

**OFFICE OF THE WASHOE COUNTY
DISTRICT ATTORNEY**

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REPORT ON THE MARCH 20, 2018 OFFICER INVOLVED
SHOOTING OF DEREK CORWIN LUTHY

CHRISTOPHER J. HICKS

WASHOE COUNTY DISTRICT ATTORNEY

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INTRODUCTION

On March 18, 2018, both the Sparks Police Department and Reno Police Department received separate reports of a suicidal subject, who was later identified as Derek Luthy (hereinafter "Luthy"). A family member of Luthy advised police that Luthy was in possession of at least one handgun and believed he would attempt to commit "suicide by cop." Police were also advised that Luthy had broken into his girlfriend's residence, and a family member expressed concern that Luthy would "hurt her" based on his "escalating" behavior. Police were further notified by Luthy's ex-girlfriend and his therapist that Luthy knew the police were looking for him and wanted to commit "suicide by cop." During further conversations with his counselor on March 19, 2018, Luthy stated that he wanted to turn himself in, and this information was relayed to police. Based on the reports, Reno Police Officer Russ Stewart (hereinafter "Officer Stewart") contacted Luthy by phone. Officer Stewart was a team leader for the Reno Critical Incident Negotiator Team (C.I.N.T.) and had developed a good rapport with Luthy after having contact with him in December of 2017 related to another suicidal threat. Luthy told Officer Stewart that he was armed and that if anyone came near him, he would force them to kill him.

Officer Stewart continued to communicate with Luthy on March 19, 2018 and March 20, 2018. Officers with the Reno Police Department (hereinafter "RPD") had been looking for Luthy but were unable to find him. Police continued to look for Luthy throughout the day on March 20, 2018, and at approximately 2:15 pm, police located him near the intersection of Nixon Avenue and Marsh Avenue, which is a residential area in Reno, Nevada. Multiple law enforcement officers responded, including Officer Stewart who spoke with Luthy. Officers observed two handguns in Luthy's front sweatshirt pockets, and Officer Stewart tried to convince Luthy to disarm himself. Reno Police Officer Derek Jones (hereinafter "Officer Jones"), Reno Police Detective Nicholas Duralde (hereinafter "Detective Duralde"), and Reno Police Detective Chris Johnson (hereinafter "Detective Johnson") arrived on scene. Collectively, they stated that Luthy pointed to his front sweatshirt pockets and said he had two handguns, and they observed the outline of two handguns in his pockets, which were weighted down. Officer Jones and Detective Johnson

possessed police-issued assault rifles, and Detective Duralde, who is a sniper for the Reno Police SWAT Team, possessed his police-issued sniper rifle.

Luthy continued to walk westbound on Marsh Avenue towards an area where he could not easily be contained and where more citizens could potentially be placed in "harm's way", all the while ignoring police commands to disarm himself of his two handguns. An Emergency Action Team (hereinafter "E.A.T.") was assembled to take Luthy into custody. Law enforcement deployed a distraction device, referred to as a flashbang, towards Luthy, as well as a less-lethal 40mm foam projectile at Luthy, in addition to releasing a K9 dog. At that time, Luthy quickly put both of his hands into his front sweatshirt pockets where his handguns were located. Officer Jones, Detective Johnson, and Detective Duralde each fired one round from their respective rifles, fearing that Luthy would shoot at Officer Russell or the E.A.T., whose members were approaching Luthy. The E.A.T. members were able to reach Luthy, at which time Luthy physically struggled with officers. Officers were ultimately able to handcuff Luthy. Officers recovered two handguns and loose ammunition, which had been in Luthy's front sweatshirt pockets. Luthy sustained injuries to his left chest and hand. He was transported to the hospital for treatment of his injuries, and survived.

Consistent with the regionally-adopted Officer Involved Shooting (OIS) Protocol, the Sparks Police Department (hereinafter "SPD") led the investigation into the shooting of Luthy. The Washoe County Sheriff's Office (hereinafter "WCSO") provided secondary investigative support, and the Washoe County Sheriff's Office Forensic Science Division (hereinafter "FIS") provided forensic services. The Washoe County District Attorney's Office provided oversight and assistance in obtaining search warrants.

The investigation included interviewing witnesses, canvassing the shooting area for additional witnesses, collecting physical evidence, photographing the shooting scene, forensically testing collected evidence, obtaining available video evidence, reviewing medical records of Luthy, and interviewing multiple officers to include those involved in the shooting.

Upon completion of the entire investigation, all police reports along with FIS forensic reports, collected documentation,

photographs, witness statements, recorded audio and video of the incident, dispatch recordings, and recorded interviews were submitted to the Washoe County District Attorney's Office for a final determination of whether the shooting of Luthy was legally justified. No criminal charges against Officer Jones, Detective Duralde, or Detective Johnson were recommended by SPD.

The District Attorney's evaluation included reviewing nearly 1300 pages of reports and documents, which included interviews of police and civilian witnesses. It further included the review of all photographs, video and audio recordings, and examination of the scene of the shooting. This report follows.

Based on the available evidence and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Luthy by Officer Jones, Detective Duralde, and Detective Johnson was justified and not a criminal act.

I. STATEMENT OF FACTS¹

A. Witness Accounts of the Shooting

1. RPD Officer Russ Stewart

Officer Stewart has been employed by the RPD for more than 11 years, and is assigned to the Downtown Enforcement Team. Officer Stewart is also a Critical Incident Negotiations Team Leader, wherein he has been a negotiator for over 10 years. Officer Stewart was interviewed at the Reno Police Department on March 20, 2018 by WCSO Detective Sean McVickers (hereinafter "Detective McVickers") and SPD Detective Eddie Wilson (hereinafter "Detective Wilson").

Officer Stewart explained that he first met Luthy on December 18, 2017 when he responded to a "jumper" on top of a downtown casino parking garage. Officer Stewart responded in his role as a leader of the Critical Incident Negotiations Team (C.I.N.T.), and the jumper was subsequently identified as Luthy. After negotiating with Luthy for approximately three hours, he successfully talked Luthy away from the building's edge. That

¹ The Statement of Facts is synopsised from all of the materials provided to the Washoe County District Attorney's Office at the conclusion of SPD's investigation.

incident resulted in Officer Stewart establishing a rapport with Luthy.

On March 18, 2018, Officer Stewart was advised about the report that Luthy had been harassing his ex-girlfriend and was armed with guns and suicidal.² Additionally, Luthy's ex-girlfriend, D.S., advised Officer Stewart that Luthy was in her house after she had previously kicked him out and changed the locks.³ D.S. learned that Luthy was in her house, and therefore stayed with somebody else rather than returning to her home.

Officer Stewart contacted Luthy over the phone on March 18, 2018, and Luthy remembered Officer Stewart and thanked him for their interactions in December. However, Luthy stated he wanted the police to kill him. Luthy repeatedly stated that he was afraid to kill himself, and instead wanted the police to shoot and kill him. Luthy further told Officer Stewart that he was armed with guns, and that if anybody came near him, he would force them to shoot him. Specifically, Luthy told Officer Stewart multiple times that he would point a gun at police so that they would have to kill him. Officer Stewart learned that Luthy was possibly armed with two handguns and a rifle.

On March 19, 2018, Officer Stewart was also contacted by D.D., Luthy's counselor, who advised him that Luthy had texted her that he wanted to turn himself in, and then immediately thereafter texted her, "How about if I come to your office and kill myself on your doorstep?"⁴ Later on March 19, 2018, D.D. told Officer Stewart that Luthy was intoxicated and banging on her office door. Officer Stewart directed officers to respond to D.D.'s office, but Luthy was gone when they arrived. Based on Luthy's texts and calls to D.D., she terminated her counseling

² Dispatch records reveal that on March 18, 2020, multiple calls regarding Luthy were placed to SPD and RPD, in which Luthy was reported to be suicidal and armed with firearms. During one of the calls, a family member stated that she was "concerned that [Luthy] is escalating", "he broke into [D.S.'s] apartment", Luthy "is threatening suicide by cop", and she "is worried that he will come home and hurt [her]". In other dispatch records, Luthy was reported to have warned police "to back off or he would fire on police".

³ Luthy's ex-girlfriend will be identified in this Report as D.S., for privacy reasons.

⁴ Luthy's counselor will be identified in this Report as D.D., for privacy reasons.

services of him, and instructed him not to contact her. Luthy ignored this demand, and continued contacting her.

Officer Stewart and Luthy repeatedly communicated with one another through phone calls and text messages from March 18 until March 20, 2018. On March 20, 2018, they continued to converse throughout the day by way of phone, while officers were looking for Luthy. Luthy initially confirmed he wanted to turn himself in, but then said he changed his mind. Luthy continued to tell Officer Stewart that he wanted to commit suicide and be killed by police. Ultimately, Luthy told Officer Stewart that he was near Nixon and St. Lawrence, and Officer Stewart and other officers responded to the area. Officer Stewart was advised that Luthy was located near the intersection of Marsh Avenue and Saint Lawrence Avenue, which is a residential area in Old Southwest Reno. Upon arrival, Officer Stewart observed Luthy speaking with another officer. As Officer Stewart approached Luthy, Luthy recognized him and stated, "I wanna talk to Russ." Officer Stewart began negotiating with Luthy to have him distance himself from his guns so that everybody was safe, but Luthy refused. Officer Stewart recalled telling Luthy this approximately 15-30 times during the course of their conversation. While attempting to negotiate with Luthy, Officer Stewart was not concerned about his or other officer safety, as he was focused on negotiating; Officer Stewart had cover from other officers.

Luthy stated that he was upset that so many officers responded, as he had thought that he was only going to meet with Officer Stewart. Officer Stewart told Luthy that he had never said that and would not say that, as there was no way that he would meet an armed suicidal subject by himself. As Luthy became agitated and moved down Marsh Avenue, the Emergency Action Team (E.A.T.) and other officers moved with him. Luthy yelled at the E.A.T. a couple of times, "Just fucking kill, shoot me, I'm right here. Just shoot me." Eventually, the E.A.T. took action and deployed a less-lethal round and flashbang, and then charged toward Luthy, successfully detaining him. Officer Stewart thereafter spoke with Luthy while he was in handcuffs being checked by REMSA medical personnel, and removed several rounds of ammunition from his left sweatshirt pocket. Officer Stewart attempted to ride with Luthy to the hospital and continue

speaking with him, but he was ordered to respond to the police station to be interviewed.

2. RPD Lieutenant Albert Snover

Lieutenant Snover has been employed by the RPD and held the title of lieutenant. Lieutenant Snover was interviewed at the Reno Police Department on March 20, 2018 by SPD Detective Harris and WCSO Detective Sawyer.

Lieutenant Snover explained that he is the Watch Commander for day shift, and was on duty on March 18, 2018 when RPD learned Luthy was armed and making suicidal threats, and had made some threats to commit suicide by cop or engage in a shootout with police. From March 18, 2018 through March 20, 2018, RPD received several calls for service regarding Luthy, including one in which Luthy's therapist had barricaded herself and a patient inside her office out of fear for their safety. Lieutenant Snover also had seen a photograph of Luthy pointing guns at himself. Information concerning Luthy was initially distributed to all RPD personnel, and then information was distributed to regional law enforcement agencies. Lieutenant Snover was aware of discussions regarding charges against Luthy for entering D.S.'s residence, but also acknowledged Nevada state law which allows law enforcement to take a person, such as Luthy under these circumstances, into custody when that person presents a danger to themselves, for purposes of obtaining mental health and medical treatment.

On March 20, 2018, Lieutenant Snover learned that Luthy planned on turning himself in, but then did not show up. RPD officers were looking for Luthy, and ultimately located him in the area of Nixon Avenue and Marsh Avenue. Lieutenant Snover responded to the area and observed multiple officers had already responded and an E.A.T. had been established. Lieutenant Snover directed that Officer Arturo Espinoza take control of the E.A.T., as he had held that role in the past.

While Luthy communicated with Officer Stewart, Lieutenant Snover was concerned that Luthy continued walking west, due to the number of vehicles parked on both sides of the residential street obstructing officers' view of Luthy and plumbers who were "trapped in between" residences. As Luthy continued west, he was

approaching a five-way intersection. This likewise presented a concern to Lieutenant Snover, as it would have made continued tactical positioning difficult, and Luthy would be moving past a relatively quiet residential neighborhood into a place with a lot more people and vehicle traffic. Lieutenant Snover was concerned that if Luthy continued westbound on Marsh Avenue, many more citizens would be in harm's way.

Based on these concerns, the E.A.T. developed a plan to deploy a flashbang, followed by a less-lethal .40 millimeter round, and then release a K9 dog in an attempt to detain Luthy. Lieutenant Snover approved execution of the E.A.T.'s plan when it was safe to do so, and dispatched over the radio for officers to prepare for a loud noise. The E.A.T. implemented the plan, and its members contacted Luthy and took him into custody. Lieutenant Snover was advised that three responding officers had fired their duty weapons.

3. RPD Officer Derek Jones

Officer Jones has been employed by the RPD for more than 10 years, and is assigned to the patrol division. Officer Jones was interviewed at the Reno Police Department on March 20, 2018 by SPD Detective Wilson and WCSO Detective McVickers.

Officer Jones stated that he learned about Luthy as being a suicidal subject during police briefings. On March 20, 2018, police were looking for Luthy, who was speaking with a negotiator over the phone. Officer Jones was instructed to respond to the area of Marsh Avenue to look for Luthy, as his vehicle had been located in the area. By the time that Officer Jones had arrived at Marsh Avenue, Luthy had been located by police. Officer Jones exited his patrol vehicle with his rifle, and observed Luthy conversing with an officer. Officer Jones was advised that Luthy was armed with two handguns.

Officer Jones observed Luthy pacing while continuing to converse with the negotiator. Officer Jones heard Luthy state that he was armed with two loaded handguns, at which time Luthy pointed towards the front of his hooded sweatshirt which had a big front pocket. Officer Jones noticed that Luthy's front sweatshirt pocket was hanging low, and he was able to make out the shape of what appeared to be two handguns.

Luthy began walking westbound intermittently, while continuing to speak with the negotiator. As Luthy moved, the responding officers similarly moved. Officer Jones observed a resident open the door to his house, at which time he was instructed to return inside and close the door. Officer Jones overheard law enforcement's plan to use a flash bang in an attempt to distract Luthy, and use a less-lethal round and K9 dog to detain him. While Officer Jones had his rifle pointed at Luthy, he heard the flash bang go off. Luthy, who was facing the negotiator, turned his body towards the group of law enforcement officers where the flash bang had come from. That group of law enforcement officers began crossing the street towards Luthy, at which time Luthy "dives his hands into...that front pocket" where his two handguns were. Officer Jones stated, "fearing for those officers' safety, I fired a round at him." Officer Jones stated, "It was my belief that he was reaching for those guns", as just 15 minutes earlier Luthy had said he had two loaded handguns and pointed to the same pocket. Officer Jones went on to say, "I just remember seeing [Luthy] turn towards...turn towards them, kind of recognizing that they were coming at him, um, by his facial expressions, and then him diving his hands in...I believe he would have pulled out the handguns that he had and fired at the officers that were coming across the street at him." Officer Jones stated that he only fired one round.

4. RPD Detective Nicholas Duralde

Detective Duralde has been employed by the RPD for more than 11 years. In addition to his responsibilities as a detective, Detective Duralde is also part of RPD's SWAT Team as a sniper. Detective Duralde was interviewed at the Reno Police Department on March 20, 2018 by SPD Detective Wilson and WCSO McVickers.

Detective Duralde stated that on March 20, 2018, he was advised by the SWAT Team Leader that an armed and suicidal subject, who was identified as Luthy, might be going to his counselor's office, which was located on Marsh Avenue, to kill himself. Detective Duralde stated that over the past several days, he had received information about Luthy being armed with two handguns. Detective Duralde also knew that on March 19, 2018, there was an incident at the counselor's office on Marsh Street where Luthy

had showed up to the office armed, and the counselor had to barricade herself inside the office.

Detective Duralde was asked to assist, and he responded to the area of Marsh Avenue. Another officer advised that Luthy had been located near Marsh Avenue and Nixon Avenue, and Detective Duralde made his way to that specific location. Detective Duralde armed himself with his sniper rifle.

Detective Duralde got into a position where he could see Luthy, and he observed him through the magnified optics attached to his rifle. Detective Duralde explained that the magnified optics make objects appear bigger and closer than they actually are. Detective Duralde saw that Luthy was wearing a gray sweatshirt that had a zipper running down the front and two pockets at the bottom of the sweatshirt. Detective Duralde noticed that the sweatshirt was weighed down in the middle like there was something heavy in front, and he saw the shapes of two handguns, one in each pocket.

Luthy was shuffling around and slowly moved down the street, in a manner that Detective Duralde described as moving and stopping, coming back, and then moving further down the street. Detective Duralde noticed residents coming out of their houses as Luthy made his way down the street. Detective Duralde stated that for the most part, Luthy kept his hands behind him away from the guns that were in his front sweatshirt pockets. Officers were following Luthy as he made his way down the street, and an E.A.T. had formed across the street from Luthy. A member of the E.A.T. obtained a flashbang from Detective Duralde, and the E.A.T. planned to deploy a less-lethal round and the flashbang in an attempt to detain Luthy.

Detective Duralde was still observing Luthy through his rifle scope when he heard the less-lethal round deployed. Detective Duralde then "saw [Luthy] pull back and uh, I don't know where it hit him, but it seemed like he looked down to see like if he was injured, and then his hands had been behind him up to that point, and then he shoves his hands in the pockets where the guns were as the team was moving across the street towards him." Detective Duralde stated that Luthy's attention had turned towards the officers that were approaching him from across the street. Detective Duralde continued by saying that he "was

concerned [Luthy] was going [to] pull out a gun and start firing at the officers that were approaching him, so I fired one round at him." Thereafter, officers were able to successfully detain Luthy, and Detective Duralde heard Luthy say something along the lines of, "If you were going to shoot me, why don't you shoot me in the head?"

5. RPD Detective Christopher Johnson

Detective Johnson has been employed by the RPD for approximately five years, and is assigned to the detective division. Detective Johnson was interviewed at the Reno Police Department on March 20, 2018 by SPD Detective Adam Harris (hereinafter "Detective Harris") and WCSO Detective Greg Sawyer (hereinafter "Detective Sawyer").

Detective Johnson stated that on March 19, 2018, he received an informational email advising of a suicidal subject armed with handguns, who was identified as Luthy. Detective Johnson was also provided with a description of Luthy's vehicle and the license plate. On March 20, 2018, Detective Johnson was instructed to assist patrol officers in locating Luthy. Detective Johnson responded to the area of Nixon Avenue, at which time he located Luthy's vehicle. Another officer advised that he located Luthy in the area of Marsh Avenue and Nixon Avenue, and Detective Johnson made his way to that specific area. Detective Johnson observed Luthy, who was wearing a zip-up hoodie with two front pouches. Detective Johnson observed Luthy standing on the south side of Marsh Avenue talking to Officer Russ Stewart. Detective Johnson grabbed his rifle and saw what looked like the top end of a gun on both of Luthy's pockets and what appeared to be the butt of a gun sticking out of his left pocket as he was walking around.

Detective Johnson heard Luthy say that he was "too chicken" to shoot himself and that he "was sorry for any PTSD that [police] were going to have after this event." As Luthy made his way westbound, responding officers likewise walked west. While Luthy and Officer Stewart spoke, Detective Johnson observed Luthy to become more agitated and upset, and was very animated with his hands when he would bring them forward from behind his back.

Detective Johnson heard the plan that was being developed, which was to deploy a less-lethal round and flashbang, along with the K9 dog, in an attempt to stop and detain Luthy. Detective Johnson, while looking through the sight on his rifle, heard a loud bang and saw the less-lethal round hit Luthy in the chest. Detective Johnson said that "it kind of startles him. He doesn't go down. And then he dives both his hands directly into his pockets, the front pockets where the guns are. Um, and then I don't see the flesh on his skin anymore. They're in the pockets and they're getting ready to grip or they're gripping whatever's in there. Um, and at that point, I thought that he was going to be pulling out the guns and start shooting, so that's when I fired one round." Detective Johnson described Luthy's placing of his hands in his pockets as "deliberate." Detective Johnson said that Officer Stewart was trying to de-escalate the situation and did not have a weapon in his hands, and was only approximately 20 yards from Luthy, so Detective Johnson shot his rifle because he "didn't want [Luthy] to potentially shoot [Officer Stewart] or any of us or anybody in the neighborhood." At that point, Luthy went down to the ground and other law enforcement officers ran towards Luthy to detain him.

6. RPD Sergeant John Silver

Sergeant Silver has been employed by the RPD for approximately 14 years, and is assigned to the detective division. Sergeant Silver was interviewed at the Washoe County Sheriff's Office on March 20, 2018 by SPD Detective Kevin Dach (hereinafter "Detective Dach") and WCSO Detective Gordon Koski (hereinafter "Detective Koski").

Sergeant Silver stated that on March 20, 2018, he heard over dispatch radio about a subject making suicidal threats in the area of Marsh Avenue and California Avenue. The subject was identified as Luthy, and Sergeant Silver had heard about Luthy for the last couple days, including an incident from the day prior that occurred in the same general area, in which his counselor had to barricade herself in her office when he showed up. Sergeant Silver also had been made aware that Luthy had threatened to kill himself in front of his girlfriend's house.

Sergeant Silver learned that an officer had located Luthy in the area of Gordon Avenue and Nixon Avenue. Sergeant Silver

responded to the area, and observed Luthy standing on the south side of the street. Luthy had his hands behind his back, and was wearing a baggy sweatshirt with pockets in the front which were sagging down with a very heavy item. As Sergeant Silver continued to watch, he thought the heavy item could be a gun. Luthy kept putting his hands behind his back while he paced back-and-forth and spoke with Officer Russ Stewart. Specifically, Officer Stewart was asking Luthy to take his jacket off and keep his hands where officers could see them, but Luthy refused both commands. Luthy was walking west away from officers, and Luthy communicated with officers for approximately 30-40 minutes.⁵ At one point, Sergeant Silver observed a female resident open the front door to her house, and she was instructed to go back inside. As Luthy continued to walk, officers paralleled him, and the E.A.T. broadcast to other officers to prepare for a loud bang. Sergeant Silver heard a noise, and saw Luthy flinch and back up, and then his right hand immediately went towards his hoodie sweatshirt pocket and went half-way in. At that point, Sergeant Silver heard one or two loud bangs, and then heard Detective Duralde state something to the effect, "Shots fired, he went for the gun, he went for the gun."

After the shots were fired, Sergeant Silver saw the K9 and the E.A.T. run towards Luthy. Sergeant Silver heard Luthy yelling things such as, "You should have shot me in the head! You should have shot me in the head! Shoot me! Just shoot me!"

7. RPD Officer Arturo Espinoza

Officer Espinoza has been employed by the RPD for approximately 13 years, and is assigned to the patrol division. Additionally, Officer Espinoza is a member of SWAT. Officer Espinoza was interviewed at the Washoe County Sheriff's Office on March 20, 2018 by SPD Detective Nick Pagni (hereinafter "Detective Pagni") and WCSO Detective Brian Atkinson (hereinafter "Detective Atkinson").

⁵ Dispatch records show that Luthy was first seen by officers on March 20, 2018 at approximately 2:15 pm, and Luthy was not secured until approximately 2:44 pm.

Officer Espinoza stated he learned that a RPD negotiator was communicating with a subject, later identified as Luthy, who had said he wanted to turn himself in and also that he was going to his therapist's office on Marsh Avenue to shoot himself. Officer Espinoza responded to D.D.'s office and positioned himself approximately two blocks away so that he was able to view the front door. Other officers went inside D.D.'s building, in case Luthy showed up. Officer Espinoza also contacted other members of SWAT to respond to the area in unmarked vehicles. While watching D.D.'s office, Officer Espinoza was advised that officers had located Luthy.

Officer Espinoza established an E.A.T. and responded to Marsh Avenue, where he observed Luthy on the south side of the street pacing and moving west. Upon arriving on scene, Officer Espinoza received confirmation that Luthy was armed. Officer Espinoza stated that he and the E.A.T. were across the street from Luthy, and as Luthy moved west, so too did the responding officers. Officer Espinoza saw that Luthy had his hands behind his back, and described him as "really agitated" and "frustrated." Officer Espinoza heard Luthy talking with the negotiator, and say something to the effect of, "Just end it."

The E.A.T. devised a plan to detain Luthy, based on the threats he had made and knowing he was armed. The E.A.T. deployed the less-lethal round, followed by a flashbang, and then a K9 dog was released. Officer Espinoza stated that while Luthy was falling to the ground and the E.A.T. was running towards Luthy to gain control of him, a gun fell out of his jacket pocket. The E.A.T. reached Luthy, who had his arms underneath his body. The E.A.T. was able to place Luthy's hands behind his back and place handcuffs on him.

After Luthy was secured, Officer Espinoza smelled alcohol on Luthy's breath and heard Luthy say that the police should have killed him. Also after securing Luthy, police removed a second gun and a couple of gun magazines. Officer Espinoza saw that Luthy's hand was injured, so he requested that medics be summoned.

8. WCSO Deputy Sam Van Der Wall

Deputy Van Der Wall has been employed by the WCSO, and is assigned to Criminal Interdiction. Deputy Van Der Wall was interviewed at the Washoe County Sheriff's Office on March 20, 2018 by SPD Detective Scott Valenti (hereinafter "Detective Valenti") and WCSO Detective Kellie Wright (hereinafter "Detective Wright").

Deputy Van Der Wall stated that on March 20, 2018, he learned that Reno Police Officers were looking for a subject, who was identified as Luthy. Deputy Van Der Wall responded to the area where Luthy had been located, and observed him speaking with a Reno Police Department negotiator. Deputy Van Der Wall was part of a tactical team (E.A.T.) which was formed and positioned across the street from Luthy and the negotiator. Luthy would move down the street, then stop and talk with the negotiator, and then move down the street further. While talking, the negotiator said things such as "let's resolve this peacefully". Luthy would have positive contacts with the negotiator, but then get agitated and make threats and demands. While watching Luthy, Deputy Van Der Wall saw that he had two pistols in his shirt. There were a couple of times that residents came out onto their porches, and they were instructed to get back into their homes.

Deputy Van Der Wall saw that Luthy was "very cognizant" about where his hands were. Luthy's hands were animated and at one point, he accidentally put them near where his guns were. Luthy saw officers prepare themselves, and then he put his hands behind his back as he realized the closer his hands got to his guns the more likely something was to occur. After a while, Luthy forgot and began using his hands in an animated manner again, his hands came closer to his front, officers prepared themselves, and Luthy remembered and put his hands behind his back again.

The E.A.T. devised a plan to deploy a flashbang and less-lethal round, followed by the K9 dog. The less-lethal round and flashbang were deployed, and the K9 was released. Deputy Van Der Wall saw Luthy fall to the ground, and the E.A.T. approached him. Deputy Van Der Wall grabbed Luthy's right hand, and heard somebody say, "One of the guns fell out over here." Luthy was handcuffed, and Deputy Van Der Wall observed Luthy to still have

a handgun in one of his sweater front pockets, so Deputy Van Der Wall grabbed the handgun and handed it to another officer.

After Luthy was detained, Deputy Van Der Wall stayed with him pending the arrival of REMSA. Deputy Van Der Wall smelled alcohol coming from Luthy's person, and Luthy admitted that he "had too much to drink today." Luthy also made suicidal statements to Deputy Van Der Wall, including, "Well you shoulda just killed me now because once I get outta the hospital you're just gonna have to do this over and do it right the next time."

9. Thomas Stegmaier

Mr. Stegmaier was interviewed at the Sparks Police Department on March 28, 2018 by SPD Detective Dach. Mr. Stegmaier was employed by Jet Plumbing as a plumber and was working at a residence on Marsh Avenue across the street from where Luthy was shot.

Mr. Stegmaier stated that he walked outside the residence and observed a guy, who was identified as Luthy, wearing a sweatshirt and florescent green hat, and officers pointing their guns at him. Mr. Stegmaier saw Luthy walk down the street while talking to an officer, while other officers followed. Mr. Stegmaier stated that "the cops were all completely calm." Mr. Stegmaier saw that Luthy had his hands behind his back for the majority of the time, and just a couple of times with his hands in front. Mr. Stegmaier also saw that Luthy had something heavy in the front of his sweatshirt Mr. Stegmaier lost view of Luthy when a truck interfered with his line of sight, but Mr. Stegmaier heard "bang" sounds and then the K9 dog go after Luthy. Mr. Stegmaier observed an ambulance respond and Luthy being medically treated, at which time Mr. Stegmaier heard Luthy state, "I should have shot that bitch in the face."

Mr. Stegmaier stated that he was recording the incident with his cellular phone, but he had stopped the video prior to the shooting. Mr. Stegmaier said that immediately after the shooting, he began re-recording.

10. D.S.

D.S. was interviewed at the Sparks Police Department on March 21, 2018 by SPD Detective Andy Schreiber (hereinafter "Detective Schreiber"). D.S. was Luthy's ex-girlfriend.

D.S. stated that she had known Luthy for approximately 10 years through work, and began dating Luthy in approximately May of 2015. D.S. stated that during their relationship, Luthy had addiction issues with alcohol, controlled substances, and gambling, and had previously threatened to commit suicide. D.S. described the December 18, 2017 incident, in which Luthy drank alcohol and gambled, and ended up at the top of a casino parking garage. After receiving treatment, Luthy returned to D.S.'s house, and on December 23, 2017, she told him that he could not stay there anymore. D.S. stated that they continued to talk, including whether they would work as a couple again, until approximately March 15, 2018, when she told Luthy that she needed time to figure things out for herself and they could not continue talking. On March 16, 2018, Luthy began texting D.S. and saying contradictory things, such as "I love you", "I hate you", "You're wonderful", and "You're awful". Luthy also texted D.S. that he was going to kill himself. Then on March 17, 2018, Luthy and D.S. talked on the phone, where he acknowledged that he had hurt D.S. and said that he understood she needed time to heal and that they both needed to move forward.

On March 18, 2018, D.S. was at her home when D.D. advised her to leave her house. Later that day, the police took her back to her house to get a few things, and she left again. Later, she received communications from Luthy, and it was clear to her that Luthy was in her house even though he had moved out months before, did not have a key, and she had changed the garage code. D.S. did not know how Luthy had gotten into her house. While she was speaking with police, Luthy was also calling her, and at one point said that he will "kill cops if I have to" - D.S. had the phone on speaker, and officers heard that statement. On March 19, 2018, D.S. applied for and was granted a Restraining Order against Luthy; at the conclusion of D.S.'s interview, she expressed her interest in signing a complaint against Luthy for Trespassing.

11. D.D.

D.D. was interviewed at the Sparks Police Department on March 21, 2018 by SPD Detective Harris. D.D. was a therapist, having providing counseling services for approximately 14 years. D.D.'s

office is on Marsh Avenue, and she had provided counseling services to Luthy.

D.D. stated that she called 911 after Luthy threatened law enforcement on March 19, 2018. Specifically, D.D. said that Luthy threatened to kill himself, and thereafter threatened law enforcement by telling D.D., "Please tell them to back off because I will fire on them." D.D. asked Luthy to turn himself in or meet with the police somewhere, to which Luthy replied, "I will shoot any mother fucker that tries to get close to me." D.D. asked Luthy to come to her office to talk, and Luthy responded, "So the cops can get me? If I come to your office, I have both of my guns with me and if any police officer shows up, I will fucking shoot them." Luthy also told D.D., "I'm going to kill myself at [D.S.'s] house in her driveway in about half an hour", and later said "if the cops decide to come at me, I will fire on them". D.D. stated that Luthy was "escalating" and the police instructed her to leave her office. Through her communications with Luthy, D.D. knew that he was at D.S.'s house, who was Luthy's ex-girlfriend.

D.D. stated that her communications with Luthy continued on March 19, 2018, when Luthy came by D.D.'s office on Marsh Avenue while she was with a separate client. Luthy was drunk and armed with guns, and he banged on her door and then banged on her window. D.D. locked herself and her client in her office, and called RPD Officer Stewart. Luthy was gone by the time police arrived. Luthy left D.D. voicemails on her phone, asking how he goes about turning himself into police. D.D. stated she received a photo from Luthy, wherein he was holding two guns. Based on everything that had occurred, D.D. advised Luthy that she was terminating her counseling services and instructed him to stop contacting her. However, Luthy continued to call and text message D.D.

On March 20, 2018, D.D. filed an Application for a Stalking and Harassment Order against Luthy. Luthy texted her, "So should I just come kill myself right in front of your office door?" Consequently, the police responded and evacuated D.D.'s building. Later that day, D.D. was contacted by RPD and advised that they had Luthy, and he had been shot but was okay. D.D.

stated that Luthy had the intention to pull a gun so that the police would shoot and kill him.

12. REMSA Paramedic Jaimie Shirley

Ms. Shirley is a Paramedic employed by REMSA, and wrote a witness statement on March 20, 2018 regarding her treatment of Luthy. Ms. Shirley stated that on March 20, 2018 at approximately 1:18 pm, she responded to the area of Marsh Avenue, where she observed a subject, later identified as Luthy, sitting in the driveway. Ms. Shirley initiated an assessment and treatment of Luthy, and saw an obvious injury to his left hand. Upon further assessment, Ms. Shirley also saw injuries to the left side of Luthy's chest. Ms. Shirley bandaged all wounds and controlled all bleeding.

While on scene, Ms. Shirley heard Luthy tell officers multiple times, "You should've fucking killed me." Luthy was loaded into the ambulance and transported to the hospital for further medical treatment.

B. Countdown of Officer Jones', Detective Duralde's, and Detective Johnson's Firearms

On March 20, 2018, an evidentiary documentation of Officer Jones', Detective Duralde's, and Detective Johnson's equipment worn and used during the shooting occurred. The countdown was administered by the Washoe County Sheriff's Office Forensic Investigations Section, along with SPD Detective Jose Zendejas (hereinafter "Detective Zendejas"). At that time, their used duty weapons and available magazines were examined.

Officer Jones' firearm was a Rock River Arms LAR-15 rifle, which held a 30 cartridge-capacity magazine. The "countdown" of his rifle revealed one .223 caliber "FC-16" unfired cartridge case in the chamber and 28 .223 caliber "FC-16" unfired cartridge cases in the magazine.

Detective Duralde's firearm was a Remington Model 700 sniper rifle, which had a 5 cartridge-capacity magazine well. The "countdown" of his rifle revealed one "FC-308WIN" unfired cartridge case in the chamber and three "FC-308WIN" unfired cartridge cases in the magazine well.

Detective Johnson's firearm was a Rock River Arms LAR-15 rifle, which held a 30 cartridge-capacity magazine. The "countdown" of his rifle revealed one .223 caliber "FC-12" unfired cartridge case in the chamber and 28 .223 caliber "FC-12" unfired cartridge cases in the magazine.

During the investigation of the shooting scene, forensic investigators located and collected, among other evidentiary items, one .223 caliber "FC-16" fired cartridge case, which had been expelled from Officer Jones' rifle, as well as one .223 caliber "FC-12" fired cartridge case, which had been expelled from Detective Johnson's rifle. Forensic investigators also collected one "FC-308WIN" fired cartridge case from Detective Duralde, at the conclusion of his interview on March 20, 2018. Detective Duralde stated during his interview that he has been trained to collect his expelled cartridge cases when he discharges his sniper rifle, and did so in this case. He retained his fired cartridge case until he provided the same to forensic investigators. In total, forensic investigators collected three fired rifle cartridge cases.

C. Area Overview

The location where the shooting took place was on Marsh Avenue, a residential neighborhood just south of downtown Reno, commonly referred to as Old Southwest. At the time Luthy was shot, he was standing on the south side of Marsh Avenue in front of 638 Marsh Avenue.

D.D.'s office is also located on Marsh Avenue, just 0.4 miles away from where Luthy was shot. Luthy's vehicle was located unoccupied and parked near the intersection of St. Lawrence Avenue and Gordon Avenue, just 0.2 miles away from where Luthy was shot.

D. Statements of Derek Corwin Luthy While on Scene

Immediately after the shooting, Reno Police Officer Tim Broadway (hereinafter "Officer Broadway") stood by Luthy until REMSA personnel transported him to the hospital by ambulance. Officer Broadway activated his audio recorder to record any statements

that Luthy made. During the time Officer Broadway stood by Luthy, Luthy made the following statements:

- "You should have killed me" (approximately 9 times);
- "I'll take care of it later";
- "You should have just shot me in the fucking head";
- "I'm sorry I had to put you through this".

E. Interview of Derek Corwin Luthy

On March 21, 2018, SPD Detective Wilson and WCSO Detective McVickers met with Luthy at Renown Regional Medical Center, where he was receiving treatment for his injuries.⁶ Prior to speaking with Luthy, Detective Wilson asked if he felt okay speaking with detectives, to which Luthy said "yeah". Detective Wilson advised Luthy of his Miranda rights, and Luthy acknowledged an understanding of his rights and agreed to speak with detectives. Detective McVickers also provided Luthy with a cup of water, upon his request.

Luthy stated that he was trying to turn himself in, and actually got close to the police station, but he got scared. Luthy explained how he and Officer Russ Stewart had forged a relationship since the December incident at the downtown Reno hotel parking garage, and that on March 20, 2018, he was talking with Officer Stewart and thought only a few police officers would meet up with him. Luthy stated that "half the force" showed up, which scared him. Luthy stated that he was not trying to hurt anybody, and then said, "And then this is all my fault. I know that. But I know you guys were just trying to protect yourselves too. But I was not gonna do anything...It's not, it's not anybody's fault except for mine."

Luthy stated that he was thinking whether he should kill himself right then, and thought about wanting an officer to kill him. Luthy then claimed that he put his guns down, at which time he was shot. Luthy explained that when he was shot by the rubber bullet, he turned sideways trying to cover himself up "because I stumbled with the gun", and then he was tackled. Luthy then

⁶ As a result of the shooting, Luthy suffered an open wound of his left hand and of his left chest.

stated that when he was hit with the rubber bullet, he was only trying to cover himself up, and was not reaching for his guns.

Luthy acknowledged that in addition to Officer Stewart, he had told D.D., his counselor, that he wanted to kill himself and have police kill him. Luthy stated that he had also told his mother that he wanted to kill himself.

Luthy admitted that he was an alcoholic and addicted to gambling. Luthy stated that D.S., his then-girlfriend, ended their relationship on Thursday night (March 15, 2018), because of "all the stuff I put [her] through last year and a half." Luthy stated "that's really what completely put me over the edge." Luthy admitted to being at D.S.'s house the last couple days before the shooting. Luthy also stated that he started drinking "a bunch" on Friday morning, and drank until he was shot.

Luthy advised that he had two rifles and a shotgun at his mom's house, in addition to the two handguns he had when he was shot. Luthy described his two handguns as a Colt .45 and a .357. Luthy explained that during his interaction with police, he was wearing a sweatshirt with two front pockets, and he had one handgun in each pocket. Luthy believed that police knew he was armed with guns, as he had told Officer Stewart he was in possession of firearms.

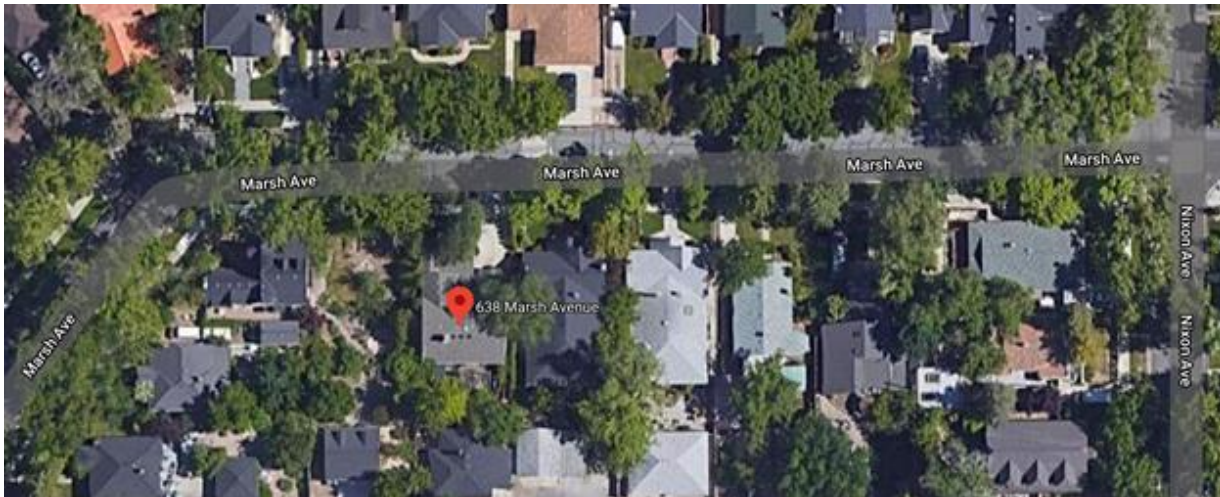
F. Derek Corwin Luthy's Guilty Pleas and Sentences

Luthy was charged, by way of Information in Washoe County District Court, of the felony offense of Attempt to Resist a Public Officer with the Use of a Firearm, related to his actions with police while armed with two handguns on March 20, 2018. Luthy was also charged, by way of Criminal Complaint in Reno Justice Court, of the misdemeanor offense of Breach of Peace, related to his actions against D.D. between March 19, 2018 and March 20, 2018. Luthy pled guilty to both offenses, and was sentenced to 15-40 months in the Nevada Department of Corrections and 6 months in the Washoe County Jail, respectively.

II. PHYSICAL EVIDENCE

A. Shooting Scene

The shooting occurred on and about Marsh Avenue, a paved street in a residential area of Reno. There are sidewalks on both sides of Marsh Avenue, with grass and trees separating the street and the sidewalks. When Luthy was shot, he was standing on the south side of Marsh Avenue in front of 638 Marsh Avenue, and Officer Jones, Detective Duralde, and Detective Johnson were all positioned on the north side of Marsh Avenue. Officer Stewart was standing on the south side of Marsh Avenue when speaking with Luthy. Individual residences line both sides of the street in the 600 block of Marsh Avenue. The scene was secured and taped-off by officers after the shooting.



B. 600 Block of Marsh Avenue

Several items of relevant evidence were photographed in place in the 600 block of Marsh Avenue, and subsequently collected by forensic investigators:

- One .223 caliber "FC-16" fired cartridge case, which had been expelled from Officer Jones' rifle, located in the grass area south of 635 Marsh Avenue. A Criminalist subsequently examined and test-fired Officer Jones' rifle, and determined it to be in normal operating condition with no noted malfunctions.

- One .223 caliber "FC-12" fired cartridge case, which had been expelled from Detective Johnson's rifle, located in on the roadway north of 638 Marsh Avenue. A Criminalist subsequently examined and test-fired Detective Johnson's rifle, and determined it to be in normal operating condition with no noted malfunctions.
- One black "Defense Technology 40 MM" launcher; one "Defense Technology exact Impact 40 MM" foam projectile (pictured below), located in the grass area north of 632 Marsh Avenue; and one "exact Impact 40 MM" fired cartridge case, located on the east side of the driveway to 638 Marsh Avenue.
- One "CTS Model 7290M Mini Bang" device, located in the grass area north of 638 Marsh Avenue; and one pull pin, located in the roadway north of 638 Marsh Avenue.
- Two handguns and associated magazines and ammunition, all of which were possessed by Luthy, located in the grass area north of 638 Marsh Avenue:
 - One "Coonan TM .357 Magnum Automatic" handgun; one magazine containing three "R-P 357 Magnum" unfired cartridge cases; and one magazine containing five "R-P 357 Magnum" unfired cartridge cases. A Criminalist subsequently examined and test-fired Luthy's .357 handgun, and determined it to be in normal operating condition with no noted malfunctions.
 - One "Colt's MK IV/Series' 70 Government Model .45 Automatic Caliber" handgun; one magazine containing five unfired cartridge cases (two "WCC71", one "WCC78", one "WW 45 Auto", and one "WRA 68"); and one "Kimber" magazine containing four "Federal 45 Auto" unfired cartridge cases. A Criminalist subsequently examined and test-fired Luthy's .45 handgun, and determined it to be in normal operating condition with no noted malfunctions.





- Luthy's clothing, including a black "Carhartt" hooded jacket with two front pockets, located in the roadway north of 638 Marsh Avenue after REMSA paramedics removed his clothing for evaluation and treatment purposes. Luthy's Carhartt jacket had a defect to the left sleeve near the wrist hole, a defect to the left chest area, and a defect to left mid-back area. Luthy's t-shirt had matching defects to the left chest area and left mid-back area.⁷

⁷ The defects to Luthy's clothing are consistent with the injuries he sustained to his left hand and left chest.



C. Detective Nicholas Duralde's Fired Cartridge Case

Detective Duralde stated that pursuant to his training and common practice for SWAT, he collects his ejected cartridge cases upon firing his weapon. Here, he collected the one "FC 308 WIN" fired cartridge case, which had been expelled from his rifle, and provided the same to forensic investigators at the conclusion of his interview on March 20, 2018. A Criminalist subsequently examined and test-fired Detective Duralde's rifle, and determined it to be in normal operating condition with no noted malfunctions.

D. Derek Corwin Luthy's Text Messages

Multiple cellular phones were provided to detectives during the course of the investigation, which allowed them to make copies of text message communications between certain individuals.⁸

On March 19, 2018, Luthy was text messaging with Officer Stewart and stated, "Guns to my head it's time". Officer Stewart asked Luthy to put the gun down and talk, but Luthy responded, "Bye Russ". Luthy admitted that he was in D.S.'s house and has "already Caused her more pain than anyone could handle...At least now the pain will stop".

Luthy and Officer Stewart continued texting one another on March 20, 2018. Luthy confirmed that he had told D.D. that he wanted to turn himself in. Luthy then said he "retracted the idea" and spoke about suicide, asking, "Will you please have an officer shoot me????". Officer Stewart responded, "No, but I will help you to get past this", to which Luthy replied, "So if I come down to the station wielded a gun around no one will care". Officer Stewart then texted, "You are better than that. I know you don't want to put that guilt on someone else...Come to the station and I will meet you out front. Leave your guns in the truck and we will get you going in the right direction". Luthy replied, "It wouldn't be guilt. It's self defense". Luthy later said, "You should just end it for me...". After Officer Stewart continued to ask Luthy where he was so that he could get help, Luthy replied, "Nixon and St Lawrence".

⁸ The text messages are presented in this Report exactly how they were written, and are not edited for proper grammar or spelling.

Luthy was also texting D.S., and stated, "All I wanted to do [D.S.] was love you I am so sorry". Following this text message, Luthy sent D.S. a photo of himself sitting on a couch holding one handgun to his right temple and a second handgun to the left side of his neck.

E. Thomas Stegmaier's Cellular Phone Video Recordings

As discussed above, Mr. Stegmaier was working in his capacity as a plumber near where Luthy was shot, and recorded portions of the incident on his cellular phone. Mr. Stegmaier stated that he would record some of the encounter and then stop recording, before starting his recording again. In total, Mr. Stegmaier made seven different recordings. He did not capture the E.A.T. executing its plan nor the shooting of Luthy, and when Mr. Stegmaier began recording again immediately after the shooting, he can be heard telling his co-worker, "I didn't get it dude, nah, I took off the recording to...." Mr. Stegmaier consented to a forensic download of his cellular phone, and all of the video recordings were recovered and reviewed by the Sparks Police Department as part of the investigation.

The video recordings on Mr. Stegmaier's cellular phone show Luthy speaking with Officer Stewart, and for the most part standing with his hands clasped behind his back.



The video recordings show that occasionally, Luthy became agitated and addressed other responding officers, during which times he moved his hands in an animated manner in front of his body. Due to background noise, to include wind, and Mr. Stegmaier's distance from Luthy, Officer Stewart, and other officers, very few words can be heard. On one occasion when Luthy turned to face members of the E.A.T. on the other side of Marsh Avenue, he can be heard screaming, "Put your fucking gun down".



Immediately after the shooting, Mr. Stegmaier's video captured officers running across the street towards Luthy to detain him. Shortly thereafter, a REMSA ambulance arrived on scene, and Luthy was then escorted to the ambulance, with the assistance of a REMSA paramedic and WCSO deputy. While walking to the ambulance, Mr. Stegmaier's co-worker is heard saying, "He's calmed down now".

F. Toxicology Tests

Personnel from Renown Regional Medical Center collected a sample of Luthy's blood on March 20, 2018 upon his admission to the hospital. On March 22, 2018, SPD Detective Nathan Coats (hereinafter "Detective Coats") applied for a Search Warrant to collect Luthy's blood samples for analysis purposes. A Justice

of the Peace authorized the Search Warrant, and Luthy's blood sample was forwarded to the Washoe County Sheriff's Office Forensic Science Division. A criminalist determined that Luthy had a blood-alcohol content of 0.176 g/100 mL.⁹ No drugs were detected in Luthy's blood sample.

III. LEGAL PRINCIPLES

The Washoe County District Attorney's Office is tasked with assessing the conduct of the officers involved and determining whether any criminality on their part existed at the time of the shooting. Although Luthy survived this officer involved shooting, in order to conduct the appropriate assessment, the District Attorney's review is controlled by the relevant legal authority pertaining to justifiable homicides. This is because the analysis rests upon the decision to use deadly force, not the result.

In Nevada, there are a variety of statutes that define justifiable homicide (see NRS 200.120, 200.140, and 200.160). There is also a statute that defines excusable homicide and one that provides for the use of deadly force to effect arrest (see NRS 200.180 and NRS 171.1455). Moreover, there is case law authority interpreting justifiable self-defense and defense of others. All of the aforementioned authority is intertwined and requires further in-depth explanation:

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

NRS 200.120 provides in relevant part that "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 200.160 further provides in relevant part that "Homicide is also justifiable when committed...in the lawful defense of the slayer...or 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

⁹ Luthy's blood-alcohol level was more than double the legal DUI limit.

injury to the slayer or to any such person, and there is imminent danger of such design being accomplished”.

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). In Runion, the Court set forth sample legal instructions for consideration in reviewing self-defense cases as follows:

The killing of another person in self-defense 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 him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

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

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and

3. A reasonable person in a similar situation would believe himself 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 of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

Id. 1051-52.

B. Justifiable Homicide by Public Officer

NRS 200.140 provides in relevant part that "Homicide is justifiable when committed by a public officer...when 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" and "[w]hen necessary...in attempting, by lawful ways or means, to apprehend or arrest a person" and/or "in protecting against an imminent threat to the life of a person".¹⁰

C. Use of Deadly Force to Effect Arrest

NRS 171.1455 provides in relevant part "If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person...poses a threat of serious bodily harm to the officer or to others.

IV. ANALYSIS

¹⁰ A 1985 Nevada Attorney General Opinion limited the interpretation of NRS 200.140 to situations where the officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or to others.

Beginning on March 18, 2018 through the day of the shooting on March 20, 2018, local law enforcement officers were advised that Luthy was an armed, suicidal subject who had expressly informed multiple people, including RPD Officer Russ Stewart, that he would shoot at officers or point a gun at officers to force them to kill him. Over the course of several days, Luthy presented a legitimate threat of harm to D.D., by sending her suicidal text messages and showing up at her office drunk and armed while banging on her office door and window while she was with a client; to D.S., by entering her house without her permission, forcing her to stay elsewhere; to law enforcement, by threatening suicide-by-cop or engaging in shootouts; and to himself, by repeatedly expressing his desire to die.

Officer Stewart and D.D. jointly attempted to help Luthy and have him turn himself in so that he could obtain much-needed mental health assistance to decrease the risk of violence to himself and others. Luthy, however, refused to cooperate, despite his own statements that he was ready to turn himself in. Officers patiently waited for him to turn himself in, as he stated he would, while also taking proactive measures to protect D.D. from violence, to include evacuating her office and posting officers inside her building.

On March 20, 2018 at approximately 2:15 pm, officers located Luthy a short distance from D.D.'s office. Knowing that he was armed with handguns, Officer Stewart went to great lengths to have him separate from his guns so that he would not harm officers, civilian residents, or himself. Luthy refused to comply with all police commands and requests, despite having previously built a rapport with Officer Stewart. While Luthy refused police commands, he continued moving west down Marsh Avenue, towards an area with more civilians and traffic which would have created a greater risk of harm to people.

The E.A.T. finally took action to detain Luthy, and while they approached him from the north side of Marsh Avenue, Officer Jones, Detective Duralde, and Detective Johnson all individually saw Luthy quickly move his hands from behind his back and place them in his front pockets, where he kept his two handguns. For the safety of the approaching E.A.T. members, Officer Stewart, other officers who were on scene, and civilians in the area,

Officer Jones, Detective Duralde, and Detective Johnson each fired one round from their respective rifles. The E.A.T. was able to secure Luthy at approximately 2:44 pm - 29 minutes after police first made contact with Luthy.

By quickly placing his hands into his front pockets, which officers knew contained two handguns, Luthy presented a significant threat to all persons around him. This action followed several days in which Luthy had communicated his intent to have the police kill him, namely: his statements to Officer Stewart that he would wield or point a gun at police forcing police to shoot at him in self-defense; his statement to D.S., which was overheard by officers, that he would "kill cops if I have to"; his statements to D.D., which were communicated to officers, that he will fire on police; and his statements to the E.A.T., immediately prior to the shooting, to shoot and kill him. Even in his own interview after the shooting, Luthy acknowledged that he had told people that he wanted the police to kill him. Luthy's judgment and actions were impacted not only by his repeatedly-expressed desire to commit "suicide by cop", but also by the fact that he had consumed alcohol for the past two days leading up to the shooting, resulting in his blood-alcohol content being a 0.176 g/100 mL.

Even in the immediate aftermath of the shooting, Luthy's intentions of forcing the police to shoot him were clear when he told officers on multiple occasions that they should have shot him in the head and that they should have killed him. Mr. Stegmaier heard Luthy state, while he was receiving medical treatment on scene, "I should have shot that bitch in the face", further evidencing Luthy's intent to create a dangerous situation. These statements after the shooting establish that Luthy had desired for officers to kill him. In order for officers to do so, Luthy deliberately placed his hands in his pockets where his guns were, leaving Officer Jones, Detective Duralde, and Detective Johnson no choice but to protect themselves and others. These three officers showed great restraint in discharging their firearms only once each, despite the fact that Officer Jones' and Detective Johnson's rifles each contained 30 rounds, and Detective Duralde's rifle contained 5 rounds.

After treatment for his injuries, Luthy pled guilty, thereby admitting his guilt, to the felony offense of Attempt to Resist a Public Officer with the Use of a Deadly Weapon. His plea of guilty, formally entered in court, further evidenced the threat he presented, by his refusal to cooperate with police while armed with handguns.

All evidence in this officer-involved shooting conclusively establishes that Luthy - with a high blood-alcohol content, in possession of two loaded firearms, refusing officer commands for nearly 30 minutes, and reaching both hands into the pockets where his guns were - placed all officers and those civilians in the area in imminent danger. He continually risked the safety and lives of officers and civilians throughout the entire incident. Luthy repeatedly refused commands to distance himself from his guns, which would have brought a peaceful end to this ordeal. Instead, Officer Jones, Detective Duralde, and Detective Johnson had no choice but to fire their weapons in order to defend themselves and others. Luthy's actions presented a clear, imminent, and legitimate threat to the safety of multiple individuals. This threat absolutely justified the officer's and detectives' response in self-defense by employing deadly force and shooting Luthy. Officer Jones, Detective Duralde, and Detective Johnson, when interviewed, each stated that they were in fear for their lives or for the lives of others. All available evidence undeniably corroborates their statements.

Accordingly, Officer Jones, Detective Duralde, and Detective Johnson had the right under Nevada law to use deadly force against Luthy, both in defense of themselves and others as well as in the discharge of a legal duty.

V. CONCLUSION

Based on the review of the entire investigation presented and the application of Nevada law to the known facts and circumstances surrounding the March 20, 2018 officer involved shooting of Luthy, the actions of RPD Officer Derek Jones, RPD Detective Nicholas Duralde, and RPD Detective Christopher Johnson are warranted and justified under Nevada law. Unless new circumstances come to light which contradict the factual foundation upon which this decision is made, the District Attorney's review of this case is officially closed.