

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of John Allen on March 29, 2015

### INTRODUCTION

On the evening of March 29, 2015, in Boulder City, a neighbor of John Allen's (hereinafter "Decedent") called 9-1-1 due to erratic behavior by Decedent. The neighbor reported that Decedent was outside of her apartment, that he had a gun, and he had fired it multiple times. She told Boulder City Police that Decedent was depressed and told her the next gunshot she hears will be when he kills himself.

Boulder City Police Department Officers Armando Salazar and Alan Nutzman were two of the officers who responded to the call. Officer Salazar took a position on the north side of the building as Officer Nutzman was approaching from the southwest. Officer Salazar saw Decedent standing on the second floor balcony near the apartment where the neighbor had called the police. Salazar identified himself as police and yelled at Decedent to "show his hands." Decedent refused to comply and, within moments, ran down the stairs to his apartment on the first floor. He then ran inside apartment B (the front door was open).

Decedent then ran outside and towards the north where Officer Salazar was positioned. As he did so, Officer Nutzman approached from the west and saw that Decedent was in possession of a gun which he aimed at Officer Salazar. Decedent was

then heard to yell, "I'll show you my hands," and he fired one time at Officer Salazar. Officers Salazar and Nutzman then fired almost simultaneously at Decedent, striking him twice in his torso and grazing his calf. Decedent fell onto the sidewalk in front of the building. The officers both approached him. Officer Salazar kicked Decedent's gun away from Decedent onto the street.

Emergency personnel responded. Decedent was helicoptered to University Medical Center where he was declared deceased. A subsequent autopsy revealed that he died of two gunshot wounds to his torso.

The District Attorney's Office has completed its review of the events surrounding the death of Decedent. This review was based on all the evidence currently available, including the benefit of a Police Fatality Public Fact-finding Review. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officers were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this law enforcement encounter. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal. This review was based on all the evidence currently available, including evidence adduced at the Police Fatality Public Fact-Finding Review held on November 13, 2015.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Boulder City Police Department or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

## **I. INCIDENT DETAILS**

On March 29, 2015, at 10:29 p.m., Boulder City Police received a 9-1-1 call from concerned citizen #1 regarding her neighbor (Decedent). The citizen was afraid and reported that Decedent, who lived at 841 Avenue A in apartment B, was distraught over a break-up with his wife and was saying he did not want to live anymore. The citizen told dispatch that Decedent had a gun and was firing it into the air. Decedent told concerned citizen #1 that the next shot she hears will be Decedent committing suicide.

Officers Armando Salazar (a Boulder City Police Officer for six years) and Vincent Albowicz (a Boulder City Police Officer for almost twenty years) were first assigned to respond to the call. They parked their patrol vehicles on Avenue A and approached on foot

towards the west. At that time, they did not know exactly where the man with the gun was located; however, Officer Salazar heard someone moaning near the front of 841 Avenue A, which is a two-story apartment building on the south side of the street. Albowicz directed Officer Salazar to walk across the street to the north side of the apartment building in order to get a view of where the man was located.



The apartment building located at 841 Avenue A. Officer Salazar took a position to the north of the building (across the street) next to the telephone pole.

Around this time, Officer Alan Nutzman (a Boulder City Police Officer for almost ten years) and Officer Todd Cazett (a Boulder City Police Officer for nine years) also responded to the call. Officers Nutzman and Cazett parked their patrol cars on Cottonwood Street just to the south of the apartment building. They approached on foot towards the north with Officer Nutzman taking the lead and Officer Cazett covering the back of the building. Officer Nutzman was armed with a Colt M4 rifle. As they approached, the officers heard Officer Salazar yelling commands at someone in the front of the building to “show me your hands.”

As Officer Salazar walked to the north in front of the building, he observed a Caucasian male, later identified as Decedent, on the second floor of the apartment building. Officer Salazar called out to the man who turned to face Salazar. As he did so, Officer Salazar noted that the man was leaning on the railing, and Salazar saw that one of the man's hands was open with nothing in it but the other was closed. Officer Salazar yelled out, "Police, let me see your hands," as he took a position near a light pole on the north side of the street directly in front of the apartment building.

Concerned citizen #2 lived in an apartment directly to the north of 841 Avenue A, and adjacent to where Officer Salazar was standing while he yelled commands at Allen.



The apartments located at 841 Avenue A on the left. The telephone pole where Officer Salazar took his position is on the right along with the apartment where concerned citizen #2 witnessed the incident.

Earlier that same evening, concerned citizen #2 heard what he at first believed were fireworks, but later believed were gunshots going off in front of the apartment building across the street. When he looked outside to investigate the noise, he saw Decedent holding one hand in the air. He also would later tell the police that Decedent appeared upset that

night, and he overheard Decedent talking on the phone while he was in front of his apartment. The conversation was about a woman leaving and stealing things from him.

Officer Salazar repeatedly yelled commands at Decedent to show him his hands, but Decedent did not comply. Salazar was in possession of an AR-15 Sig Sauer rifle with a tactical flashlight affixed to it. The flashlight was turned on in order for him to see the front of the apartment building. Salazar saw Decedent run down the stairs of the building and enter into a first floor apartment on the west side. The front door to the apartment was left open (apartment B). Concerned citizen #2 also saw Decedent disobey the commands of Officer Salazar and run into the apartment. Within seconds, Decedent exited the front door with a gun in his right hand and approached north towards Officer Salazar.

As Decedent exited his apartment, Officer Nutzman was approaching from the south and west of the building to the side of Decedent. He also observed Decedent exit the building and move north towards Salazar. Decedent told Salazar, "I'll show you my hands," and fired one time at Officer Salazar. Both Officers Salazar and Nutzman yelled out to Decedent to "drop the gun" but he refused and continued to point it in the direction of Salazar. Officer Salazar then returned fire four times, and - - at that same time - - Officer Nutzman fired two times after he observed Decedent fire one time at Salazar. Concerned citizen #2 also saw Decedent exit his apartment, approach towards the north and fire at Officer Salazar. This caused the citizen to duck down, and he immediately heard return fire by the officers.



The viewpoint of citizen #2 as he looked out to the south of his apartment.

Officer Albowicz, who had taken a position just east of the apartment building, also observed Decedent disobey commands by Officer Salazar to show his hands. Albowicz saw Decedent run to the north from the building towards Officer Salazar, and he saw him fire one time at Officer Salazar after which Albowicz heard several return gunshots by officers. Likewise, Officer Cazett, who had taken a position just to the west and south of the apartment building, heard a gunshot that did not come from either Officer Salazar or Nutzman prior to both officers returning fire.

Decedent fell to the ground on the sidewalk in front of the building. Officers Salazar and Nutzman then approached and noted that Decedent was still breathing. At first, the gun was not visible; however, as Officer Salazar approached, he saw that Decedent's gun was laying near Decedent's right hand. Salazar yelled commands at Decedent to not move. Nutzman yelled out to Salazar that he did not see the gun from his vantage point, but Salazar did see it and kicked it twice in an effort to get it away from Decedent. By this time, concerned citizen #2 got up to look through the window and observed Officer Salazar kick Decedent's handgun into the street. Officer Salazar then handed his weapon to Officer Nutzman in order to handcuff Decedent. Once Decedent was taken into custody, Officer Nutzman called out for medical assistance. Officer Nutzman and Officer Cazett then cleared apartment B to ensure no one was inside the residence.

Decedent was taken by ambulance to a local helipad and was medically evacuated by helicopter to University Medical Center. After arrival, he was declared deceased by an emergency room physician.

Upon being notified of the death of Decedent, Boulder City Police contacted the Las Vegas Metropolitan Police Department for assistance in the investigation. LVMPD then assigned their Force Investigation Team (FIT) to conduct the investigation.

#### Video Recording of Incident

Officer Nutzman's vehicle had a camera affixed to the front of it that was operating that evening. The patrol car was parked on Cottonwood south of the crime scene. Since the shooting occurred on the north side of 841 Avenue A, the camera did not record any of the events involving Decedent other than the initial approach north on Cottonwood by Officers Nutzman and Cazett.

## Audio Recording of Incident

Officer Nutzman wore a microphone affixed to his body that recorded some of the events. The following is a transcript of the incident from immediately before the first shot was fired. It takes place over a time span of three minutes and ten seconds:

NUTZMAN: The suspect's coming out. Cover me okay.

SALAZAR: Let me see your hands! Let me see your hands! Let me see your hands!

NUTZMAN: I'm going to cross the street over here okay.

(Sound of 1<sup>st</sup> Gunshot)

(Inaudible)

NUTZMAN: Drop the gun.

SALAZAR: Drop the gun.

(Sound of multiple gunshots)

NUTZMAN: Suspect down, suspect down. Drop your head, step back, Rick.

UNKNOWN VOICE: Hey, are you guys' code 4?

NUTZMAN: Yes, yes. Shots have been fired by me. (Inaudible) Step around that way please. (Inaudible) ... step around that way please.

SALAZAR: I don't see his weapon.

NUTZMAN: That's what I'm trying to find.

UNKNOWN VOICE: Look around.

(Inaudible)

NUTZMAN: Hold up (inaudible), hold up okay (inaudible) ... I got both hands.

SALAZAR: He's still breathing.

NUTZMAN: His gun was shot. I don't see the weapon.

SALAZAR: (inaudible)

NUTZMAN: I do not see the weapon.

SALAZAR: Right there. It's right by the grass.

UNKNOWN VOICE: Keep away from it.

SALAZAR: He's still breathing.

NUTZMAN: He's still breathing.

SALAZAR: He's still breathing.

NUTZMAN: I got both hands.

SALAZAR: Alright. I'm gonna go for gun.

NUTZMAN: Where's the gun at? I don't see it.

SALAZAR: It's on the ground right here by the grass.

NUTZMAN: Don't move, don't move.

SALAZAR: (inaudible) .... Alan, we got the gun.

NUTZMAN: Kick it out in the street, out in the street.

SALAZAR: (inaudible) okay.

NUTZMAN: Go Cuff him, cuff him.

SALAZAR: Cuff him, cuff him.

NUTZMAN: I got him covered. We'll, we'll ... we got cover. (Inaudible) ... both cover.

SALAZAR: Alright I'm gonna cuff. I'm gonna cuff.

NUTZMAN: Here we go. Don't move, medical's coming alright. Med ...

SALAZAR: You got me right (inaudible) ... you got me right?

NUTZMAN: (inaudible)

SALAZAR: Alright.

NUTZMAN: We got it out of the way, make sure secondary weapon, secondary weapons.

SALAZAR: (inaudible) ... stand right here.

NUTZMAN: Alright, slow down, slow down, it's alright we got it.

SALAZAR: Okay.

NUTZMAN. Your good alright, calm down just take deep breaths.

UNKNOWN VOICE: (inaudible)

NUTZMAN: Once he's cuffed (inaudible) ... okay?

UNKNOWN VOICE: (inaudible)

NUTZMAN: Okay. I fired two rounds.

SALAZAR: I fired two rounds as well.

(Ambulance sounds).

### Examination of Crime Scene



841 Avenue A is an apartment building on the southeast corner of Avenue A and Cottonwood Street in Boulder City, Nevada. It consists of four apartments that all face north with units A and B on the first floor and units C and D on the second floor.



In the street, directly north of the sidewalk in front of the building, was a .44 caliber black powder revolver. The revolver was later found to be loaded with two additional percussion caps along with black gun powder, circular wads and metal balls (in chambers 3 and 4).



The firearm was swabbed for potential DNA evidence. Subsequent testing revealed there was an indistinguishable mixture of at least three individuals, at least one of which

was male. Due to the limited data available in the mixture, no additional conclusions could be made regarding this DNA.



On the sidewalk in front of the building was an expended percussion cap. Subsequent forensic testing on the percussion cap was conducted. Due to insufficient microscopic detail, the cap could not be either included or excluded as having being fired by the .44 caliber black powder revolver.



Next to the pole in the grass to the southwest of the apartment building at 830 Avenue A (across the street from 841 Avenue A) were found four cartridge cases, each

bearing head stamp “SPEER 11 223 REM.” The four cartridge cases were microscopically compared to Officer Salazar’s Sig Sauer M400 rifle and shown to have been fired from his weapon.



On the pavement on the northbound lane of Cottonwood Street to the west of 841 Avenue A were found two cartridge cases. Both of those cartridge cases were marked “SPEER 11 223 REM.” The two cartridge cases were microscopically compared to Officer Nutzman’s Colt M4 rifle and shown to have been fired from his weapon.



Four bullet holes were found in and around the front door to apartment B. The bullet holes entered the apartment from the north to the south. Fragments of bullets were also found on the ground.

## **II. AUTOPSY:**

On March 31, 2015, Dr. Alane Olson conducted an autopsy on Decedent. During the external examination of the body, Dr. Olson noted that Decedent had four defects on his body and a graze wound to his calf. At the completion of the autopsy, Dr. Olson opined Decedent died from gunshot wounds to the right buttock and left mid-back. There were no exit wounds noted on the body and two bullets were recovered from inside, one from his right lower back (corresponding to the gunshot wound from his right buttock) and another from the right portion of his chest (corresponding to the gunshot wound from his left mid-back). Autopsy also indicated that Allen was grazed by a bullet to his left calf. Additionally, the toxicology results on Allen revealed that his blood alcohol concentration was 0.14, which is nearly twice the legal limit for intoxication.

## **III. OFFICER/SUSPECT WEAPON COUNTDOWNS**

Officer Salazar's rifle was a Sig Sauer Model M400 5.56mm caliber with a tactical illuminator light, serial number 21G003163. Officer Salazar carried one magazine with a thirty cartridge capacity; he did not keep one in the chamber. After firing his rifle, he removed one round from the chamber and reloaded it into the magazine. All of the cartridge cases were head stamped "SPEER 11 223 REM." The countdown of Officer

Salazar's rifle showed that Officer Salazar's rifle was fired four times.

Officer Salazar also carried a Glock 19 9mm with serial number VXR 804. The magazine in the weapon had a fifteen cartridge capacity; he also carried one in the chamber. Salazar also carried three spare magazines with seventeen cartridge capacities in each. The countdown of Officer's Salazar's handgun showed that all cartridges were present and that the gun was not discharged.

Officer Nutzman's firearm was a Colt Model M4 5.56mm caliber rifle with serial number A0257466. Officer Nutzman carried one magazine with a thirty cartridge capacity and he did not keep one in the chamber. After firing his rifle, he removed one round from the chamber and reloaded it into the magazine. All of the cartridge cases were head stamped "SPEER 11 223 REM." The countdown of Officer Nutzman's rifle showed that Officer Nutzman's rifle was fired two times.

Officer Nutzman also carried a Glock 21 .45 caliber with serial number NVN 870. The magazine in the weapon had a thirteen cartridge capacity; he also carried one in the chamber. Nutzman also carried two spare magazines with thirteen cartridge capacities in each. The countdown of Officer's Nutzman's handgun showed that all cartridges were present and that the gun was not discharged.

#### **IV. POLICE CONTACT WITH JOHN ALLEN EARLIER ON THE EVENING OF MARCH 29, 2015**

At 5:23 p.m., earlier the same evening of March 29, 2015, Boulder City Police received a 9-1-1 hang-up from an apartment at 841 Avenue A. Dispatch called back and spoke to a thirteen year-old female juvenile who was subsequently identified as the daughter of concerned citizen #1 (the neighbor of Decedent). The child indicated that "John" was in an argument with his wife, and he wanted to go to California and she did not want to leave. Police were told that no weapons were involved in the argument and "John" was not drinking at the time.

Boulder City officers from the day shift responded to the apartment building and made contact with "John" (Decedent) and his wife. Officers reported back to dispatch that the argument was stopped when Decedent left the scene, and his wife was given a ride to Henderson. None of those same officers were involved in the subsequent call for assistance that occurred several hours later.

## **V. HISTORY OF JOHN ALLEN**

In a follow-up investigation to the shooting of Decedent, LVMPD detectives interviewed neighbors and friends of Decedent as well as his current wife. Detectives learned that Decedent had recently married his wife on February 18, 2015, less than six weeks prior to his death. The two had a brief and tumultuous relationship and had been in an argument earlier on March 29, 2015, which caused the wife to move out of their apartment. Decedent wanted his wife to travel with him to California to meet his family, but she did not want to leave.

Prior to marrying his current wife, Decedent had been married for many years to Irma Allen. On August 15, 2013, Decedent came home from work and found Irma Allen dead in their bathroom. Also in that same month, Decedent, while employed as a RTC bus driver, was involved in a suicide by a random citizen. The citizen jumped in front of Decedent's bus and hit the windshield, causing the citizen to have a significant head injury and die on scene. Decedent was described by friends and neighbors as being distraught and depressed in the months subsequent to these deaths.

## **VI. LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing 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 killing. As this case has been deemed a homicide by the coroner, the action of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). There is also a statute that defines excusable homicide by misadventure (NRS 200.180 – Excusable homicide by misadventure).

### **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 NRS 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony ..." against the other person. NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is

reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished ....

NRS 200.160(1).

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

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

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

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

....

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

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

actual beliefs; and

3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

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

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

*Id.* at 1051-52.

Officers Salazar and Nutzman had the right under Nevada law to use deadly force against Decedent in defense of themselves and each other. Decedent had disobeyed the commands to show his hands to Officer Salazar, and then proceeded to obtain a deadly weapon and shoot at Officer Salazar. Officer Nutzman witnessed Decedent running towards Officer Salazar with a gun and saw him shoot at Officer Salazar. Decedent's actions of obtaining the gun and shooting at Officer Salazar clearly reflect an intent to kill Officer Salazar. Officer Salazar had no other option than to use lethal force to protect himself from death or substantial bodily injury. Likewise, Officer Nutzman, having direct knowledge that a deadly weapon had just been used against Officer Salazar and observing Decedent moving towards Officer Salazar armed with a gun, was also justified in using deadly force to stop Decedent from killing or attempting to kill Officer Salazar.

#### **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).

Decedent's conduct in disobeying Officer Salazar's commands, and then obtaining a weapon and shooting it at Officer Salazar, justified Officers Salazar and Nutzman in using deadly force to prevent Decedent from inflicting death or serious bodily injury upon Officer Salazar. Clearly, Decedent's actions provided both officers with probable cause to believe that Decedent posed a threat of serious physical harm to both of the officers.

In light of all the evidence reviewed to date, the State would be unable to prove that

the actions of Officers Salazar and Nutzman were in fact unjustified “in the discharge of a legal duty.”

### **CONCLUSION**

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved shooting death of Decedent, it has been determined that the actions of Officers Armando Salazar and Alan Nutzman were reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable *shall* be “fully acquitted and discharged.” (NRS 200.190).

As there is no factual or legal basis upon which to charge Officer Salazar or Nutzman based on the totality of the circumstances, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

J. Timothy Fattig  
Chief Deputy District Attorney  
Gun Crimes Unit  
Clark County District Attorney’s Office