

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Adrian Zarate Cervantes on October 3, 2021

INTRODUCTION

On October 3, 2021, Nevada Highway Patrol (NHP) Troopers Michael Abbate and Mark Willner shot and killed 40-year-old Adrian Zarate Cervantes (Decedent). The use of force occurred at approximately 8:26 a.m. on East Lake Mead Boulevard (State Route 147) near Mile Marker 11.

SYNOPSIS

On October 3, 2021, at approximately 7:22 a.m., Las Vegas Metropolitan Police Department (LVMPD) dispatch received a 9-1-1 call from Decedent, stating that he was fighting with his wife, M.A. During that call, M.A. took the phone from Decedent and advised dispatch that Decedent had slapped her in the face and was preventing her from leaving the vehicle. M.A. stated that she and Decedent were in a gray Toyota Corolla headed west on East Lake Mead Boulevard from Los Feliz Street. At approximately 7:58 a.m., LVMPD dispatch routed the call to NHP dispatch due to the location being Lake Mead Boulevard (State Route 147). Troopers Abbate and Willner were assigned to respond to the call.

Trooper Abbate was driving east on East Lake Mead Boulevard near Mile Marker 12 in his marked NHP vehicle when he observed a Toyota Corolla driving west. Trooper Abbate was not sure at that time that the Corolla he observed was the subject vehicle, so he continued to the nearby Ranger Station and turned around. Now driving west on Lake Mead Boulevard, Trooper Abbate observed the Corolla in front of him and still headed westbound. Trooper Abbate conducted a DMV records check on the Corolla and confirmed that it indeed belonged to M.A.

Trooper Abbate activated his emergency lights and attempted to stop the Corolla, but the vehicle continued traveling westbound. Trooper Abate advised dispatch that the vehicle did

not stop. Trooper Abbate observed M.A. waving her arm out of the passenger side window. Subsequently, the Corolla pulled to the side of the road and stopped; however, as soon as Trooper Abbate exited his vehicle, the Corolla drove away.

At approximately 8:20 a.m., Trooper Willner arrived in the area driving eastbound on Lake Mead in his marked NHP vehicle, and he observed the Corolla vehicle driving west toward him. Trooper Willner conducted a Traffic Break (driving in a S-like pattern to attempt to get a vehicle to stop), but the Corolla did not stop and continued westbound. Trooper Willner then turned his vehicle around and joined with Trooper Abbate headed westbound to pursue the vehicle.

A few minutes later, the Corolla pulled onto the shoulder of the road. Trooper Abbate positioned his vehicle directly behind the Corolla, and Trooper Willner positioned his vehicle to the right of Trooper Abbate. Trooper Willner shouted commands to the occupants of the Corolla. While stopped, the Corolla's passenger door opened but then quickly closed. As soon as the passenger door closed, the Corolla again drove away. With their lights and sirens activated, Troopers Abbate and Willner pursued the Corolla for approximately one mile.

At approximately Mile Marker 11, the Corolla stopped for a third time. Trooper Abbate gave verbal commands via his loudspeaker for the driver to exit the Corolla with his hands up. Trooper Willner observed what appeared to be keys being thrown out of the window of the Corolla. M.A. later explained to police that she had reached over, put the car in park, removed the keys from the ignition, and threw the keys out of the car.

At approximately 8:26, a.m., Troopers Abbate and Willner observed the driver-side door open and Decedent exit the Corolla. Decedent faced the troopers with his hands near his waist area and then quickly raised them up in the air. Trooper Abbate discharged from his firearm one round toward Decedent but missed. Immediately after the gunshot, Decedent bent over from the waist while holding his chest. Then, abruptly, Decedent stood up straight, briefly placed his right hand behind his back, and then quickly raised his right arm and pointed it in Trooper Willner's direction. Trooper Willner and Trooper Abbate nearly simultaneously discharged one round each from their respective firearms. Decedent fell to the ground as Troopers Abbate and Willner called for M.A. to exit the vehicle. M.A. eventually moved toward the troopers, and Trooper Willner placed M.A. in handcuffs and sat her in his vehicle. Troopers Abbate and Willner then approached Decedent, cleared the Corolla, and administered first aid to Decedent until medical personnel arrived.

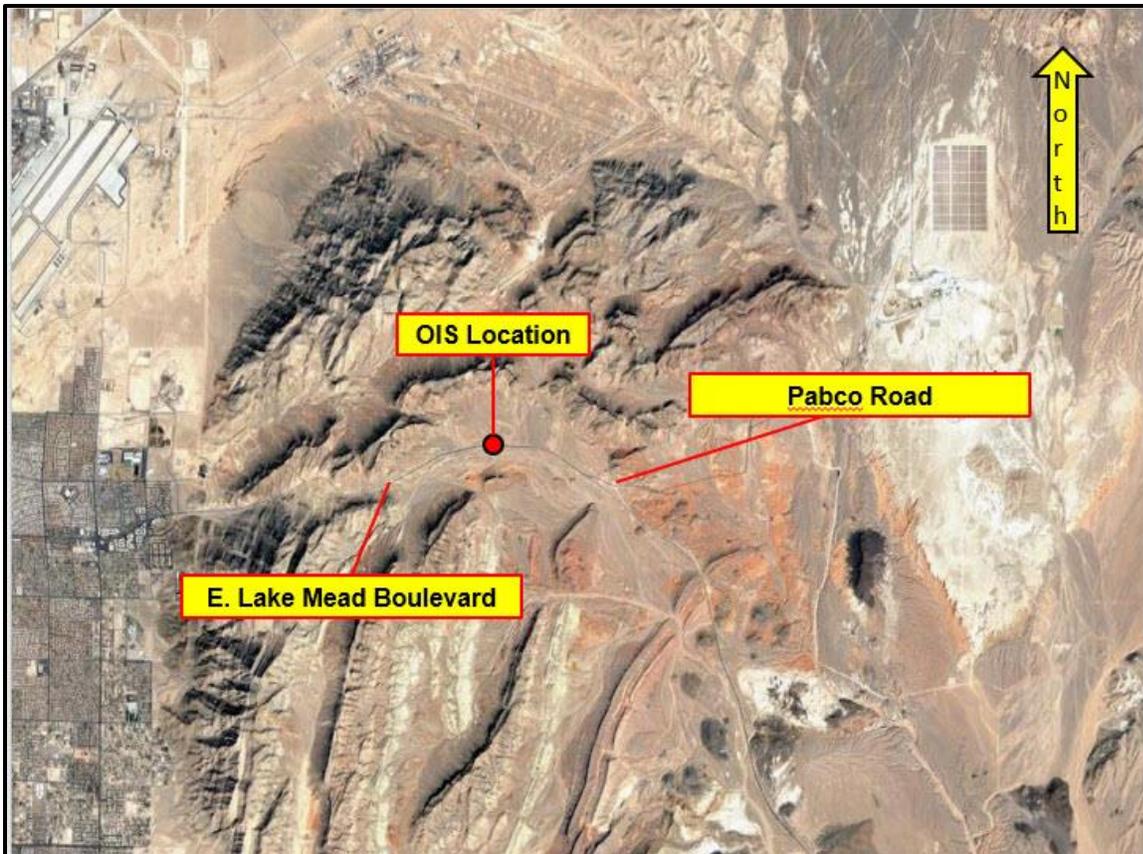
Due to the officer-involved shooting (OIS) aspect of the incident, detectives from LVMPD's Force Investigation Team (FIT) were requested and responded to the scene to investigate.

This report explains why criminal charges will not be forthcoming against NHP Troopers Abbate and Willner. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on June 2, 2022.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by NHP or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

DESCRIPTION OF THE SCENE

Overview



Satellite map of location.

The use of force event occurred in righthand travel lane of westbound East Lake Mead Boulevard (SR 147) near Mile Marker 11, Las Vegas, Nevada.

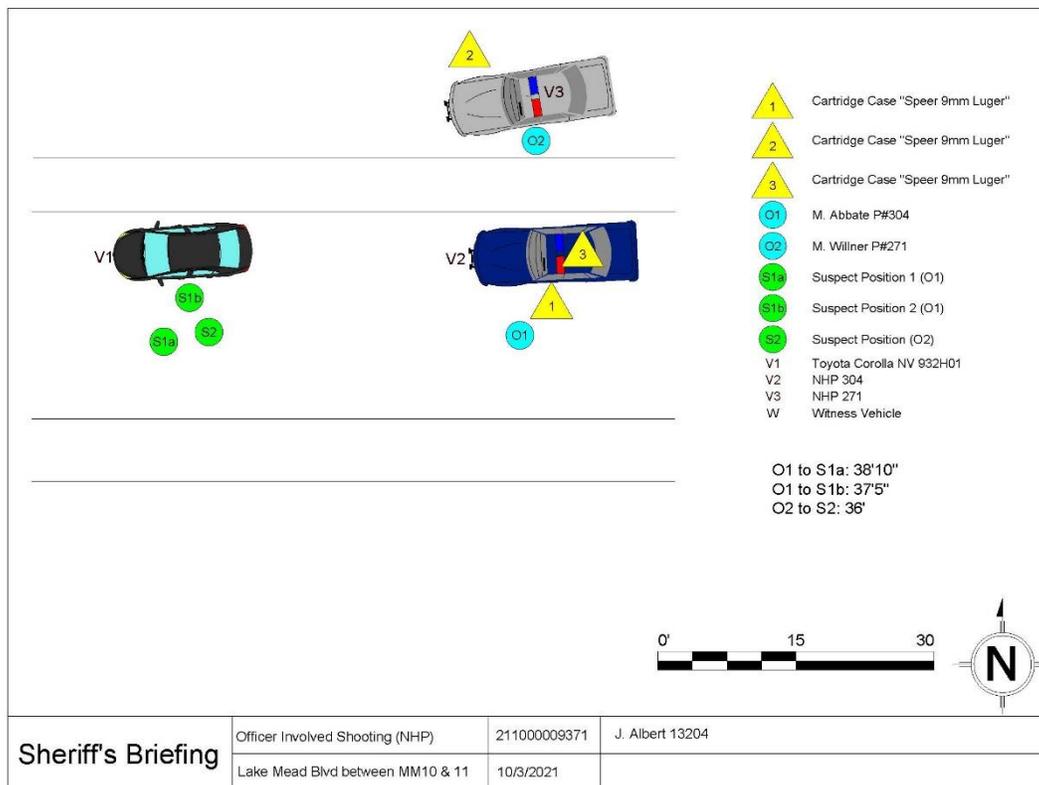
Vehicle Positions at Time of OIS

Immediately before officers discharged their firearms, Decedent's gray Toyota Corolla was stopped in a western direction in the righthand travel lane of westbound East Lake Mead Boulevard (SR 147). Trooper Abbate's vehicle was stopped in a western direction in the righthand travel lane of westbound East Lake Mead Boulevard (SR 147) approximately 30 feet behind Decedent's vehicle. Trooper Willner's vehicle was stopped in a western direction on the righthand shoulder parallel to and slightly forward of Trooper Abbate's vehicle.

Visible Evidence

One Speer 9mm Luger cartridge case was located on the ground in the road adjacent to the left side of Trooper Abbate's vehicle, and one Speer 9mm Luger cartridge case was located within the left edge of the lightbar on Trooper Abbate's vehicle.

One Speer 9mm Luger cartridge case was located on the ground in the desert area adjacent to the right side of Trooper Willner's vehicle.



SCENE WALK-THROUGHS

Trooper Mark Willner

On October 3, 2021, at approximately 1:15 p.m., Trooper Willner provided a limited walk-through of the scene.

According to Trooper Willner, he positioned his patrol vehicle on the right side of Trooper Abbate's vehicle. Trooper Willner exited his vehicle and stood between the open driver-side door and driver's seat. Decedent quickly exited his vehicle and pointed a gun at Trooper Abbate. Trooper Abbate fired one round which appeared to cause Decedent to bend over.

Decedent stood up, reached toward his rear waistband, pulled out a gun and pointed it at Trooper Willner. Trooper Willner fired one round and took cover in his vehicle.

Trooper Willner advised detectives where he believed he was standing when he fired his gun, and where he believed Decedent was standing. LVMPD Crime Scene Analyst Supervisor Grammas marked both locations with orange traffic cones.

Trooper Michael Abbate

On October 3, 2021, at approximately 2:50 p.m., Trooper Abbate provided a limited walk-through of the scene.

According to Trooper Abbate, he positioned his vehicle directly behind Decedent's vehicle. Trooper Abbate exited his vehicle and stood next to the driver-side door. Decedent opened the driver-side door and put both of his feet on the ground with his hands in his waistband.

Decedent stood up and pointed a gun in the direction of Trooper Abbate. Trooper Abbate fired his gun one time. Decedent bent over holding his stomach. Decedent stood up, reached toward his rear waistband, pulled out a gun, and pointed it at Trooper Willner. Trooper Abbate fired his gun one time.

Trooper Abbate advised detectives where he believed he was standing when he fired his gun and where he believed Decedent was standing. LVMPD Crime Scene Analyst Supervisor Grammas marked both locations with orange traffic cones.

PUBLIC SAFETY STATEMENTS

Trooper Michael Abbate

On October 3, 2021, at approximately 11:28 a.m., LVMPD Detective Scott Mendoza interviewed LVMPD Sergeant Kashif Summers regarding the Public Safety Statement he obtained from Trooper Abbate. Following is a LVMPD transcript of that interview.

Note: Detective Mendoza is designated as SM, and Sergeant Summers is designated as KS.

SM: Ok operator this is Detective S. Mendoza P number 6878 with the Force Investigation Team conducting a recorded Public Safety Statement interview with Sergeant Kashif Summers that's K-A-S-H-I-F S-U-M-M-E-R-S. His P number is 14109 call sign of 795. Date of hire July 14, 2009. Sergeant Summers works out of the uh North uh Northeast Area Command squad is Northeast 22. Uh, work hours are 0630 to 1630 days off are Tuesday, Wednesday, Thursday. This Public Safety Statement is in reference to an officer - involved shooting reference Nevada Highway Patrol that occurred on October 3rd 2021 at approximately 0826 hours in the area of Lake Mead Boulevard and mile marker 12. This is reference LVMPD event # 211000009371. Today's date is October 3rd, 2021 current time is 1128 hours. This statement is being conducted at the uh the scene of Lake Mead and mile marker 12. In unmarked LVMPD vehicle 20449. All right Sergeant Summers, can you tell me who you conducted the public safety statement with, uh the time it was conducted and the details of, of the uh statement.

KS: Yes, uh first one was down with uh Trooper Michael Abbate that's A-B-B-A-T-E. Uh I record his uh badge number is 304, uh public safety statement, did you discharge your firearm? He stated yes, uh, if so, in what direction? He stated at the subject.

Uh, B, approximately where were you located when you fired, he stated his left front wheel. Uh C, how many shots did you think you fired? He stated 2. Uh question 2 is anyone injured? He stated yes, uh, the subject. If so, where are they located? And he pointed at the male who was on the uh, ground by his vehicle uh, being attended by medical. Question 3, uh are there any outstanding suspects? Uh he stated uh, no. Ummm, B, C, D and E do not apply. Question 4 is it possible the suspect fired rounds at you? He stated, no. Uh, A, B and C do not apply. Uh number 5, do you know if any other officers discharged their firearms? He stated I don't know. Uh, A and B do not apply. Question 6 are there any weapons or evidence that need to be secured, protected? Ummm, he stated not that I know of. A does not apply. And number 7, are you aware of any witnesses? And he stated uh, my partner, uh Mark.

SM: Ok, is that the conclusion of your questions for the PSS?

KS: It is.

SM: Ok, that'll be the end of the interview, time of 1130 hours.

Trooper Mark Willner

On October 3, 2021, at approximately 11:31 a.m., LVMPD Detective Scott Mendoza interviewed LVMPD Sergeant Kashif Summers regarding the Public Safety Statement he obtained from Trooper Willner. Following is an LVMPD transcript of that interview.

Note: Detective Mendoza is designated as SM, and Sergeant Summers is designated as KS.

SM: Ok operator this is Detective S. Mendoza M-E-N-D-O-Z-A P number 6878 with the Force Investigation Team conducting a recorded Public Safety Statement interview with Sergeant Kashif Summers, first name is K-A-S-H-I-F last name

S-U-M-M-E-R-S. P number of 14109 call sign 795. Sergeant Summer's date of hire July 14, 2009. He currently works out of the Northeast Area Command squad is NE22. Work hours are 0630 to 1630 RD, RDO's are Tuesday, Wednesday, Thursday. This Public Safety Statement is in reference to an officer - involved shooting involving uh Nevada Highway Patrol that occurred on October 3rd 2021 at approximately 0826 hours in the area of Lake Mead Boulevard and mile marker 12. It's reference LVMPD event # 211000009371. Today's date is October 3rd, 2021, time of 1131 hours. This statement is being conducted at the scene, Lake Mead and mile marker 12. Uh, in unmarked LVMPD vehicle 20449. All right Sergeant Summers, can you tell me who you conducted the public safety statement with, the time it was conducted and the details of the statement please.

KS: Yes, this was conducted with Trooper Mark Willner, that's W-I-L-L-N-E-R, his badge number was 6271. This statement was given at approximately uh 0845 hours. Uh, question 1 did you discharge your firearm? He stated I believe so, uh, A, if so, in what direction, he said towards the suspect. Approximately where were you located when you fired? He stated, uh, by his driver door. C, how many shots do you think you fired? He stated one shot. Question 2 is anyone injured? He stated no, ummm, and question A, if so where are they located? And he uh just pointed at the suspect. Ummm, question 3 are there any outstanding suspects, he stated no. Uhhh, A B C D and E did not apply. Question 4, is it possible the suspect fired rounds at you? He stated no, A B and C did not apply. Number 5, do you know if any other officers discharged their firearms? He stated yes. If so, who are they? And he said Michael. Ummm, D approximately where was the officer located when

they fired? He said, by the front left fender. Ummm, number 6, are there any weapons or evidence that need to be secured protected? He stated no. A does not apply. Number 7 are you aware of any witnesses he stated no. And A does not apply.

SM: Ok, and is that the conclusion of your public safety statement with the uh, the trooper?

KS: It is.

SM: Ok, all right that'll be the end of the interview, same person is present. Uh, before I end it, ummm you were given the opportunity you would decline any ummm, LVPMSA representation for both uh, PSS interviews with FIT?

KS: That is correct.

SM: Ok, all right that'll be the end of the interview, same persons present. Time of 1134 hours.

OFFICER WEAPON COUNTDOWNS

On October 3, 2021, Troopers Abbate and Willner had their duty weapons counted down at the OIS scene in the LVMPD Mobile Command Vehicle.

Trooper Michael Abbate

Prior to the countdown, Trooper Abbate stated that he carried 21 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (21+1, 22 total).

Make	Sig Sauer
Model	P320
Serial Number	58H054647
Caliber	9mm
Weapon Mounted Light	Yes
Ammunition	SPEER
Cartridge in Chamber	Yes
Magazine from Weapon	Capacity: 21 cartridges
	Countdown: 19 cartridges
Spare Magazine #1	Capacity: 21 cartridges
	Countdown: 21 cartridges
Spare Magazine #2	Capacity: 21 cartridges
	Countdown: 21 cartridges
Spare Magazine #3	Capacity: 21 cartridges
	Countdown: 21 cartridges

When compared to evidence at the scene, detectives concluded that Trooper Abbate discharged his firearm 2 times. LVMPD SCSA Heather Ubbens photographed and impounded Trooper Abbate's firearm, magazines, and cartridges.

Trooper Mark Willner

Prior to the countdown, Trooper Willner stated that he carried 17 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (17+1, 18 total).

Make	Sig Sauer
Model	P320
Serial Number	58H159037
Caliber	9mm
Weapon Mounted Light	Yes
Ammunition	SPEER
Cartridge in Chamber	Yes
Magazine from Weapon	Capacity: 17 cartridges Countdown: 16 cartridges
Spare Magazine #1	Capacity: 17 cartridges Countdown: 17 cartridges
Spare Magazine #2	Capacity: 17 cartridges Countdown: 17 cartridges
Spare Magazine #3	Capacity: 17 cartridges Countdown: 17 cartridges

When compared to evidence at the scene, detectives concluded that Trooper Willner discharged his firearm 1 time. LVMPD SCSA Heather Ubbens photographed and impounded Trooper Willner's firearm, magazines, and cartridges.

FIREARM EXAMINATIONS

LVMPD Forensic Scientist Roy Wilcox examined Trooper Abbate's firearm and Trooper Willner's firearm. Per his report dated November 16, 2021, Trooper Abbate's Sig Sauer P320, 9mm, semiautomatic pistol and Trooper Willner's Sig Sauer P320, 9mm, semiautomatic pistol both were examined, test fired, and found to be operational with no noted malfunctions.

According to her report, Forensic Scientist Wilcox also performed comparisons of the three Speer 9mm Luger cartridge cases recovered from the scene. Two of the cartridge cases were identified as having been fired from Trooper Abbate's firearm, and one of the cartridge cases was identified as having been fired from Trooper Willner's firearm.

SUMMARY OF RELEVANT WITNESS STATEMENTS

Subject Troopers

Trooper Michael Abbate

On October 5, 2021, at approximately 9:27 a.m., LVMPD Sergeant Michelle Iacullo, Detective Marc Colon, and Detective Jason Leavitt conducted an audio recorded interview with Trooper Abbate at LVMPD headquarters.

Trooper Abbate stated that, on October 3, 2021, at approximately 7:58 a.m., he was advised by NHP dispatch of a domestic disturbance on Lake Mead Boulevard and Los Feliz Street. The details stated a female, M.A., was being held against her will by Decedent in a blue Toyota Corolla. Trooper Abbate responded to the area utilizing his emergency lights and siren.

Trooper Abbate drove east on Lake Mead Boulevard and advised dispatch he was going to attempt to locate the vehicle. Trooper Abbate planned on driving east and turning around at the ranger station.

While enroute to the ranger station, Trooper Abbate observed a grey Toyota Corolla driving westbound. Trooper Abbate confirmed with dispatch that the vehicle in question had been reported as blue. Trooper Abbate continued to the ranger station where he turned around and drove west. Trooper Abbate planned on stopping the grey Corolla to make sure it was not Decedent's vehicle.

Trooper Abbate observed the grey Toyota Corolla parked on the shoulder of westbound Lake Mead Boulevard. Trooper Abbate stepped out of his vehicle and the grey Toyota Corolla, driven by Decedent, drove away. Trooper Abbate advised dispatch of the circumstances and his decision to pursue the vehicle.

Trooper Abbate stated that Decedent drove at speeds ranging from 8 miles per hour to 35 miles per hour. Trooper Abbate observed M.A. waving her arm out of the passenger side window. Decedent pulled over to the right and stopped. Trooper Abbate observed M.A. attempting to exit the vehicle. Trooper Abbate called her back to his vehicle, but Decedent drove away with M.A. still in the vehicle.

Trooper Abbate observed Trooper Willner driving eastbound toward him. Trooper Willner attempted a traffic break maneuver but was unsuccessful. Trooper Willner passed Trooper Abbate and turned around to join behind him.

Decedent pulled over to the right and stopped his vehicle again. The troopers conducted a felony car stop with Trooper Abbate's vehicle positioned behind Decedent and Trooper Willner's vehicle to the right of Trooper Abbate. Trooper Abbate utilized the PA (Public

Address) on his patrol vehicle and instructed Decedent to put his hands out of the vehicle. Decedent opened the driver's door and put his feet on the ground. Trooper Abbate observed Decedent's hands in his front waistband area. During this time, M.A. had opened the passenger door and attempted to exit unsuccessfully.

Trooper Abbate stood outside of his vehicle and continued to give commands to Decedent. Decedent stood up and put his right hand towards his right hip. Decedent made a motion that could not be mistaken for anything other than drawing a gun and pointed it at Trooper Willner. Trooper Abbate feared for Trooper Willner's life and fired one round at Decedent.

Decedent hunched over and grabbed his stomach. Decedent then stood up straight and faced Trooper Abbate. Decedent reached with his right hand toward his rear waistband and made a movement that could not be mistaken for anything other than drawing a firearm and pointed it at Trooper Abbate. Trooper Abbate feared for his life and fired one round at Decedent.

Decedent grabbed his stomach and fell to the ground. At that time, M.A. had moved to the driver's seat. Trooper Abbate yelled for her to exit the vehicle so they could provide aid to Decedent. M.A. exited and ran toward the troopers. Trooper Willner placed handcuffs on M.A. and placed her in the back of his vehicle.

The troopers approached Decedent and cleared his vehicle. Trooper Willner placed handcuffs on Decedent while Trooper Abbate checked him for injuries. Trooper Abbate located a gunshot wound on Decedent's abdomen and applied pressure while Trooper Willner retrieved a trauma kit from his vehicle. The trooper applied first aid until medical personnel arrived and took over.

Trooper Mark Willner

On October 5, 2021, at approximately 10:44 a.m., LVMPD Sergeant Iacullo, Detective Colon, and Detective Leavitt conducted an audio recorded interview with Trooper Willner at LVMPD headquarters.

Trooper Willner stated that, on October 3, 2021, at approximately 7:58 a.m., NHP dispatch broadcasted a domestic disturbance call where a male had struck a female inside a vehicle in the area of Lake Mead Boulevard and Los Feliz Street. Trooper Willner assigned himself to the call and heard Trooper Abbate also assign himself.

While Trooper Willner was enroute, he heard Trooper Abbate broadcast that he located the vehicle and was going to stop it. Trooper Abbate advised the vehicle did not stop and he was going to pursue.

Trooper Willner was driving eastbound and observed Decedent and Trooper Abbate driving westbound toward him. Trooper Willner conducted a traffic break, which was

driving his vehicle in a zig-zag formation to get traffic to slow down and stop. Decedent did not stop, so Trooper Willner continued westbound and made a U-turn to join behind Trooper Abbate in the pursuit. Decedent stopped his vehicle. Trooper Abbate stopped behind Decedent, and Trooper Willner positioned his vehicle on the right side of him.

Trooper Abbate issued verbal commands for Decedent to show them his hands. M.A. appeared to be attempting to exit the vehicle on the passenger side but was unable to get out because Decedent drove away. Decedent then stopped approximately 50 yards away. The troopers moved their vehicles behind Decedent, and Trooper Willner exited his vehicle with his gun drawn to conduct a felony car stop.

Trooper Willner then observed keys being thrown out of the passenger window. Trooper Abbate commanded Decedent to exit the vehicle with his hands up. Trooper Willner observed the driver's door open and Decedent stand up. Decedent then made a movement as if he was drawing a weapon, and Trooper Abbate fired one round. Decedent bent over. Trooper Willner commanded him to put his hands up. Decedent did not comply and reached toward his rear waistband and pointed at Trooper Willner. Trooper Willner fired one round and ducked into his vehicle for cover. Trooper Willner fired to protect himself from Decedent whom he believed was trying to kill him.

Trooper Willner looked through his windshield and observed Decedent on the ground. The troopers called M.A. out of the vehicle, and Trooper Willner put handcuffs on her and placed her in his vehicle.

The troopers approached Decedent's vehicle and cleared it. Trooper Willner placed handcuffs on Decedent and retrieved his trauma kit from his vehicle. The troopers located a gunshot wound on Decedent, and Trooper Willner applied pressure until medical personnel arrived.

Civilian Witnesses

M.A.

On October 3, 2021, at approximately 11:45 a.m., LVMPD Detective Trever Alsup conducted an audio recorded interview with M.A. at Lake Mead Boulevard and Mile Marker 12.

M.A. stated she had been out all night with Decedent (her boyfriend), her sister, and a friend of Decedent. At approximately 5:00 a.m., the four left a night club and drove M.A.'s sister and Decedent's friend home. M.A. believed they were headed home, but Decedent drove to the area of Lake Mead.

M.A. stated Decedent parked the car and the two were looking at the view of Las Vegas when Decedent accused her of cheating on him. The argument escalated and Decedent

slapped M.A. two times across the face with an open hand. During the argument, Decedent called 9-1-1 and M.A. took the phone.

M.A. told the dispatcher Decedent had struck her and gave their location. M.A. told Decedent to let her out of the vehicle, but he locked the doors and windows, thereby preventing her from exiting the vehicle. Decedent stated he would not be caught by police and this was the last time M.A. would see him.

A short time later, M.A. observed a NHP vehicle behind them. Once the emergency lights were activated on the patrol car, Decedent pulled over and stopped, but he began driving again. Another patrol vehicle joined a short time later. Decedent again stopped the vehicle briefly before continuing. When Decedent finally stopped again, M.A. put the vehicle in park, grabbed the keys, and threw them out the window.

Decedent then exited the vehicle and M.A. heard a single gunshot, followed by two more gunshots. M.A. observed Decedent fall to the ground, and she exited the vehicle and was taken into custody by the troopers. M.A. stated Decedent had no weapons and his hands were in the air when he was shot.

H.B.

On October 3, 2021, at approximately 12:30 p.m., LVMPD Detective Alsup conducted an audio recorded interview with H.B. at Lake Mead Boulevard and Mile Marker 12.

H.B. stated he was currently homeless and had been sleeping in his vehicle near the area of Lake Mead. That morning, he observed a NHP vehicle travelling east and briefly stop near the area where he was parked. The patrol vehicle then continued east. A couple of minutes later, H.B. observed a dark colored vehicle heading west followed by two patrol vehicles. The dark car stopped briefly on Lake Mead before continuing west.

A short distance later, the vehicle again stopped. H.B. observed a Hispanic male exit the vehicle. He could hear the troopers saying something to the male, but he could not understand what they were saying. The male grabbed at his waist band, as if he were grabbing a firearm, and quickly pointed his hands towards the troopers. H.B. heard a single gunshot and believed the male was hit by a bullet. The male then grabbed at his waistband and pointed his hands towards the troopers again. H.B. heard at least one more gunshot and the male fell to the ground.

H.B. then observed a female exit the vehicle, and the troopers provided first aid to the male until paramedics arrived.

BODY-WORN CAMERAS

Trooper Michael Abbate

Trooper Abbate was wearing a body-worn camera (BWC) at the time of the incident. The camera was activated. Relevant audio and video portions of Trooper Abbate's BWC footage are described below:

Trooper Abbate notifies dispatch he is going out on a grey Toyota Corolla on State Route 147 at Mile Marker 14. Trooper Abbate exits his vehicle while stopped behind the Corolla. As Trooper Abbate walks to the front of his patrol vehicle, the Corolla drives away. Trooper Abbate yells, "Stop!"

Trooper Abbate gets back in his vehicle, advises dispatch of the pursuit, and drives after Decedent. Trooper Abbate advises dispatch that Decedent's speed is 39 miles per hour. Trooper Abbate advises Trooper Willner they are headed westbound toward him. At Mile Marker 11 or 12, Trooper Abbate advises that Decedent slows to 8 miles per hour and then speeds up at the Pabco Turnoff to 46 miles per hour.

Trooper Abbate advises dispatch that Decedent is stopping in the travel lane. Trooper Abbate utilizes his PA and tells Decedent, "Stop your car."

Trooper Abbate exits his vehicle and commands, "Stop your vehicle. Stop the car and put it in park." Decedent's passenger door opens, and Trooper Abbate tells the passenger to walk back toward the troopers. Trooper Willner's voice is heard instructing the passenger to walk back.

Trooper Willner continues to give instructions to the passenger with no response. Decedent drives away westbound, and Trooper Abbate returns to his vehicle and drives after him. Trooper Abbate advises dispatch that Decedent drove away and the female is in distress. Trooper Abbate updates dispatch that Decedent stopped again.

Trooper Abbate utilizes the PA system and asks Decedent to stop the car. Trooper Abbate exits his vehicle, draws his gun, and orders Decedent to put the car in park.

Decedent opens his door and places his feet on the ground. Trooper Abbate yells, "Out of the car with your hands up!"

Decedent stands up with his right hand near his waistband. Decedent moves his right hand from his waistband toward Trooper Abbate. One shot is heard. Decedent grabs his chest and stumbles back. Trooper Willner is heard saying, "Put your hands up!"

Both troopers yell, "Hands up!" Decedent reaches toward his rear waistband, turns toward Trooper Willner, and points his hand in Trooper Willner's direction. Two shots are

heard as well as M.A.'s voice. Decedent falls to the ground next to the Corolla, and Trooper Abbate broadcasts, "Shots fired!" at 08:26:14 on the timestamp.

Trooper Abbate instructs M.A. to exit the vehicle numerous times. M.A. eventually exits the vehicle and walks toward the troopers. Trooper Willner escorts M.A. out of view.

The troopers approach the vehicle and check it for any additional occupants. Trooper Abbate instructs Trooper Willner to handcuff Decedent. Decedent is heard making a groaning sound.

Trooper Abbate puts on latex gloves and checks Decedent for injuries. Trooper Abbate locates a gunshot wound on Decedent's abdomen. Trooper Abbate updates dispatch and requests medical personnel.

Trooper Mark Willner

Trooper Willner was wearing a body-worn camera (BWC) at the time of the incident and the camera was activated. Relevant portions of audio and video portions of Trooper Willner's BWC footage are described below:

Trooper Willner is driving eastbound on Lake Mead Boulevard at approximately Mile Marker 10 when radio traffic advises Trooper Abbate is in pursuit of Decedent and headed westbound at approximately Mile Marker 12.

Trooper Willner advises dispatch he is conducting a traffic break maneuver. Trooper Willner advises dispatch the maneuver was unsuccessful, and Decedent passes him. Trooper Willner turns his vehicle around and follows behind Trooper Abbate in pursuit.

Decedent appears to stop his vehicle with Trooper Abbate's vehicle directly behind Decedent. Trooper Willner positions his vehicle on the right side of Trooper Abbate. Trooper Willner opens his door and Trooper Abbate's voice is heard addressing Decedent. Trooper Willner stands up with his gun pointed toward Decedent's vehicle. The passenger door of Decedent's vehicle is slightly ajar, and Trooper Willner commands the passenger to exit. The passenger, M.A., waves her arm out the passenger door before Decedent drives away. Trooper Willner returns inside his vehicle and follows behind Trooper Abbate.

Decedent stops his vehicle again, and Trooper Willner takes the position to the right of Trooper Abbate. Trooper Willner opens his door and advises Trooper Abbate that keys were thrown from Decedent's vehicle.

Trooper Willner stands behind his open driver's door with his gun pointed in the direction of Decedent's vehicle. Decedent stands up and points toward Trooper Abbate, and one gunshot is heard. Decedent grabs his stomach and stands up straight while stumbling backward. Trooper Willner yells for him to put his hands up.

Decedent reaches toward his rear waistband with his right hand. Trooper Willner moves slightly to the right which obstructs the camera's view. Trooper Willner fires one shot as he moves into his vehicle.

Trooper Willner stands up with his gun pointed toward Decedent who is on the ground. Trooper Willner gives numerous commands for Decedent to put his hands up and move toward the troopers.

Trooper Abbate instructs M.A. to exit the vehicle as Trooper Willner requests medical personnel.

M.A. walks back toward Trooper Willner. Trooper Willner walks her to his vehicle and places handcuffs on her before placing her in the backseat. Trooper Willner approaches Decedent with Trooper Abbate to his left. They determine the vehicle has no other occupants and approach Decedent who is laying on the ground next to the open driver's door.

Trooper Willner places handcuffs on Decedent. Trooper Abbate locates a gunshot wound on Decedent and Trooper Willner retrieves a medical kit from his vehicle.

Trooper Willner returns to Decedent where he applies pressure to Decedent's wound. Trooper Willner continues to apply pressure until he is relieved by medical personnel.

DASHBOARD CAMERA

Trooper Abbate's Vehicle

Trooper Abbate's vehicle was equipped with a dashboard camera system and the camera was activated. The recording does not contain audio.

Decedent's vehicle was stopped in the westbound travel lane. The driver's door opened, and Decedent placed his left foot on the ground. Decedent stood up with his hands by his waistband. Decedent turned toward Trooper Abbate and pointed his right hand toward Trooper Abbate. Decedent grabbed his chest area with his right hand and moved away from his vehicle. M.A. was in the vehicle on the driver's side looking toward Trooper Abbate.

While facing Trooper Abbate, Decedent took a few steps backward while reaching to his rear waistband with both hands. Decedent stood up straight, rotated his body toward Trooper Willner, pulled his right arm up and pointed his hand toward Trooper Willner. Decedent then fell to the ground while holding his chest.



Trooper Willner's Vehicle

Trooper Willner's vehicle was parked the the right of Trooper Abbate's vehicle and did not capture the incident.

AUTOPSY

I. AUTOPSY

On October 4, 2021, at approximately 7:00 a.m., under Clark County Office of the Coroner/Medical Examiner (CCOCME) Case 21-6476, an autopsy was performed on the body of Decedent at the CCOCME by Doctor Ben Murie.

Dr. Murie noted the following wound/injury on Decedent's body: gunshot wound of the torso.

Upon the completion of toxicology testing, the following results were noted:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Ethanol	27	mg/dL	001 - Heart Blood
Blood Alcohol Concentration (BAC)	0.027	g/100 mL	001 - Heart Blood
Amphetamine	46	ng/mL	001 - Heart Blood
Methamphetamine	340	ng/mL	001 - Heart Blood

After a complete autopsy and examination, Dr. Murie opined that Decedent's cause of death was a gunshot wound of the torso and the manner of his death was homicide.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

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

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

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

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

NRS 200.160(1).

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

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

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

¹ NRS 200.120(3)(a) defines a crime of violence:

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

the other person, for the purpose of avoiding death or great bodily injury to [himself or the person(s) being defended].

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

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

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

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

If evidence exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that the slayer did not act in self-defense [or defense of another]. *Id.* at 1051-52.

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

The known facts and circumstances surrounding this incident indicate that NHP Troopers Abbate and Willner actually and reasonably believed one or both troopers were in danger of imminent harm. Decedent created the appearance of imminent danger to Troopers Abbate and Willner. At the time that the troopers approached Decedent, Decedent ignored the troopers' commands, moved abruptly, and moved his body in a manner that showed Decedent was intentionally portraying himself to the troopers to be armed. After Decedent's first threatening arm movement - - simulating a gun - - toward the troopers which induced Trooper Abbate to discharge his firearm for the first time, Decedent bent over at the waist and appeared to pretend to have been hit. Decedent then quickly raised himself back upright and made a second threatening arm movement - - again simulating a gun - - toward the troopers.

The totality of the evidence, to include BWC video, dashboard camera video, and witness statements, illustrates that both Trooper Abbate and Trooper Willner had a reasonable belief that Decedent would cause great bodily harm to either or both troopers. The troopers were confronted with the appearance of imminent danger and acted out of a reasonable belief that

Decedent was about to shoot one or both troopers. The troopers reasonably acted in defense of themselves and each other. Consequently, the shooting of Decedent is justifiable under this legal theory.

B. Justifiable Homicide by a Public Officer

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

In this case, the evidence indicates that Troopers Abbate and Willner had probable cause to believe that Decedent posed a threat of serious physical harm to themselves. Immediately preceding the shooting, Decedent refused to comply with their lawful orders, moved abruptly, and moved his body in a manner that shows Decedent was intentionally portraying himself to the troopers to be armed. After Decedent’s first threatening arm movement toward the troopers - - simulating a gun - - which induced Trooper Abbate to discharge his firearm for the first time, Decedent bent over at the waist and appeared to pretend to have been hit. Decedent then quickly raised himself back upright and made a second threatening arm movement - - again simulating a gun - - toward the troopers. At the point that the troopers fired their weapons at Decedent, Troopers Abbate and Willner each had a reasonable belief that Decedent could cause serious physical harm to himself or to the other. Thus, the use of deadly force by Troopers Abbate and Willner was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Trooper Abbate and Trooper Willner were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. See 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, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming against Trooper Abbate or Trooper Willner.