:23 a.m. he again unsuccessfully attempted an armed robbery of the casino cage at that property. As Aquarius security officers approached Decedent after his failed armed robbery attempt within the casino, Decedent retreated back to his vehicle and fired one round at approaching security officers. Decedent was surrounded in the parking lot by security and law enforcement. At 2:14 a.m., SWAT and CNT arrived.

Ultimately, LVMPD SWAT Officers Cory Mikkelson and John Susich discharged their firearms striking and killing Decedent (hereinafter “Decedent”).

### SYNOPSIS

On August 19, 2019, at approximately 12:49 a.m., Decedent entered the Golden Nugget and approached the casino cage area. Decedent placed a black handgun on the counter and asked the cashier for "large bills." The cashier refused to give him money, and Decedent picked up his firearm and walked away from the counter. The Golden Nugget contacted LVMPD Dispatch at approximately 1:07 a.m. and reported the attempted robbery. LVMPD Resident Section Laughlin (hereinafter referred to as "Laughlin") patrol officers responded to the Golden Nugget.

At 1:04 a.m., Decedent left the Golden Nugget and arrived at the Aquarius. At 1:11 a.m., Decedent entered the Aquarius. Upon entering, Decedent walked around the casino and at approximately 1:23 a.m. approached the casino cage. As he did at the Golden Nugget, Decedent showed the cashier a black handgun and asked for money. The Aquarius cashier refused and looked at a security officer who was standing close to the cage area. Decedent walked away from the casino cage as a security officer followed him.

Security officers continued to follow Decedent as he exited the casino into the parking lot. Decedent pointed his handgun at one of the security officers and fired one round but did not strike him. Decedent went through the parking lot and entered his vehicle. The Aquarius contacted LVMPD Dispatch at this time and Laughlin patrol officers responded to the hotel.

Upon arrival at the Aquarius, Laughlin patrol officers were directed to Decedent's vehicle where they blocked Decedent from leaving. Officers used their public address system (hereinafter referred to as "PA system") equipped on their patrol vehicle to give Decedent verbal commands. Decedent acknowledged the officers but refused to exit his truck.

At 2:14 a.m., SWAT and CNT personnel were notified and began to respond to the scene. While SWAT and CNT personnel were en route, Decedent stopped communicating with patrol officers and remained barricaded inside of his truck.

Upon SWAT and CNT's arrival, two BearCat vehicles were placed to the front and rear of Decedent's vehicle and snipers set up in the parking garage adjacent to the parking lot. SWAT and CNT personnel contacted Decedent in an effort to convince Decedent to surrender.

As negotiations continued, All Hazard Regional Multi-Agency Operations and Response (hereinafter referred to as "ARMOR") deployed two robots, one of which broke a window on Decedent's truck in an attempt to get a better view of Decedent. A plan was devised to deploy tear gas into Decedent's vehicle via a robot to get Decedent to surrender.

Decedent exited his truck and stood along the passenger side near an open rear passenger door. As Decedent spoke to SWAT and CNT personnel, he raised his handgun into the air and started to walk to the rear of his truck. Officers ordered Decedent to put down his handgun and he complied. However, after several minutes of talking to officers, Decedent suddenly picked up his handgun and ran towards officers.

Initially, Decedent pointed his handgun into the air; however, as he neared the rear of the BearCat, he lowered it and pointed it forward towards officers. SWAT Officer Susich, who was at the rear of the BearCat, discharged his firearm at Decedent when Decedent reached the rear of the BearCat. SWAT Officer Mikkelson, a sniper who was staged on the third floor of the parking garage, discharged his rifle at Decedent as Decedent ran towards the BearCat. Decedent was struck by the officers' gunfire and fell to the ground. Decedent was pronounced deceased at the scene.

Due to the fact that an officer-involved shooting ("OIS") occurred, the scene was secured and the Force Investigation Team ("FIT") was requested to assume responsibility of the investigation.

This report explains why criminal charges will not be forthcoming against LVMPD Officers Mikkelson and Susich. 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 which was held on August 17, 2020.

This report 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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

## **FOOTAGE FROM THE GOLDEN NUGGET AND AQUARIUS HOTELS**

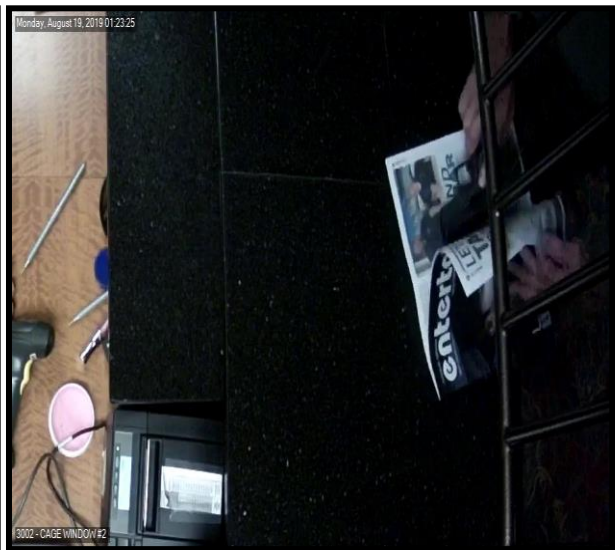
Video surveillance footage was recovered from the Golden Nugget and Aquarius. The Golden Nugget footage captured Decedent entering into the Golden Nugget attempting to rob the casino cage, while disguised in a straw hat and sunglasses. The Aquarius footage also captured Decedent attempting to rob the casino cage in the same disguise. Additionally, exterior surveillance footage from the Aquarius parking lot captured footage of Decedent running towards officers while pointing a firearm at them before he was shot and killed.

**Golden Nugget Footage**



Above: Decedent's Attempted Armed Robbery of the Golden Nugget

**Aquarius Footage**



Above: Decedent's Attempted Armed Robbery of the Aquarius



Above: Decedent Firing at Aquarius Security Officer N.E.



Above: Decedent Pointing Firearm at Aquarius Bike Security Officer



Above: Parking Lot Footage of Decedent Prior to Running Towards Officers



Above: Parking Lot Footage of Decedent Running Towards Officers



Above: Parking Lot Footage of Decedent Running Towards and Pointing Firearm at Officers

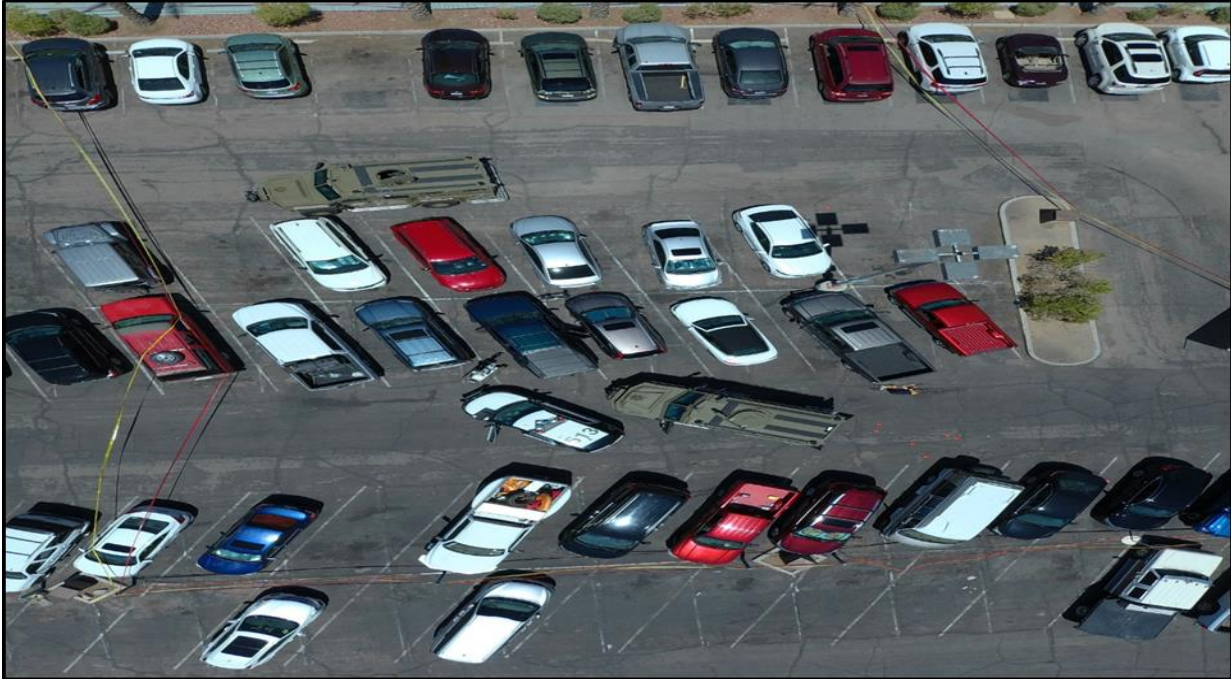


Above: Parking Lot Footage of Decedent Running Towards and Pointing Firearm at Officers

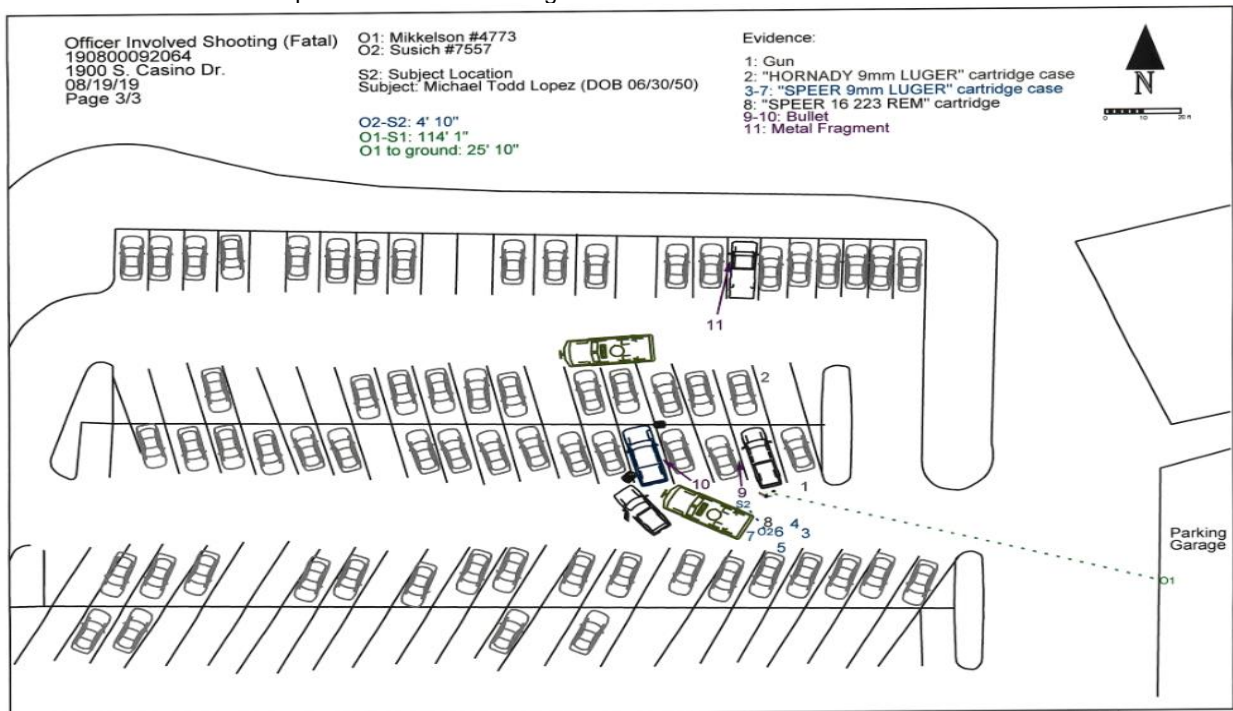
## DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scene was located at the Aquarius hotel in the southern open parking lot of the hotel. The southern parking lot is west of the multi-floor parking garage of the hotel.

### Southern Parking Lot



Above: Overhead view of Aquarius Southern Parking Lot



Above: Crime Scene Diagram



## Vehicle Locations

Decedent's 2005 Blue Chevrolet Avalanche truck was located in the first row of doubled opposing spaces. Decedent's vehicle faced northwest in the 5<sup>th</sup> space from east to west along the south side of the row.

A 2018 Olive Green LVMPD SWAT BearCat vehicle was parked behind Decedent's vehicle and parked to the southeast of Decedent's vehicle. A second 2018 Olive Green LVMPD SWAT BearCat vehicle was parked to the north of Decedent's vehicle.

A 2014 Black/White LVMPD Patrol Vehicle was parked to the southwest and rear of Decedent's truck. It was parked adjacent to the BearCat vehicle parked to the rear of Decedent's truck

An armor robot was located on the asphalt to the southwest near the driver side door of the vehicle. An additional armor robot was located on the asphalt to the northeast near the headlight of the front passenger side of the vehicle.

## The Multi-Floor Parking Garage

On the third floor of the parking garage, facing the southern parking lot two tactical backpacks, gear, a cloth stool and a black LaRue Tactical model LT-10 multi-caliber semi-automatic rifle with serial #0BR7772 were on the ground at the west end of the second parking row. A brown and black, Accuracy International AX, .308 caliber, bolt action rifle with serial #22483 was on the driveway adjacent to a support column east of the backpacks.



Above: Photo of the Parking Garage in relation to the Southern Parking lot.



Above: SWAT Sniper vantage point of Decedent from the third floor of parking garage.

### **Decedent's Vehicle**

Decedent's blue Chevrolet Avalanche was facing northwest. The rear passenger door was open and the rear driver side window was shattered, with glass on the ground and seats below. A bullet impact was located to the rear passenger side frame near the leading edge of the rear passenger side door. A bullet fragment was on the ground in the parking stall east of the vehicle. A suicide note and/or makeshift will was also located in the vehicle. The hat and sunglasses Decedent used in the attempted robberies were also located within the vehicle.



Above: Decedent's vehicle and ARMOR Robots

LAST DEED  
I am writing this  
to say that I am  
sorry that I am  
not able to do  
to do with any  
of this. This was  
my last day at  
work and my  
possessions to  
Priscilla's name  
and I am sorry  
for the trouble  
you will always  
be my friend

Priscilla  
I'm  
so  
sorry  
Love you both

Above: Decedent's suicide notes



Above: Hat and Sunglasses worn by Decedent during the attempt armed robberies

## **Officer Positions at time of the Shooting**

Officer Cory Mikkelson was positioned on the third floor of the parking garage as a SWAT sniper.

Officer John Susich was positioned at the rear of the BearCat parked behind Decedent's truck.

Witness Officer Zachary Adam was positioned on the third floor of the parking garage as a SWAT sniper.

Witness Sergeant James Bonkavich was positioned at the rear of the BearCat parked behind Decedent's truck.

Witness Officer Matthew Burris was positioned at the rear of the BearCat parked behind Decedent's truck

Witness Officer James Ferrante was positioned at the rear of the BearCat parked behind Decedent's truck.

Witness Officer Allyn Goodrich was positioned in the driver's seat of the BearCat parked behind Decedent's truck.

Witness Officer Kerry Kubla was positioned in the driver's seat of the BearCat parked behind Decedent's truck.

Witness K-9 Officer Michael Marano was positioned in the driver's seat of the BearCat parked behind Decedent's truck.

Witness Officer Jason Auschitz had been relieved of duties from SWAT upon their arrival and was not present during the shooting.

## **Decedent**

Decedent was lying in the street to the east of the rear of the BearCat truck parked behind his truck. Decedent's head was pointed to the east and his legs were pointed to the west. Decedent was bent at the knees, with his left arm bent at the elbow and hand on the ground north of his face. His right arm was also bent at the elbow resting on the ground. Decedent wore a navy-blue tank top, black shorts, white socks and brown/black boots. A black Hi-Point Model 9, 9 mm, semiautomatic firearm (serial #: P1442886) was on the ground east of his right hand. The chamber was empty and a gray/black firearm ammunition magazine in the gun contained eight cartridges.

Coroner Investigator P. Chavez arrived and observed traumatic injuries to Decedent's left side/back of head and left shoulder, a gunshot wound to the top right side of the chest. Abrasions were also noted to his left elbow.

## **BODY-WORN CAMERAS**

There were an extensive number of police officers who responded to this hours-long barricade who were equipped with body-worn cameras (hereinafter "BWC"). This included the two involved officers, Mikkelson and Susich, Officer Jason Auschitz who had initial contact with Decedent prior to SWAT's arrival, Officer Zachary Adam who was paired with

Officer Mikkelson in the sniper post as well as six other witness officers who were near Officer Susich on the ground position behind the BearCat parked behind Decedent's truck.

Officer Mikkelson's BWC did not provide video of the shooting and the camera was up against the officer's clothing as he laid on the ground with the sniper rifle in order to take a shot at Decedent.

Officer Susich's BWC's captured the most detailed footage of the overall incident from the ground perspective.<sup>1</sup> His BWC footage depicts the following:

Officer Susich's BWC footage began as he and other SWAT officers walked toward the Resident Section patrol officers who were positioned behind Decedent's vehicle. The SWAT officers relieved the patrol officers of their positions and took over coverage of the location behind Decedent's vehicle. Officer Susich directed the other SWAT officers into position and staged patrol officers for an arrest team.

Officer Susich moved SWAT officers farther back to safer positions and to create distance from Decedent's vehicle. During that time, Decedent did not communicate with any officers, and the doors of his vehicle were closed. Once SWAT officers were in position, they stood by and waited for the BearCats to arrive. Officer Susich directed the positioning of the BearCats upon arrival.

Once the BearCats were positioned, officers used the PA system to issue verbal commands directing Decedent to exit his vehicle. Decedent opened and closed the rear door of his vehicle several times. Decedent opened the door and yelled at the officers. Officer Susich communicated with Decedent, who stated he did not have a cellular phone. An ARMOR robot delivered a cellular phone to Decedent, who stated he was not going to hurt officers. After delivery of the phone, Decedent stopped communicating directly with the SWAT officers for several minutes.

Decedent opened the rear passenger door again and was given verbal commands via PA system and by Officer Susich. Decedent could not be seen on Officer Susich's BWC due to the camera view being blocked by the BearCat. Officer Susich and crisis negotiators continued over an extended period of time to use the PA system to give Decedent commands to surrender. Officer Susich made several attempts to de-escalate the situation and assure Decedent he would not be hurt if he surrendered. Decedent stated he did not want to go to prison.

At one point, Decedent asked Officer Susich to step out from behind the BearCat and talk to him. Officer Susich and Decedent had a conversation about Decedent surrendering and officers not getting hurt. Decedent refused to comply and stated he could not do it.

A decision was made to use an ARMOR robot to break a window of Decedent's vehicle. After the window was broken, Decedent yelled to get the robot out of there. Decedent was given

---

<sup>1</sup> The Aquarius Parking Garage Surveillance footage provided the best overhead surveillance of what occurred during this shooting incident.

more verbal commands via the PA system to surrender, and Officer Susich also attempted to get Decedent to surrender. The robot that was used to break the window was moved back to the BearCat where officers prepared it to deploy a tear gas canister.

While SWAT officers were putting on gas masks, an officer inside the BearCat yelled, "He's reaching! He's got the gun! He's got the gun! Gun's straight up!" Officer Susich gave Decedent commands to drop the gun. Decedent stated, "I'm going to come out blazing." Officer Susich kept giving Decedent commands, and Decedent put down the gun. Officer Susich continued to try and convince Decedent to surrender.

An officer inside the BearCat yelled, "Here he comes! Here he comes! Here he comes!" Decedent ran into camera view holding his firearm in his right hand. As Decedent neared the rear of one of the BearCats, Officer Susich discharged his handgun at Decedent. Decedent was struck by gunfire and fell to the ground. Decedent's firearm was seen on the ground next to him.

**Officer Susich's BWC showing Decedent running to the back of the BearCat with firearm pointing forward**



## **SCENE WALK-THROUGHS**

### **SWAT Officer Cory Mikkelson**

On August 19, 2019, at approximately 2:03 p.m., Officer Mikkelson relayed the following information during a walk-through of the scene:

Officer Mikkelson was located on the third floor of the parking garage in a sniper position. At that time, SWAT Officer Mikkelson was notified of the Decedent's prior robbery attempts and that he had shot at a security officer. While watching Decedent, he saw Decedent mouth, "I can't do this boys." At that time, Decedent was not moving his firearm and was standing outside of his truck approximately seven to eight feet away from the back of the BearCat.

After he mouthed those words, Decedent started running towards the back of the BearCat with the handgun in his right hand. Initially, the handgun was pointed up, but then Decedent pointed it straight in the direction of the officers. Officer Mikkelson observed there were SWAT officers standing at the rear of the BearCat and more were inside of it. Officer Mikkelson fired one shot because the team was in imminent jeopardy.

### **SWAT Officer John Susich**

On August 19, 2019, approximately 2:13 p.m., Officer Susich relayed the following information during a walk-through of the scene:

Officer Susich was positioned at the rear of the BearCat parked behind Decedent's truck. At that time, Officer Susich was notified of the Decedent's prior robbery attempts and that he had shot at a security officer.

Officer Susich spoke to Decedent while Decedent stood at the rear of his truck and by the open door to his truck. Decedent stated to Officer Susich that he would go out in a blaze and he would not go back to prison. Officer Susich tried to get Decedent to surrender.

Decedent started running towards officers who were standing outside of the BearCat. Decedent broke the plane of the BearCat and his gun was pointed towards officers.

There were several SWAT officers standing at the rear of the BearCat as well as officers inside of the vehicle. Due to Decedent putting Officer Susich's life in danger, as well as the lives of others, Officer Susich fired four rounds at Decedent to stop Decedent's momentum.

## SWAT Officer James Ferrante

On August 19, 2019, at approximately 2:20 p.m., Officer Ferrante relayed the following information during a walk-through of the scene:

Officer Ferrante was positioned at the rear of the BearCat parked behind Decedent's truck. At that time, Officer Ferrante was notified that Decedent had committed a robbery and fired a shot.

Officers identified Decedent's location, and Decedent communicated with officers for a long time. Decedent stated he wasn't going to surrender, he was going to go out in a blaze and that he couldn't do it.

Decedent came out with a handgun and ran towards the officers. Officer Ferrante was armed with a rifle and attempted to shoot Decedent due to being in fear for his safety and the safety of other officers. Officer Ferrante's rifle did not fire so he transitioned to his handgun. Officer Ferrante did not discharge either of his weapons.

Due to Officer Ferrante attempting to discharge his rifle, he was initially treated as a subject officer. However, Officer Ferrante was subsequently declared a witness officer due to him not discharging any rounds.

## PUBLIC SAFETY STATEMENTS

Officers Mikkelson, Susich and Ferrante provided Public Safety Statements. The questions asked of the officers are reflected in italics, and the officers' responses to those questions are reflected in bold italics.

### Officer Mikkelson

1. *"Did you discharge your firearm?"* ***"I did."***
- 1A. *"If so, in what direction?"* ***"West, toward the suspect."***
- 1B. *"Approximately where were you located when you fired?"* ***"Third floor parking garage, elevated, three o'clock, 55 yards."***
- 1C. *"How many shots do you think you fired?"* ***"One."***
2. *"Is anyone injured?"* ***"Suspect is deceased."***
- 2A. *"If so, where are they located?"* ***"On the ground."***
3. *"Are there any outstanding suspects?"* ***"No."***
- 3D. *"What crimes have they committed?"* ***"Robbery with a deadly weapon, and assault with a deadly weapon."***
- 3E. *"What type of weapon do they have?"* ***"Black handgun."***
4. *"Is it possible the suspect fired rounds at you?"* ***"It...it's possible."***
- 4A. *"If so, what direction were the rounds fired from?"* ***"Suspect was to the west of me."***
- 4B. *"How many, how many shots do you think the suspect fired?"* ***"I don't know."***



- 4C. "Approximately where was the suspect located when they fired?" **"In the parking lot."**
5. "Do you know if any other officers discharged their firearms?" **"Yes."**
- 5A. "If so, who are they?" **"Joe Susich."**
- 5B. "Approximately where was the officer located when he fired?" **"To the rear of the BearCat."**
6. "Are there any weapons or evidence that need to be secured or protected?" **"Yes."**
- 6A. "If so, where are they located?" **"Vehicle, weapons, and the suspect."**
7. "Are you aware of any witnesses?" **"Yes."**
- 7A. "If so, what are their locations?" **"Unknown."**

### Officer Susich

1. "Did you discharge your firearm?" **"Yes."**
- 1A. "If so, in what direction?" **"Northbound."**
- 1B. "Approximately where were you located when you fired?" **"Behind the rear...behind, uh, to the rear of the BearCat."**
- 1C. "How many shots do you think you fired?" **"Approximately four from a 9mm handgun, department issue."**
2. "Is anyone injured?" **"Yes."**
- 2A. "If so, where are they located?" **"They're located by the rear of a...by the rear BearCat."**
3. "Are there any outstanding suspects?" **"No."**
4. "Is it possible the suspect fired rounds at you?" **"Yes."**
- 4A. "If so, what direction were the rounds fired from?" **"From a southwest direction."**
- 4B. "How many shots do you think the suspect fired?" **"I don't know."**
- 4C. "Approximately where was the suspect located, uh, when they fired?" **"I don't know."**
5. "Do you know if any, uh, other officers discharged their firearms?" **"Yes."**
- 5A. "If so, who are they?" **"Corey Mikkelson and Jim Ferrante."**
- 5B. "Approximately where was [sic] the officers located when they fired?" **"They were in the sniper position, I believe elevated behind us, to the east."**
6. "Are there any weapons or evidence that need to be secured or protected?" **"Yes."**
- 6A. "If so, where are they located?" **"The suspect was to the rear of the BearCat, along with his firearm."**
7. "Are you aware of any witnesses?" **"Yes."**
- 7A. "If so, what are their locations?" **"Officers on the containment position of the rear BearCat."**

### Officer Ferrante

1. "Did you discharge your firearm?" **"Yes, I pulled the trigger, but the firing pin, uh, hit the bullet but it did not fire."**
- 1A. "If so, in what direction?" **"In a north direction."**
- 1B. "Approximately where were you located when you fired?" **"Behind the BearCat at**

**a six o'clock position."**

- 1C. "How many shots do you think you fired?" **"One."**
2. "Is anyone injured?" **"The suspect."**
- 2A. "If so, where are they located?" **"The suspect's on the ground."**
3. "Are there any outstanding suspects?" **"No."**
- 3D. "What crimes have they committed?" **"Robbery with a deadly weapon, and assault with a deadly weapon."**
- 3E. "What type of weapon do they have?" **"A black handgun."**
4. "Is it possible the suspect fired rounds at you?" **"It's possible."**
- 4A. "What direction were the rounds fired from?" **"South direction."**
- 4B. "How many shots do you think the suspect fired?" **"Unknown."**
- 4C. "Approximately where was the suspect located when they fired?" **"Side of the BearCat, on the passenger side."**
5. "Do you know if any other officers discharged their firearms?" **"Yes."**
- 5A. "If so, who are they?" **"Joe Susich and Corey Mikkelson."**
- 5B. "Approximately where was [sic] the officers located when they fired?" **"SWAT Officer Mikkelson was in the parking garage, and that SWAT Officer Susich was right beside me."**
6. "Are there any weapons or evidence that need to be secured or protected?" **"The suspect; the weapon the suspect had, the handgun; and the vehicle, the suspect's vehicle."**
- 6A. "If so, where are they located?" **"In the parking lot of the Aquarius."**
7. "Are you aware of any witnesses?" **"Yes."**
- 7A. "If so, what are their locations?" **"Not sure."**

## OFFICER WEAPON COUNTDOWNS



### **Officer Mikkelson (.308 Accuracy International AX)**

At the completion of the countdown, it was determined Officer Mikkelson discharged his rifle one time during this incident.



### **Officer Susich (9mm Glock 17 9mm)**

At the completion of the countdown, it was determined Officer Susich discharged his firearm five times during this incident.



### **Officer Ferrante (.223 Colt M4)**

At the completion of the countdown, it was determined Officer Ferrante did not fire his rifle during the incident.

## **FIREARM EXAMINATIONS**

On August 20 and 21, 2019, LVMPD Forensic Laboratory Requests were submitted by Lieutenant Michael Gennaro on Officer Ferrante's firearm for a function test and ballistic comparison evidence.

On August 27, 2019, an LVMPD Forensic Laboratory Request was submitted by Detective Blake Penny on Officers' Mikkelson and Susich's respective firearms and Decedent's firearm for function tests and ballistic comparison evidence.

On November 4, 2019, Forensic Scientist Glenn Davis submitted the Report of Examination: Firearms with results for all requested function tests and ballistic comparison evidence.

Decedent's 9mm Hi-Point C9 Luger was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 6 cartridges.

Officer Mikkelson's .308 Accuracy International AX308 Winchester bolt action rifle was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 10 cartridges.

Officer Susich's 9mm Glock 17 Gen 4 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine shotgun has a capacity of 18 cartridges.

Officer Ferrante's Colt M4 Carbine 5.56 NATO select fire rifle was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 30 cartridges.

Two bullets and a bullet fragment, which were recovered, were examined and microscopically compared to each other and to test fired bullets from the Hi-Point and Glock pistols. The bullets and bullet fragment had similar general rifling characteristics as the Glock pistol, but could not be conclusively be identified or eliminated as having been fired from the Glock pistol or having been fired in a single firearm due to a lack of repeatable marks. The bullets and bullet fragment were eliminated as having been fired from the Hi-Point pistol and the Accuracy International rifle due to differences in general rifling characteristics.

One recovered 9mm Luger cartridge case was identified as having been fired from Decedent's Hi-Point pistol.

One recovered 9mm Luger cartridge case was identified as having been fired from Officer Susich's Glock pistol.

One recovered 308 Winchester cartridge case was identified as having been fired from Officer Mikkelson's Accuracy International rifle.

## **INVESTIGATION**

### **Involved Officers**

At the completion of the officer walk-throughs, Lt. Lloyd asked each involved officer (i.e., Officers Mikkelson and Susich) if they would provide a voluntary statement to FIT investigators; all involved officers declined.

### **Witness Officers**

#### **SWAT Sergeant James Bonkavich**

On August 19, 2019, at approximately 1:04 p.m, Detectives Marc Colon and Deanna Melton conducted an audio recorded interview with SWAT Sergeant Bonkavich, who relayed the following:

Sergeant Bonkavich was advised SWAT was being requested in reference an armed robbery suspect (Decedent), who attempted to rob two casinos, shot at a security guard and was currently barricaded in his vehicle.

Sergeant Bonkavich responded to the Aquarius. There he devised both a lethal and non-lethal plan to apprehend Decedent. SWAT positioned one armored vehicle in front of Decedent's vehicle and one armored vehicle behind it to prevent Decedent from leaving the area.

A team of SWAT officers posted behind the rear armored vehicle and attempted to establish a dialogue with Decedent. Decedent did not comply with their commands and exited his vehicle with a firearm in his hand.

A robot was utilized to break out the rear window of Decedent's vehicle. SWAT decided to deploy tear gas utilizing the robot. As the robot approached Decedent's vehicle, the SWAT officers put on their gas masks. While putting on the gas masks, Decedent, with gun in hand, ran toward the SWAT officers who were posted behind the armored vehicle.

As Decedent approached, SWAT officers fired at him. The tactical medic determined Decedent to be deceased. SWAT officers approached Decedent's vehicle and cleared it.

## **SWAT Officer Matthew Burris**

On August 19, 2019, at approximately 1:28 p.m., Detectives Gilberto Valenzuela and Andrew Ubbens conducted an audio recorded interview with SWAT Officer Burris, who relayed the following:

Officer Burris stated that he received a text message in reference to an incident in Laughlin where a robbery had occurred, and the suspect (Decedent) had later shot at security officers. Officer Burris responded to Laughlin and met with SWAT members at the Chevron near the Aquarius. Officer Burris drove the equipment truck so upon arrival he opened all the doors to his truck and set up equipment so SWAT Officers could equip themselves as they arrived.

Once the BearCat vehicles arrived, he was assigned to carry a shield and stand behind one of the BearCats. Officer Burris had additional SWAT team members positioned behind him as Crisis Negotiators engaged Decedent in conversation. Officer Burris saw Decedent exit and enter his vehicle. Officer Burris knew the location of SWAT snipers, and thus, did not want to expose himself due to crossfire. Since Officer Burris was behind the BearCat, he never observed Decedent's firearm. Officer Burris overheard radio communication that indicated Decedent had a firearm.

Officer Burris also heard communication when Decedent ran towards the BearCat. He believed he heard footsteps approaching the BearCat. Officer Burris then heard gunshots being fired as he stood behind the BearCat with his shield. Decedent went down as he cleared the BearCat and he observed Decedent's firearm land about a foot away from him. Officer Burris advised that if the SWAT sniper had not shot Decedent, he would not have had enough time to react if Decedent had cleared the back of the BearCat.

## **K-9 Officer Michael Marano**

On August 19, 2019, at approximately 1:51 p.m. hours, Detectives Ubbens and Valenzuela conducted an audio recorded interview with K-9 Officer Marano, who relayed the following:

Officer Marano was advised of a shooting in Laughlin and the suspect (Decedent) was barricaded in a vehicle. Officer Marano and his canine partner, Yogi, were assigned to be in the SWAT BearCat positioned behind Decedent's vehicle.

Once on scene, officers communicated with Decedent to work towards a peaceful resolution. Officer Marano observed Decedent move throughout the vehicle. Decedent eventually exited his vehicle and ran towards the rear of the BearCat, armed with a firearm.

Officer Marano did not see Decedent run towards the BearCat, but rather heard other officers announce that Decedent was running towards them. Officer Marano was positioned at the rear of the arrest team which was posted behind the BearCat. He did not see Decedent until after he was struck by gunfire.

Officer Marano felt that if Decedent reached the rear corner of the vehicle, he could have utilized the driver's side of the vehicle as cover from the Decedent.

### **SWAT Officer Kerry Kubla**

On August 19, 2019, at approximately 1:56 p.m., Detectives Colon and Melton conducted an audio recorded interview with SWAT Officer Kubla, who relayed the following:

Officer Kubla was called out and advised of a robbery suspect (Decedent) was barricaded in a vehicle at the Aquarius. Officer Kubla learned Decedent committed several robberies to casino cages on different casino properties, and he also fired a firearm at a security officer.

Once Officer Kubla arrived at the command post, he met with the Assistant Team Leader SWAT Officer Susich. A plan was formulated that involved weapons assignments and a custody plan. SWAT Sergeant Bonkavich, SWAT Officers Susich, Kubla, Ferrante and Goodrich, Search and Rescue Officer Lindsley-Thayer and K-9 Officer Murano were assigned to the BearCat. Officer Kubla stated that he was assigned as low lethal coverage.

Officer Kubla drove a BearCat. Officer Kubla observed Decedent's Chevy Avalanche was contained by two patrol vehicles in the Aquarius parking lot. Officer Kubla parked the BearCat to the right rear corner of Decedent's vehicle, taking the place of one of the patrol vehicles. Officer Kubla, along with other officers assigned to that BearCat, were stacked behind the BearCat.

Officers attempted to communicate with Decedent. ARMOR officers then deployed the robot toward Decedent to provide him with a phone to communicate with crisis negotiators. Decedent communicated with negotiators on the phone intermittently.

The robot was then deployed again to break the window of Decedent's vehicle for chemical agent deployment. As Officer Kubla donned his gas mask, information was relayed to the officers that Decedent was approaching the BearCat again with a firearm. Officer Kubla heard several shots being fired and observed Decedent fall to the ground.

Officer Kubla believed Decedent was deceased by looking at his injuries. He cleared Decedent's vehicle with several other officers immediately after the shooting.

### **SWAT Officer James Ferrante**

On August 22, 2019, at approximately 11:24 a.m., Detective Penny conducted an audio recorded interview with SWAT Officer Ferrante, who relayed the following:

Officer Ferrante stated on August 19, 2019 at approximately 2:53 a.m., he received a text message stating there was a barricade in Laughlin. A suspect (Decedent), who was involved in a robbery with a deadly weapon and had a firearm, was in a vehicle. Several minutes later he learned Decedent had fired a shot at security during a second robbery attempt.

While en route to Laughlin, the initial plan was to have SWAT stage at the Laughlin Substation and deploy from there. Upon arrival to the substation, he was instructed to go to the Aquarius parking lot. When he arrived at the Aquarius, he conducted reconnaissance of the area and got a visual of the scene.

Officer Ferrante saw patrol officers addressing Decedent's vehicle and made contact with them. A patrol officer informed him that Decedent was in the rear passenger area of the truck, he had been yelling at them, and the vehicle was not running. As additional SWAT officers arrived, they eventually took patrol's positions. When the BearCats arrived, they were moved into containment positions.

Decedent eventually started to communicate with CNT who provided information to SWAT. Decedent stated he did 20 years in prison, had several firearms in the vehicle, and if anyone approached, he would shoot. Decedent also admitted to committing the attempted robberies and shooting at security. Additionally, Decedent stated he had a short barrel or sawed-off shotgun. Decedent's behavior would go between compliant and non-compliant.

CNT got Decedent a "throw phone" and communicated directly with him. Decedent stated he wouldn't go back to prison; he was sorry about what he did to his girlfriend and for making bad decisions.

Decedent eventually exited his vehicle on the passenger side, but he left the rear door open. His behavior was erratic, and he was constantly looking around. SWAT had a less lethal plan in place, but Decedent did not give them enough distance to implement it. They knew he had a firearm and SWAT didn't want to rush.

A robot was moved up to Decedent's vehicle to break a window and look inside. After breaking the window, a firearm was seen on the back seat within Decedent's reach. Decedent stated that he was going to go out in blaze and Officer Ferrante believed Decedent was either going to commit suicide or force officers to shoot him.

Decedent picked up his firearm and pointed it in the air. Officer Susich gave Decedent verbal commands to de-escalate. Decedent started running towards the BearCat with a firearm in his right hand. He was also running towards the casino and parking garage. As Decedent reached the back of the BearCat, he pointed the firearm towards the SWAT officers. Seeing a threat, Officer Ferrante pulled the trigger, but his rifle didn't fire. Officer Ferrante heard Officer Susich fire at Decedent.

By the time Officer Ferrante transitioned to his pistol, Decedent was going down and there was no need to fire as the threat was stopped.

## Civilian Victims

### **T.G.**

On August 19, 2019, at approximately 6:04 a.m., Robbery Detectives Jason Hanshew and Samuel Smith conducted an audio recorded interview with T.G., who relayed the following:

T.G. is a casino cashier at the Golden Nugget. Decedent approached the cage that night and demanded T.G. give him all of the "big bills." T.G. told him no. Decedent then raised a handgun and placed it on the counter with the barrel facing her. He again demanded T.G. give him all of the big bills and she again told him no. Decedent then walked away.

T.G. described Decedent as a male in his 60's, gray hair, wearing sunglasses, a Panama hat and armed with a black semi-automatic pistol.

### **L.M.**

On August 19, 2019, at approximately 6:48 a.m., Detectives Hanshew and Smith conducted an audio recorded interview with L.M., who relayed the following:

L.M. is a cage cashier at the Aquarius. Decedent approached the cage that night and she recognized him from previous encounters. L.M. greeted Decedent as he unzipped a fanny pack and pulled out a black gun. Decedent put the gun on the counter and pointed it at L.M. Decedent demanded all of the hundred dollar and twenty dollar bills be placed on the counter.

L.M. saw a security officer walking by and she looked at him in a way that drew the officer's attention. When the security guard approached, Decedent put his gun in between a magazine and told L.M. not to get the security officer's attention. Before the security officer got to the cage, Decedent picked up the magazine and ran away.

L.M. described Decedent as an older male, 50's to 60's, hat, glasses and a black handgun that looked like a Glock. L.M. did not give Decedent any money.

### **N.E.**

On August 19, 2019, at approximately 7:37 a.m., Detectives Hanshew and Smith conducted an audio recorded interview with N.E., who relayed the following:

N.E. is a security officer for the Aquarius. N.E. was approached by another security officer, G.M., who requested that he follow him. N.E. wasn't sure what was going on and heard cage employee L.M. yelling, "That's him!" N.E. saw Decedent drop a cellular phone as he ran from the cage area.

N.E. followed Decedent into the parking garage and picked up his phone. N.E. then saw a bicycle security officer arriving and pointed to Decedent. As N.E. got within about 15 feet, Decedent yelled, "Get back." N.E. then heard a pop and saw a flash, but he did not see a



firearm. Other security officers yelled to get back and Officer G.M. yelled, "Shots fired." The security officers took cover as Metro was called to the scene.

### Witnesses

#### **Z.I.**

On August 19, 2019, at approximately 1:50 a.m., Z.I. provided a written voluntary statement, which stated the following:

As Z.I. came down Level 4 in the parking garage, he saw a man in the parking lot pull a gun and shoot at a security officer.

#### **M.N.**

On August 19, 2019, at approximately 5:40 a.m., M.N. provided a written voluntary statement, which stated the following:

At approximately, 1:30 a.m., Security Officer G.M. announced over the radio there was a "dead body" at the main cage and he was running down the breezeway. As M.N. approached Decedent, he saw Security Officer N.E. was about five feet behind Decedent. M.N. rode around them to get in front of Decedent to box him in.

M.N. then saw Decedent take out a handgun and shoot at Security Officer N.E. M.N. then ducked between two cars in the lot.<sup>2</sup>

#### **P.T.**

On August 19, 2019, at approximately 8:00 a.m., P.T. provided a written voluntary statement, which stated the following:

P.T. stated that her boyfriend, Decedent, and her went to the Riverside (Casino). Decedent went to the Pioneer (Casino) while she went to the Riverside Casino parking lot. About 45 minutes later, Decedent called P.T. to pick him up at the Tropicana (Casino). After picking up Decedent, they went to the Aquarius. Decedent gave P.T. \$10.00 to play slots and said he would meet up with her.

#### **Officer Jason Auschwitz**

On August 19, 2019, at approximately 11:38 a.m., Detective Valenzuela conducted an audio recorded interview with Officer Auschwitz who relayed the following:

---

<sup>2</sup> Several other Aquarius employees and security officers, including G.M., J.D. and A.G., provided written voluntary statements indicating that they either saw Decedent shoot at security officers or spoke to N.E. who indicated he had been shot at by Decedent.

Officer Auschwitz stated he was on a call in the area of Big Bend State Park assisting with a fire when he responded to a call for assistance in relation to a robbery attempt at the Golden Nugget. While en route, he heard a call reference that Decedent had shot at a security guard at the Aquarius and he was still in the parking lot.

Officer Auschwitz arrived at the Aquarius parking lot and entered where he observed a security guard flashing a flashlight in his direction to flag him down. Officer Auschwitz positioned his vehicle on the west entrance of the parking lot and observed other security guards hiding behind vehicles. A security guard informed Officer Auschwitz that the only way Decedent could drive off would be through the south side exit of the parking lot.

Officer Auschwitz communicated with his partner, Officer West, to arrive on the south side of the parking lot. Security personnel also informed Officer Auschwitz that Decedent was inside a Chevy Avalanche. Officer Auschwitz drove through the parking lot attempting to locate the Decedent or his vehicle. Officer Auschwitz heard a security guard yelling at him and pointing towards the Chevy Avalanche. Officer Auschwitz had Officer West position his vehicle behind the Chevy Avalanche on the passenger's side rear quarter panel. Officer Auschwitz then positioned his vehicle on the Avalanche's driver's side rear quarter panel.

Decedent's vehicle was now boxed in the parking space and they had containment of the vehicle. Officer Auschwitz challenged the person inside the vehicle several times with no success. Officer Auschwitz contacted two security officers who confirmed Decedent had a firearm and that he fired a shot at them. Officer Auschwitz relayed this information to dispatch then continued trying to create a dialogue with Decedent.

Officer Auschwitz engaged in a conversation with Decedent where he admitted committing the robberies. Decedent stated he didn't want to go back to prison. Officer Auschwitz believed he conversed with Decedent for at least three hours. Officer Auschwitz stated he attempted to de-escalate the situation as best he could until he was relieved by SWAT. Officer Auschwitz was then re-assigned to an arrest team and took a position of containment. Officer Auschwitz observed SWAT utilize a robot to break a window to Decedent's vehicle via a television. Officer Auschwitz then heard gunshots. After the incident he helped set up crime scene tape to preserve the scene.

### **Officer Brian Hammerbeck**

On August 19, 2019, at approximately 11:46 a.m., Detective Ubbens conducted an audio recorded interview with Officer Hammerbeck who relayed the following:

Officer Hammerbeck was originally dispatched to an attempt robbery at the Golden Nugget, along with Officer Auschwitz. Officer Hammerbeck was reviewing surveillance footage at the Golden Nugget when the shooting call was broadcasted at the Aquarius. Officer Auschwitz diverted from the Golden Nugget to the Aquarius. The suspect description of the shooting at the Aquarius matched the same physical description of the attempt robbery suspect at the Golden Nugget.

Officer Hammerbeck left the Golden Nugget and went to the Aquarius. Officer Auschwitz was in the Aquarius parking lot on foot looking for the suspect vehicle. Security advised the suspect (Decedent) was in a blue Chevrolet Avalanche. Officer West's vehicle blocked the exit on the south end of the parking garage. Officer Hammerbeck noticed Officer Auschwitz's vehicle blocked the north exit of the garage, so Officer Hammerbeck parked his vehicle at the intersection on Casino Drive for additional containment.

While officers were on foot, they observed the blue Chevrolet Avalanche parked in the second row of the parking lot. Officer West drove his vehicle and parked to the right rear of Decedent's vehicle. The officers contained the vehicle but could not see inside because of the lighting and tint on the windows. They utilized the PA system to give verbal commands to anyone who was possibly in the vehicle. After multiple commands they observed movement in the vehicle and noticed it was occupied. Decedent slightly opened the rear driver's side door and stated he would not come out until he spoke with his fiancé, P.T. They offered to contact her on the phone after Decedent exited the vehicle, but he refused to exit unless he could talk to her first. Decedent continued to open the door and look out of the vehicle to see where the officers were positioned.

Officer Hammerbeck maintained lethal coverage with his handgun while Officer Auschwitz retrieved a shotgun. Officer West also maintained lethal coverage with his handgun. They formulated a plan where Officer Hammerbeck would go hands on to take Decedent into custody if he complied and exited the vehicle. Officer Hammerbeck believed the dialogue continued for approximately fifteen minutes before his sergeant arrived.

It was confirmed that Decedent shot at a security officer and attempted to commit a robbery at the Aquarius. They confirmed Decedent's identity by a records check on the license plate, along with a cellular phone and identification card dropped by Decedent. LVMPD's Analytical Section completed a records check and advised Decedent had a violent criminal record. Additional officers were requested from the Las Vegas valley. They kept Decedent talking and attempted to convince him to exit the vehicle.

When SWAT arrived, the officers were relieved from their positions and maintained an outer perimeter to assist with taking Decedent into custody when SWAT got him out of the vehicle.

Officer Hammerbeck did not witness the officer involved shooting but heard the gunshots.

### **Officer Kenneth West**

On August 19, 2019, at approximately 11:44 a.m., Detective Trever Alsup conducted an audio recorded interview with Officer West who relayed the following:

Officer West was finishing a call when he heard radio traffic in reference to an assault with a deadly weapon call at the Aquarius Hotel. Officer West responded to the Aquarius. Officer West contacted two other officers who had located the suspect (Decedent) in a blue Chevrolet Avalanche. Officer West parked his vehicle to the rear of the Chevrolet Avalanche and took a position of cover. Officer West could not observe anyone in the truck but observed

the truck moving and believed someone was inside. While watching the vehicle, Officer West observed a white male adult (Decedent) raise his head. Officer West noted Decedent was sweating profusely and believed he was either under the influence of a controlled substance or suffering from excited delirium.

Officer Auschwitz was giving verbal commands when Decedent opened the rear door and began talking to the officers. Decedent made statements to the officers saying he had a gun and that they should come up and get him. Decedent also stated he wanted to speak to his girlfriend P.T. The officers continued to give Decedent verbal commands to exit the vehicle with his hands raised but Decedent would not comply.

Sergeant Cowley arrived at the scene and instructed Officer West to set up the command post.

### **Officer Rayven Lafua**

On August 19, 2019, at approximately 11:35 a.m., Detective Ubbens conducted an audio recorded interview with Officer Lafua who relayed the following:

Officer Lafua was dispatched to a shooting call in Laughlin, NV from Southeast Area Command. Officer Lafua responded with an LVMPD Tactical Vehicle. From the Tactical Vehicle, he gave one officer a shield and gave Officer Moss the 40 mm. Officer Lafua was assigned the hands-on position of the initial arrest team. During the course of the event, Officer Lafua learned Decedent was involved in a robbery and shot at a security officer.

Decedent was barricaded in the back seat of a vehicle. A Laughlin Resident Officer issued verbal commands to Decedent, but he did not comply. When SWAT arrived, Officer Lafua was assigned to secure the stairs of the nearby parking garage.

He did not witness the shooting firsthand but was able to see it on ARMOR's television monitor. Officer Lafua saw Decedent run out of the vehicle towards SWAT while holding a firearm in his hand. Officer Lafua believed Decedent had the gun towards his head.

Officer Lafua felt if he was still positioned on the arrest team when Decedent exited the vehicle with the gun, Decedent's intention would have been to shoot him.

### **SWAT Officer Zachary Adam**

On August 19, 2019, at approximately 1:11 p.m., Detectives Ubbens and Valenzuela conducted an audio recorded interview with SWAT Officer Adam who relayed the following:

When he arrived in Laughlin, Officer Adam was directed to deploy as a sniper with SWAT Officer Mikkelson. Officer Adam was informed Decedent attempted a robbery at the Golden Nugget and Aquarius Hotels and fired a round during one of the robberies. Officer Adam was also told Decedent served approximately 20 years in prison for a bank robbery.

Officers Adam and Mikkelson initially went to second level of the parking garage which was directly to the passenger side of Decedent's vehicle. They relocated to a better position on the third level of the garage.

Officers Adam and Mikkelson rotated their roles as the sniper and observer. Decedent initially was inside his vehicle, but later exited the vehicle. Officer Adam observed the top half of Decedent's vehicle. When Decedent was advised to exit the vehicle, he appeared to respond by saying he could not do it.

While Officer Adam was performing duties of observer, Decedent eventually exited the rear passenger door of his vehicle armed with a black handgun. Decedent had the firearm raised straight in the air. As Decedent approached the back of the BearCat, he went from walking to running. The firearm moved from an elevated position to a leveled off position. Officer Adam heard Officer Mikkelson discharge his rifle.

Officer Adam explained that anytime someone levels a gun towards another person it should be assumed there is an intention to harm. He explained that due to how the other SWAT operators had been positioned behind the BearCat, if Decedent was able to make it to the rear of the armored vehicle there would be no source of cover for the operators. SWAT Officer Adam also expressed he felt that negotiators and SWAT operators did everything possible to prevent a deadly force situation from occurring.

### **Sergeant Andrew Hefner**

On August 19, 2019, at approximately 2:11 p.m., Detectives Valenzuela and Ubbens conducted an audio recorded interview with Sergeant Andrew Hefner who relayed the following:

Sergeant Hefner was working in his assigned area command (SVAC) when he received a notification from the SWAT Lieutenant to respond to a barricade situation in Laughlin. Sergeant Hefner stated he is a member of the Crisis Negotiator Team (CNT). Sergeant Hefner responded to Laughlin, NV and arrived at the command post. Sergeant Hefner was briefed about the suspect (Decedent) and was given the task to make contact with Decedent via the PA system. Sergeant Hefner entered the SWAT BearCat Vehicle and utilized the PA system and spoke with Decedent. Sergeant Hefner informed Decedent they were the police and several times instructed Decedent to give up and surrender. Sergeant Hefner stated they spoke with Decedent for approximately two and a half hours.

As Decedent stood outside of the passenger side his vehicle, Sergeant Hefner could see Decedent holding a black semi-auto handgun as Decedent raised both of his hands in the air. Decedent then placed the handgun back inside his vehicle. Decedent waited a couple of minutes then retrieved the handgun again and quickly ran with the firearm raised in the air. Decedent made it to the rear corner of the second SWAT Bearcat that was positioned on the opposite side of Sergeant Hefner. As Decedent reached the SWAT officers, Sergeant Hefner saw Decedent lower the firearm and turn toward the SWAT officers who were standing at the rear of their vehicle. Sergeant Hefner heard gunshots and saw a SWAT officer, who was

standing to the rear of the SWAT vehicle, shooting toward Decedent's direction. Sergeant Hefner saw Decedent fall to the ground. Sergeant Hefner stated he thought Decedent was going after the officers who were positioned to the rear of their SWAT vehicle.

### **SWAT Officer Sean O'Donnell**

On August 19, 2019, at approximately 3:11 p.m., Detective Alsup conducted an audio recorded interview with Officer O'Donnell who relayed the following:

Officer O'Donnell was notified of a barricaded subject in Laughlin via the Communicator at approximately 0300 hours. Officer O'Donnell was advised the barricaded subject (Decedent), was the suspect in a robbery and shooting which had occurred. Officer O'Donnell arrived and was assigned to the team which would block the front of Decedent's vehicle with one of the BearCat vehicles.

After getting into position near the front of Decedent's vehicle, Officer O'Donnell observed the person in the vehicle matched a photograph he was given of Decedent. Decedent constantly moved in the vehicle. During the negotiations, a deployed robot provided Decedent a phone. Decedent sat in the backseat of his vehicle and had the rear passenger door open.

Decedent told officers he would "go out shooting" and stated he could not go back to prison. At one point the robot broke one of the windows to Decedent's vehicle and officers were able to see a firearm in the vehicle through the camera feed of the robot.

At the end of the incident, Decedent exited the vehicle, raised the firearm in the air, lowered the firearm, and then ran towards the officers who were positioned near the BearCat at the rear of his vehicle. Officer O'Donnell heard three gunshots but did not observe which officer or officers had fired.

### **AUTOPSY**

Medical Examiner Dr. Lisa Gavin of the Clark County Coroner's Office conducted an autopsy on Decedent. M.E. Gavin concluded Decedent's cause of death was multiple gunshot wounds.

The toxicology results indicated Decedent had Methamphetamine in his system at a concentration of 1200 ng/mL.

## **LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal use of force 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 incident.

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 could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

### **A. The Use of Deadly Force in Defense of Self or Defense of Another**

The authority to kill another in self-defense or 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 ... another person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the person or other person.<sup>3</sup> 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 self-defense [or 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 himself [or the other person] or cause himself [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [self-defense or defense of another] force or means that might cause the death of

---

<sup>3</sup> NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

the other person, for the purpose of avoiding death or great bodily injury to [himself or the person(s) 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 self-defense [or 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 self-defense [or 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 he [or 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 himself [or 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 exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that Decedent did not act in self-defense [or defense of another]. Id. at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense or defense of another, the State at trial must prove beyond a reasonable doubt that the slayer was not acting in self-defense or defense of another.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to numerous SWAT Officers positioned to the rear of the BearCat parked behind Decedent's vehicle. Officers were drawn to the scene initially, because Decedent was involved with two attempted armed robberies at the Golden Nugget and Aquarius and had shot at an Aquarius security officer while fleeing from the Aquarius.

Decedent had retreated to his vehicle in the Aquarius parking lot and refused to exit the vehicle despite numerous and repeated requests by LVMPD officers to do so. Based off reported eyewitness testimony from casino employees, visual confirmation from SWAT officers on the ground, snipers posted on the third floor of the parking garage overlooking the barricade, as well as deployed robots armed with cameras, the officers were aware that Decedent was armed.

The barricade situation lasted hours, with LVMPD officers and CNT negotiators repeatedly attempting to convince Decedent to surrender peacefully. However, Decedent's repeated statements to police throughout this standoff illustrated that Decedent was unwilling to



surrender peacefully. Multiple officers recalled Decedent telling law enforcement throughout this hours-long negotiation such things as: he was not going to surrender, he could not do it (surrender), he was “going to go out in a blaze”, he was not going back to prison and that he would “go out shooting.”

As SWAT officers prepared a non-lethal resolution to the standoff by deploying a robot to dispense a tear gas cannister, Decedent grabbed his firearm and ran towards the rear of the BearCat where multiple SWAT officers were positioned. While decedent initially raised his weapon in the air, Decedent lowered the firearm so that it pointed in the direction of the huddled officers.

Given the fact that Decedent had refused to comply with repeated requests to surrender and Decedent was now running towards a group of officers with a gun pointed at them, Officer Mikkelson believed that Decedent posed a threat to the safety of his fellow officers. Officer Susich believed that Decedent posed a threat to his safety as well as the safety of his fellow officers. Accordingly, Officers Mikkelson and Susich both indicated they fired their weapons in an effort to stop the threat posed by Decedent and to ensure the safety of themselves and/or their fellow officers.

Thus, the totality of the evidence, to include Golden Nugget and Aquarius surveillance footage, BWC footage and a multitude of corroborating statements, illustrates that Officer Mikkelson was reasonable in believing that Decedent would cause great bodily harm or death to his fellow officer positioned in the parking lot. Similarly, the totality of evidence illustrates that Officer Susich was reasonable in believing that Decedent would cause great bodily harm or death to either himself or his fellow officers next to him. Officers Mikkelson and Susich were confronted with the appearance of imminent danger and they each had an honest belief and fear that either themselves or their fellow officers were about to be killed or suffer great bodily injury at the hands of the Decedent. The evidence further illustrates that Officers Mikkelson and Susich acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officer Mikkelson reasonably acted in defense of others. Likewise, Officer Susich reasonably acted in self-defense and defense of others. Consequently, the shooting of Decedent is justifiable under this legal theory.

## **B. Justifiable Homicide by a Public Officer**

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, the known evidence illustrates that Officers Mikkelson and Susich had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and/or their fellow officers. Prior to firing their weapons Officers Mikkelson

and Susich were all aware that hours earlier Decedent was a suspect in two attempted armed robberies at the Golden Nugget and Aquarius and that Decedent had fired at an Aquarius security guard in effort to avoid capture. Furthermore, Decedent's actions and statements made over the course of the hours long standoff demonstrated that he was unwilling to comply with any of the officers repeated commands to exit the vehicle and surrender peacefully.

Given Decedent's repeated refusals to peacefully surrender and his subsequent decision to run towards a group of SWAT officers while pointing a gun at them, Officers Mikkelson and Susich each had a reasonable belief that Decedent could cause serious physical harm to either themselves or their fellow officers. Thus, the use of deadly force by Officers Mikkelson and Susich was legally justified and appropriate under NRS 200.140(2).

### **CONCLUSION**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Officers Mikkelson and Susich were reasonable and/or 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." See NRS 200.190.

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