



# OFFICE OF THE DISTRICT ATTORNEY

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July 30, 2012

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

**Re:** Officer-involved death of Luis Silva on July 05, 2011, at 2842 Taurus Court, Las Vegas, Nevada, under Las Vegas Metropolitan Police Department Event #110704-5637.

Dear Sheriff Douglas C. Gillespie:

On July 04, 2011, Las Vegas Metropolitan Police Department ("LVMPD") police officers responded to 2842 Taurus Court regarding a domestic violence incident. Upon arrival, officers learned that Luis Silva ("Decedent") was in a bedroom armed with a handgun. Officers established a dialogue with Decedent and attempted to talk Decedent out of his bedroom. Decedent eventually opened the bedroom door. He was holding a pistol to his head. Decedent refused commands to drop his weapon and made numerous statements that he wanted officers to shoot him. After a lengthy, but unsuccessful, negotiation to convince Decedent to drop his gun, officers employed a low lethality shotgun to strike Decedent with three bean bags. Decedent still refused to drop his weapon. Officers deployed and struck Decedent with three Taser cartridges. Decedent again refused to drop his weapon. Decedent eventually pointed his loaded 9mm handgun at officers who, in defense of themselves and other officers, shot and killed Decedent.

The District Attorney's Office has completed its review of the July 05, 2011, death of Decedent. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officers were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

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

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

## **BACKGROUND**

### **Interview of Decedent's Girlfriend**

Decedent and Girlfriend were in a dating relationship for approximately four years. They began living together at 2842 Taurus Court in March 2010. Decedent kept several guns in their house, including a 9mm handgun, a .380 caliber pistol, and a shotgun.

In October 2010, Decedent lost his job as a transmission mechanic and had been despondent ever since. Decedent had been looking for a job every day since October 2010; he finally found one with Allstate Batteries. Decedent was supposed to start his new job on July 05, 2011.

Decedent also was depressed about a custody issue with his ex-girlfriend involving their 13-year-old daughter. Approximately two months prior to July 04, 2011, Decedent stopped eating, refused to come out of his bedroom, and said he was going to fast until he died. Decedent only agreed to leave his room after three days when Girlfriend threatened to call Decedent's mother.

Girlfriend said that Decedent, until the week prior to his death, had never been violent toward her. Girlfriend's daughter ("Daughter") recently moved to Las Vegas from Montana with her children. Daughter and her children were staying in the house on Taurus Court with Decedent and Girlfriend. Girlfriend was at work on June 30, 2011, when she received a phone call from Daughter. Daughter was at a friend's house because Decedent was being mean to her. Girlfriend called Decedent to confront him about his behavior toward Daughter. During the phone call, Decedent "freaked out" and hung up on her. Girlfriend returned home from work at approximately 9:30 p.m. When she went to her bedroom to go to sleep, Decedent, who already was in bed, jumped out of bed, tried to hit Girlfriend and threatened to "kick [her] ass." Girlfriend was scared and called the police. While she was on the phone, Decedent took Girlfriend's phone from her and threatened to throw it in the toilet. Moments later, he gave the phone back to her. Girlfriend explained that the police called her back; however, she did not answer the call. (Research of that event revealed that officers were not able to respond to the call because the call originated from a cellular telephone at an unknown Las Vegas address.)

**Interview of Decedent's Girlfriend's Daughter**

Daughter confirmed that she recently moved to Las Vegas from Montana. She was aware that Decedent was depressed over losing his job and a custody battle with his ex-girlfriend. Daughter also confirmed the two prior incidents her mother relayed: (1) Daughter had to leave the house based on Decedent's behavior toward her; and (2) Decedent locked himself in his bedroom and refused to eat.

**THE EVENTS AT 2842 TAURUS COURT ON THE NIGHT OF JULY 04, 2011**

On July 04, 2011, Girlfriend came home from work around noon, cleaned the house and took a shower. While Girlfriend was in the shower, Decedent went to the store and bought a large quantity of beer. Girlfriend was concerned because Decedent rarely drank and had not eaten anything.

According to Daughter, a number of family members - - including Decedent, Girlfriend, Daughter, and Daughter's children and their friends - - were in the backyard at 2842 Taurus to celebrate the holiday. Decedent was drinking beer. Around 2:00 p.m., Daughter walked into the living room and saw Decedent pull a black handgun from his waistband. Decedent tried to hand the gun to Daughter, but she refused to take it. Daughter told Decedent to put the gun in his room. Decedent then left again for the store. After Decedent returned from the store, Daughter saw him in the backyard with the gun.

Later that evening, Girlfriend, Daughter, Daughter's young son, and Decedent were in the house. Girlfriend told everyone how Decedent had threatened her life<sup>1</sup> a couple days earlier. Decedent became very agitated. Girlfriend, however, continued to confront Decedent about the incident. She demanded that Decedent admit he had threatened her.

Decedent went to his bedroom. He emerged a few minutes later to get another beer then returned to the bedroom. Girlfriend went to Decedent's bedroom and again demanded that Decedent admit he threatened her. Decedent then removed from his waistband the gun he was carrying earlier and placed it to the right side of his head. (Girlfriend remarked to police that she was "shocked" he was carrying the gun in his waistband. Decedent typically was very careful with his gun, and she had never seen him carry the gun in his waistband.)

The argument between Girlfriend and Decedent was overheard by Daughter. Daughter entered the bedroom. She saw Decedent "waving the gun around." Daughter was concerned that Decedent was going to shoot her mother, so Daughter tried to grab the gun. She and Decedent wrestled over the gun, but she was unable to take it from Decedent. Daughter ordered her mother out of the bedroom. Decedent repeatedly stated, "Just leave me alone. Just leave me alone." Decedent also repeatedly stated, while he

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<sup>1</sup> Girlfriend explained that she interpreted Decedent's earlier threat to "kick [her] ass" as a threat to her life.

had the gun to his head, "All I want to do is give my daughter the '66." (Decedent was referring to an automobile that was parked in the garage which he wanted to leave to his 13-year-old daughter.)

Daughter left the bedroom, walked into the living room and showed her mother the minor injuries she sustained while wrestling with Decedent over the gun. Girlfriend called the police.

The first 911 call was placed at 11:28 p.m. Girlfriend reported that her boyfriend was being violent and hit her daughter. She explained that her boyfriend was still in the residence and had been drinking. The 911 dispatcher asked Girlfriend if her boyfriend had any weapons; she said no. Police officers were dispatched to the residence.

Approximately 14 minutes later, at 11:42 p.m., Girlfriend called 911 again. Girlfriend admitted that her boyfriend was armed with a gun. She also reported that he had the gun pointed at his head approximately 20 minutes earlier.

#### **THE ARRIVAL OF MEMBERS OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT**

At approximately 11:35 p.m., LVMPD Officers Raymond Novak (P#8408) and Nicole Gonzales (P#9492) assigned themselves to the incident. They arrived at the Taurus Court residence at approximately 11:44 p.m. Girlfriend met the officers at the front door and let them in the house.

Girlfriend told Officer Novak that Decedent was in the bedroom armed with a gun. The bedroom door was locked. Officers Novak and Gonzales took positions in the hallway outside of Decedent's bedroom door and established a dialogue with Decedent. Both Girlfriend and Daughter heard Officer Novak trying to convince Decedent to come out of the room. After Decedent continuously refused to exit the bedroom, Girlfriend and Daughter eventually were ushered out of the house for their safety.

Over the next several minutes, several additional officers - - including Sgt. R. Stauffer (P#5287), Officer Suzana Markovic (P#13477), and Officer Charles Smith (P#13800) - - arrived at the residence. They stationed themselves in the hallway outside of Decedent's bedroom while he remained in his room. Officer Novak continued to negotiate with Decedent for approximately 23 minutes.

At approximately 12:10 a.m. (now in the early morning hours of July 05, 2011), Decedent unlocked and opened his bedroom door. Officer Smith handed Officer Markovic his X-26 Taser, while Officer Smith went outside to retrieve his low lethality shotgun from his vehicle. Officer Markovic turned on Officer Smith's X-26 Taser which, in turn, activated the Taser's video camera. Officers then entered the bedroom.

Officer Novak had his .45 caliber pistol drawn and pointed at Decedent. Officer Smith had his low lethality shotgun pointed at Decedent. Officer Gonzales had her 9mm pistol drawn and pointed at Decedent. Sgt. Stauffer remained outside the room in the doorway.

The first image on Officer Smith's Taser camera appeared at 00:10:22 hours.<sup>2</sup> The image showed Decedent standing in the southeast corner of the bedroom. He had a black semiautomatic pistol pressed against the right side of his head and a bottle of beer in his left hand. As soon as officers walked in the room, Officer Novak said, "I don't want to shoot you, code red, listen to me." Decedent replied, "Boy, there are a lot of cops." A female officer told Decedent, "Drop the gun, put the gun down dude." A male officer said, "Put it down." Decedent told the officers, "I'm not fucking around, but you guys are pushing me to this. I would never hurt you."

For nearly 20 minutes, Officer Novak attempted to persuade Decedent to put his gun down. Decedent, however, repeatedly asked the officers to shoot him. Decedent remained in the southeast corner of the room, approximately six to eight feet from the officers. Decedent held the pistol to his head during the majority of the negotiation. Decedent told the officers, "I'm not a suicidal motherfucker, you guys put me in this position, and if I point my gun at you, you will shoot me. I want you guys to shoot me." While talking with Officer Novak, Decedent moved the gun from his head, pointed it at his chest then moved it back to the right side of his head. At one point, Decedent leaned across the bed, shook hands with Officer Novak and said, "It's nice knowing you." Decedent told officers that, because they showed up, it put him in a bad position. Decedent said he was never going to hurt himself or anyone else, but he had no choice because the police arrived. He also said, "I don't want to be here anymore." Decedent explained to the officers that, if he put his pistol down, he would lose his CCW permit<sup>3</sup> because he was trying to commit suicide. Decedent said there were only two ways out - - either he would "blow [his] brains out" or the police would take him to jail.

At one point in the standoff, Decedent put a cigarette in his mouth and asked Officer Novak for a light. Officer Novak handed Decedent a lighter. Officer Novak then moved to a position in the southwest corner of the room, Officer Smith stayed near the entrance to the room, and Officers Markovic and Gonzales took positions on the north side of the bed (see diagram below<sup>4</sup>).

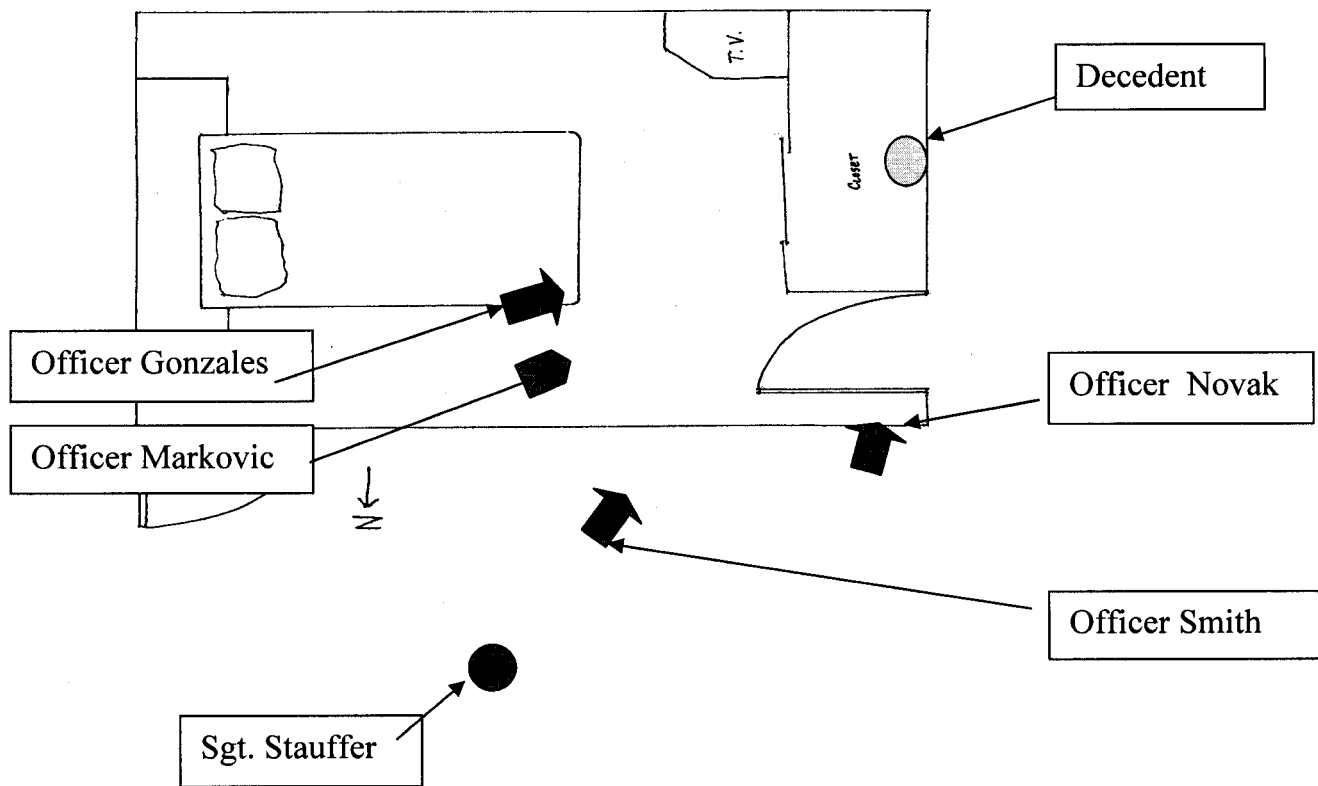
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<sup>2</sup> Officer Smith's Taser camera recorded a time of 07:13:22 hours GMT on 07-05-2011. Therefore, the listed times have been adjusted back 7 hours and 3 minutes to compensate for GMT to Pacific Standard Time and because the camera was approximately 3 minutes fast.

<sup>3</sup> Decedent in fact had a Carrying Concealed Weapons permit.

<sup>4</sup> The diagram is not to scale and is offered only to depict general position and placement of Decedent and officers involved.

**Master Bedroom 2842 Taurus Court**



At approximately 12:27 a.m., Decedent picked up his cell phone and placed a call. During the next three-minutes-and-18-seconds, Decedent spoke to his brother in Spanish.<sup>5</sup> At approximately 12:30 a.m., Decedent handed the phone to Officer Novak at which time the video on Officer Smith's Taser stopped. The video stopped because Taser cameras automatically turn off after running for 20 minutes. At the time the video camera turned off, it had been running for approximately 19 minutes-and-58-seconds.

When Officer Smith's Taser camera turned off, Officer Markovic tossed Officer Smith's Taser on the bed. Officer Markovic drew her own X-26 Taser, turned it on and activated the Taser's camera. The time on Officer Markovic's Taser camera was 07:46:10 hours GMT when it was activated.<sup>6</sup>

The first image on Officer Markovic's Taser camera was at 00:30:10 hours. It showed Decedent leaning against the wall in the southeast corner of the master bedroom with his

<sup>5</sup> Decedent's brother was later interviewed by police and recalled Decedent telling him, "I am tired... life is no good"... and "I am going to shoot myself in the head."

<sup>6</sup> The time on Officer Markovic's Taser was approximately 7 hours and 16 minutes fast. The listed times have been adjusted back 7 hours and 16 minutes to compensate for GMT to Pacific Standard Time and because the camera was approximately 16 minutes fast.

left hand in his pocket. He was holding the pistol against the right side of his head with his right hand. The camera audio captured Officer Novak talking on the phone to Decedent's brother. After speaking with Decedent's brother, Officer Novak handed the phone back to Decedent. At approximately 12:31 a.m., Decedent laid the phone on the bed and began talking again with Officer Novak. At approximately 12:33 a.m., Decedent spoke to his brother again saying, "Listen to me, this is gonna turn out bad, man." Decedent then put the phone down and told Officer Novak, "This is gonna turn out bad, Ray."

At approximately 12:34 a.m., Decedent's phone rang and he answered it. While on the phone, Decedent told Officer Novak not to come any closer. Decedent said, "This is my choice." Approximately 30 seconds later, Officer Smith fired three shots from his low lethal shotgun. Decedent was struck by three bean bag rounds in the chest, abdomen, and hip. After being shot with the low lethal bean bag rounds, Decedent stood upright, spread his arms, and said, "Shoot me!" Decedent lowered his pistol to his waist and dropped his phone. As Decedent moved his hands toward his abdomen, Decedent pointed his pistol at Officer Novak.

Officer Markovic fired her X-26 Taser cartridge at Decedent which caused him to flinch and bend over. Officer Smith stepped out of the bedroom and into the hallway to reload the magazine tube of his low lethality shotgun. As Decedent was bent over, he raised his pistol in the direction of Officer Gonzales. Officer Gonzales fired one shot from her 9mm pistol which struck Decedent in the left upper arm. The bullet passed through Decedent's left upper arm and through the south bedroom wall (the bullet was later recovered in the dirt in the southeast corner of the backyard). Decedent still did not drop his pistol. He continued to tell the officers to shoot him. As Decedent began to rise back up, Officer Novak told Decedent, "Don't do it!"

At approximately 12:35 a.m., Sgt. Stauffer told Officer Markovic to reload her Taser. After reloading her Taser, Officer Markovic fired one additional cartridge which struck Decedent. Decedent then turned toward Officer Novak who fired one cartridge from his X-26 Taser. After being struck by Officer Novak's cartridge, Decedent turned toward Officer Novak and said, "I want you to do it." Decedent raised his pistol toward Officer Novak who fired his Glock .45 caliber pistol three times at Decedent. Decedent was struck twice in the chest and once in the right upper leg. The bullet that struck Decedent in the right leg passed through his leg (the bullet was later found lodged in the exterior wall on the east side of the bedroom behind Decedent).

Decedent dropped his pistol next to his right side. He collapsed in a seated position in the southeast corner of the bedroom. After securing the pistol, Officers Gonzales and Novak pulled Decedent onto the floor and rolled him onto his back. Other officers in the room called for medical personnel. Paramedics from the North Las Vegas Fire Department arrived and determined Decedent was dead.

## **THE AUTOPSY OF DECEDENT**

An autopsy was performed by Dr. Alane Olson on Decedent on July 06, 2011, at the Clark County Coroner's Office. The listed injuries were observed on Decedent's body.

1. Apparent abrasion/contusion from a bean bag on the center of the chest.
2. Apparent abrasion/contusion from a bean bag on the right side of the torso.
3. Apparent contusion from a bean bag on the left hip.
4. Small laceration possibly from a Taser probe on the left side of the torso.
5. Small laceration from a Taser probe on the center of the abdomen.
6. Small laceration from a Taser probe on the right side of the abdomen.
7. Two apparent gunshot wounds (combined wound) on the left side of the upper chest.
8. Apparent gunshot wound (entrance wound) on the right inner thigh.
9. Apparent gunshot wound (exit wound) on the outside of the right thigh.
10. Two apparent gunshot wounds on the left upper arm (entrance and exit wounds).
11. Minor abrasion on the left elbow.

Two bullets were recovered - - one from the left rib area and one from the left buttocks area - - and impounded by Crime Scene Analyst M. McIntyre during the autopsy of Decedent.

After performing a complete autopsy on the body of Decedent, Dr. Olson determined the cause of death was multiple gunshot wounds to the torso.

Toxicology tests revealed that Decedent had a blood alcohol level of .183. This was more than twice the legal limit of a driver who would be considered impaired for purposes of driving under the influence in Nevada.

## **THE SCENE AND EVIDENCE**

### **Exterior of the residence**

A trash can containing 12 empty Budweiser beer bottles was located on the sidewalk at the southwest corner of the garage at 2842 Taurus Court. Three (3) 20-bottle cases of Budweiser beer (containing a total of approximately 30 empty bottles) were located on the sidewalk in front of the residence.

Crime scene analysts located an expended bullet fragment in the dirt in the southeast corner of the backyard. The bullet appeared to be a 9mm, and it appeared to have originated from an apparent exit hole in the south wall near the southeast corner of the residence. The bullet hole corresponded with Decedent's location in the master bedroom at the time he was shot by Officer Gonzales.



Crime scene analysts located a fired bullet in the exterior stucco of the east wall near the southeast corner of the residence. The bullet in the stucco appeared to be a .45 caliber. The bullet hole corresponded with Decedent's location in the master bedroom at the time he was shot by Officer Novak.

#### **Living room and kitchen area**

An opened Budweiser beer bottle was found on the coffee table, an unopened beer bottle was found on the bar, and several empty beer bottles were found in the kitchen trash can. A 12-gauge shotgun was found in the living room; however, it was unrelated to the incident.

#### **Hallway outside the master bedroom**

Located in the hallway outside of the master bedroom were a Taser dart, two lengths of loose dart wire, and a .12 gauge drag stabilized bean bag shotgun shell (unfired). The Taser dart and wires appeared to have been drug out of the bedroom when the wires became entangled in the shoes of someone who was walking out of the bedroom. The shotgun shell was dropped by Officer Smith as he was in the process of reloading the magazine tube of his low lethality shotgun.

#### **Master bedroom**

Six (6) Taser dart wires were located in the bedroom (some were connected to darts and some were not). One Taser dart was recovered from the carpet on the Decedent's right side, and four additional darts were recovered from the Decedent's person. The darts on the Decedent were recovered from the following locations: one from the left arm pit; one from the groin area; one from the left back; and one from the right chest. Numerous components from the Taser cartridges were located in various spots in the room including on top of the bed. The three serial numbers were consistent with the three cartridges fired by Officer Markovic and Officer Novak.

Officer Smith and Officer Novak's X-26 Tasers were located on the top of the mattress on the south side of the bed. All of the Tasers and Taser components were impounded by a crime scene analyst. Officer Markovic retained her Taser and turned it over to Detective Wilson during the countdown of her weapon.

One (1) Speer 9mm Luger cartridge case was found inside the bedroom near the door on the north side of the closet. The 9mm cartridge case's location was consistent with Officer Gonzales firing toward the south from the north side of the bed.

Three (3) 12-gauge low lethality drag stabilized bean bag shells were found in the bedroom. Two of the fired shells were in the doorway inside the bedroom on the north side of the closet. The third shell was in the bedroom on the carpet near the northeast corner of the closet. The location of the shotgun shells was consistent with Officer Smith

firing his 12-gauge low lethality shotgun in a southeasterly direction from the northwest corner of the bed.

The three (3) drag stabilized bean bags which were fired from Officer Smith's shotgun in the bedroom were found on the top center of the mattress, in front of the nightstand on the south side of the bed, and on the carpet on the north side of the bed.

Three (3) Speer .45 caliber cartridge cases were found in the southwest corner of the room. One of the cases was on the carpet east of the television stand in the southwest corner of the room, one case was on top of the television stand, and one case was on the carpet behind the television stand. The location of the cartridge cases was consistent with Officer Novak firing from west to east while standing near the southwest corner of the bed.

Decedent's Ruger P89 9mm pistol was found on top of the north nightstand. The pistol's hammer was back and the safety was off. The pistol was loaded with one (1) FC 9mm Luger cartridge in the chamber and four (4) FC 9mm Luger cartridges in the installed magazine.

All of the cartridge cases, shotgun shells, bean bags, and Decedent's Ruger pistol were impounded by a crime scene analyst.

Decedent's cell phone was found on the carpet in front of the nightstand on the south side of the bed. Three (3) Budweiser beer bottles - - two empty and one partially empty - - were found in the bedroom.

### **Trajectories and Distances**

Based on the video footage from Officer Smith's, Officer Markovic's, and Officer Novak's Tasers, as well as the information provided by officers during a walk-through of the scene, the following trajectory determinations were made<sup>7</sup>:

Officer Smith fired three (3) low lethality drag stabilized bean bag rounds in a southeasterly direction at Decedent who was standing near the southeast corner of the bedroom. Officer Smith was approximately 10'10" northwest of Decedent when he fired.

After Officer Smith fired, Officer Markovic fired one cartridge from her X-26 Taser from her position on the north side of the bed at Decedent who was standing on the south side of the bed. Officer Markovic was approximately 10' north of Decedent when she fired.

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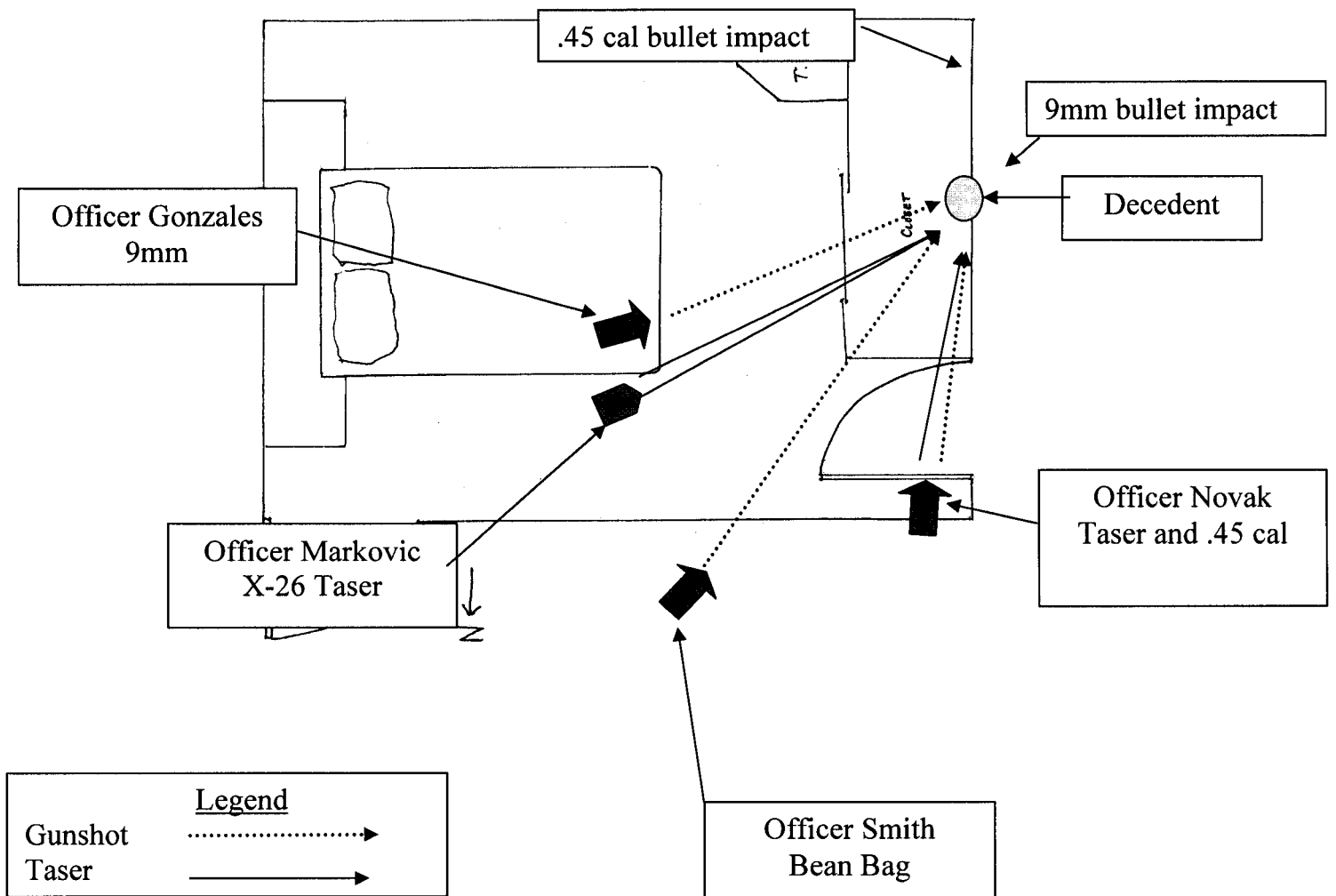
<sup>7</sup> The diagram is not to scale, and is offered only to depict general position and placement of officers and Decedent, as well as general directionality of shots fired.

Officer Gonzales fired one (1) shot from her 9mm pistol at Decedent who was standing on the south side of the bed west of the east wall. Officer Gonzales was approximately 9'10" north of Decedent when she fired. After Officer Gonzales fired, Officer Markovic and Officer Novak each discharged one X-26 Taser cartridge at Decedent.

Officer Markovic fired her second cartridge from the north side of the bed at Decedent who was approximately 10' away from her on the south side of the bed.

Officer Novak was approximately 6'8" west of Decedent when he fired an X-26 Taser cartridge at Decedent who was standing near the southeast corner of the bedroom.

After Officer Novak fired his Taser, he fired three (3) shots from his .45 caliber pistol in an easterly direction at Decedent who was crouched in the southeast corner of the bedroom. Officer Novak was approximately 6'8" west of Decedent when he fired.



Two bullet impacts were located in the master bedroom: The first impact point was located on the south wall; the second impact point was located on the east wall. The bullet from the first impact passed through the wall and was recovered in the southeast corner of the backyard. The bullet from the second impact lodged in the exterior east wall and was recovered. The first impact on the south wall was caused by Officer Gonzales's bullet, and the impact on the east wall was caused by the shot fired by Officer Novak which passed through Decedent's right leg.

### **COUNTDOWN OF OFFICERS' WEAPONS**

On July 05, 2011, LVMPD Homicide Detective Robert Wilson and Crime Scene Analyst O. Klosterman conducted the countdown of the weapons from the officers who were inside 2842 Taurus Court at the time of the shooting.

#### **Officer Ray Novak**

A countdown was conducted on Officer Novak's Glock Model 21 .45 caliber pistol. Officer Novak normally carried his pistol with one (1) cartridge in the chamber and 13 cartridges in the installed magazine. When Officer Novak's pistol was counted down, it had one (1) round in the chamber and 10 in the installed magazine, which indicated that Officer Novak fired his pistol three (3) times during the incident. Officer Novak also carried an X-26 Taser with an attached camera; however, it was not on his duty belt during the countdown. According to Officer Novak, he fired a cartridge from his Taser during the incident, and he left the Taser and the cartridge at the scene. Officer Novak did not carry a backup handgun.

#### **Officer Nicole Gonzales**

A countdown was conducted on Officer Gonzales's Glock 17 9mm handgun. Officer Gonzales normally carried her pistol with one (1) cartridge in the chamber and 17 cartridges in the installed magazine. When Officer Gonzales's pistol was counted down, it had one (1) round in the chamber and 16 in the installed magazine, which indicated that Officer Gonzales fired her pistol one (1) time during the incident. Officer Gonzales also carried an X-26 Taser, but she did not deploy it during the incident. Officer Gonzales did not carry a backup handgun.

#### **Officer Charles Smith**

A countdown was conducted on Officer Smith's Sig Saur P226 9mm pistol. Officer Smith normally carried his pistol with one (1) cartridge in the chamber and 15 cartridges in the installed magazine. When Officer Smith's pistol was counted down, it had one (1) round in the chamber and 15 in the installed magazine, which indicated that Officer Smith did not fire his pistol during the incident. Officer Smith carried an X-26 Taser with an attached camera. Officer Smith's Taser was used by Officer Markovic to record Decedent's actions during the incident; however, the Taser was not fired. Officer Smith's Taser was left at the scene.

During the incident, Officer Smith obtained a 12-gauge low lethality shotgun from his vehicle and brought it into the scene. Officer Smith said the shotgun was loaded with four (4) drag stabilized bean bags in the magazine tube, nothing in the chamber, and six (6) drag stabilized bean bag shells on the attached side saddle. When the shotgun was counted down at the scene by Detective Mogg, it had one bean bag shell in the chamber, none in the magazine tube, and five (5) on the side saddle, indicating that Officer Smith fired three bean bag rounds. Officer Smith did not carry a backup handgun.

**Officer Suzana Markovic**

A countdown was conducted on Officer Markovic's Beretta PX4 Storm 9mm pistol. The pistol had a Streamlight TLR 1 tactical flashlight mounted under the barrel. Officer Markovic normally carried her pistol with one (1) cartridge in the chamber and 17 cartridges in the installed magazine. When Officer Markovic's pistol was counted down, it had one (1) round in the chamber and 17 in the installed magazine, which indicated that she did not fire her pistol during the incident.

Officer Markovic also carried an X-26 Taser which she deployed during the course of the incident. Officer Markovic fired two cartridges from her Taser during the incident. She removed the first cartridge from her Taser and left it at the scene. The second fired cartridge was installed in her Taser during the countdown. The Taser and cartridge were collected by Detective Wilson and turned over to Detective Mogg to be downloaded.

**Sgt. Robert Stauffer**

A countdown was conducted on Sgt. Stauffer's Glock 22C .40 caliber pistol. The pistol had a Streamlight TLR1 tactical flashlight mounted under the barrel. Sgt. Stauffer normally carried his pistol with one (1) cartridge in the chamber and 15 in the installed magazine. When Sgt. Stauffer's pistol was counted down, it had one (1) round in the chamber and 15 in the installed magazine, which indicated that Sgt. Stauffer did not fire his pistol. Sgt. Stauffer also carried an X-26 Taser with an attached camera. Sgt. Stauffer's Taser was not deployed during this incident. Sgt. Stauffer did not carry a backup handgun.

**Officer Travis Chapman**

A countdown was conducted on Officer Chapman's Glock Model 23 .40 caliber pistol. Officer Chapman normally carried his pistol with one (1) round in the chamber and 13 in the installed magazine. When Officer Chapman's pistol was counted down, it had one (1) cartridge in the chamber and 13 cartridges in the installed magazine, which indicated that Officer Chapman did not fire his pistol. Officer Chapman also carried an X-26 Taser with an attached camera. Officer Chapman's Taser was not deployed during this incident. Officer Chapman did not carry a backup handgun.

**Officer James Rude**

A countdown was conducted on Officer Rude's Glock Model 21SF .45 caliber pistol. The pistol had a Streamlight TLR1 tactical flashlight mounted under the barrel. Officer Rude normally carried his pistol with one (1) cartridge in the chamber and 13 cartridges in the installed magazine. When Officer Rude's pistol was counted down, it had one (1) round in the chamber and 13 in the installed magazine, which indicated that Officer Rude did not fire his pistol. Officer Rude also carried an X-26 Taser which was not deployed during the incident. Officer Rude did not carry a backup weapon.

During the incident, Officer Rude was also armed with a Remington 870 12-gauge shotgun. The shotgun had a Streamlight TLR1 tactical flashlight mounted under the barrel. Officer Rude normally carried the shotgun with an empty chamber, five (5) 00 Buck shotgun shells in the magazine tube and six (6) tactical slug shells on a side saddle. When Officer Rude's shotgun was counted down, it was found to have an empty chamber, five (5) 00 buck rounds in the magazine tube and six (6) tactical slug rounds on the side saddle. According to Officer Rude, at the time of the shooting he had a round chambered; however, after the incident he cleared the weapon and placed the round back in the magazine tube. At the conclusion of the countdown, it was determined that Officer Rude did not fire the shotgun during this incident.

**Officer Phil Glubber**

A countdown was conducted on Officer Glubber's Glock Model 21 .45 caliber handgun. The pistol had a Surefire X200 tactical flashlight mounted under the barrel. Officer Glubber normally carried his pistol with one (1) cartridge in the chamber and 13 cartridges in the installed magazine. When Officer Glubber's pistol was counted down, it had one (1) round in the chamber and 13 in the installed magazine, which indicated that Officer Glubber did not fire his pistol. Officer Glubber also carried an X-26 Taser with an attached camera. Officer Glubber's Taser was not deployed during the incident. Officer Glubber did not carry a backup handgun.

**BALLISTICS EXAMINATION AND COMPARISON**

The two .45 caliber bullets recovered from Decedent's body, the .45 caliber bullet recovered in the east wall, and the 9mm bullet recovered in the backyard of 2842 Taurus Court were microscopically compared to a test fired .45 caliber bullet from Officer Novak's .45 caliber pistol and Officer Gonzales's 9mm pistol. Based on the comparative examination, it was determined the bullets recovered were marked with the same general rifling characteristics as Officer Novak's and Officer Gonzales's pistols, but lacked sufficient microscopic detail for a positive identification.

Firearms Examiner James Krylo test fired a cartridge case from Officer Novak's Glock Model 21 pistol. The test fired cartridge was microscopically compared to the .45 caliber cartridge cases collected at the scene. Based on the comparative examinations, Mr. Krylo

determined the three .45 caliber cartridge cases recovered at the scene had all been fired from Officer Novak's Glock pistol.

Firearms Examiner Krylo test fired a cartridge case from Officer Gonzales's Glock Model 17 pistol. The test fired cartridge was microscopically compared to the 9mm cartridge case collected at the scene. Based on the comparative examination, Mr. Krylo determined the single 9mm cartridge case recovered at the scene had been fired from Officer Gonzales's Glock pistol.

Mr. Krylo also test fired a drag stabilized bean bag shot shell from the Remington low lethality shotgun which Officer Smith used. The test fired shot shell was microscopically compared to the three bean bag shot shells collected at the scene. Based on the comparative examinations, Mr. Krylo determined the three bean bag shot shells had similar cycling marks to the test fired shot shell but lacked sufficient microscopic detail for a positive identification.

Decedent's Ruger P89 9mm pistol was also examined by Mr. Krylo. After test firing the pistol, Mr. Krylo determined that the firearm was in normal operating condition with no malfunctions. The single action trigger pull was determined to be 5  $\frac{3}{4}$  to 6 pounds, and the double action trigger pull was determined to be 10  $\frac{1}{4}$  to 11 pounds. The barrel length of Decedent's pistol was 4  $\frac{1}{2}$  inches with an overall length of 7  $\frac{3}{4}$  inches. The pistol magazine had a maximum capacity of 15 cartridges.

### LEGAL ANALYSIS

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

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent was justifiable under two theories: (1) The killing of a human being in self defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

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**A. The Use of Deadly Force in Self Defense 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 ... 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.

*Id.* at 1051-52.



In this case, Decedent posed an imminent risk of death in general to all of the officers who were present in the bedroom at 2842 Taurus Court, and in particular to Officers Gonzales and Novak at the time they shot Decedent. Decedent was armed with a loaded Ruger 9mm pistol. He ignored officers' multiple commands to drop his weapon ("I don't want to shoot you, code red, listen to me." "Drop the gun, put the gun down, dude." "Put it down.>"). Officers went to great lengths to defuse the situation. For example, during the lengthy negotiation they allowed Decedent to talk on his cell phone and gave him a lighter for his cigarette. Officers also utilized a variety of measures to avoid shooting Decedent. Officer Smith fired three bean bag rounds from his low lethal shotgun. Decedent was struck in the chest, abdomen, and hip. Rather than drop his gun, however, Decedent pointed his pistol at Officer Novak. Decedent stood upright, spread his arms, and said, "Shoot me!"

In yet another attempt to utilize less-than-lethal force, Officer Markovic fired her X-26 Taser cartridge at Decedent. Decedent, however, raised his pistol and pointed it in the direction of Officer Gonzales. At that moment, Decedent posed an imminent risk of death to Officer Gonzales (and possibly others). Therefore, Officer Gonzales fired one shot from her 9mm pistol which struck Decedent in the left upper arm. Decedent still did not drop his pistol. He continued to tell the officers to shoot him.

As Decedent was again raising his pistol, Officer Novak told Decedent, "Don't do it!" Officer Markovic fired a Taser cartridge which struck Decedent. Decedent turned toward Officer Novak who also fired one cartridge from his X-26 Taser. After being struck by Officer Novak's cartridge, Decedent turned toward Officer Novak and said, "I want you to do it." Decedent then raised his pistol toward Officer Novak. At that moment, Decedent posed an imminent risk of death to Officer Novak (and possibly others). Therefore, Officer Novak fired his Glock .45 caliber pistol three times at Decedent. Decedent was struck twice in the chest and once in the right upper leg.

Based on the factual scenario, it was absolutely necessary under the circumstances for the officers to use deadly force for the purpose of avoiding death or great bodily injury to themselves and other officers. Prior to shooting Decedent, officers utilized all available means - - including a lengthy negotiation, bean bag rounds from a low lethal shotgun, and Taser darts - - to avoid lethal force. Only when Decedent aimed his loaded 9mm pistol at officers did they employ deadly force.

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**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, officers had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and other officers. Decedent was armed with a loaded Ruger 9mm pistol. He ignored officers’ multiple commands to drop his weapon (“I don’t want to shoot you, code red, listen to me.” “Drop the gun, put the gun down, dude.” “Put it down.”). Decedent refused to drop his weapon even after being struck in the chest, abdomen and hip by three bean bag rounds from a low lethal shotgun. In fact, rather than drop his gun, Decedent pointed his pistol at Officer Novak and said, “Shoot me!”

Officer Markovic fired her X-26 Taser cartridge at Decedent during yet another attempt to utilize less-than-lethal force. Decedent, however, raised his pistol and pointed it in the direction of Officer Gonzales. At that moment, Officer Gonzales had probable cause to believe that Decedent posed a threat of serious physical harm to her (and other officers in the room). Accordingly, Officer Gonzales was justified in firing the shot she fired from her 9mm pistol. Even after being struck by a bullet in the left upper arm, Decedent still did not drop his pistol. He continued to tell the officers to shoot him.

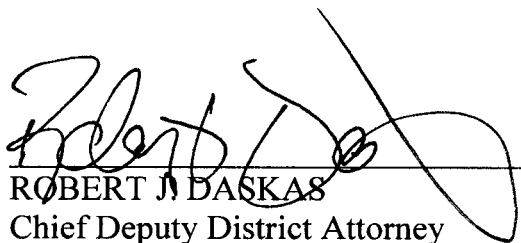
Moments later, Officer Markovic and Officer Novak fired cartridges from their Tasers to get Decedent to drop his gun. After being struck by Officer Novak’s cartridge, however, Decedent turned toward Officer Novak and said, “I want you to do it.” Decedent then raised his pistol toward Officer Novak. At that moment, Officer Novak had probable cause to believe that Decedent posed a threat of serious physical harm to him (and other officers in the room). Accordingly, Officer Novak was justified in firing the three shots he fired at Decedent.

Based on the factual scenario presented, it was absolutely necessary under the circumstances for the officers to use deadly force for the purpose of avoiding death or great bodily injury to themselves and other officers. Further, the officers who shot had probable cause to believe that Decedent posed a threat of serious physical harm to them and other officers in the room. In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* “in the discharge of a legal duty.”

### CONCLUSION

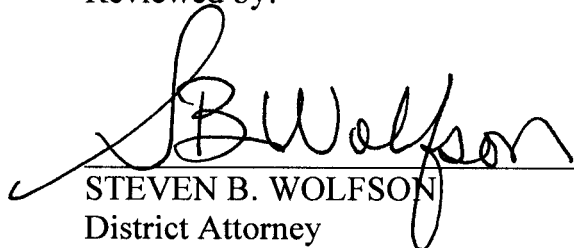
Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of Officers Gonzales and Novak were necessary and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable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

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



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Reviewed by:



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