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August 20, 2012

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

Re: Officer-Involved Death of Bernard Pate which occurred on
November 21, 2011, at the Karen Pines Apartments,
4450 East Karen Avenue, Las Vegas, Clark County, Nevada,

LVMPD Event # 111121-4314

Dear Sheriff Douglas C. Gillespie:

On November 21, 2011, Gang Enforcement Detectives Casey Clarkson and Christopher Tucker, from the Gang Crimes Bureau, were conducting enforcement operations in the 4400 block of East Karen Avenue. They were working as a two man, unmarked, gang unit, call sign GC-61. At approximately 2300 hours, as they patrolled the Karen Pines apartment complex at 4450 East Karen Avenue, they observed a black male adult dressed predominately in red clothing, loitering in the playground area in the center of the complex.

Detective Clarkson exited the patrol vehicle and attempted to conduct a person stop on the male on the east side of the apartment complex. The male (later identified as Bernard Pate and hereinafter "Decedent") ran from Detective Clarkson toward Karen Avenue and a foot pursuit ensued.

The Decedent turned eastbound on Karen Avenue and produced a black semi-automatic handgun, which he pointed back towards Detective Clarkson.

Detective Clarkson drew his duty weapon and fired multiple shots at the Decedent, which caused him to stumble and fall to the ground. Additional Gang Detectives arrived and assisted with taking the Decedent into custody. The detectives requested medical personnel respond to the scene. Medical personnel arrived and pronounced the Decedent deceased at the scene.

The District Attorney's Office has completed its review of the November 21, 2011, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officer were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

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

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

DESCRIPTION OF SCENE

The primary scene was located on Karen Avenue between the Desert View apartment complex at 4550 East Karen Avenue to the north and the Luxury Meadow Vista apartment complex at 4555 East Karen Avenue to the south. Karen Avenue is an east/west oriented, two lane street with a concrete curb and sidewalk along both the north and south sides of the street. On November 21, 2011, the scene was dimly lit with street lights along both sides of the street. There was also ambient light from the various apartment complex buildings in the area.

The incident originated in the Karen Pines apartment complex at 4450 East Karen, which is just west of the Desert View apartment complex on the north side of Karen Avenue. The Karen Pines complex consists of several two-story, multi-family apartment buildings, which are surrounded the driveway and parking lot. On the night of the shooting, the parking lot contained various marked parking spaces and vehicles. Multiple intertwined concrete walkways provide pedestrian access from the parking lot to the various apartments located throughout the buildings and complex.

The leasing office and club house for the Karen Pines complex is centrally located on the south side of the complex, immediately north of the vehicle entrance off of Karen

Avenue. A children's playground is located behind the office, north of the complex swimming pool.

Building 1 of the Karen Pines apartment complex is located just east of the playground. It is a two-story northwest/southeast oriented building. The front doors to Apartments 108 and 208 are located on the ground level of the southwest corner of Building 1.

Building 3 of the Karen Pines apartment complex is a two-story, east to west oriented building, located in the southeast corner of the complex, just north of Karen Avenue. Building 4 of the Karen Pines apartment complex is a two-story, north and south oriented building, which is located north of Building 3. The buildings are separated by an open area of dirt landscaping.

Investigators found a right-foot tan boot near the middle of the driveway east of Building 3. They found the matching left-foot tan boot on Karen Avenue, southeast of the Karen Pines apartment complex.

The Desert View apartment complex is located east of the Karen Pines complex. Building A of the Desert View apartment complex is located in the southwest corner of the complex next to the block wall which separates the apartment properties. Building B is located east of Building A. Both buildings are two-story, oriented east and west, and parallels Karen Avenue, north of the shooting scene.

There is an area of landscaping between the north sidewalk on Karen Avenue and Buildings A and B of the Desert View apartment complex. The landscaping includes an assortment of different sized rocks, grass, shrubs and trees. There is a large tree in the landscaped area near the southwest corner of Building A. Investigators found four (4) 9mm casings (Head stamped Speer 9mm Luger +P), a black Samsung cellular phone, a key, and a Hi-Point .380 Auto magazine on Karen Avenue, east of the left boot and south of Building A. The magazine contained eight (8) .380 Auto cartridges (Head stamped Aguila .380 Auto). Investigators also found five (5) 9mm cartridge cases (Head stamped Speer 9mm Luger +P) in the landscaped area, east of the large tree, between the sidewalk and Building A.

Investigators observed several red, white and blue cotton-like fibers and a Hi-Point, Model CF380, .380 Auto caliber, semi-automatic handgun, with serial number P8020350, on Karen Avenue, east of the .380 handgun magazine. The handgun did not have a magazine in it, but did contain a .380 Auto cartridge in the firing chamber (Head stamped Aguila .380 Auto). A small piece of white cotton-like material was located on the slide of the handgun. An apparent bullet defect was noted on the left side of the frame and slide of the Hi-Point handgun.

Under Decedent's body on Karen Avenue east of the Hi-Point handgun, was a pair of black, white, and grey "Riddell" size "XL" gloves. A bullet and a red baseball hat were recovered on Karen Avenue, east of the Hi-Point handgun. A small pool of apparent blood was visible on the street.

The Luxury Meadow Vista apartment complex is located on the south side of Karen Avenue, across the street from the shooting scene. Building 7 is located near the middle of the apartment complex on the north side. The two-story building is oriented east to west and parallels Karen Avenue. Building 7 contains Apartments 17 and 23.

Apartment 17 is located on the first floor in the west end of the building. The bedroom window to Apartment 17, located near the northwest corner of the building in the west facing wall, had an apparent bullet hole in it at approximately eye level. A bullet had traveled through the window into Apartment 17, through the bathroom door, struck the east bathroom wall, and came to rest on top of the base of the toilet.

On the north side of Building 7, near the middle of the building, the wall expanded north in a "pop-out." On the west facing wall of this expansion was an apparent bullet impact. Apartment 23 is located on the east side of the impact. Detectives searched Apartment 23, however, the bullet did not penetrate the wall and make it inside the apartment.

Investigators observed, north of Building 7, near the middle of the wrought iron fence, a bullet impact in one of the vertical wrought iron bars. The bullet had penetrated the bar and was located on the ground. A bullet and a bullet fragment were located near the north curb in the westbound lanes of Karen Avenue, near the northwest corner of the intersection of Mountain Vista and Karen Avenue.

LOCATION AND DESCRIPTION OF THE BODY

Decedent was located in the street on Karen Avenue. The body was in the west bound lane near the concrete curb, southeast of Building A of the Desert View apartment complex at 4550 East Karen Avenue. The body was lying supine with the head oriented to the southeast and turned towards the left shoulder. The feet were oriented to the northwest. The legs extended out from the body and were crossed near the knees with the left leg resting on top of the right. The hands were handcuffed behind the back and were partially underneath the body. The hips were turned slightly toward the right, which exposed the handcuffed left hand.

The body was clad in a red jacket over a black hooded sweatshirt, blue jeans with a black and purple belt and black socks. A red hat was on the street adjacent the right shoulder. Apparent blood was visible on the sweatshirt and an apparent bullet defect was visible on the lower right pant leg. The red jacket was opened in the front, which revealed the black sweatshirt underneath. The sweatshirt appeared to have been pulled up toward the head, which exposed the left hip and stomach.

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RESULTS OF AUTOPSY

On November 22, 2011, a complete autopsy was performed on the body of Decedent. Doctor Lisa Gavin determined the cause of death was to be gunshot wound of the left upper back.

INVESTIGATION

The LVMPD Officers involved in this incident did not provide voluntary statements to the investigating homicide detectives; however, a Public Safety Statement was taken from Patrol Sergeant Clark, who was one of the first supervisors on the scene.

On November 22, 2011, Detective Boucher interviewed Sergeant Clark, who had obtained a Public Safety Statement from Gang Detective Clarkson. Clark related the following: Detective Clarkson had been involved in a shooting, while in a foot pursuit at 4450 East Karen. According to Detective Clarkson, Obstructing a Police Officer by fleeing from the detective's presence, was the specific crime. As the Decedent ran, he produced a black handgun and pointed it at Clarkson. The shooting occurred on Karen Avenue, in the street, and Clarkson believed he had fired 6-7 times in a southeastward direction. He did not believe other officers or the Decedent had fired their weapons during the incident, but believed Gang Detectives Santos and Auschwitz may have witnessed the shooting.

On November 22, 2011, Detective Rogers interviewed Decedent's wife (hereinafter "Wife of Decedent"), who related the following: Wife of Decedent and Decedent have been married for approximately one year and lived together in apartment D at 2745 Jennydiane Drive.

Prior to the shooting, Wife of Decedent and Decedent had been gambling at Sam's Town Hotel & Casino. They later both left, but went their separate ways. Wife of Decedent returned home and she believed Decedent went to visit a girlfriend named "Veronica" or "Vanessa," who lived in the Karen Pines Apartments. At approximately 2340 hours, Wife of Decedent called Decedent's cellular phone and spoke with him briefly. She later heard several gunshots and called Decedent's cellular phone again, but no one answered, which concerned her. After hearing the gunshots, Wife of Decedent left her apartment and contacted an unknown patrol officer near Mountain Vista and Karen, and asked who the person was that had been involved in the shooting with officers. She believed it was Decedent. Wife of Decedent described Decedent as a black male adult, approximately 5'9" inches tall, with a bald head, and numerous tattoos on his face. Wife of Decedent stated she had never seen Decedent with a gun, but said he may be in possession of a gun, but only for protection. She also said he "hated the police."

On November 22, 2011, Detective Rogers interviewed Witnesses 1 and 2, where they related the following: Witness 1 and Witness 2 are siblings, who live together in Apartment 256 of the Desert View apartment complex.

Prior to the shooting, Witness 2 was asleep inside their apartment and Witness 1 was watching television. Witness 2 was awakened by yelling outside her window. She went to the window and heard what she believed to be a police officer yelling “[g]et down!” Witness 2 then walked to a bedroom window. She looked out and saw a police officer shoot an unknown black male. She believed she heard 3-4 quick gunshots. Witness 2 did not have her glasses on and was unable to describe any details of the officer or Decedent. She also did not see anyone with a gun, but believed the dead person probably shot first, because the officer would not have fired for “no reason.”

Witness 1 was on the couch playing video games, when he heard yelling outside, which he initially thought was on his video game. Witness 1 turned the television down and believed he heard a police officer yell, “[i]s that good for you?” and “[g]et down!” Witness 1 heard approximately eight gunshots, but did not see the shooting. He looked out a window and saw a police officer with his gun out looking around. He believed the shooting was between two people, because the shots came from different directions.

On November 21, 2011, Detectives had Wife of Decedent transported to the apartment that she shared with Decedent. Trauma Intervention Program (TIP) Volunteer Linda Ulrich accompanied Detectives Sanborn, Woosnam and Ivie to the apartment, which was located at 2745 Jennydiane Drive, Apartment D. Wife of Decedent allowed the volunteer and detectives to enter her apartment. Detectives encountered a fawn colored female pit bull terrier type dog inside the apartment. In order to provide a safe environment for the TIP volunteer, Detective Sanborn locked the dog in a back bedroom. In plain view on the kitchen counter, detectives observed a box of Aguila .380 Auto ammunition. The box of ammunition was documented with photographs and recovered as evidence. Wife of Decedent asked detectives if her neighbor (hereinafter Neighbor) could come to the apartment to assist with the grieving process.

On November 21, 2011, Detectives Sanborn and Woosnam made contact with Neighbor, who related the following: Neighbor was a friend of Wife of Decedent and Decedent. On November 21, 2011, during the late evening hours, Neighbor heard several gunshots. After the gunshots, Neighbor’s daughter asked her if she thought the shooting had involved Decedent. Neighbor believed Decedent could have been involved because she knew he possessed a handgun for protection.

On December 14, 2011, Criminal Intelligence Detectives Woosnam and Hunkins interviewed the owner of the Hi-Point .380 Auto semi-automatic (hereinafter Gun Owner), who related the following: Gun Owner had purchased a Hi-Point .380 Auto semi-automatic pistol, unknown serial number, and two types of ammunition from Pawn World in Kingman, Arizona in March or April of 2011. The Hi-Point was later stolen from her sister’s apartment at 2666 Aarondavid, Apartment C, in Las Vegas on October 1, 2011. Gun Owner had been at her sister’s apartment helping her move and had left the loaded Hi-Point in a locked box, along with a trigger lock, and a box of ammunition, on top of the refrigerator. She and sister later left the apartment and, when they returned, Gun Owner found the lock on the box had been broken and the handgun and ammunition

were missing. Gun Owner reported the theft of the handgun to LVMPD and it was documented under event number 111001-3164. Gun Owner did not know the serial number for the pistol at the time she filed the report. She returned to Arizona, found the serial number and called the LVMPD to update her report. She was unable to contact anyone to assist her with the updated information. Gun Owner did not give the handgun to anyone, or give anyone permission to take it, nor did she believe anyone knew the gun was in the apartment.

Gun Owner felt an African American male known to her as "Brooklyn" had stolen the handgun. Brooklyn was sister's boyfriend's friend. Sister's boyfriend and Brooklyn had met in jail and his first name was "Bernard." Brooklyn was supposed to help Gun Owner's sister move, but never showed up at the apartment.

At the conclusion of the interview, Detective Woosnam showed Gun Owner a photograph of Decedent. She immediately identified him as "Brooklyn."

On January 3, 2012, LVMPD Forensic Scientist Kathryn Aoyama completed the requested fingerprint processing of the evidence recovered during the follow-up investigation. There were no latent prints developed on Decedent's Hi-Point handgun. One latent print was recovered on the magazine for Decedent's handgun; however, it was not suitable for comparison.

OFFICER'S FIREARM COUNTDOWNS

Gang Detectives Clarkson, Auschwitz, Ploense, Berg, Madrid, Tucker and Santos had their duty weapons counted down inside the Karen Pines Apartment complex clubhouse. Present during the countdowns were Homicide Detective Boucher, Crime Scene Analyst Shrum, Critical Incident Review Team (CIRT) Detective Kegley, Police Protective Association (PPA) Attorney John Harper, PPA Representative Tom Reid, Police Employee Assistance Program (PEAP) Sergeant Tom Harmon and PEAP Officer Stacy Short. The countdowns were documented with photographs. The detectives were photographed for appearance and identification.

Gang Detective Clarkson's duty weapon was a Glock, Model 17, 9mm, semi-automatic handgun with serial number HGT318. The handgun had an attached X-300 Surefire tactical light. The handgun was loaded with nine (9) cartridges; one (1) cartridge in the chamber and eight (8) cartridges in the magazine. Clarkson carried two additional magazines on his duty belt, one of which contained sixteen (16) cartridges; the other contained eighteen (18) cartridges. Clarkson typically carried his duty weapon loaded with eighteen (18) cartridges, one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. It appeared Detective Clarkson fired his duty weapon nine (9) times during the incident. Clarkson's handgun and the seated magazine were impounded as evidence by Crime Scene Analyst Shrum.

Gang Detective Auschwitz's duty weapon was a Sig Sauer, Model P220, .45 ACP, semi-automatic handgun with serial number G194434. The handgun was loaded with eight (8) cartridges; one (1) cartridge in the chamber and seven (7) cartridges in the magazine. Auschwitz carried three additional magazines on his duty belt, all of which contained seven (7) cartridges. Auschwitz typically carried his duty weapon loaded with eight (8) cartridges; one (1) cartridge in the chamber and seven (7) cartridges in the magazine. Detective Auschwitz did not fire his weapon during the incident.

Gang Detective Ploense's duty weapon was a Glock, Model 17, 9mm, semi-automatic handgun with serial number LNW248. The handgun had an attached Streamlight flashlight. The handgun was loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Ploense carried two additional magazines on his duty belt, which each contained seventeen (17) cartridges. Detective Ploense typically carried his duty weapon loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Detective Ploense did not fire his weapon during the incident.

Gang Detective Berg's duty weapon was a Glock, Model 17, 9mm, semi-automatic handgun with serial number FVV889. The handgun was loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Berg carried two additional magazines on his duty belt; each contained seventeen (17) cartridges. Berg typically carried his duty weapon loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Detective Berg did not fire his weapon during the incident.

Gang Detective Madrid's duty weapon was a Glock, Model 17C, 9mm, semi-automatic handgun with serial number KYN121. The handgun was loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Madrid carried two additional magazines on his duty belt; each contained seventeen (17) cartridges. Madrid typically carried his duty weapon loaded with eighteen (18) cartridges; one (1) cartridge in the chamber and seventeen (17) cartridges in the magazine. Detective Madrid did not fire his weapon during the incident.

Gang Detective Tucker's duty weapon was a Heckler & Koch, Model HK45 USP, .45 ACP, semi-automatic handgun with serial number 25107865. The handgun was loaded with thirteen (13) cartridges; one (1) cartridge in the chamber and twelve (12) cartridges in the magazine. Tucker carried four additional magazines on his duty belt; two contained twelve (12) cartridges and two contained ten (10) cartridges. Tucker typically carried his duty weapon loaded with thirteen (13) cartridges; one (1) cartridge in the chamber and twelve (12) cartridges in the magazine. Detective Tucker did not fire his weapon during the incident.

Gang Detective Santos's duty weapon was a Glock, Model 17, 9mm, semi-automatic handgun with serial number HKE491. The handgun had an attached Streamlight flashlight. The handgun was loaded with seventeen (17) cartridges; one (1) cartridge in

the chamber and sixteen (16) cartridges in the magazine. Santos carried two additional magazines on his duty belt, one contained sixteen (16) cartridges and the other contained seventeen (17) cartridges. Santos typically carried his duty weapon loaded with seventeen (17) cartridges; one (1) cartridge in the chamber and sixteen (16) cartridges in the magazine. Detective Santos's back-up weapon was a Glock, Model 26, 9mm, semi-automatic handgun with serial number HSZ788. The handgun was loaded with ten (10) cartridges; one (1) cartridge in the chamber and nine (9) cartridges in the magazine. Santos typically carried his back-up weapon loaded with ten (10) cartridges; one (1) in the chamber and nine (9) in the magazine. Detective Santos did not fire either of his weapons during the incident.

FIREARM & BALLISTIC EVIDENCE EXAMINATIONS

On January 23, 2012, LVMPD Forensic Scientist Jonathan Fried completed the requested firearms examinations of the weapons and evidence recovered during the follow-up investigation.

Gang Detective Clarkson's Glock, 9mm, semi-automatic handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and magazine had a stated capacity of seventeen (17) cartridges; however, it had an actual capacity of eighteen (18) cartridges. The test fired bullets and cartridge cases from Detective Clarkson's handgun were microscopically compared to the evidence recovered at the crime scene. Based on these comparative examinations, it was determined the nine (9) cartridge cases recovered from the crime scene had been fired from Detective Clarkson's handgun.

Five (5) fired bullets recovered at the crime scene bore markings consistent with having been fired by Clarkson's Glock handgun, but they lacked sufficient microscopic detail for identification. The bullets were not fired by Decedent's Hi-Point handgun.

Decedent's Hi-Point semi-automatic handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and magazine had a capacity of eight (8) cartridges. The handgun had a functioning magazine lockout safety, which prevented the trigger from being pulled when the magazine was removed. As a result, the handgun would fire with the magazine partially or fully inserted, but would not fire without a magazine, even if there was a cartridge in the chamber.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent was justifiable under the following theory: The killing of a human being in self defense/defense of others.

The Use of Deadly Force in Self Defense or Defense of Another

The authority to kill another in defense of others is contained in NRS §§200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony ...” against the other person. NRS §200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished

NRS §200.160(1).

The Nevada Supreme Court has refined the analysis of self defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar

situation. The person killing must act under the influence of those fears alone and not in revenge.

....

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

Id. at 1051-52.


In this case, Decedent posed an imminent danger to Detective Clarkson, other officers in the area, and residents of the apartment complex. Decedent, after fleeing from officers, pointed a handgun, with a cartridge in the firing chamber, at Detective Clarkson. Detective Clarkson was confronted by the appearance of imminent danger which created in his mind an honest belief and fear that he or another, was about to be killed or suffer great bodily injury. Accordingly, his actions were justified in acting upon those appearances, fears and actual beliefs.

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CONCLUSION

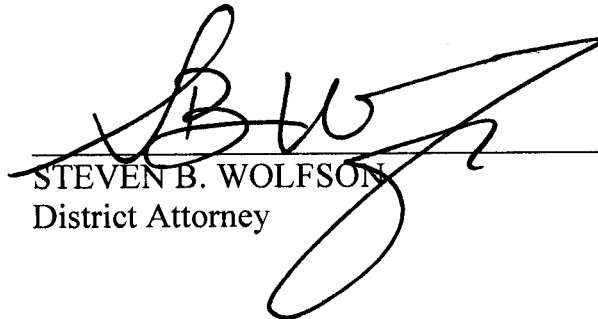
Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Detective Clarkson were reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS §200.190). A homicide which is determined to be justifiable *shall* be “fully acquitted and discharged.” (NRS §200.190).

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



PAMELA WECKERLY
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney