

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Michael Cohen on March 15, 2019

INTRODUCTION

On March 15, 2019, 49-year-old Michael Cohen was shot and killed during an altercation with Las Vegas Metropolitan Police Department (hereinafter "LVMPD") Officers Joaquin Escobar, Preston Ellis, Devin McHale, and Gabriel Lea. The incident took place at approximately 9:49 p.m. in the north valet area of the Bellagio Hotel located at 3600 Las Vegas Boulevard. Officer Escobar discharged his firearm, striking and killing Michael Cohen (hereinafter "Decedent").

SYNOPSIS

On the evening of March 15, 2019, LVMPD Central Intelligence Unit ("CIU") Detectives responded to the Bellagio Hotel to investigate a kidnapping event. During the course of that investigation, Detectives requested patrol units to the Bellagio, which resulted in a significant police presence in and around the hotel. CIU Detectives were inside the security surveillance room when they were advised by Bellagio surveillance officers that a robbery had just occurred at the casino cage inside the Bellagio's poker room.

Almost immediately, the Bellagio surveillance officers were able to locate the robbery suspect (later identified as Decedent) and track his movements via live-feed video as he made his way through the casino. Surveillance officers tracked Decedent until he exited the casino into the north valet area toward Flamingo Boulevard.

Due to the unrelated kidnapping investigation, LVMPD uniformed bicycle Patrol Officers Joaquin Escobar, Preston Ellis, Devin McHale, and Gabriel Lea were standing with their bicycles in the north valet area when Decedent exited the casino. Decedent exited into the north valet area and immediately approached two civilian vehicles waiting in the valet line. Decedent entered one of the civilian vehicles, which was not occupied at the time. Decedent

was unable to locate the keys to the vehicle, so he exited and approached the second civilian vehicle, which was occupied. As Decedent tapped on the window of the second civilian vehicle with his firearm, CIU Detectives radioed to the bicycle officers that he had just committed a robbery inside the casino.

Officers Escobar, Ellis, McHale, and Lea dismounted their bicycles and approached Decedent, who was on the opposite side of the civilian's vehicle. Officers Ellis, McHale, and Lea went around the front of the vehicle, while Officer Escobar circled around the rear of the vehicle. As Officers Ellis, McHale, and Lea approached Decedent from the front of the vehicle, Decedent fired a round at the Officers, striking Officer Ellis in the chest. Decedent then began to flee toward Las Vegas Boulevard with the firearm in his right hand, and Officer Escobar returned a single round at Decedent, striking him in the head. Decedent was later transported to University Medical Center ("UMC"), where he was pronounced deceased.

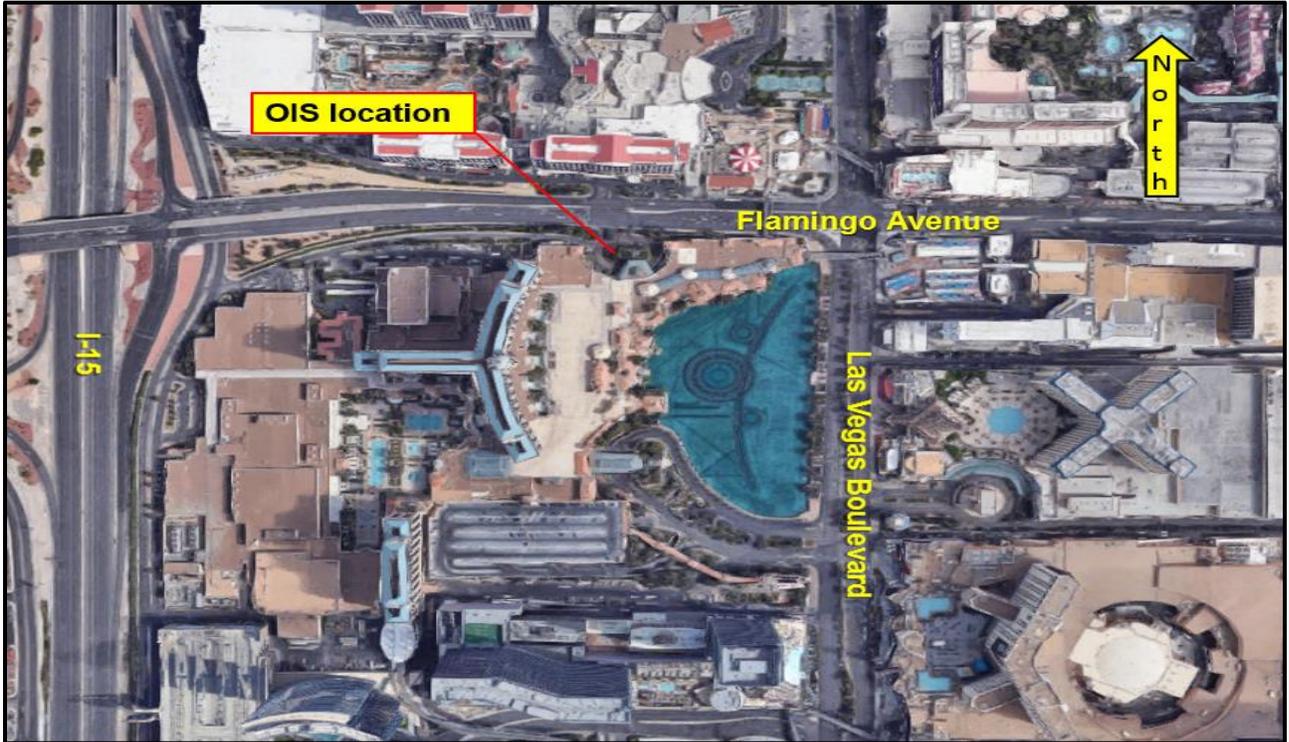
Due to the fact that an officer-involved shooting occurred, the on-scene incident commander requested the Force Investigation Team ("FIT") respond to assume responsibility of the investigation. FIT personnel arrived thereafter and assumed control of the scene and the investigation.

This report explains why criminal charges will not be forthcoming against LVMPD Officer Escobar. 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 September 9, 2019.

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

DESCRIPTION OF THE SCENE

The scene was located within the north valet area of the Bellagio Hotel. The valet area consisted of a semi-circular driveway connected to Flamingo Avenue. Northeast of the driveway was a sidewalk that leads to Las Vegas Boulevard.



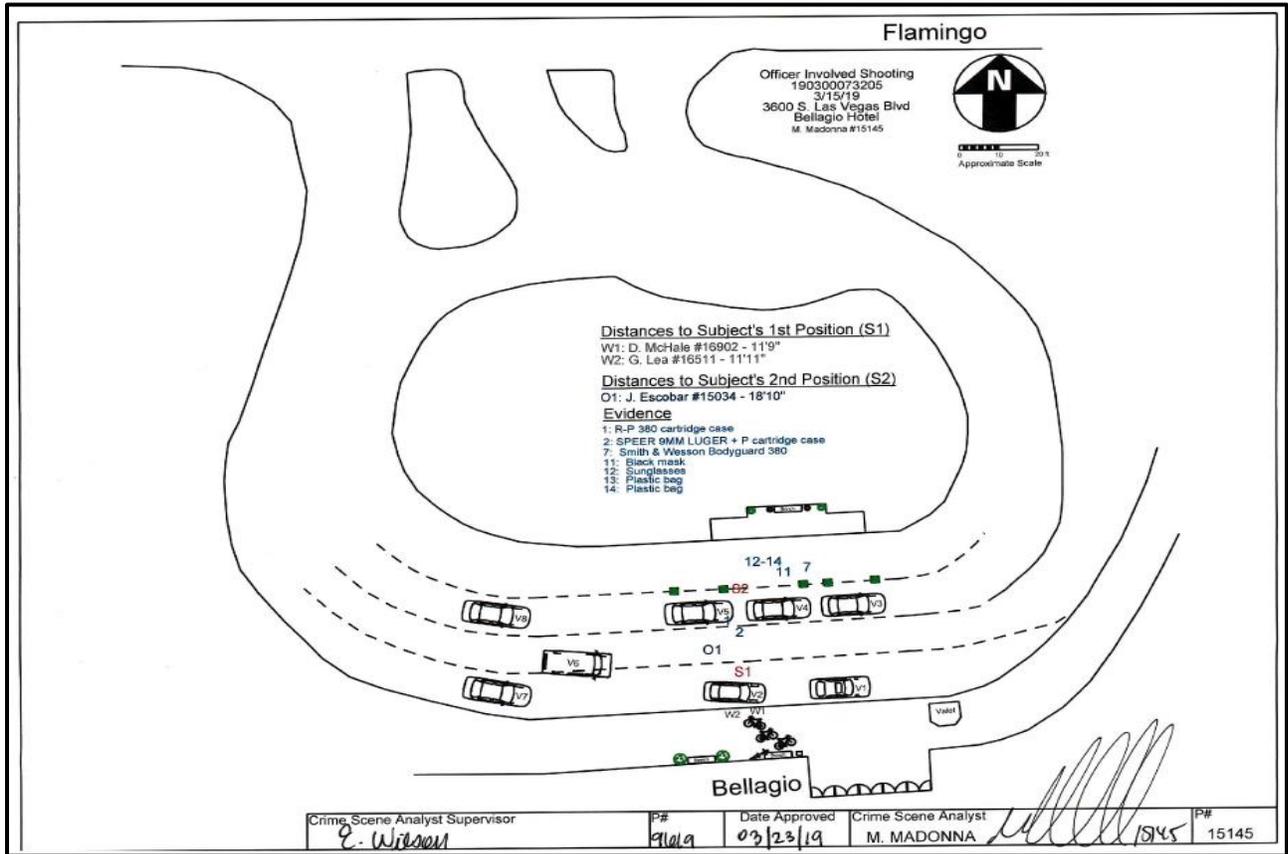
South of the driveway were the entry and exit doors to the casino (under the canopy).



EVIDENCE

Scene

There were 8 vehicles in the valet driveway. Just outside the casino doors there were 4 LVMPD bicycles laying on the ground. There was a R-P .380 AUTO cartridge case and a SPEER 9mm LUGER +P cartridge case on the pavement between lanes 1 and 3.



On the pavement just north of the vehicles parked in lane 3 there was a Smith & Wesson Bodyguard .380 semi-automatic firearm, a black mask, sunglasses, and two plastic bags containing \$72,350.00 in cash and casino chips.



UMC Hospital

Decedent was transported to the UMC Trauma Intensive Care Unit (“ICU”), where he was pronounced deceased. Decedent had an apparent gunshot wound to the head. In the pocket of his sweatpants, there was a .380 magazine containing 4 live cartridges.



Officer Ellis was also transported to UMC and treated for his injuries. Officer Ellis' LVMPD uniform shirt and ballistic vest had two visible defects to the right upper chest and center chest areas. Officer Ellis' cell phone, which was in his right breast pocket at the time of the shooting, had damage from an apparent bullet strike. A single bullet and plastic shrapnel were located between Officer Ellis' shirt and ballistic vest.



SCENE WALK-THROUGHS

Officer Joaquin Escobar

On March 16, 2019, at approximately 2:32 a.m., Officer Escobar relayed the following information during a walk-through of the scene:

Officer Escobar stated his attention was drawn to Decedent prior to the shooting because of something on Decedent's face. Officer Escobar then heard radio traffic reference a robbery, and he heard Officer Ellis state, "Metro Police."

Officer Escobar then identified the location where he perceived he was standing when Decedent fired his gun.

Officer Escobar then stated he fired his weapon for the safety of his partner and the other people in the valet lot.

Officer Devin McHale

On March 16, 2019, at approximately 2:48 a.m., Officer McHale relayed the following information during a walk-through of the scene:

Officer McHale started his walk-through at the location where he left his police bicycle, which was the farthest east of the group of bicycles. Officer McHale did not observe Decedent's actions or notice Decedent's gun. Officer McHale was alerted to Decedent after hearing Decedent's description broadcast over the police radio.

Officer McHale identified the location where he perceived Decedent was standing when Decedent fired his gun. Officer McHale stated he did not hear or see any officers fire their handguns.

Officer Gabriel Lea

On March 16, 2019, at approximately 3:00 a.m., Officer Lea relayed the following information during a walk-through of the scene:

Officer Lea started his walk-through at the location where he left his police bicycle, which was leaning against the wall of the Bellagio. Officer Lea observed Decedent walking in the valet area, and described his actions and appearance as being suspicious. Officer Lea was alerted to Decedent after hearing Decedent's description broadcast over the police radio.

Officer Lea identified the location where he perceived Decedent was standing when Decedent fired his gun. Officer Lea stated he did not hear or see any officers fire their handguns.

PUBLIC SAFETY STATEMENT

Officer Escobar provided a Public Safety Statement. The questions asked of the officer are reflected in italics, and the officer's responses to those questions are reflected in bold italics.

Officer Escobar

1. *"Did you discharge your firearm?" "Yes."*
2. *"If so, in what direction?" "Northeast direction."*
3. *"Approximately where were you located when you fired?" "Between two vehicles in the valet."*
4. *"How many shots do you think you fired?" "One shot."*
5. *"Is anyone injured?" "Ellis had blood above his eye."*
6. *"If so, where are they located?" "Unknown."*
7. *"Are there any outstanding suspects?" "No."*
8. *"Is it possible the suspect fired rounds at you?" "Yes."*
9. *"How many shots do you think the suspect fired?" "One."*
10. *"Approximately where was the suspect located when they fired?" "In front of the black Toyota Camry, on the driver's side."*
11. *"Do you know if any other Officers discharged their firearms?" "No."*
12. *"Are there any weapons or evidence that needs to be secured or protected?" "One firearm."*
13. *"If so, where is it located?" "North valet."*
14. *"Are you aware of any witnesses?" "A few witnesses."*
15. *"If so, what is their location?" "I don't know."*

SUMMARY OF RELEVANT WITNESS STATEMENTS

Civilian Witnesses

There were seventeen (17) civilian witnesses on scene, all of whom were interviewed. All of the interviews were audio-recorded. The civilian witnesses were generally consistent with one another and with the officer witnesses. The following summaries were most relevant for purposes of this report.

F.H.

On March 16, 2019, at approximately 12:35 a.m., Detective Erik Perkett conducted an audio recorded interview with F.H.

On March 15, 2019, at approximately 9:49 p.m., F.H. was working in the Bellagio poker room cage when a male, later identified as Decedent, approached her and displayed a small black handgun. Decedent spoke softly as he demanded money from her cashier drawer. F.H. did not want to give Decedent the \$5,000 chips, so she gave him lower denominations and U.S.

currency. During the robbery, Decedent told F.H., "Give me all your big chips," and "I'll shoot you if you don't give me what I want." F.H. pushed the gaming chips and currency across the cage counter and Decedent placed the chips and money in a white plastic grocery bag. Decedent finally walked away from the cage and walked towards the high limit tables. As soon as he left, F.H. called security and pushed her panic button.

B.M.

On March 16, 2019, at approximately 1:00 a.m., Detective Andrew Ubbens conducted an audio recorded interview with B.M.

B.M.'s boyfriend was a registered guest at the Bellagio and she was returning to the hotel after a birthday celebration with friends. As B.M. drove into the north valet lot she pulled in the lane closest to the curb and doors. A white Mercedes was parked in front of her and she observed a male, later identified as Decedent, in the car. At the time, B.M. believed Decedent was a valet attendant.

B.M. looked down at her phone and when she looked up she observed Decedent walking toward her. She described Decedent as a white male, wearing all black, with a white patch on his face. As Decedent reached B.M.'s vehicle he yanked on the door handle on the front driver's side door. As Decedent attempted to open the door, B.M. observed either police officers or security officers nearby their location. She looked toward the officers and heard tapping on her window. As she looked toward the window, she saw Decedent had a gun pointed at her. B.M. believed she was going to die. She looked down toward the ground as she waited for something to happen.

B.M. heard a gunshot near where Decedent was standing, but she continued to look down believing Decedent had shot at her. B.M. then heard another gunshot, and a few seconds later she looked up and saw the police officers looking inside her vehicle. The officers instructed B.M. to exit her vehicle and to go inside the Bellagio.

B.M. did not see who fired the first shot but heard the first shot come from the driver's side of her vehicle where Decedent had been standing.

M.A.

On March 16, 2019, at approximately 1:38 a.m., Detective Justin Zinger conducted an audio recorded interview with M.A.

M.A. was in the north valet area of the Bellagio to retrieve her vehicle. M.A. stood near the ticket machine and saw three or four officers on bicycles near the entry doors. M.A. said the officers were wearing yellow shirts and helmets, and it was clear to her that they were officers.

M.A. heard one of the officers say, "Stop. Don't touch," then the officers threw down their bicycles and started to run. M.A. turned around and saw a male, later identified as Decedent, who was standing next to a vehicle with an open door, pull a gun and fire. M.A. said she saw the flash from the gun. M.A. could not further describe Decedent because of the lighting in

the area. M.A. said Decedent held the gun above the car level but did not see where it was pointed. M.A. heard two or three gunshots all from the same area. After Decedent fired the first shot, M.A. went to the ground and could not see anything else.

B.G.

On March 15, 2019, at approximately 11:15 p.m., Detective Trever Alsup conducted an audio-recorded interview with B.G.

B.G. arrived at the Bellagio and pulled her vehicle into the north valet line. While waiting for an attendant to take her vehicle, B.G. observed several LVMPD officers on bicycles near the entrance doors. B.G. then observed Decedent standing next to a vehicle in front of her.

B.G. heard the officers yell something like, "Get down!" and then heard a gunshot. The officers dropped their bicycles, moved in various directions, and she heard more gunshots. Although B.G. did not observe any of the officers or Decedent discharge their firearms, she believed Decedent fired at the officers first. B.G. based her opinion on the positioning of the officers and Decedent. B.G. then observed the officers run towards Decedent, who was lying on the ground.

C.K.

On March 16, 2019, at approximately 1:48 a.m., Detective Andrew Ubbens conducted an audio recorded interview with C.K.

C.K. and her husband had pulled into the middle lane of valet, and while they waited for the valet attendant, her husband got out of the car. C.K. saw police officers to her right jump off their bicycles and start yelling. She looked in the direction the officers were yelling and saw the side profile of a male, later identified as Decedent, pointing a gun approximately five feet away from the passenger side of her car. C.K. saw the muzzle flash and heard a gunshot. She believed the gun was pointed at the police officers. C.K. heard a second gunshot and her husband got back in the car.

When she heard the gunshots, she was concerned about her husband because he was still outside the car. She heard the officers give verbal commands to Decedent. C.K. did not see anyone else with Decedent but saw a female in a black car near Decedent who appeared stressed and concerned.

H.W.

On March 16, 2019, at approximately 2:02 a.m., Detective Andrew Ubbens conducted an audio recorded interview with H.W.

H.W. and his girlfriend, S.K., were waiting for a friend to pick them up in valet. H.W. noticed several police cars leave the valet while multiple bicycle officers stayed in the valet by the hotel entrance. H.W. assumed the officers were looking for someone.

H.W. saw four officers move forward, and one of the officers yelled, "Hey you, stop right there!" H.W. looked towards the area where the cars were parked and saw a gun and heard a gunshot. H.W. laid on top of his girlfriend to block her. He heard another gunshot then directed his girlfriend to hide behind a planter. H.W. could not describe the male holding the gun as he was focused on the gun and saw a muzzle flash.

While H.W. and his girlfriend were behind the planter an officer went to them and directed them into the hotel. H.W. saw the officer had an injury to his face. H.W. was appreciative of the four officers who addressed the gunfire and protected him.

Officer Witnesses

There were 7 officer witnesses on scene, all of whom were interviewed. All of the interviews were audio-recorded. The officer witnesses were generally consistent with one another and with the civilian witnesses. The following summaries were most relevant for purposes of this report.

Detective Kenneth Ruzicka

On March 16, 2019, at approximately 12:57 a.m., Detective Scott Mendoza conducted an audio recorded interview with Detective Ruzicka.

Detective Ruzicka was at the Bellagio working a kidnapping incident. His team apprehended the kidnapping suspect inside the Bellagio, and while Detective Ruzicka was in the Bellagio surveillance office viewing video of the apprehension, he was informed by security that one of the casino cages was actively being robbed. Bellagio security surveillance officers were able to use surveillance cameras to locate the robbery suspect, later identified as Decedent, running through the casino. Detective Ruzicka informed other detectives and officers via his radio about the robbery and Decedent's location. Detective Ruzicka observed Decedent enter a white Lexus sedan which was parked in the valet area. Decedent exited the Lexus, which apparently did not have the keys inside, and walked to another vehicle. LVMPD bicycle patrol officers were in the valet area in close proximity to Decedent.

LVMPD Sergeant Whitely broadcast Decedent's description via his radio and informed the officers that Decedent was involved with the robbery and they needed to apprehend him. Detective Ruzicka continued to watch Decedent on the surveillance monitors as Decedent attempted to carjack a citizen in the valet area. Detective Ruzicka observed Decedent produce a handgun and point it at the driver of the vehicle. As the patrol officers received the information via the police radio regarding the robbery, they noticed Decedent in the valet area. As officers approached Decedent, he fired his handgun one time toward the officers, striking Officer Ellis in the chest area. As Decedent attempted to flee, he was struck with gunfire and fell face first onto the sidewalk. Officers took Decedent into custody after the shooting.

Officer Preston Ellis

On March 16, 2019, at approximately 12:19 a.m., Detective Blake Penny conducted an audio recorded interview with Officer Ellis at UMC Trauma Center.

Officer Ellis, along with Officers Escobar, Lea, and McHale, were in the north valet area of the Bellagio discussing where to go next when Officer Ellis heard radio traffic about a robbery. Officer Ellis realized Decedent was right in front of him and was trying to get into two different cars. Officer Ellis moved towards the front of the car Decedent was trying to get into when he saw Decedent aim a handgun at him. The handgun was described as a small, black semiautomatic handgun and was being held in Decedent's right hand. As Decedent aimed the handgun, Officer Ellis heard a loud bang and he immediately moved for cover.

Officer Ellis announced over the radio, "Shots fired," and began to look for Decedent. He then discovered Decedent was down on the ground and requested medical personnel to respond to the scene. A responding sergeant arrived and saw Officer Ellis had holes in his shirt and asked if he had been shot. Officer Ellis didn't think he was, but realized he had a laceration above his left eye. Officer Ellis was being checked by fire department personnel when he removed his cellular phone from his uniform shirt pocket to look at the time and saw the phone was damaged by a bullet. Officer Ellis then told his sergeant he thought he had been shot and was subsequently transported to UMC Trauma Center to be examined.

Officer Ellis did not hear any gunfire except the initial shot from Decedent.

Officer Devin McHale

On March 20, 2019, at approximately 7:18 p.m., Detective Scott Mendoza conducted an audio recorded interview with Officer McHale.

On March 15, 2019, Officer McHale arrived in the north valet of the Bellagio along with his partner, Officer Lea, to assist LVMPD detectives with a kidnapping call. As they met with Officers Ellis and Escobar in the north valet area, Officer McHale was informed via police radio by a detective that a robbery suspect, later identified as Decedent, exited the casino and was in the north valet area. A description of Decedent was broadcast over the radio and officers located him. Officers issued verbal commands to Decedent; Decedent stepped back, raised a firearm, and shot one time at the officers.

As Officers McHale, Lea, and Ellis retreated away from Decedent, Officer Escobar went toward the rear of a vehicle and followed Decedent. Officer McHale ran around the rear of a vehicle and went to Officer Escobar's location. Officer McHale saw Decedent down on the ground and believed Officer Escobar placed handcuffs on Decedent. "Shots fired" was broadcasted over the radio and officers requested medical aid for Decedent.

Officer McHale had his firearm out as he went to Officer Escobar's location, but stated he did not fire his weapon. Officer McHale was not aware that anyone else fired a shot other than Decedent.

Officer Gabriel Lea

On March 20, 2019, at approximately 7:39 p.m., Detective Scott Mendoza conducted an audio recorded interview with Officer Lea.

On March 16, 2019, Officer Lea and his partner, Officer McHale, arrived at the Bellagio to assist with a kidnapping call. Officers Lea and McHale met up with Officers Escobar and Ellis, also assigned to bicycle patrol, in the north valet of the Bellagio. Officer Lea saw a subject, later identified as Decedent, exit the Bellagio doors. Officer Lea noticed a bandage on Decedent's face as he watched him in the valet area but did not pay much attention to him. Moments later, Officer Lea received information on his patrol radio that Decedent had robbed the Bellagio and to apprehend him. Decedent was then at a BMW sedan that had pulled into the valet area.

As officers approached Decedent, he was given verbal commands to stop. As Officer Lea and the assisting officers walked toward the front end of the BMW, Decedent raised a firearm and fired one time at the officers. Officer Ellis was struck by the gunfire as the other officers backed away to find cover. Officer Lea saw Officer Escobar go around the trunk of the BMW, but then lost sight of him. Officer Lea stated he did not hear any other gunshots and did not know Officer Escobar had fired his weapon. Officers Ellis, McHale, and Lea moved toward Decedent and he was found lying on the ground. Officer Lea stated he did have his firearm out as he moved toward Decedent's location, but he did not fire his weapon. Medical personnel were requested to the scene to assist Decedent.

BODY-WORN CAMERAS

Officers Escobar and McHale were equipped with body-worn cameras ("BWC") which were activated at the time of the incident. The BWC footage depicts the following:

Officer Escobar

Officer Escobar's BWC footage depicted a group of uniformed LVMPD bicycle patrol officers underneath the north valet canopy of the Bellagio. To the left of the officers (north), vehicles were stopped in the valet lanes of the driveway, and a male, later identified as Decedent, was seen walking west in the driveway. Decedent was dressed in all dark clothing, which included a beanie, glasses, jacket, pants and shoes. Decedent appeared to have a large, white bandage across the left side of his face, and he carried a plastic bag. The bicycle officers seemed to notice Decedent, however they did not initially react to his presence as he walked out of BWC view.

The officers appeared to be engaged in conversation among themselves when, approximately 16 seconds later, Officer Ellis, who was in front of Officer Escobar,

appeared to grab the radio on his uniform belt and looked toward where Decedent had gone. All of the officers immediately dismounted their bicycles, dropped them, and moved toward the driveway. Officer Escobar ran behind a vehicle closest to the curb of the driveway and drew his firearm as he ran. As Officer Escobar moved north across the driveway, Decedent could be seen running between vehicles. Officer Escobar's weapon was pointed directly at Decedent. Officer Escobar then fired one round, though no gunshot was heard.¹ Officer Escobar neared the north side of the driveway, where Decedent fell to the ground behind a vehicle. As Officer Escobar approached, Decedent was lying face down with his head pointing to the east, between two vehicles. As Officer Escobar moved closer to Decedent, the vehicle furthest to the north and next to Decedent proceeded to drive forward leaving the valet driveway.

Officer Escobar yelled out Decedent's location to the other officers and told them to get medical personnel on scene. Officer Escobar knelt down and placed Decedent in handcuffs as another officer kicked a gun away from Decedent's body.

Officer McHale

Officer McHale's BWC footage depicted him in the north valet lot of the Bellagio. Officer McHale's camera faced northeast toward the valet driveway, where several vehicles stopped or were parked. Officer McHale got off of his bicycle and immediately rushed toward the northwest with other uniformed LVMPD bicycle patrol officers. Officer Ellis was in front of Officer McHale as they moved around the front of a black vehicle which was stopped along the curb next to them. As the two officers moved around the front of the vehicle, Officer Ellis quickly stopped his forward momentum and backed up toward the sidewalk. As Officer Ellis backed up, Officer McHale went down to the ground, drew his firearm, and took cover behind the front passenger side wheel of the vehicle. Officer McHale looked over the hood of the vehicle and could be heard yelling, "Where's he at?" A voice yelled back, and Officer McHale moved behind the vehicle and made his way north across the driveway and joined Officer Escobar.

As Officer McHale joined Officer Escobar, a male, later identified as Decedent, was face down on the driveway. Decedent's body was lying with his head to the east, and his feet, which were nearest to Officer McHale, to the west. Decedent wore a jacket that was bunched up around his upper body and head area, and his arms were tucked under his head. Officer Escobar grabbed Decedent's arm to place him in handcuffs, and as he pulled the right arm out from under Decedent's body a handgun was visible, which Officer Ellis immediately kicked away from Decedent.

Officer Ellis wiped his face and asked the officers if he was bleeding, to which they responded he was. Officer McHale let his BWC continue to run as additional units responded to assist, the scene was locked down, and Decedent was transported from the scene.

¹ Although the BWC is always recording video, audio is not captured until the camera is activated. Thirty seconds of footage playback will be captured prior to the start of the audio recording.

THIRD PARTY VIDEO

Bellagio North Valet Stationary Driveway Camera

The Bellagio north valet stationary driveway camera was mounted above the doors to the hotel. This camera faced northwest and showed the pedestrian walkway and vehicles arriving in the north valet.

The video footage showed a group of 4 LVMPD bicycle patrol officers off to the left of the screen on the pedestrian walkway. At approximately 9:46 p.m., per the camera's internal clock, a male subject, later identified as Decedent, walked north across the bottom of the screen into the valet driveway. Decedent walked in front of an unoccupied vehicle parked closest to the pedestrian walkway in the valet driveway, approached the driver's door, opened it, and sat down in the driver's seat. Decedent sat in the driver's seat for approximately three seconds before exiting the vehicle and walking west in the driveway toward an approaching vehicle entering the valet lot.

As Decedent approached the vehicle that entered, he immediately moved to the driver's door. Due to the angle of the camera, Decedent was visible at the door, but his actions could not be seen. Decedent stood at the door for approximately 10 seconds before the vehicle began to slowly move forward in the driveway. As the vehicle moved forward, Decedent stayed at the driver's door and it appeared as if he was trying to open it. The vehicle moved forward until it was almost directly in front of the officers. The officers dropped their bicycles and ran toward the vehicle. Officer Ellis moved in front of the vehicle and was followed by Officers McHale and Lea; Officer Escobar moved to the rear of the vehicle.

As Officer Ellis moved around the front of the vehicle toward the driver's door, Decedent pointed a firearm at him and fired. Officer Ellis immediately jumped back, colliding with Officers McHale and Lea, and the three officers went down to the ground on the passenger side of the vehicle. As soon as the shot was fired, Decedent ran north through the driveway and in between parked vehicles. Officer Escobar pursued Decedent, drew his weapon as he followed, and fired one round at Decedent. Decedent fell forward in between two vehicles just prior to reaching the north side of the driveway. The other officers moved up toward Officer Escobar's location, which was behind a vehicle and out of direct camera view, however, it appeared they took Decedent into custody.

Bellagio North Valet Pan-Tilt-Zoom Driveway Camera

The Bellagio north valet pan-tilt-zoom ("PTZ") driveway camera was mounted on the ceiling in the middle of the valet driveway and could be controlled by Bellagio surveillance officers. The Bellagio surveillance room officers had been notified of a robbery in the poker room cage and were able to follow the suspect, later identified as Decedent, on camera.

The video footage showed Decedent exit the far west doors into the north valet at a slow run and move directly to a white vehicle parked in the valet driveway against the curb and directly in front of the doors. Decedent wore all dark clothing to include a beanie, jacket, shirt and pants. He appeared to be holding a cell phone to his left ear, using his cheek and shoulder to hold it in place. He carried a plastic bag in his left hand while his right hand was inside his jacket pocket. Decedent moved around the front of the vehicle and went directly to the driver's door, which he opened, and climbed into the driver's seat. The camera was zoomed in to get a closer view of Decedent, who immediately exited the vehicle. Per the camera's internal time clock, Decedent was inside of the vehicle for less than three seconds.

When Decedent exited the vehicle, he walked west in the valet driveway toward a black BMW sedan which was pulling into the valet lot. As Decedent moved toward the vehicle, he looked south (to his left) to where a group of 4 LVMPD uniformed bicycle officers were positioned. Decedent walked slowly toward the driver's door of the BMW, which had come to a stop, and with his left hand, which held a plastic bag, Decedent appeared to grab the door handle multiple times in an attempt to open the door. The door did not open, and Decedent tapped on the driver's side window as the driver slowly drove farther into the valet lot.

Decedent kept his hand on the door handle and moved with the vehicle. He pulled his right hand out of his jacket pocket and held a small frame black handgun which he used to begin tapping on the driver's window. The vehicle accelerated and stopped almost adjacent to the bicycle officers. The officers quickly dismounted their bicycles, dropped them, and moved toward the BMW. Decedent maintained his position at the driver's door as the officers moved toward him. One of the officers, Officer Ellis, moved around the front of the BMW. Decedent pointed his firearm at Officer Ellis, fired, and turned his body to run north across the valet driveway.

As Decedent ran, the surveillance officers followed his movements with the camera. Decedent ran north past two vehicles and looked back over his right shoulder before falling forward onto the pavement. Decedent's body came to rest on the far north side of the valet driveway in between two vehicles. The driver of the vehicle farthest north and nearest Decedent's head drove away as Officer Escobar approached and took Decedent into custody. Officer Escobar knelt over Decedent as he grabbed Decedent's arms to place him in handcuffs. As Officer Escobar pulled Decedent's right arm from under his body to place it behind his back, Officer Ellis approached and kicked a gun away, which appeared to have still been in Decedent's hand.

Once Decedent was in custody, officers requested medical aid for Decedent, and secured the crime scene.

AUTOPSY

Medical Examiner Dr. Chiara Mancini of the Clark County Coroner's Office conducted an autopsy on Decedent. M.E. Mancini concluded Decedent's cause of death was a single gunshot wound to the head.

The toxicology results indicated Decedent had Hydrocodone, Nordiazepam, Temazepam, and Alprazolam in his system at the time of his death. Therapeutic ranges for all of these drugs vary depending on dosage and tolerance.

OFFICER WEAPON COUNTDOWN



Officer Escobar (9mm Glock 17)

At the completion of the countdown, it was determined Officer Escobar discharged his firearm one time during this incident.

FIREARM EXAMINATIONS

Officer Escobar's Glock pistol and magazine were initially secured and impounded by Crime Scene Analysts. There was a cartridge in the chamber and twenty-two (22) cartridges in the magazine, all bearing headstamp "SPEER 9mm LUGER +P." Officer Escobar's Glock pistol was examined, test fired and found to be operational with no noted malfunctions by Forensic Scientist Roy Wilcox. The submitted magazine had a capacity of twenty-three (23) cartridges.

Decedent's Smith & Wesson Bodyguard .380 pistol and magazine were initially secured and impounded by Crime Scene Analysts. There was a cartridge in the chamber bearing headstamp "R-P 380 AUTO." There were 5 cartridges in the magazine – 4 bearing headstamp "FEDERAL 380 AUTO," and 1 bearing headstamp "R-P 380 AUTO." A second magazine was located in Decedent's pants-pocket at UMC. There were 4 cartridges in the second magazine bearing headstamp "R-P 380 AUTO." Decedent's Smith & Wesson Bodyguard .380 pistol was examined, test fired and found to be operational with no noted malfunctions by Forensic Laboratory Technologist Logan Bodily.

The cartridge case bearing headstamp "SPEER 9mm LUGER +P" located at the scene was the same make and caliber as the ammunition inside the chamber and magazine of Officer Escobar's 9mm Glock 17. The .380 cartridge case bearing headstamp "R-P 380 AUTO" located at the scene was the same make and caliber as some of the ammunition inside the magazine of Decedent's Smith & Wesson Bodyguard .380, as well as all of the ammunition within the second magazine located inside Decedent's pants-pocket.

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.² 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

² 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 Decedent 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 Decedent posed an imminent danger to Officers Escobar, Ellis, McHale, and Lea, as well as the multiple civilians and tourists in the Bellagio valet area and on Las Vegas Boulevard. Officer Escobar was aware that Decedent had just committed a brazen armed robbery of the Bellagio poker cage. When he and the other officers attempted to apprehend Decedent, he was actively attempting to carjack a civilian at gunpoint and failed to comply with officers' commands to stop. Decedent then brandished a firearm and pointed it at Officers Ellis, McHale, and Lea. Decedent then fired a round at those Officers, striking Officer Ellis in the chest. Decedent was still armed with the handgun when he began to flee and had demonstrated that not only was the firearm loaded and operational, but that he was willing to use it in order to escape apprehension. Decedent then fled with the firearm in the direction of the civilians waiting in the valet pickup area. It should also be noted that Decedent was running toward the sidewalk that leads to the heavily-populated Las Vegas Strip. Officer Escobar discharged his firearm once, striking Decedent in the head and ending the threat to the numerous people in the area.

Thus, the totality of the evidence, to include BWC video footage, third party video footage, and witness statements, illustrate that Officer Escobar was reasonable in believing that Decedent would cause great bodily harm or death to himself or others. Officer Escobar was confronted with the appearance of imminent danger and had an honest belief and fear that he himself, along with his fellow officers and countless civilians, were about to be killed or suffer great bodily injury at the hands of the Decedent. The evidence further illustrates that Officer Escobar acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officer Escobar reasonably acted in self-defense and defense of others. 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 known evidence illustrates that Officer Escobar had probable cause to believe that Decedent posed a threat of serious physical harm to himself, his fellow officers, and to the numerous civilians in the area. Officer Escobar was aware that Decedent had committed an armed robbery inside the Bellagio, fired in the direction of his fellow officers and the civilians in and around the Bellagio valet, and had just attempted to carjack a civilian at gunpoint in order to escape apprehension. When Decedent began to flee with the firearm, he could have easily turned and fired again at the officers and/or civilians, taken a hostage at gunpoint, or attempted to carjack another vehicle in order to escape. At that point, Officer Escobar had a reasonable belief that Decedent could cause serious physical harm to himself, his fellow officers, or any number of civilians in the area. Thus, the use of deadly force by Officer Escobar 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 Officer Escobar were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” See 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 Officer Escobar.