

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Javier Munoz on October 19, 2016

### INTRODUCTION

On October 19, 2016, 28-year-old Javier Munoz (hereinafter “Decedent”) was shot and killed by Nevada Highway Patrol (hereinafter “NHP”) Trooper David Dudley. The incident took place at approximately 7:36 a.m. at the service bay of the Findlay Cadillac car dealership, located at 993 Auto Show Drive in Henderson, Nevada. NHP Trooper Dudley fired one round at Decedent, striking him in the left side of his abdomen.

This report explains why criminal charges will not be forthcoming against NHP Trooper Dudley. 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 March 20, 2017.

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

### OVERVIEW OF SURROUNDING FACTS

On October 19, 2016, at approximately 7:10 a.m., I.C. drove her 2012 Toyota Scion to the AM/PM located at 3885 East Charleston Boulevard, Las Vegas, Nevada. I.C. parked her vehicle and entered the store to purchase a car wash. As I.C. returned to her vehicle, she was approached by an unknown Hispanic male adult (later identified as Decedent). Decedent punched I.C. once on the side of her head, pulled her out of her vehicle, and threw her to the ground. Then, Decedent grabbed I.C.’s vehicle keys from her hand and entered her vehicle. I.C. stood up, reached into her vehicle, grabbed Decedent by the head and attempted to pull

him out of her vehicle. Decedent knocked I.C. to the ground a second time and placed the Scion in reverse while the driver's side door was open. I.C. hung onto the vehicle and was dragged backwards with the vehicle until she fell from the car and was pushed back by the open door. Decedent ran over I.C.'s right hand as he backed up. Decedent then fled the area in I.C.'s vehicle, striking another vehicle belonging to J.B. as Decedent sped out of the AM/PM parking lot. Decedent turned westbound on East Charleston and drove on the center median before he turned south on Eastern Avenue. I.C. was transported to UMC Trauma Center via ambulance. X-rays of her right hand showed no broken bones.

At approximately 7:25 a.m., NHP Troopers Stephanie Gonzalez and Ni-Kela Howze were on patrol traveling southbound on US 95 near Las Vegas Boulevard when they observed Decedent driving I.C.'s Scion at a high rate of speed. Troopers Gonzalez and Howze did not know the Scion had been stolen during a robbery. Trooper Howze activated her emergency lights and siren to signal Decedent to pull over to the side of the road. Upon seeing the emergency lights, Decedent accelerated and made several unsafe lane changes in an attempt to flee. Trooper Howze briefly pursued Decedent and observed as Decedent drove recklessly. The stolen vehicle reached speeds of over 100 miles per hour. Trooper Howze discontinued the pursuit due to high speeds, citizen traffic, and Decedent's reckless driving. This pursuit lasted approximately two (2) minutes and as the two vehicles remained on US 95.

At approximately 7:26 a.m., Trooper Dudley heard Trooper Howze's pursuit broadcast. Trooper Dudley positioned himself ahead of the pursuit at US 95 southbound near the Boulder Highway exit. When Decedent passed his location, Trooper Dudley pursued southbound on US 95. Decedent drove at a high rate of speed southbound on US 95 while failing to yield for Trooper Dudley's lights and siren. Decedent exited US 95 southbound at the Sunset Road exit and immediately re-entered US 95 continuing southbound. Decedent exited US 95 southbound at Auto Show Drive. Decedent continued westbound on Auto Show Drive with Trooper Dudley in pursuit. Finally, Decedent turned onto southbound Gibson Road, jumped the center median, and turned into the service bay of Findlay Cadillac located at 993 Auto Show Drive, Henderson, Nevada. This pursuit lasted approximately nine (9) minutes.

At approximately 7:30 a.m., 85-year-old J.V. parked his 2012 Cadillac SRX in the service bay of Findlay Cadillac. Decedent stopped the stolen Scion behind J.V.'s vehicle, ran to the driver's side of J.V.'s vehicle, and pulled J.V. out of the vehicle. Decedent threw J.V. to the ground and entered the Cadillac. J.V. landed on the ground right by the open driver's side door in between the front and back driver side tires. Decedent attempted to drive off in J.V.'s vehicle, but witnesses prevented him from doing so by holding onto the Cadillac and Decedent. J.V. remained on the ground, unable to get up without assistance, until his wife, 82-year-old F.V., dragged him away from the car and a Findlay Cadillac employee helped him to his feet.

At the same time, Trooper Dudley arrived at the Cadillac dealership and parked his patrol vehicle behind the Scion. Trooper Dudley noticed the citizens around the Cadillac waving him over to that area. Trooper Dudley approached the Cadillac and ordered Decedent to put

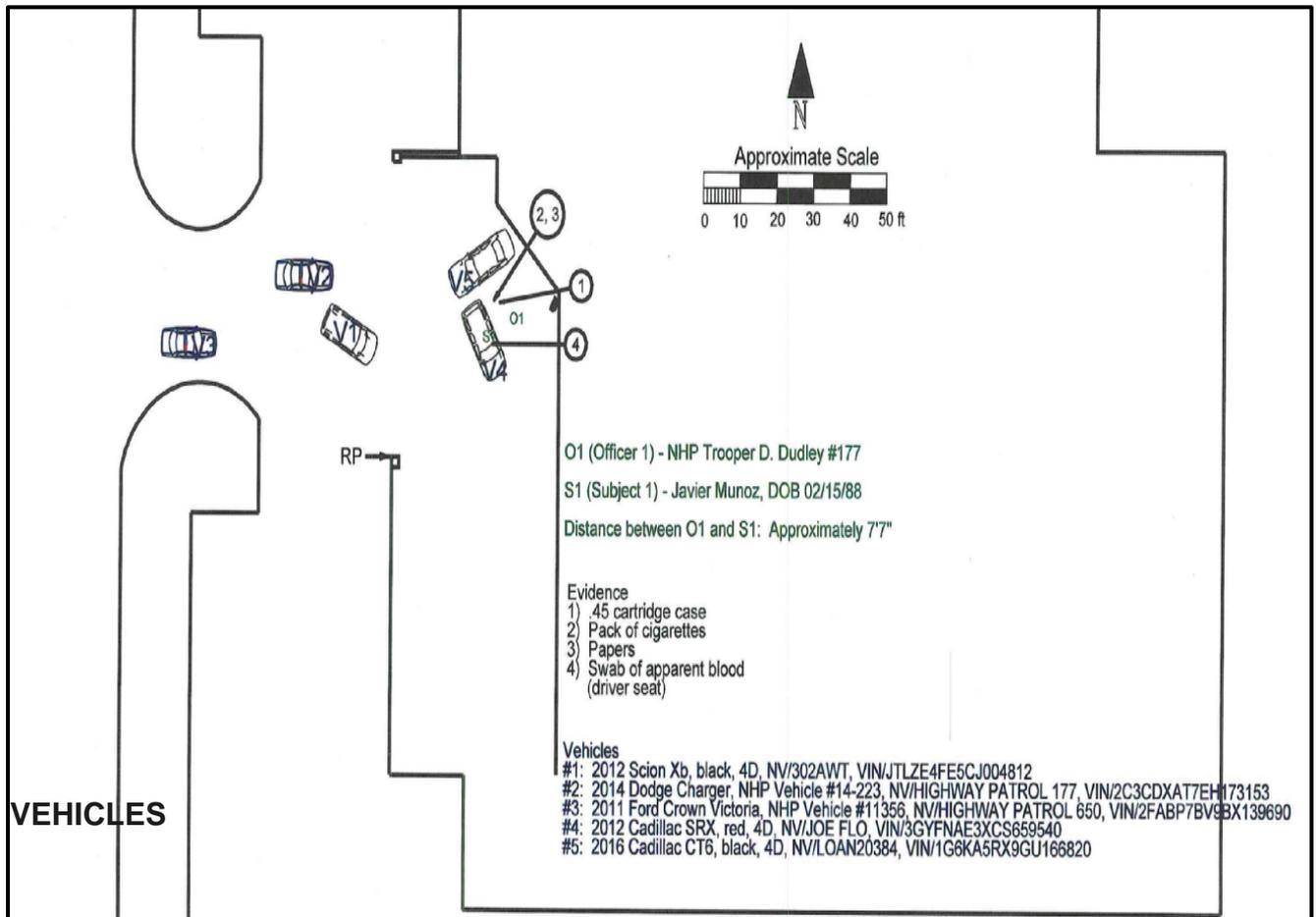
his hands up or he would shoot. Decedent reversed the vehicle, nearly striking a Cadillac employee, before hitting a parked vehicle in the service area. Once Decedent reversed the vehicle, Trooper Dudley fired one (1) round at Decedent, striking him in the left side of his abdomen.

Assisting officers and troopers arrived and Decedent was taken into custody. Lifesaving techniques were immediately performed on Decedent by Troopers Gonzalez and Howze. Henderson Fire Department personnel were requested, responded to the scene and transported Decedent to Sunrise Hospital where he underwent surgery for his injuries.

On October 19, 2016, at approximately 9:30 p.m., Decedent was booked into the Clark County Detention Center in absentia by LVMPD Detective Ryan Jaeger for the following charges: Battery With Intent To Commit Robbery, Robbery, Grand Larceny Auto, Evading a Police Officer Which Endangers Others, Battery With Intent To Commit Robbery Victim Over 65 Years Old, Robbery Victim Over 65 Years Old, and Grand Larceny Auto Victim Over 65 Years Old.

On October 20, 2016, at approximately 10:02 a.m., Decedent succumbed to his injuries and was pronounced dead at Sunrise Hospital.

## DESCRIPTION OF THE SCENE



- V1 – Vehicle taken by Decedent from I.C. at AM/PM; 2012 Scion xB
- V2 – Trooper David Dudley's Vehicle; 2014 Dodge Charger #14-223, NV/HIGHWAY PATROL 177
- V3 – Trooper Ni-Kela Howze's Vehicle; 2011 Ford Crown Victoria #11-356, NV/HIGHWAY PATROL 650
- V4 – Vehicle belonging to victim J.V.; 2012 Cadillac SRX
- V5 – Loaner Car Belonging to Findlay Cadillac; struck by Decedent in attempt to flee the scene in J.V.'s vehicle; 2016 Cadillac CT6

## **EVIDENCE RECOVERED FROM THE SCENE**

**Item #1 – One (1) .45 caliber cartridge case head stamped “WINCHESTER 45 AUTO”** collected from the ground in the service area of the dealership near vehicle #4, approximately 30'2" north of and 29'3" east of the south pillar of the service area entry.

**Item #2 – One (1) pack of Maverick menthol cigarettes stained with apparent blood** collected from the ground in the service are of the dealership near vehicle #4, approximately 30'6" north of and 27'8" east of the south pillar of the service area entry.

**Item #3 – Papers from Valley Hospital in the name of Javier Munoz stained with apparent blood** collected from the ground in the service are of the dealership near vehicle #4, approximately 30'6" north of and 27'8" east of the south pillar of the service area entry.

**Item #4 – Swab of apparent blood** collected from the driver seat in vehicle #4.

## **SCENE WALKTHROUGH WITH TROOPER DAVID DUDLEY**

On October 19, 2016, at approximately 10:05 a.m., Trooper Dudley provided an unrecorded walk-through of the scene. Trooper Dudley relayed the following information:

Trooper Dudley first stopped his patrol vehicle directly behind the Decedent's vehicle. When he noticed that the front driver's side door was open, he believed the driver (Decedent) had exited the vehicle and fled on foot. Trooper Dudley noticed a group of citizens waving him up to a red Cadillac. Trooper Dudley approached the Cadillac on foot and noticed an elderly gentleman [J.V.] on the ground close to the rear driver's side tire of the Cadillac. A group of employees kept Decedent from fleeing in the Cadillac. As Trooper Dudley approached the driver's door of the Cadillac, he saw Decedent shift the Cadillac into reverse. Trooper Dudley was afraid J.V. would be run over or struck by the Cadillac if the vehicle reversed. Trooper Dudley fired one (1) round at Decedent through the open driver's window. After firing the round, Trooper Dudley saw an entry wound on Decedent's left chest. Decedent was pulled out of the vehicle and taken into custody. Once in custody, Trooper Dudley administered first aid to Decedent.

## **AUDIO RECORDED INTERVIEW OF TROOPER DAVID DUDLEY**

On October 19, 2016, at approximately 4:24 p.m., LVMPD Force Investigations Team<sup>1</sup> (hereinafter "FIT") Detective Ryan Jaeger conducted an audio recorded interview with Trooper Dudley at LVMPD headquarters located at 400 S. Martin Luther King Boulevard, Las Vegas, Nevada. Also present for the interview were LVMPD Sergeant MacDonald, Detective Brian Kowalski, and Nevada Association of Public Safety Officers Representative Richard McCann. The following is a summary of the interview.

On October 19, 2016, Trooper Dudley was operating as a marked NHP unit in the area of US 95 and Boulder Highway when he heard a radio broadcast that another NHP unit was in pursuit of a black SUV southbound on US 95. Trooper Dudley pulled onto the left shoulder and stopped. The other NHP unit lost sight of the vehicle and aborted their pursuit. Trooper Dudley observed a black SUV approaching his location in his rearview mirror. The vehicle was driving partially in the left shoulder and partially in the #1 travel lane. The vehicle veered to the right, cut across into the #3 travel lane, and continued to travel south.

Trooper Dudley identified the vehicle as a Toyota Scion, but was unable to see the license plate because of the speed it was traveling. Trooper Dudley turned on his emergency lights and siren and pursued the Scion. The Scion almost struck an unknown subject and vehicle parked in the right shoulder as it continued to travel south. During the pursuit, the Scion reached speeds between sixty-five (65) and eighty-five (85) miles per hour while using all lanes of travel and the right shoulder. The Scion swerved through traffic as it continued southbound.

Trooper Dudley followed the Scion to Sunset Boulevard where it exited and immediately re-entered US 95 southbound. The Scion continued south on US 95 and Trooper Dudley continued to pursue. The Scion exited onto Auto Show Drive. Trooper Dudley noticed the Scion had sustained damage at some point as it was smoking and parts and rubber were falling off the vehicle. The Scion turned west onto Auto Show Drive in front of a semi-truck which was making the same westbound turn. Trooper Dudley was unable to turn in front of the semi-truck and traveled westbound into the eastbound lanes to continue his pursuit.

The Scion turned south onto Gibson Road. Trooper Dudley believed the Scion was going to continue south on Gibson Road, but it abruptly jumped the center median and turned into the entrance of the Cadillac dealership. Trooper Dudley was unable to drive over the median, so he drove to the end of the median and performed a U-turn. Trooper Dudley turned into the dealership and saw the Scion stopped in the parking lot with the door open.

As Trooper Dudley exited his vehicle, he saw a tall male standing next to a red vehicle. He was waving his hand and Trooper Dudley believed he was saying, "Over here, over here." Trooper Dudley saw an elderly man lying down on the ground near the rear driver's side tire of the red vehicle. An unknown male, later identified as Decedent, was in the driver's seat of

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<sup>1</sup> LVMPD's Force Investigation Team investigates Officer Involved Shootings in Clark County with the exception of shootings which involve officers from Henderson Police Department and North Las Vegas Police Department.

the red vehicle. Decedent reached up to the steering wheel column but nothing was there. Trooper Dudley believed he was attempting to put the vehicle in gear. Decedent reached down low and Trooper Dudley feared the vehicle was going to move in reverse.

Trooper Dudley believed the elderly man was still on the ground behind the vehicle and was in danger of being run over by the vehicle. Also, Trooper Dudley was in fear of being struck by the vehicle. Decedent had the potential to strike Trooper Dudley and the other people around the vehicle. Trooper Dudley saw the vehicle move and yelled, "Stop or I'm gonna shoot!" Trooper Dudley fired one (1) time at Decedent as the vehicle reversed, striking another vehicle that was parked behind it.

Trooper Dudley shouted several commands at Decedent to show his hands. Trooper Dudley holstered his weapon and opened the door of the Cadillac. He pulled Decedent from the vehicle to the ground. Officers from another jurisdiction arrived and assisted Trooper Dudley with placing Decedent in handcuffs. Other NHP troopers arrived on scene and they began to administer first aid to Decedent.

At no time during the pursuit leading up to the trooper-involved shooting was Trooper Dudley aware of the event that occurred at 2320 Fremont Street. Trooper Dudley did not know that Decedent was the suspect in a carjacking or that the Scion was a stolen vehicle.

## **SUMMARY OF RELEVANT LAW ENFORCEMENT WITNESS STATEMENTS**

### **NHP Trooper Stephanie Gonzalez**

Troopers Gonzalez and Howze were riding together in vehicle #650. Trooper Gonzalez, who was assigned as Trooper Howze's training officer, was in the passenger seat and Trooper Howze was driving. The troopers were southbound on US 95 between Casino Center Boulevard and Las Vegas Boulevard when Trooper Gonzalez observed a black Scion cut another vehicle off without using a signal, almost hit another vehicle, and make several more unsafe lane changes. Several drivers had to hit their brakes to avoid a collision.

Trooper Howze activated the lights and siren on her marked NHP patrol vehicle to initiate a vehicle stop. Decedent immediately accelerated and made several unsafe lane changes to avoid the troopers. Trooper Howze announced over the radio that they were in pursuit of the vehicle which had failed to pull over. Decedent's vehicle was going at least seventy-five (75) to eighty (80) miles per hour on the freeway.

Trooper Gonzalez felt the pursuit became unsafe due to the speeds and unsafe lane changes made by Decedent, so she ordered Trooper Howze to stop the pursuit. Trooper Howze pulled to the left center pull-out lane and stopped. Trooper Howze contacted the dispatcher and advised they had discontinued the pursuit.

Trooper Howze broadcasted the vehicle information. Trooper Dudley was in the area of US 95 and Boulder Highway. He broadcasted that he observed a vehicle being driven recklessly southbound on US 95 and was in pursuit of the vehicle.

Troopers Gonzalez and Howze continued southbound on US 95, following the direction of the pursuit given by Trooper Dudley. They exited US 95 at Auto Show Drive and went westbound to Gibson Road. At Gibson Road, Trooper Howze turned northbound. Shortly after turning northbound, Trooper Gonzalez heard Trooper Dudley broadcast "shots fired" at the Cadillac dealership. Trooper Howze made a U-turn and drove back to the Cadillac dealership.

Trooper Howze pulled into the service driveway and stopped behind Trooper Dudley's vehicle. The troopers exited and ran to Trooper Dudley's location near the Scion. Trooper Dudley had Decedent on the ground. Decedent was in handcuffs and bleeding. Trooper Howze went to Trooper Dudley and assisted him with rendering aid to Decedent. Trooper Gonzalez went to Trooper Dudley's patrol vehicle, retrieved his trauma kit and assisted Trooper Howze in applying a large gauze bandage to Decedent's injury.

#### **NHP Trooper Ni-Kela Howze**

Trooper Howze was driving vehicle #650. Her field training officer, Trooper Gonzalez, was in the passenger seat. Trooper Howze observed a black SUV (Scion) do an unsafe lane change at a high rate of speed in the area of US 95 and Las Vegas Boulevard. Trooper Howze pulled in behind the vehicle and activated her lights and siren and attempted to stop the vehicle. The vehicle, driven by Decedent, swerved and almost struck two (2) other vehicles as it took off at a high rate of speed.

Trooper Howze notified the dispatcher that she was in pursuit. A short time later, due to the unsafe manner of the pursuit, Trooper Gonzalez decided to stop following the Scion. Trooper Howze pulled to the center pull-out lane and stopped. She broadcasted a description of the vehicle over the radio. Trooper Dudley advised he had located the vehicle and was in pursuit of it.

Trooper Howze drove southbound on US 95 and exited the freeway at Auto Show Drive based on the information Trooper Dudley broadcast. Trooper Howze went westbound on Auto Show Drive and turned northbound on Gibson Road. She heard Trooper Dudley announce "shots fired" at the Cadillac dealership. Trooper Howze made a U-turn southbound, drove to the Cadillac dealership, and pulled into the service driveway behind Trooper Dudley's patrol vehicle.

Trooper Howze exited her vehicle and observed Trooper Dudley with Decedent on the ground. Trooper Howze assisted with first aid and conducted a pat down of Decedent for weapons. Trooper Howze heard Decedent state, "Just kill me. Just kill me." Medical personnel arrived and Decedent was transported to Sunrise Hospital.

### **LVMPD Officer Sukhvir Singh**

Officers Singh and Rose were a two-man unit when they heard the initial call broadcast by Dispatch advising of a pursuit that involved Nevada Highway Patrol. They headed toward the area of the pursuit and followed the updates from NHP. As they neared the area of US 95 and Auto Show Drive, they observed a NHP vehicle exit the highway and head toward Gibson Road. They followed the NHP vehicle and, as they got to the west side of the Cadillac dealership on Gibson Road, they observed a citizen who pointed toward the service area. They pulled their vehicle into the driveway of the service area. When Officer Singh exited his vehicle, he heard a service representative yelling “shots fired” as he pointed toward a red Cadillac SUV. When Officer Singh moved around the red Cadillac, he observed NHP Trooper Dudley with his gun drawn and pointed toward the driver’s side door of the vehicle as he issued commands. Officer Singh saw Decedent place his hands outside of the vehicle and comply with the Trooper’s commands as he exited the vehicle and laid face down on the ground. Officer Singh moved in and grabbed Decedent’s hands as Trooper Dudley placed him in handcuffs.

### **LVMPD Officer Jason Rose**

Officers Singh and Rose heard the initial call broadcast by Dispatch advising of a pursuit that involved Nevada Highway Patrol. They headed toward the area of the pursuit and followed the updates from NHP. As they neared the area of US 95 and Auto Show Drive, they observed an NHP vehicle exit the highway and head toward Gibson Road. They followed the NHP vehicle and, as they got to the west side of the Cadillac dealership on Gibson Road, they observed a citizen who pointed toward the service area. They pulled their vehicle into the driveway of the service area. The pursuit had been of a gray Scion, which was unoccupied in the service driveway of the dealership. Officer Rose had been driving and exited after Officer Singh. As he moved around to a red Cadillac SUV, he observed NHP Trooper Dudley with his weapon drawn, aimed at the driver’s side of the vehicle. Trooper Dudley announced “shots fired.” Officer Rose then broadcast over LVMPD’s radio that shots had been fired as his partner, Officer Singh, assisted Trooper Dudley with taking Decedent into custody.

## **VEHICLE MOUNTED CAMERAS**

### **Trooper David Dudley**

Trooper Dudley’s vehicle was equipped with an L3 Communications camera system. A camera was mounted facing out the front windshield of Trooper Dudley’s vehicle. The camera system captured in-car audio, the date and time, emergency light activation, siren activation, brake activation, the vehicle’s GPS location, heading, and speed. Trooper Dudley’s vehicle camera captured footage of Decedent.

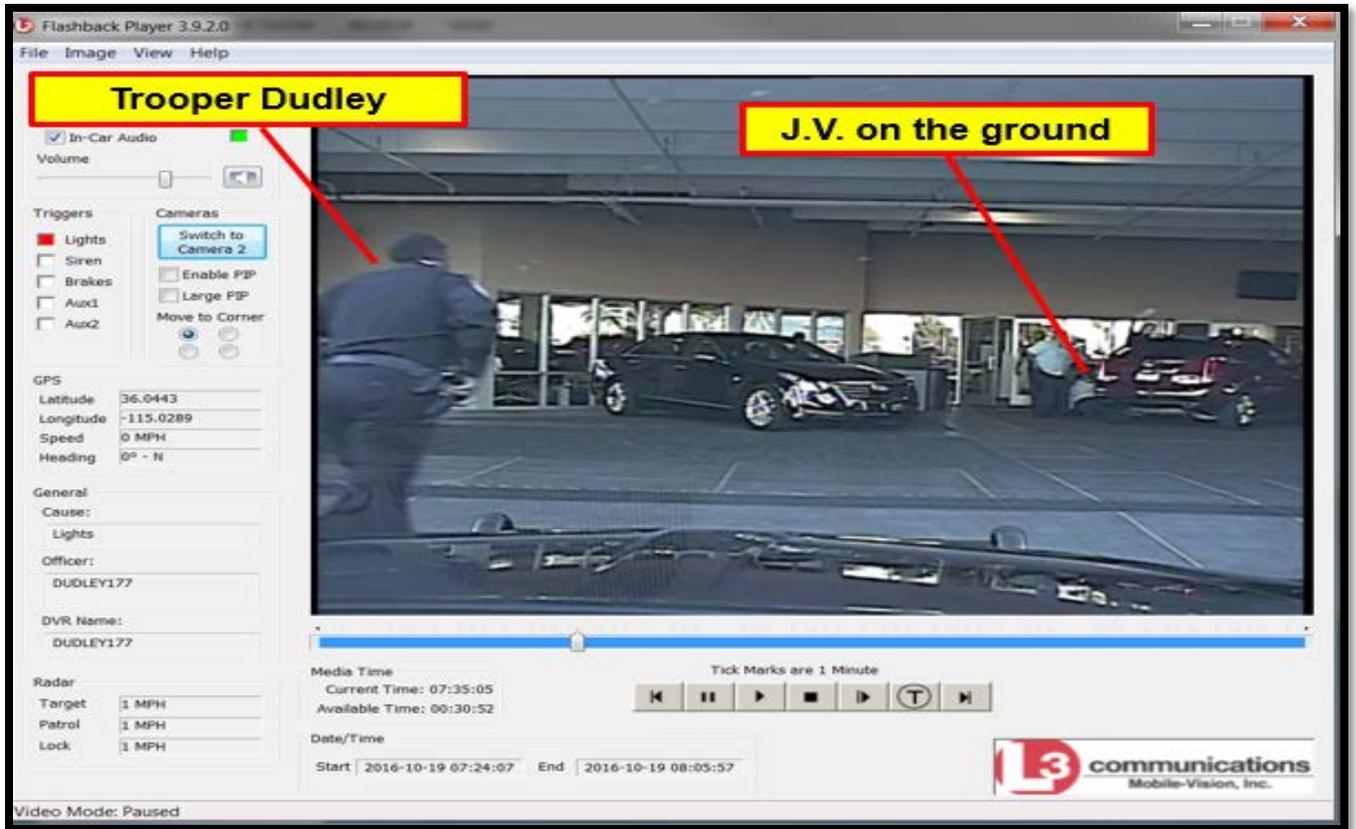
Trooper Dudley activated his camera while parked on the left shoulder of southbound US 95 between Charleston Boulevard and Boulder Highway waiting for Decedent to drive past his

location. Decedent was seen driving the Scion with a flat front tire at speeds between fifty-five (55) to ninety (90) miles per hour. The flat tire disintegrated and Decedent continued to operate the vehicle on the rim at speeds up to seventy (70) miles per hour. Decedent fled southbound on US 95 until he exited at Sunset Road.

Decedent continued across Sunset Road and reentered southbound US 95. Decedent exited Auto Show Drive and fled westbound on Auto Show Drive. Decedent continued from Auto Show Drive to Gibson Road, then turned southbound onto Gibson Road. Decedent crossed the center median and entered the Findlay Cadillac service bay. Trooper Dudley continued southbound on Gibson Road and made a U-turn before entering the service bay. By the time Trooper Dudley parked his vehicle, J.V. was on the ground near the rear tire of his vehicle. Trooper Dudley approached on foot and Decedent placed the vehicle in reverse. Trooper Dudley fired one (1) round into the vehicle at Decedent. Decedent continued backward until he struck a parked vehicle. Decedent was pulled from the vehicle and medical personnel were summoned.

### View from Trooper Dudley's Dash Mounted Camera





## Trooper Ni-Kela Howze

Trooper Howze's vehicle was equipped with an L3 Communications camera system. The camera was mounted facing out the front windshield of Trooper Howze's vehicle. The camera system captured in-car audio, the date and time, emergency light activation, siren activation, brake activation, and the vehicle's GPS location, heading, and speed.

Trooper Howze's vehicle camera captured footage of Decedent in the area of southbound US 95 near Las Vegas Boulevard where she first attempted to stop Decedent. Decedent's reckless driving and the heavy citizen vehicle traffic when he fled from Trooper Howze was also captured. Trooper Howze pursued Decedent at speeds up to 108 miles per hour before she discontinued the pursuit between Eastern Avenue and Charleston Boulevard. Trooper Howze's camera continued to record while she was in route to the Cadillac dealership and after she arrived and assisted Trooper Dudley.

## View from Trooper Howze's Dash Mounted Camera



## SUMMARY OF RELEVANT CIVILIAN WITNESS STATEMENTS

### J.S.

J.S. brought his vehicle to Findlay Cadillac for service. As he was waiting, J.S. observed a male (Decedent) approach a red vehicle, which was parked in the service bay. The male appeared to be of Middle Eastern decent and was wearing a greenish yellow jacket and green pants. Decedent grabbed an elderly gentleman, who was sitting in the driver's seat of a red

Cadillac, and threw him to the ground. Decedent got into the driver's seat of the Cadillac and was trying to leave. J.S. and another male approached the Cadillac and grabbed Decedent to prevent him from leaving. Trooper David Dudley approached the red Cadillac. Trooper Dudley told Decedent, "Put your hands up," and "Get out of the vehicle." Decedent did not comply with Trooper Dudley's verbal commands. J.S. heard Decedent state he had a gun. As Decedent attempted to drive away, Trooper Dudley fired one (1) shot. J.S. then went inside the dealership and did not observe any further actions.

#### **J.V.**

J.V. and his wife, F.V., went to Findlay Cadillac for service on their vehicle. J.V. parked in the service bay and waited for an advisor to come out. F.V. exited the vehicle. A short time later, a service advisor came to the driver's side door. As J.V. was talking to the advisor, Decedent came up to the driver's side door and grabbed J.V., pulled him out of the vehicle, and threw him to the ground. J.V. was laying on the ground when another male picked him up. As J.V. got to his feet, he saw someone trying to get Decedent out of his vehicle. Then, NHP Trooper Dudley approached and told Decedent to "put your hands up." J.V. was then taken inside the dealership and did not witness any further actions.

#### **F.V.**

On October 19, 2016, F.V. and her husband, J.V., took their vehicle to Findlay Cadillac to be serviced. As they pulled into the service center, she exited her vehicle from the passenger side and saw a service technician helping her husband out of the vehicle. Her husband has had extensive medical issues regarding his heart and she was going to assist him. As she neared the driver's door, Decedent rushed to the driver's side door where J.V. was still seated. Decedent pushed the service representative out of the way, grabbed J.V., and pulled him out of the vehicle. J.V. fell to the ground underneath the vehicle. Decedent then got into the vehicle as the service representative struggled with him. A police officer ran up to the vehicle and engaged in the struggle to remove Decedent from their vehicle. As she and a service representative pulled J.V. out from underneath the vehicle, she heard gunshots. F.V. was unsure how many gunshots she heard, but believed it was more than one. Other officers arrived and arrested Decedent, who had been shot. F.V. believed she saw Decedent with a gun when he pulled J.V. out of the driver's seat of the Cadillac. However, she could not be certain. She indicated the police officer (Trooper Dudley) might have had the gun.

#### **B.M.**

B.M. was working at Findlay Cadillac as a service advisor when he observed a red Cadillac SRX pull into the service bay. B.M. went outside and contacted the elderly gentleman who was driving the vehicle. As B.M. was talking with the driver, he observed a dark colored Scion SUV "skidding" through the parking lot of the dealership. The vehicle was missing a front tire. He saw Decedent exit the Scion and run towards the red Cadillac.

Decedent grabbed the driver of the red Cadillac SRX and pulled him out of the vehicle. Decedent sat in the driver's seat of the Cadillac SRX. B.M. and a customer grabbed onto Decedent to stop him from leaving in the Cadillac. As B.M. and the customer held onto Decedent, Trooper Dudley approached the vehicle saying, "Show me your hands." Trooper Dudley repeated this phrase several times while running to the vehicle. B.M. stated Decedent

never complied with Trooper Dudley's verbal commands and reversed the SRX. B.M. then observed Trooper Dudley fire one (1) round and immediately open the door and take Decedent into custody. B.M. believed he heard Decedent say, "Call the police," when he exited the Scion.

**M.G.**

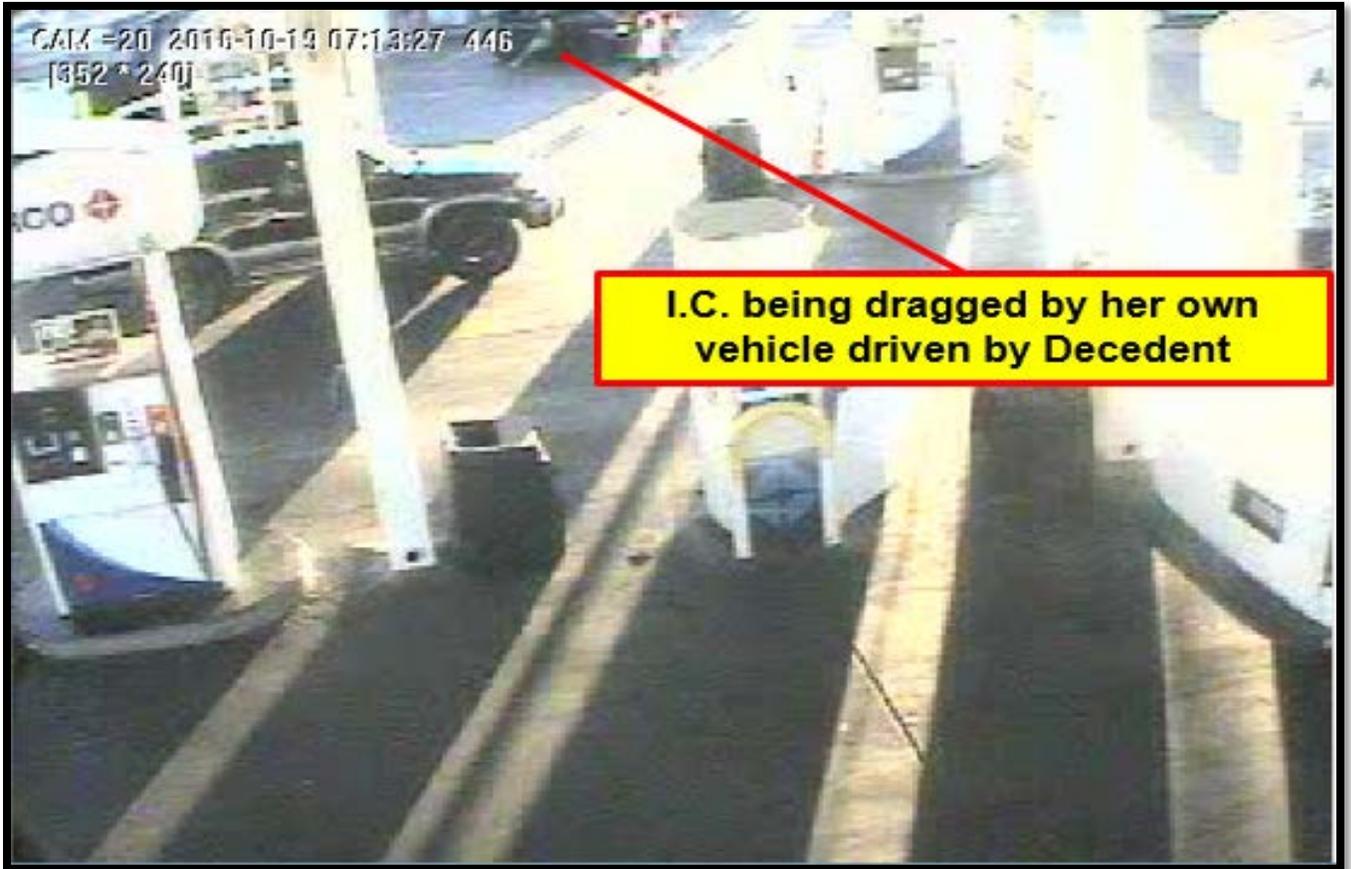
M.G. was sitting at his desk when he observed a Toyota Scion sliding into the service area of Findlay Cadillac. M.G. saw the Scion was missing a front tire. He heard police sirens in the background. Another service advisor was helping a customer who was sitting in a red Cadillac. Decedent exited the Scion and approached the other service advisor and the driver of the SRX.

Decedent grabbed the driver of the SRX and pulled him out of the vehicle. Decedent sat in the driver's seat and was backing up to leave when a marked NHP vehicle pulled into the service driveway. Trooper Dudley ran towards the Cadillac while giving Decedent verbal commands to "put your hands up." This command was given several times. As Trooper Dudley gave verbal commands, Decedent appeared to be "reaching for something down low." M.G. ran behind a wall and heard one (1) gunshot.

**THIRD PARTY SURVEILLANCE FOOTAGE**

**AM/PM Surveillance, 3885 E. Charleston, Las Vegas, Nevada**





### Findlay Cadillac Surveillance, 993 Auto Show Drive, Henderson, Nevada

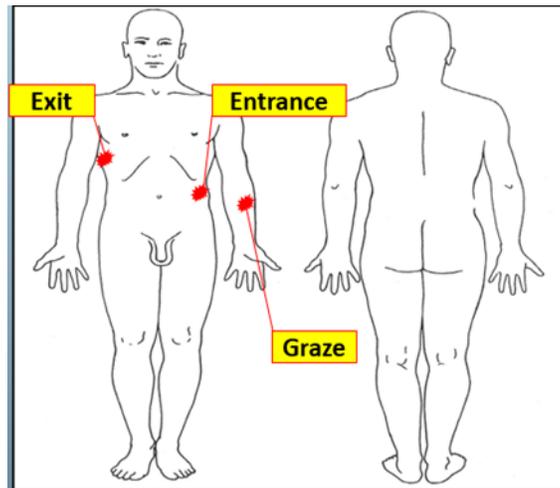
The camera video that captured the incident was affixed to the west wall of Findlay Cadillac and pointed west at a downward angle. The camera captured a view of a section of the parking lot, the service entrance driveway, and the west doors of the service office area.





## AUTOPSY

Medical Examiner Dr. Lisa Gavin of the Clark County Coroner's Office, opined Decedent died as a result of a gunshot wound to the abdomen.



The toxicology results indicated the presence of the following substances in Decedent's system:

- |    |                     |            |
|----|---------------------|------------|
| 1) | Amphetamine         | 12 ng/mL   |
| 2) | Methamphetamine     | 56 ng/mL   |
| 3) | Midazolam           | 15 ng/mL   |
| 4) | Delta-9 Carboxy THC | 6.9 ng/mL  |
| 5) | Fentanyl            | 0.98 ng/mL |

According to the NMS Labs toxicology report, Amphetamine is a Schedule II stimulant, often used therapeutically in the treatment of narcolepsy, obesity, and of hyperactivity in children. Amphetamine is also a metabolite of methamphetamine. Overdose with amphetamine can produce restlessness, hyperthermia, convulsions, hallucinations, respiratory and/or cardiac failure. Reported blood concentrations in amphetamine related fatalities ranged from 500-41,000 ng/ml.

Methamphetamine is a Drug Enforcement Agency ("DEA") Schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions. Blood levels of 200-600 ng/ml have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

Midazolam is a short acting benzodiazepine (a DEA Schedule IV controlled compound) with strong central nervous system depressant/hypnotic properties.

Delta-9 Carboxy THC is the principle psychoactive ingredient of marijuana/hashish.

Fentanyl is a DEA Schedule II synthetic morphine substitute anesthetic/analgesic. It is reported to be 80 to 200 times more potent than morphine.

## **WEAPON COUNTDOWN**



On October 19, 2016, Trooper Dudley's handgun was counted down at LVMPD headquarters. His weapon was a Springfield XD-45 ADP (.45 caliber) serial number US564321.

Trooper Dudley was dressed in the standard NHP blue long sleeve patrol uniform. He wore NHP patches on each shoulder, and an NHP badge on his left breast. Trooper Dudley wore a black duty belt with attached tools and equipment as part of his position as a trooper. Trooper Dudley's handgun was carried on the right side of his body and secured in a holster.

Prior to the countdown, Trooper Dudley stated he loaded thirteen (13) cartridges in the magazine placed into his firearm and one (1) in the chamber (13+1). Trooper Dudley also

carried thirteen (13) cartridges in each of the two (2) spare magazines carried on his belt. All three (3) of his magazines had the capacity to hold thirteen (13) cartridges.

At the completion of the countdown, it was determined Trooper Dudley's firearm was missing one (1) round. Evidence on the scene indicated Trooper Dudley fired one (1) round. Based on the countdown and evidence at the scene, it was determined that Trooper Dudley fired one (1) round from his handgun during the incident. Trooper Dudley's firearm, magazine, and cartridges were impounded by Senior Crime Scene Analyst Jeffrey Scott.

## **FIREARM EXAMINATION OF TROOPER DUDLEY'S WEAPON**

On November 14, 2016, a LVMPD Forensic Laboratory Request was submitted to examine Trooper Dudley's firearm for functionality and ballistic comparison.

On December 7, 2016, Forensic Scientist Anya Lester, P# 13771, submitted the Firearms & Tool Marks Report with the following results:

The Springfield pistol was examined, test fired, and found to be operational with no noted malfunctions. This pistol had a barrel length of approximately four (4) inches, an overall length of approximately 7 <sup>7</sup>/<sub>16</sub> inches and a trigger pull of 5 <sup>1</sup>/<sub>4</sub> -5 <sup>3</sup>/<sub>4</sub> pounds. The submitted magazine had a capacity of thirteen (13) cartridges.

The evidence and test fired cartridge cases were examined and microscopically inter-compared. Based on these comparative exams, it was determined that the cartridge case recovered from the Cadillac dealership had been fired by the Springfield pistol.

## **INFORMATION REGARDING DECEDENT JAVIER MUNOZ**



Decedent Javier Munoz was a 28-year-old male who lived in Glendale, Arizona. Additional background information is limited to only the information available in reports at this time.

Review of reports from Glendale Arizona Police Department and Boulder City Police Department indicate Decedent left Glendale on October 17, 2016, two (2) days before he was shot and killed in Henderson. He fled Glendale in a family member's vehicle, which he stole after he assaulted and attempted to rape a female relative. By October 18, 2016, Decedent made his way to Boulder City, Nevada, where he ultimately led Boulder City Police Department (hereinafter "BCPD") Officers on a high speed chase. When he was taken into custody, Decedent behaved very erratically and appeared to be under the influence of multiple controlled substances. He even asked a BCPD Officer to shoot him in the head. BCPD decided to release him to the custody of Boulder City Hospital, but due to his erratic and uncontrollable behavior, Boulder City Hospital transferred him to Valley Hospital in Las Vegas for further treatment. Valley Hospital

released Decedent at approximately 7:00 p.m. on October 18, 2016. He was shot by Trooper Dudley after a high speed chase a little over twelve (12) hours later.

### **DECEDENT'S CRIMINAL HISTORY**

Arizona Department of Corrections Records indicate that Decedent was released from prison on June 7, 2015, after serving a ten (10) year sentence for Kidnapping and Robbery in two separate cases. He has the following prior felony convictions: 2006 Arizona Robbery, 2006 Arizona Kidnapping, 2006 Arizona Precursor Chemicals and 2009 Arizona Unlawful Flight from Law Enforcement Vehicle. At some point, when he was transferred to serve his time in an Indiana prison, Decedent was charged with Possession of Device by Incarcerated Person and Rioting. The disposition of those charges are unknown.

### **TIMELINE OF EVENTS LEADING UP TO OCTOBER 19, 2016**

Two (2) other law enforcement agencies investigated incidents involving Decedent in the days leading up to the October 19<sup>th</sup> shooting by Trooper Dudley.

#### **Glendale Arizona Police Department report #16 149755**

On October 17, 2016, at approximately 6:32 a.m., Glendale Arizona Police Department Officer Rachel Gellman responded to 6145 W. Frier Drive and met with Decedent's female relative, who was visibly crying and shaking. The relative stated she was the passenger in her aunt's 2015 Nissan Sentra, which Decedent was driving. She told police that she normally dropped Decedent off for work in the area of 6700 W. Northern Avenue. However, on that day, Decedent drove to Lions Park located at 6250 W. Frier Drive, which she thought was strange.

Decedent parked the vehicle in the southwest portion of the park. Their vehicle was the only one there, and they were the only persons present. Decedent stated to her, "You're going to be my bitch today. I want that ass." Decedent used his right closed fist to punch her in the right side of her face at least three (3) to four (4) times. She tried to get out of the vehicle, but Decedent pulled her back into the vehicle by her hair. Decedent placed his hands on her groin area, outside her clothing. She told Decedent "that was not going to happen" and moved his hand away. As Decedent drove away, she opened the front passenger door and jumped out of the moving vehicle. She saw an unknown male come out of his residence so she ran towards him screaming for help. Decedent drove away in an unknown direction.

The relative was scared for her life and thought Decedent was going to kill or rape her. She stated Decedent had never been physical with her in the past and had never attempted anything like that with her. She knew Decedent used methamphetamine and marijuana, but she did not know if Decedent was under their influence at the time of the incident.

## **Boulder City Nevada Police Department Report #16BC1263**

On October 18, 2016, at approximately 7:44 a.m., Boulder City Police Department (hereinafter "BCPD") Officer Mark DuBois, while in his marked patrol vehicle, was stationed on a street near an active school zone. The school crossing lights were flashing and there were children using the crosswalk with the assistance of two (2) crossing guards. Officer DuBois observed Decedent's vehicle travelling approximately twenty-five (25) miles per hour in the posted fifteen (15) miles per hour zone. Decedent's vehicle, a gray Nissan Sentra, pulled up next to Officer DuBois and stopped behind another vehicle that was stopped for the crossing guard. Officer DuBois noticed that the windows on the vehicle were partially down, so he yelled at Decedent to "slow down!" Decedent looked over at him. Officer DuBois noticed Decedent was a Hispanic male adult with short brown hair and light facial hair.

Decedent proceeded eastbound after the children had crossed, speeding up to approximately twenty-five (25) to thirty (30) miles per hour. Officer DuBois noticed the vehicle had Arizona license plates, but could not read the plate numbers. Officer DuBois activated his emergency lights and started to go after Decedent. Officer DuBois confirmed Decedent's speed to be forty (40) miles per hour while still in an active school zone. Officer DuBois activated his emergency siren as Decedent approached a street where children were crossing with two (2) crossing guards. Decedent stopped behind another vehicle in lane #2, then pulled into lane #1 and ran through the stop sign with crossing guards and children still in the crosswalk. Decedent continued to pick up speed and failed to yield for an emergency vehicle.

Officer DuBois pursued Decedent who continued on at approximately fifty-five (55) miles per hour in a posted thirty-five (35) miles per hour zone and ran a stop sign. Decedent continued to travel at approximately double the posted speed limit. Officer DuBois eventually turned off his emergency lights and siren and discontinued pursuit due to safety reasons.

At approximately 8:00 a.m., BCPD received calls from witnesses that Decedent was again traveling eastbound on Adams Boulevard through the school zone at a high rate of speed. BCPD then received a call from a Las Vegas Paving employee that Decedent was on the TAP Road (dirt road maintained by the city) down by the I-11 project. While Officer DuBois and two (2) other units (Officer Keith Sandin and Sergeant Lisa Byrd) were driving down the TAP Road, Decedent drove directly at them. Officer DuBois noticed the vehicle's left front tire was flat and the vehicle was riding on the rim. Officer Sandin and Officer DuBois attempted to block Decedent by using their vehicles, but Decedent was able to drive around them. Decedent was then blocked off by Sergeant Byrd with the use of her patrol vehicle. Decedent drove at Sergeant Byrd's vehicle, then veered left just prior to striking it. His vehicle landed high center on a dirt berm.



Decedent exited the vehicle through the driver's door and ran into the desert. He stopped after approximately one hundred (100) feet when given orders at gunpoint by Officer Sandin and Sergeant Byrd to stop. Decedent was prone out and taken into custody without further incident. At that time, Officer DuBois noticed Decedent was talking very fast and acting very paranoid. He kept asking why police were chasing him and stated that he wanted police to just shoot him. Officer DuBois noticed Decedent's eyes were bloodshot, wide open with a wild look and his pupils were extremely dilated. When asked if he was under the influence of controlled substances, Decedent stated he had taken spice, methamphetamine, marijuana, and ecstasy. Decedent later stated he might have taken other drugs as well. When asked whose vehicle he was driving, Decedent stated the vehicle belonged to a relative. Decedent was very fidgety and continued to make comments about wanting to die. He also repeatedly asked if he was going to die and would raise and lower his voice as he did so.

Decedent was placed into Sergeant Byrd's vehicle and transported to a paved road where he was transported by Boulder City Fire Department Rescue to Boulder City Hospital. Officer DuBois ran the license plate on Decedent's vehicle, which came back stolen out of Glendale Police Department in Arizona. The vehicle was confirmed stolen by BCPD Dispatch and an attempt to locate was sent to Glendale Police Department. Decedent was identified by a valid Arizona identification card found in the vehicle, with a revoked driver's license from Arizona.

At approximately 8:15 a.m., Decedent was transported to the Boulder City Hospital for treatment and evaluation. The chief complaint listed possible excited delirium<sup>2</sup> secondary to recreational drug use. Once Decedent was at the hospital, he yelled and screamed and asked the doctor if he was going to die. Decedent looked at Officer DuBois with wide eyes and asked to be shot in the head. When Officer DuBois told him he could not shoot him, Decedent bowed his head and was silent for a few seconds. Moments later, Decedent screamed and asked if he was going to die. Decedent was out of control, thrashing around and screaming and trying to hit and push people around him. The on-duty doctor sedated

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<sup>2</sup> The term "excited delirium" was first used to describe the acute behavior changes associated with the abuse of stimulant drugs, like methamphetamine, PCP, and cocaine. It has since become a more widely used phrase, often used interchangeably with "agitated delirium," to describe any individual who demonstrates a specific constellation of physical signs, such as unfounded fear or panic, shouting/nonsensical speech, bizarre behavior (hallucinations/paranoia), hyperactivity and thrashing about, unexplained strength/endurance, shedding clothes/nudity, and profuse diaphoresis.

Joe Heck, Excited Delirium (March 8, 2017, 11:12 A.M.),

[http://southernnevadahealthdistrict.org/ems/documents/excited\\_delirium/excited-delirium-article.pdf](http://southernnevadahealthdistrict.org/ems/documents/excited_delirium/excited-delirium-article.pdf)

and intubated Decedent due to his erratic behavior. Thus, Decedent was unable to consent to a blood draw at that time.

Officer DuBois drafted a search warrant affidavit to draw Decedent's blood to test for the presence of alcohol and drugs. The affidavit and search warrant were approved by Boulder City Municipal Court Judge Victor L. Miller. Officer DuBois responded to Boulder City Hospital where a laboratory technician withdrew two (2) vials of blood from Decedent's left arm.

Instead of booking Decedent in absentia for the felony crimes he committed, BCPD made the decision to release him to the custody of the hospital and submit for a warrant at a later time.

Decedent was released to the custody of the Boulder City Hospital due to his intoxicated state and because he was going to be transferred to Valley Hospital in Las Vegas for further treatment. The doctor stated Decedent could be in the hospital for a few days.

At approximately, 11:50 a.m., Decedent was transported from Boulder City Hospital to Valley Hospital for drug overdose treatment. At approximately 1:30 p.m., Decedent was received at Valley Hospital. At approximately 5:15 p.m., Decedent became more alert and agitated by the intubation. Decedent was evaluated and the tube was removed from his mouth. Decedent admitted to doing drugs the previous night. As time went on, Decedent's condition continued to improve. At approximately 7:09 p.m. Decedent was discharged as requested and he left the hospital shortly after.

Officer DuBois submitted for a warrant of arrest with the Clark County District Attorney for the following charges: Felony Evading of a Police Officer, Possession of Stolen Motor Vehicle, DUI Drugs 1<sup>st</sup> Offense, and Reckless Driving (School Zone).

The blood test results from the BCPD event revealed that Decedent was not under the influence of alcohol on October 18, 2016. However, Decedent's blood contained Amphetamine, Methamphetamine, Delta-9 Carboxy THC, and Ketamine.

## **FOLLOW-UP INVESTIGATION**

On October 20, 2016, NHP was requested to the area of US 95 southbound north of Eastern Avenue. Nevada Department of Transportation employees located a handgun in the right paved shoulder. The handgun was recovered from the path of Decedent's travel while he fled from Troopers Howze and Gonzalez. There were concerns Decedent may have discarded the handgun after Troopers Howze and Gonzalez discontinued the pursuit and before Trooper Dudley initiated his pursuit. The handgun was a black and gray damaged semiautomatic handgun, unknown manufacturer, and unknown model, with a gray Zev Custom slide, 9X19mm caliber, no serial number, and an approximate 5" barrel. SCSA Moretta McIntyre swabbed the slide, trigger, and grips for any possible DNA evidence. The handgun was processed for latent prints with negative results. LVMPD Forensic Scientist Allison Rubino opined that the partial DNA profile obtained from the swab from the slide,

grips and trigger of the handgun was consistent with originating from at least one contributor. However, due to the limited data available, no additional conclusion could be made regarding this partial DNA profile.

## **LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any 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/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 Another**

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.<sup>3</sup> NRS 200.120(1). Homicide is also lawful when committed:

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

NRS 200.160(1).

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

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

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and

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<sup>3</sup> 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.

2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

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

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

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

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

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

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

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Nevada Highway Patrol Trooper David Dudley, 85-year-old J.V., B.M., (the Findlay Cadillac employee who was positioned near the rear driver's side tire and the dealership's loaner car) and all the other customers and dealership employees who were in the immediate vicinity. Decedent had just engaged Trooper Dudley in a high-speed chase. Decedent jumped over a center median and "skidded" into the entryway of the dealership. When Trooper Dudley ran up to the service bay, he saw multiple citizens near and around J.V.'s red Cadillac. He saw an elderly man lying on the ground near the rear driver's side tire of the vehicle. Trooper Dudley told Decedent to stop or he would shoot. Decedent failed to comply with Trooper Dudley's commands. Instead, Trooper Dudley observed Decedent, who was in the driver's seat of J.V.'s vehicle, reach up to the steering wheel column and then reach down low. Once Decedent placed the vehicle in reverse, Trooper Dudley feared that he was going to be struck by the vehicle. As Decedent reversed the vehicle, Trooper Dudley, believing that the elderly man was still on the ground near the vehicle's rear tire and in danger

of being run over, shot Decedent once in the abdomen. Thus, the totality of the evidence, to include surveillance video and witness statements, illustrates that Trooper Dudley was reasonable in believing that Decedent would cause great bodily harm or death to himself or others. Trooper Dudley was confronted with the appearance of imminent danger and he had an honest belief and fear that he or the elderly gentleman were about to be killed or suffer great bodily injury at the hands of the Decedent. The evidence further illustrates that Trooper Dudley acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Trooper Dudley 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 Trooper Dudley had probable cause to believe that Decedent posed a threat of serious physical harm to himself, J.V., B.M., and numerous other customers and dealership employees near the scene of the strong-arm robbery. As Trooper Dudley ran up to the red Cadillac, he observed multiple citizens around the victim’s vehicle and Decedent in the driver’s seat. He saw an elderly man lying on the ground between the front and rear driver’s side tires. Trooper Dudley told Decedent to stop or he would shoot but Decedent failed to comply with Trooper Dudley’s commands. Trooper Dudley then observed Decedent reaching for an unknown object in the vehicle. Trooper Dudley did not shoot Decedent until Decedent placed the vehicle in reverse. At that point, Trooper Dudley had a reasonable belief that Decedent could cause serious physical harm to himself and the citizens around the moving vehicle. Thus, Trooper Dudley’s use of deadly force 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, the State concludes that the actions of Nevada State Trooper David Dudley 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.” (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.