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June 5, 2012

Chief Joseph Chronister
Chief of Police
North Las Vegas Police Department
1301 E. Lake Mead Blvd.
North Las Vegas, NV 89030

Re: Officer-involved death of Fernando G. Saucedo which occurred on January 1, 2011, at 609 Glendale, North Las Vegas under North Las Vegas Police Department Event #110101-0009.

Dear Chief Chronister:

The District Attorney's Office has completed its review of the January 1, 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 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 NLVPD or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

FACTUAL SUMMARY

STATEMENT OF OFFICERS HARRIS AND POLLARD

Just after midnight on New Years Eve, Officers Pollard and Harris were travelling in an unmarked department issued Ford F-150 pickup truck and heard multiple gunshots that appeared to be coming from an area near them and within a residential community. Pollard and Harris drove by the residence located at 609 Glendale.¹ As the officers passed the residence they noticed several individuals outside of the residence. The officers observed several of these individuals look at the officers as they drove past the home.

Several minutes later, Pollard and Harris looped back to near 609 Glendale and observed 6-10 individuals outside the residence and Officer Pollard observed one of the individuals holding a rifle. As they were travelling across Glendale, Harris heard several loud “pops” that sounded distinctly like gunfire. Pollard and Harris parked their vehicle² and walked towards 609 Glendale with their duty weapons withdrawn from their holsters. Harris and Pollard were dressed in green fatigues with “Police” marked in large white letters on the front right breast area of their uniforms. Harris requested a “Code Red” to dispatch.³ Pollard and Harris continued to the Glendale residence and as they approached, Harris heard a “volley of gunfire” coming from 609 Glendale.

Approaching the residence, one individual from 609 Glendale asked, “Hey, who is that?” Harris turned on his weapon mounted flashlight and began shouting, “Police! Show me your hands!” He heard Pollard giving verbal commands as well as identifying himself as the police. Several of the individuals standing in the driveway ran away from the officers into a nearby enclosed patio area immediately adjacent to the driveway. This area was largely hidden by tarps used to create an enclosure to the front portion of the residence.

Officer Harris approached the individuals remaining at the front of the first of two vehicles parked in the drive way (hereinafter “Vehicle #1” as the 1st vehicle in the driveway and “Vehicle #2” the 2nd vehicle and one closest to the street). He approached on the driver’s side of both vehicles. Officer Pollard approached on the opposite side of the two vehicles - the passenger side. This rout put Officer Pollard immediately adjacent to the covered patio area and the tarp enclosure.

¹ Southeast of the intersection of E. Carey and N. 5th

² Vehicle parked White St. between Glendale Ave and Orr Ave.

³ “Code Red” refers to officers seeking priority radio traffic with dispatch

Harris observes Pollard opening the tarps surrounding the front porch of this residence. Harris continues to the front of the vehicles where a couple of individuals remained and while approaching, Harris hears several gunshots (approximately 5-7). He is unable to determine who is firing or whether Officer Pollard is involved with this gunfire. Forensic examination of the post-shooting event, indicate that the gunfire involved Officer Pollard and the Decedent on the passenger side of the two vehicles parked in the driveway. Officer Pollard's weapon was fired several times and the weapon possessed by Decedent may have been fired 2 times. During this interchange, the vehicle window near Harris explodes from gunfire.

Officer Harris believes, after hearing the gunfire and the car window explode, that his life and the life of Officer Pollard are in danger.

Harris approaches a citizen (later identified as J.R.) armed with a rifle and gives him verbal commands to drop the weapon. With his duty weapon pointing at J.R., Harris shouts: "Police, drop that fucking gun, drop the gun!" J.R. puts his right hand in the air and stated, "OK man, ok." J.R. places the rifle on the ground in front of the front bumper of Vehicle #1. Harris kicks the rifle away to make it more inaccessible.

While continuing to give verbal commands to J.R. to get on the ground, Harris sees, what is ultimately determined to be the Decedent, entering his field of view to his right. Decedent is holding a .357 caliber handgun. Decedent is looking at the ground and the .357 caliber handgun is also pointed at the ground. Harris gives verbal commands to Decedent to drop the weapon which he did. Officer Harris shouts for Decedent to get on the ground and Decedent goes immediately to the ground. Concerned that the .357 caliber hand gun is now in the area of control of both Decedent and J.R., Harris kicks the handgun away from both individuals. Harris physically pulls J.R. to the ground on top of Decedent and calls to dispatch that shots were fired. Harris had no idea that the Decedent had been shot or was otherwise wounded. When handcuffing Decedent, Harris notices no physical resistance and when turning Decedent's upper torso, notices apparent blood on Decedent's clothes in the chest area.

Harris then sees Pollard come to the front of Vehicle #1. Pollard exclaims, "[T]hat guy put his fucking gun in my face," referring to Decedent. Numerous occupants of the residence exited the home yelling and screaming. Pollard and Harris attempt to control the crowd until additional units arrive.

Officer Pollard made no formal statement to investigating detectives. Pollard did make a statement, soon after the shooting, in the presence of another officer which is the genesis of these details set forth below.

Pollard states essentially the same series of events leading up to the shooting. According to Pollard, he moved the tarps attempting to see and identify persons inside the enclosed patio area. While doing so, he saw a large male approach him (Decedent) from his

immediate left. Pollard noticed that the approaching man had a large black handgun, palm down,

pointing at Pollard's head. Pollard spun back towards the Decedent and knocked his gun and arm away from his face and struggled to control the Decedent's right arm. During this struggle, and fearing for his life, Pollard discharged his duty weapon at the Decedent.

After the initial shots fired, the Decedent broke free from Officer Pollard's grasp and began to run towards the front of Vehicle #1, Officer Harris' last known position as known to Pollard. Fearing for the safety of Officer Harris and the fact that Decedent still had the handgun in his hand, Pollard fired two more rounds at the Decedent striking the Decedent on the back. Forensic examination of the scene and the post-shooting countdown indicates that Officer Pollard fired his duty weapon (Glock - 9mm) a total of 12 times.

INTERVIEWS OF CIVILIAN WITNESSES

Nine (9) adult civilian witnesses were apparently present at the 609 Glendale residence on the night/morning in question. All were interviewed or attempted to be interviewed by authorities. Of these nine, four were arrested and charged for discharging a firearm(s) that evening. These four adults were ultimately convicted of firearm violations. *See section entitled "Additional Relevant Evidence."*

The Decedent's wife, I.C., terminated her statement very early on. An appointment was made to get a further statement, but she failed to appear. Several unsuccessful attempts were made to contact her, but she never returned the police's telephone messages. Five other individuals, both adult and children, were sought out to give statements about the events of that evening/morning. Repeated attempts by NLVPD were made to follow up; none of their phone calls were returned.⁴

According to these interviews, numerous individuals were present at the residence located at 906 Glendale at the time of this event. Several of the adults were drinking alcohol and smoking marijuana. Several children were present, but they were inside the residence at the time of the events leading up to and during the shooting with police officers. The adult witnesses interviewed all indicate a social party was going on at the residence. At midnight, multiple guns were fired by several of the adults outside the residence. Forensic examination of the scene, indicate that these celebratory shots were fired in the street adjacent to the driveway of this location and in the driveway itself.

⁴ D. C.; M. B. and minors: J.B., A.B., and M.A.

A.S. STATEMENT

A.S. is a relative of the Decedent. He went to the Decedent's home that evening to celebrate the New Year. During the interview, A.S. indicated that his vision is not perfect and stated that "he needs new glasses."

He states that they (several adults at the party) celebrated the New Year by firing 4-5 guns. He observes two people walking down the street (Harris and Pollard) but did not recognize they were police officers. They were not in uniform and he did not see any marked patrol vehicle. He recalls one of his friends state: "Hey, who's that?" referring to the fast approaching Pollard and Harris. The approaching men shine flash lights at the people gathered outside and yelled: "Don't move. Don't move. Freeze. Stay right there." Several of the adults at 609 Glendale had weapons in their hands when these commands were given.

A.S. adamantly indicates that he never took his eyes off the approaching men. He indicates that none of the adults stopped or dropped their weapons. He describes that after the verbal commands, the adults ran into the enclosed patio area at the front of the home.

A.S. describes that one officer (presumably Officer Pollard), reaches over the canvas/fence and starts firing, with both hands on his weapon, towards the front door, firing 5-6 rounds. At the time these shots were fired, A.S. states that he was 1.5 yards in front of the officer firing his weapon. It was at this moment A.S first realized these men are police officers. He describes the officers as dressed in green and states that both officers are "white." A.S. later describes them as "special agent guys."

A.S. observes the Decedent trying to "run, go hide or whatever" and "scuffles with – with one of the other cops." A.S describes that the officer struggling with the Decedent is a different officer than the one who first fired his weapon. They were not throwing punches merely wrestling with one another. A.S. sees the Decedent with a .357 caliber revolver in his hand during the struggle. A.S. hears verbal commands being given by the officer struggling with the Decedent.

At another point in this interview, A.S. states that when the first officer fires into the patio, the Decedent was struggling with the other officer. He describes these two events occurring simultaneously.

According to A.S., Decedent breaks free from the struggle with the officer and began to run towards the front of the truck in the driveway (away from the officer). A.S. observes the officer (he is unsure of which one) fire several rounds at his brother. Decedent dove on the ground in front of vehicle #1.

A.S. is uncertain whether the Decedent, or the officer, fired their weapon during the struggle. Examination of the .357 caliber weapon indicated that it contained two

expended cartridges upon its recovery by crime scene analysts. A.S. was asked why the Decedent did not drop his weapon when verbally commanded to do so and his response was: "We didn't know if they were officers or not."

A.S. called the officers involved "punks" although he understood they were doing their jobs, but believed they acted "a little rough." He states that when Decedent broke free of the officer, A.S. said: "Whoa. Whoa. Whoa. – Just stop." The officer, according to A.S. kept firing.

F.A. STATEMENT

F.A. was a guest at 609 Glendale celebrating New Years Eve. F.A. admits to being one of the adults that was firing a weapon celebrating the New Year. He describes going into the residence to use the bathroom while other people were still firing weapons outside the home. When he was coming back out of the home, he saw police officers. His immediate reaction was to turn around and walk back inside the home. He saw several other people react to the arrival of Pollard and Harris as: "Oh shit – 5-0 (police)"; or "oh shit watch out like I think there are 5-0 (cops)." F.A. knew by the conversation that the police were coming. He describes these individuals as then leaving the driveway area and heading inside the enclosed patio area.

F.A., still inside the residence, hears two gunshots. He could not see who was still outside or who was involved with these gunshots.

F.A. admits to firing two revolvers in celebration of the New Year prior to the police arrival. He had observed the Decedent firing his revolver earlier that evening. In total F.A. believes that the celebratory gunfire amounted to a "few rounds."

H.D. STATEMENT

H.D. attended the New Years Eve party at 609 Glendale. He admitted firing a weapon, prior to the police arrival as part of the celebration activities. According to his statement, he fired a revolver one time in the street directly in front of 609 Glendale. H.D. was in the kitchen when the police arrived and the shots were fired.

H.D. heard "a couple of shots" while he was in the kitchen of the Glendale residence. He had no additional knowledge of the events that occurred outside the residence when the police arrived or during the shots being fired. He exited the residence when verbally commanded by police officers.

J.D. STATEMENT

J.D. went to 609 Glendale to celebrate the New Year. During the party, J.D. said that "everyone started shooting" to celebrate the New Year. The next thing he remembers is a guy running up to them, with flashlights, saying – "Drop the gun!" He did not know they

were police officers. J.D. describes that he was “bum rushed” and was thrown to the ground by the officers.

J.D. initially denied firing any of the celebratory rounds. Ultimately, he admitted that he was the person holding the rifle when police demanded that he put the weapon down and lie on the ground. He admits to firing one round into the air prior to the police officers arrival at the residence. He was drinking and has no specific recollection about who was shooting weapons prior to the police officers arrival. Further, he could not provide any additional details about hearing verbal commands from the police or seeing any activity other than police telling him to drop the rifle and to get on the ground.

G.I. STATEMENT

G.I. attended the New Years party at 609 Glendale. He was inside the residence when party goers began firing weapons outside the residence to celebrate the New Year. When the shooting started, he took several of the minor children into a back room. According to G.I., he and another adult male were the only two adult males inside the residence when the celebratory gunfire was occurring.

Being in the backroom, G.I. had no knowledge of any of the events that took place in the front of the home.

M.H STATEMENT

M.H. attended the party at 609 Glendale to celebrate the New Year. He was sitting in the enclosed patio area and was “a little iffy drunk” so his memory about the events is not very clear or precise. He did not provide any details about the arrival of the police or what occurred after their arrival. He denied owning a gun that was involved in the celebratory shooting or that he shot any weapon that evening.

J.D. STATEMENT

J.D. is a relative of the Decedent and lives at 609 Glendale. He describes the event as a “get together” and not a party. He stated the celebratory shooting started at about 15 minutes before midnight and all the adult males went outside before the shooting started.

J.D. said he was inside watching a football game when the celebratory shooting started. The next thing J.D. recalls was hearing his aunt scream and he ran outside the home. He saw police pointing guns at him and was ordered to “Get on the floor.” Officers rushed him and started hitting him at which point J.D. informed the police officers that he was not resisting arrest.

He denied shooting any weapons that evening. He had no further information to provide to investigating officers.

E.C. STATEMENT

E.C. was invited to 609 Glendale for dinner. At the time of the celebratory gunshots, E.C. was inside the residence eating dinner and offered no information as to the people involved in firing these shots. E.C. was unable to provide any detail about when the police arrived or the events occurring thereafter.

E.C. denied shooting or touching any weapon at the scene.

WEAPONS

Numerous weapons were found both inside and outside the residence located at 609 Glendale. These weapons include:

1. Tarus .38 caliber handgun – reported stolen (LVMPD #051114-1310)
2. H&R .22 caliber handgun
3. Savage .30-30 caliber bolt action rifle
4. Ruger .357 caliber revolver
5. 9mm caliber handgun
6. .380 caliber handgun
7. large folding knife

Examination of the curtilage of 609 Glendale (not including the 12 shots fired by Officer Pollard) indicate that a total of 112 rounds from 5 different weapons were fired. The .357 caliber revolver observed in the Decedent's hands by Officer Harris was recovered and examined. That examination located two expended cartridge cases were inside the cylinder. Ballistic testing confirms that a total of six firearms were fired at this location. The results are as follows:

1. Twelve (12) rounds from 9mm Glock (Pollard's duty firearm);
2. Twelve (12) rounds from a .30-.30 caliber rifle;
3. Eight (8) rounds from a .357 caliber revolver;
4. Ten (10) rounds from a .38 caliber revolver (different from #3 above);
5. Forty-six (46) rounds from a single 9mm handgun (not #1 above);
6. Thirty-six (36) rounds from a single .380 caliber handgun

Excluding Officer Pollard's twelve rounds, 112 rounds were fired immediately outside of 906 Glendale. Based upon the investigation, the vast majority were fired as a result of the New Years celebration by the adult male citizens at this social function. The investigation cannot, definitively, determine whether any additional shots were fired by the Decedent during his brief struggle with Officer Pollard or were fired prior to the officer's arrival.

Gunshot residue tests (GSR) were taken from various individuals at the scene. Results of these tests indicate that the four individuals that admitted shooting the guns, all tested

positive for the presence of chemicals consistent with handling and/or firing a weapon. See *“Other Additional Relevant Evidence”* section. GSR testing of Decedent indicates that he “may have discharged a firearm, handled a firearm or was in close proximity to a discharged firearm.”

A countdown of the weapons and ammunition carried by Officers Pollard and Harris was conducted by investigators. That examination revealed that Officer Pollard had discharged his duty handgun twelve times during this incident. This countdown was corroborated by the number of expended cartridges found at the scene itself. Remaining in Pollard’s weapon were one live round in the chamber and 4 live rounds in the magazine.

Examination revealed that Officer Harris had not discharged his weapon during this incident.

EXAMINATION OF DECEDENT - INCLUDING AUTOPSY

Forensic examination of the Decedent at the scene and autopsy revealed numerous relevant pieces of evidence. Located underneath the Decedent, crime scene analysts found a pair of foam ear plugs. No evidence gathered in this investigation establishes whether the Decedent had these in place during these events. As stated previously, GSR tests from the Decedent’s hands indicate that: “may have discharged a firearm, handled a firearm or was in close proximity to a discharged firearm.”

Inside the Decedent’s jacket, two empty “speed loaders” were found. At autopsy, a cell phone and a package of marijuana was found in the Decedent’s front pants pocket.

The autopsy of the Decedent was performed on January 2, 2011 at the Clark County Coroner’s Office by Dr. Lary Simms. Doctor Simms determined Decedent died as a result of “multiple gunshot wounds.” Decedent suffered gunshot wounds to his left shoulder, left abdomen, mid back, right upper back, left buttock, left thigh and right thigh. Forensic examination of the afore-mentioned gun shot wounds, revealed no evidence of close-range firing.

Autopsy revealed that Decedent was struck 9 times, the majority of which were found to have entered the front and left sides. Four projectiles were removed from the Decedent’s body.⁵ However, one of the projectiles removed forensically appeared to have been from a previous gunshot wound and unrelated to this incident.

⁵ Forensic examination indicates three bullets removed at autopsy were consistent with Officer Pollard’s Glock handgun but were not microscopically confirmed because of the lack of indentifying detail.

Toxicology reports revealed Decedent had a blood alcohol level of .091⁶; THC at 8.9⁷ and the presence of THC metabolites measuring at 14⁸ indicating recent and historic marijuana consumption above the legal limit to operate a motor vehicle in Nevada.

INCONSISTENCY IN DESCRIPTIONS OF THE INCIDENT

As set forth above, there are several significant inconsistencies between the version of events as described by Officers Pollard and Harris with those of the adults who decided to give statements to investigating officers. Additionally, there are significant inconsistencies between those statements of the civilian witnesses themselves.

Several are critical to the analysis of the legal/factual questions in this case. First, whether the occupants recognized whether the approaching Pollard and Harris were in fact police officers or members of law enforcement. F.A. stated when he was coming back out of the home, he visually observed police officers approaching the residence. His immediate reaction was to turn around and walk back inside the home. He saw several other people react to the arrival of Pollard and Harris as: “Oh shit – 5-0 (police)”; or “oh shit watch out like I think there are 5-0 (cops)” F.A. knew by audible comments being made, that the police were approaching the residence. He describes several of these adult males then leaving the driveway area and heading inside the enclosed patio area, apparently to avoid contact with the arriving police officers.

Thus, it appears that several of the adults outside the residence physically observed and stated out loud that the approaching Pollard and Harris were in fact police officers. It is certainly possible that Decedent, or for that matter, other adults outside the residence, did not hear or see these details. As described earlier, a pair of foam ear plugs was found underneath Decedent’s body. It should be noted that no interviewed witness describes seeing Decedent wearing the foam ear plugs that evening.

Second, A.S. describes one of the officers pointing his weapon (with a two hand grip) through the tarps, used to drape the enclosed patio area, and immediately firing “towards the front door.” Examination of the entire area and the outside structure of the 609 Glendale residence renders this description virtually impossible. No signs of bullet strikes were found on any portion of the exterior walls of the residence, to include, detailed examination of the front door area. No signs of bullet impacts were identified having entered the residence. There were no reports from any of the occupants of being injured or struck by a foreign object. Examination of the scene reveals rounds fired towards Vehicle #1 and the residence directly to the east of 609 Glendale (away from 609 Glendale). This is consistent with rounds being fired by Pollard/Decedent away from 609 Glendale during their struggle and/or the rounds fired at Decedent as described by Pollard.

⁶ The legal limit in Nevada is .08

⁷ The legal limit in Nevada is 2

⁸ The legal limit in Nevada is 5

Third, A.S. describes the two officers as being “white.” In fact, Pollard is Caucasian and Harris is African–American. Based upon how they were dressed that evening, that distinction was readily apparent.

Fourth, A.S. describes that while the first officer was firing his weapon through the tarped enclosed patio area, the other officer was struggling with Decedent. The physical area where these events allegedly occurred is very narrow. The distance between vehicle #1 and the fence boundary of the “porch,” makes it highly unlikely that such a scenario actually occurred.

Officer Harris describes approaching the numerous individuals from the driver’s side of these vehicles (Vehicles #1 and 2) while his partner, Officer Pollard, approached from the passenger side. Officer Pollard’s brief statement indicates the officers approached on both sides of the parked vehicles (Vehicles #1 and 2).

The approach of two officers, as described by A.S., in such a confined area would be tactically unsound and physically difficult to accomplish. From an officer safety perspective, it would greatly increase the danger to both officers if they approached the residence (and multiple armed individuals) on the same side of the parked vehicles in the driveway with little to no cover and confronted by potentially armed individuals from two sides.

Based upon the independent physical evidence and the statements provided by civilian witnesses, the version of events described by Officers Pollard and Harris are more credible.

DECEDENT’S PRIOR INTERACTION WITH LAW ENFORCEMENT

Decedent has had several prior interactions with law enforcement. These events may or may not explain why he reacted or failed to react to the shouted verbal commands given by Officers Pollard and Harris. Decedent’s prior interactions involved crimes of violence, firearm violations and obstructing a police officer.

ADDITIONAL RELEVANT EVIDENCE

Four adult males admitted to police that they fired numerous weapons into the air prior to the officer’s arrival. As stated previously, GSR tests were performed on these individuals. Test results corroborate these admissions. These adults were identified as follows:

1. A.S.
2. F.A.
3. J.R.
4. H.D.

These individuals were all charged with criminal offenses regarding their conduct in this incident. The disposition of these cases is as follows:

1. A.S.: convicted of Drawing a Deadly Weapon in a Threatening Manner (8/18/2011 – Case #11CRN 1079-0002 (11FN0082B));
2. F.A.: convicted of Drawing a Deadly Weapon in a Threatening Manner (8/18/2011 – Case #11CRN 1079-0001 (11FN0082A));
3. J.R.: convicted of Drawing a Deadly Weapon in a Threatening Manner (8/18/2011 – Case #11CRN 1079-0004 (11FN0082D));
4. H.D.: convicted of Drawing a Deadly Weapon in a Threatening Manner (8/18/2011 – Case #11CRN 1079-0003 (11FN0082C)).

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of an officer involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officer existed at the time of the killing. As this case has been deemed a homicide by the 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.

A. 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.

As indicated above, the version of events described by Officers Pollard and Harris and some of the civilians at the residence, are corroborated by the physical evidence at the scene. Officer Pollard observed Decedent point a .357 caliber handgun at his face after Pollard and Harris had verbally identified themselves as police officers and ordered the individuals to put their weapons down. For whatever reason, Decedent did not follow those directives. The manner in which Decedent displayed his weapon, clearly demonstrated an intent to inflict death or great bodily injury upon Officer Pollard. During the struggle, Decedent may have demonstrated further intent to kill by discharging his weapon. Whether the weapon was actually discharged or not, the use of deadly force by Officer Pollard was legally justified.

After the initial gunfire by Officer Pollard, the manner and direction Decedent travelled further indicated a potential threat of death or substantial bodily harm to Officer Harris in Pollard's mind. Decedent travelled directly towards Officer Harris' location still holding the .357 caliber handgun. When Decedent is observed by Officer Harris seconds later, Harris' evaluation of the threat Decedent posed to him to be entirely consistent with the conclusions formulated by Officer Pollard. That the .357 caliber handgun was still in decedent's hand and represented a threat of death or substantial bodily injury to Officer Harris.

At all times that Officer Pollard discharged his duty weapon, the threat of death or substantial bodily harm existed. Therefore, the use of deadly force was lawful in defending himself and the perceived threat to Officer Harris.

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).

Officers Harris and Pollard were performing their professional responsibilities in a lawful manner. They were investigating criminal activity being committed by a large number of individuals outside of 609 Glendale. Decedent pointing a large frame .357 caliber handgun at the head of Officer Pollard created probable cause for Officer Pollard to believe that Decedent posed a threat of serious physical harm to himself. The verbal commands given to Decedent, the physical struggle and the moving towards Officer Harris' position with the handgun still in his possession, represented a threat of serious physical harm to Officer Harris.

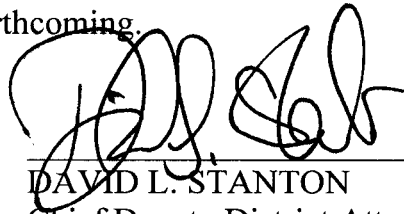
In light of all the evidence provided to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* "in the discharge of a legal duty."

A countdown of each of the officers' weapons corroborates that Officer Pollard stopped firing once the threat ceased to exist. Pollard's weapon was not "emptied"; rather, it contained unfired cartridges. This fact also illustrates the considerable restraint exercised by the officers - - when Decedent no longer posed a threat to officers or civilians, no additional shots were fired.

CONCLUSION

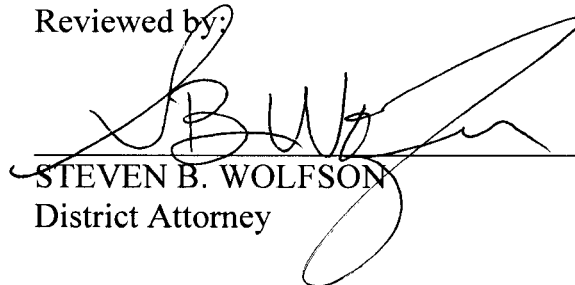
Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the use of deadly force by Officer Pollard was reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable 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.



DAVID L. STANTON
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney