

# Office of the District Attorney

## County of Lebanon

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*Pier Hess Graf*  
District Attorney

*Jonathan Hess*  
Chief County Detective

To the Citizens of Lebanon County,

On November 7, 2021, Troopers from the Pennsylvania State Police responded to a private address in Union Township, Lebanon County, Pennsylvania. A female called for law enforcement and complained of an ongoing violation of a Protection From Abuse Order. She described a pattern of harassment, methamphetamine abuse, and volatile behavior from her ex-boyfriend, the subject of the PFA Order, Andrew Dzwonchyk. The Troopers responded, investigated, and attempted to arrest Mr. Dzwonchyk. After Mr. Dzwonchyk resisted and assaulted one Trooper, law enforcement utilized deadly force.

Attached to this letter is the official Report issued by the Lebanon County District Attorney's Office. The Report evidences our Office's investigation of this incident, our Detectives' findings of fact, and our legal determinations. The Lebanon County District Attorney's Office and the Lebanon County Detective Bureau made the findings and determinations in this Report. Chief Jonathan Hess, Detective Sergeant Todd Hirsch, Detective David Shaffer and Detective Stephen Kiefer conducted the criminal investigation on behalf of the Lebanon County Detective Bureau. The Detective Bureau, in conjunction with District Attorney Pier Hess Graf and First Assistant Nichole Eisenhart, generated the final rulings and conclusions contained in the Report.

Most investigations of a police shooting result in a brief letter which states only the final outcome and determination – whether the shooting was lawful or unlawful. Given the attention this case garnered, such a result seemed deficient. A mere letter or brief press conference fails to explain to our citizens and Mr. Dzwonchyk's family what really occurred. It also fails to explain the law and the legal standards that actually govern the case; biased media outlets may purport to know the law, but historically misstate applicable legal principles for their own purpose. The public deserves an authoritative and accurate discussion from the County's chief law enforcement officer, the District Attorney's Office, and that is what we provide in our report.

The attached Report exists to give a full public viewing for our efforts and the true factual circumstances which led to the loss of Mr. Dzwonchyk's life. A popular misconception exists as to the role of our investigations with respect to officer-involved shootings. The Report gives our citizens an accurate explanation of the laws applicable to an officer's use of deadly force. Our role in these cases is to determine the facts, apply the law, and decide whether the officer's use of force was lawful or unlawful.

This incident, the actions of the State Police, and the subsequent investigation by our District Attorney's Office and County Detective Bureau have garnered a good deal of scrutiny. Media articles written up until this point used eye-catching headlines to further an untrue and unfair

narrative – namely, that our Office is unable to objectively and accurately rule in this case. My job as your District Attorney is twofold in any criminal investigation. I must ensure criminal cases are always investigated and prosecuted to the best of our ability. I must also remain accountable to the community which put its faith behind me and elected me to this position.

I've been a prosecutor with the Lebanon County District Attorney's Office for thirteen (13) years. During my transition from Senior Deputy District Attorney to the elected District Attorney in early 2020, I identified a potential conflict of interest if my Office received criminal charges or investigations that involved my husband, a Corporal with the State Police. My First Assistant researched relevant case law pertaining to conflicts of interest. She further discussed how a conflict may arise with the Attorney General's Office. My First Assistant then drafted a formal policy which stated when our office possessed a conflict with respect to my husband and his involvement in any State Police investigations. The policy states if my husband is a material witness or the affiant to criminal charges, my Office possesses a conflict of interest and must refer the case to the Attorney General.

My First Assistant then provided a copy of our draft policy to the President Judge of our Court of Common Pleas in January and February of 2020. A meeting then occurred with myself, First Assistant Eisenhart, and President Judge Tylwalk. We discussed the policy as-drafted; the President Judge did not voice any objections nor did he request any changes. First Assistant Eisenhart then circulated the policy to the Court and the State Police. She then identified a point of contact for any identified conflicts with the Attorney General's Office.

In total, our Office investigated two (2) State Police shootings. In both cases, my husband was not on duty, played no role in the incident, and had no factual information to offer. Additionally, my husband transferred from the Jonestown Barracks well over a year ago. He was thus not even employed at the local station at the time of Mr. Dzwonchyk's incident. In both State Police matters, our office followed our conflict policy and properly investigated.

We are aware that prior media articles claimed I, and my Office, are unable to investigate and rule on State Police shootings because of my marital status. These articles then led to a complaint made by a local organization to the Pennsylvania Disciplinary Board (which regulates attorney conduct) in February of 2022. The Board has a job to do, and I respect the goal of keeping attorneys in bounds with the law. While our Office discussed deferring a release of our Report and our Findings until the Board did its work, we believe the public's right to know what truly happened outweighs any additional delay.

When I swore my oath as District Attorney, I promised to uphold the law and do the right things for the right reasons. In my thirteen-year career as a prosecutor, I tried over one hundred (100) cases with a near ninety (90) percent conviction rate. My caseload encompassed rapes, child abuse, robberies, instances based in domestic violence, and murders. In March of this year, I tried a mother who tortured, abused, and starved her stepson to death over the course of a decade. We secured a First-Degree conviction in that trial; the jury rendered its verdict in less than an hour. I secured another First-Degree murder conviction this past June for a senseless murder from gun violence. I am proud of my career and the work of our Office in keeping our community safe.

When I attend District Attorney conferences, I am always struck at the sheer lack of women who occupy the seat of elected District Attorney. I am only the second female DA in the history of

Lebanon County. In all my years as a prosecutor, I never once witnessed any of my male colleagues be questioned or vilified based on their spouse's career. The entire tone of many media articles written on this case implies I am somehow incapable of issuing appropriate, professional, correct decisions based on my own mind. In 2022, it astonishes me that this still occurs. To anyone who knows or has worked with me, the notion that I am incapable of rendering decisions based on what I know to be correct is absurd. I was a prosecutor before my marriage; I remain a prosecutor after my marriage. While I respect and love my husband dearly, who I happen to go home to after work has *never* impacted my professional capabilities or beliefs.

When elected as District Attorney, I understood my job requires me to make difficult decisions on a near daily basis. I also understood those decisions, however tough, must be made and acted upon. The easy decision in this case, or in any high-scrutiny State Police matter, would be to claim 'conflict' based on my marital status. The easy decision would be to deflect my work and the attention it inherently garners to another office or another official. To do so not only would be wrong but would show a complete lack of moral character. I will never shy away from what my job demands of me even though an easier path exists.

I never thought of myself as a politician and still don't. When I speak to our local citizens about what they want and expect from their elected officials, the common consensus focuses on honesty, accountability, and grit. People expect us to not only stand up for what is right, but also to fight for it. When I meet with victims and their families, I often tell them they may not like the realities I must explain, but they can always rely on me for a blunt and direct answer. With this letter and accompanying Report, our Office understands the community may not like the existing facts or applicable law. But we owe the citizens of Lebanon County full transparency, and we have delivered it with the Report.

Respectfully,

A handwritten signature in black ink, appearing to read 'Pier Hess Graf', with a long horizontal flourish extending to the right.

Pier Hess Graf  
District Attorney



**INVESTIGATIVE REPORT:  
OFFICER-INVOLVED SHOOTING  
of  
ANDREW DZWONCHYK**

Pier Hess Graf  
District Attorney of Lebanon County  
400 S. 8<sup>th</sup> Street  
Lebanon, PA 17042

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# **I. INTRODUCTION**

The instant Report, authored by District Attorney Pier Hess Graf, First Assistant District Attorney Nichole Eisenhart, and the Lebanon County Detective Bureau, provides Findings of Fact and Conclusions of Law following the completed investigation. The Report concludes with Advisory Comments and Recommendations addressing the inherent dangers of police involvement in the emotionally-charged realm of PFA enforcement when the custody of minor children is involved.

## II. INVESTIGATORY EFFORTS AND EVIDENCE REVIEWED

Following the fatal shooting of Decedent Andrew Dzwonchyk by the Pennsylvania State Police on November 7, 2021 in Union Township, Lebanon County, the Lebanon County Detective Bureau initiated a complete criminal investigation of the incident. Investigating officers were Chief Jon Hess, Detective Sergeant Todd Hirsch, Detective David Shaffer, and Detective Stephen Kiefer. Their investigatory efforts included the creation and review of the following: <sup>1</sup>

1. Criminal Investigative Reports of the Lebanon County Detective Bureau
2. Criminal Investigative Reports of the Pennsylvania State Police
3. Criminal Investigative Reports of the Pennsylvania State Police, CARS Unit
4. Review of maps/footage of the Crime Scene produced by the CARS Unit
5. Review of Crime Scene Photographs
6. Review of Photographs (Trooper Jay Splain and equipment, Trooper Justin Achenbach and equipment, Decedent)
7. Review of Autopsy Photographs
8. Review of toxicology reports (Trooper Jay Splain, Trooper Justin Achenbach, Decedent)
9. Review of Autopsy Report (Decedent)

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<sup>1</sup>This list does not include interviews of members of the Decedent's family. On November 8, 2021, members of the State Police went to the residence of the Decedent's mother. They advised the Decedent's mother as to the fatal incident. The State Police provided her with business cards and contact information; they stated their desire to interview the Decedent's mother as to any relevant information she wished to provide. To date, the Decedent's mother has not yet contacted the State Police or been interviewed by them. On March 3, 2022, Chief Jon Hess personally spoke to the Decedent's mother and brothers. He specifically asked that they give statements on behalf of the Decedent. Chief Hess then distributed business cards with his contact information to those present. The Decedent's mother indicated the Decedent's family would not be speaking with any detectives or law enforcement. She further indicated that detectives would be hearing from the family's attorney. To date, no one from the Decedent's family has scheduled an interview with the Detective Bureau. No attorney has contacted the Detective Bureau to provide statements on behalf of the Decedent's family. While refusing to provide statements to both the Pennsylvania State Police and the Lebanon County Detectives Bureau, members of the Decedent's family spoke to various media outlets and gave interviews.

10. Review of Evidence Obtained on-scene, from vehicles, from each involved-Trooper, from Decedent
11. Call out to, and investigation of, the initial crime scene. It should be noted this crime scene investigation occurred in the hours after the shooting, while the Decedent's body remained present. The Lebanon County Detective Bureau was thus able to observe the Decedent, the position of his vehicle, the layout of 61 Ridge Road, Union Township, Lebanon County, and the location of physical evidence on the scene.
12. Review of Mobile Video Recordings (MVR) footage from Trooper Splain and Achenbach's vehicle (11/7/21)
13. Review of Mobile Video Recordings (MVR) footage from Vehicle L208<sup>2</sup>
14. Review of interview, Randy Kapp
15. Review of interview, Randy Kapp (audio-recorded)
16. Review of interview, Lisa Hastings
17. Review of interview, Amy Hastings (audio-recorded)
18. Review of Search Warrant (Amy Hasting's and the Decedent's Cellular Telephones)
19. Review of Forensic Cellular Telephone Download, phone of Amy Hastings
20. Review of Forensic Cellular Telephone Download, phone of the Decedent
21. Review of Amy Hasting's call to the Pennsylvania State Police (11/7/21, 1339 hours)
22. Review of Amy Hasting's call to the Pennsylvania State Police (11/7/21, 2239 hours)
23. Review of interview, Ashley Lajuett
24. Review of Police Dispatch transmissions (11/7/21, 2241 hours though 11/8/21, 0023 hours)
25. Review of Life Lion EMT Interviews
26. Review of Search Warrants, Decedent's vehicle
27. Review of Court Order (Search Warrants – Sealed)
28. Review of interviews, neighborhood canvas

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<sup>2</sup> While investigators reviewed the in-car camera footage from Trooper Splain and Achenbach's marked patrol vehicle from the night in question, the in-car camera of the patrol car records only the area immediately in front of the vehicle. Since the entire incident between troopers and the Decedent on November 7, 2021 occurred at a ninety-degree angle from the car itself, the footage taken during that incident failed to capture the Decedent's actions against Trooper Achenbach or the shots fired by Trooper Splain.



29. Interviews of Trooper Jay Splain (audio recorded, transcript)
30. Review of Conduct Energy Weapon print outs, Trooper Jay Splain
31. Review of Firearm Scoring Records, Trooper Jay Splain
32. Interview, Trooper Justin Achenbach (audio recorded, transcript)
33. Review of Conduct Energy Weapon print outs, Trooper Justin Achenbach
34. Review of Firearm Scoring Records, Trooper Justin Achenbach
35. Review of Vehicle Inspection Report, Decedent's vehicle
36. Review of Criminal History Search, Decedent
37. Review of Criminal History Search, Decedent's mother and brothers
38. Review of Criminal Docket Filings, Decedent
39. Review of Criminal Docket Filings, Decedent's mother and brothers
40. Review of Protection from Abuse filings, Amy Hastings against Decedent (includes PFA violations)
41. Review of Protection from Abuse filings, Decedent against Amy Hastings
42. Review of Prior-Contacts with the Pennsylvania State Police, Decedent, mother, brothers, and Amy Hastings
43. Review of multi-agency neighborhood canvas

# III. FINDINGS OF FACT

The Findings of Fact, relevant to the investigation at hand, are as follows:

1. On November 7, 2021, two (2) Pennsylvania State Police Troopers responded to a private residence to investigate the report of a violation of a Protection From Abuse Order. The PFA Order prohibited the Decedent, Andrew Dzwonchyk, from initiating contact with a female, hereinafter identified as “A.H.” While the troopers were at A.H.’s residence beginning their investigation, Andrew Dzwonchyk arrived at the residence in his vehicle. A struggle between police and Dzwonchyk ensued. Ultimately, one of the troopers shot and killed Andrew Dzwonchyk.
2. That same night, the Office of the District Attorney, through the Lebanon County Detective Bureau, commenced a criminal investigation into the shooting.
3. The factual findings of that investigation are stated in this section of the Report.<sup>3</sup>

## A. PERSONS INVOLVED.<sup>4</sup>

4. Trooper Justin Achenbach is a Pennsylvania State Trooper. On November 7, 2021, Trooper Achenbach was assigned to the Jonestown barracks. At that time, he had been a Pennsylvania State Trooper for four- and one-half years.
5. Trooper Jay Splain is also a Pennsylvania State Trooper. On November 7, 2021, Trooper Splain was assigned to the Jonestown barracks. Trooper Splain has been a Pennsylvania State Trooper since May 10, 2004.

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<sup>3</sup>Hereinafter Andrew Dzwonchyk will be referred to “A.D.” or “the Decedent” in this Report. To the extent possible, this Report is written to protect identities of the Decedent’s family, A.H.’s family, the minor children involved, and police involved.

<sup>4</sup>To the extent possible, this Report is written to protect identities of the Decedent’s family, A.H.’s family, and the parties’ minor children. Names and/or initials were purposefully redacted.

6. Andrew Dzwonchyk (hereinafter “the Decedent”) was an adult male who resided in Union Township, Lebanon County.
7. For years prior to November 7, 2021, the Decedent engaged in a romantic relationship with A.H. The couple never legally married but lived together in the Decedent’s residence.
8. The couple had two (2) children together. Both children were minors at the time of the Decedent’s death.
9. On October 5, 2021, A.H. ended her relationship with the Decedent. Taking the couples’ two minor children with her, she moved in with her mother and her mother’s boyfriend.
10. A.H.’s mother lived less than a quarter mile from the Decedent’s residence. Thus, even after A.H. left the Decedent’s home and ended their romantic relationship, she remained within close physical proximity to the Decedent.
11. Neither A.H. nor the Decedent filed for formal custody of their two minor children. As a result, no Custody Order existed specifying the details of where, when, and with whom the minor children were to reside.

**B. A.H. OBTAINED A PROTECTION FROM ABUSE ORDER AGAINST THE DECEDENT.**

12. On October 12, 2021, seven days after A.H. left the Decedent’s home and ended their relationship, she obtained a Temporary Protection From Abuse Order against the Decedent on behalf of herself and her children. In her PFA request, A.H. stated that the Decedent had followed her to a wooded trail, parked her vehicle in with his own, engaged in a vehicular pursuit of A.H., and ceased chasing her only after he caused an accident at a local gas station. At that gas station, the Decedent told A.H. that if she did not resume their romantic relationship, he would commit suicide in front of their children. A.H. also stated

in her PFA request that the Decedent had a six-year drug habit, and his behavior placed her in physical fear for her safety and that of their shared, minor children.

13. The Temporary PFA Order entered on October 12, 2021 protected A.H. and her minor children. On October 14, 2021, the Court of Common Pleas issued an Amended Temporary Order that removed the parties' minor children as protected parties to allow the Decedent to have contact with the children. Thus, the continuing Temporary PFA Order prohibited contact only between the Decedent and A.H.<sup>5</sup>
14. After A.H. filed for her initial, Temporary PFA Order on October 12, 2021, the Decedent sought his own PFA Order against A.H. In his PFA Petition, the Decedent alleged A.H. suffered from mental health issues, caused an explosion on their property, locked herself in a room to read 'smut' novels, and neglected their children. The Decedent stated he had told A.H., "God was trying to show her that her stubbornness is dangerous."
15. On October 15, 2021, the Honorable Bradford H. Charles denied the Decedent's PFA request. Later that same day, the Decedent himself withdrew his PFA request.
16. A.H. obtained counsel to litigate her PFA; AH.'s counsel entered her appearance with the Lebanon County Court of Common Pleas on October 20, 2021.
17. The Decedent obtained Counsel on his behalf; Decedent's counsel entered his appearance with the Lebanon County Court of Common Pleas on October 21, 2021.
18. A Hearing on the PFA Petition occurred before Senior Judge Robert J. Eby on October 22, 2021. At that Hearing, the Decedent agreed to the issuance of a permanent PFA Order, but

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<sup>5</sup> A review of the PFA docket involving A.H. and the Decedent shows that the original Temporary PFA Order issued on October 12, 2021 received a hand-written amendment by President Judge John C. Tylwalk. That handwritten amendment removed the parties' minor children as protected individuals. Days later, a second Temporary PFA which covered only A.H. was formally issued.

did not admit he had committed the underlying, threatening behavior that A.H. alleged. The Court then issued a permanent PFA Order on behalf of A.H. against the Decedent.

19. That final, October 22, 2021 PFA Order allowed the Decedent to “have temporary custody and/or partial custody and/or visitation [of the parties’ minor children] to be arranged between [A.H. and the Decedent].” The Order further prohibited either party from withholding custody of their minor children from the other party.
20. In short, the final PFA Order prohibited contact between A.H. and the Decedent *unless* that contact pertained to the parties’ shared, minor children.
21. The October 22, 2021 PFA Order was to be in effect for 30 days. Thus, the Order was still in effect against the Decedent on November 7, 2021, the date of his death.

**C. THE DECEDENT VIOLATED THE PFA ORDER WITHIN DAYS THROUGH CONTACT WITH AND THREATS AGAINST A.H.; THE DECEDENT APPEARED IN COURT AND ACKNOWLEDGED THE VIOLATION TWO DAYS BEFORE HIS DEATH.**

22. The Decedent exhibited willful disregard of the final PFA Order almost immediately after its issuance.
23. On October 24, 2021, A.H. phoned the State Police and reported that, beginning on October 23, 2021, the Decedent had been repeatedly contacting her in violation of the PFA Order.
24. A.H. provided the State Police with copies of the text messages sent to her by the Decedent from October 23<sup>rd</sup> through October 24<sup>th</sup> of 2021. Those texts from the Decedent included:
  - a. 9:26 p.m. – “Piss on you / Keep running away from the fucking shit that matters most in life and you ain’t ever going to have a life sure you’ll have plenty of stiff dicks run up in like your mother but you could have the life they all want, you gad it but don’t know how to handle it so you go wild and get a boyfriend like your mommy always did when it got too real just justify it somehow while lying to yourself the whole time and hurting all involved but your selfish little self...I see you and you can’t even look me in the eye you are soo wrong and you can’t stand

to look at me because you cry and I see the person I love but she is growing cold and old and gonna be old in the cold once she wakes up and I moved on cause you were so mean I couldn't stay no more and wait through the constant mind fucking and games"

b. 9:48 p.m. – "It's gonna be bad now / we coulda just talked and came to an understanding / just like you don't go a boyfriend or fuck buddy right. You had sex with me almost every day and enjoyed it but now you are abstaining from it all together?"

c. 11:56 p.m. – "you out late tonight"

d. 12:34 a.m. – Decedent sent a picture text of a somewhat empty closet

e. 12:34 a.m. – "You hurting me so bad I had to burn the clothes in the closet to make you understand that I'm not joking about my pain is unbearable"

f. 12:39 a.m. – "I'm cleaning shit out and its going on the fire since you won't allow us to work on our relationship this stuff all can ho and means nothing just like me to you..I don't want to do it but you have betrayed me beyond measure and I can't understand why I am the victim of your hate and Daddy issues"

g. 8:58 a.m. – "I would like to see my boys please got worked police were at my house this morning? Is there something I need to know before I go home?"

25. The Pennsylvania State Police thereafter charged the Decedent with a PFA violation. The Criminal Complaint alleged the Decedent sent A.H. text messages. The State Police then arrested the Decedent.

26. Both the PFA Violation and Criminal Complaint stated the Decedent's vehicle was a 1999 Volkswagen Beetle with a license plate of JKB8648. The vehicle was a two-door, red sedan.

27. During his Violation arraignment, the Decedent completed paperwork naming A.H. as his spouse but stating that their marriage was "in disarray." He listed his mother and brothers as family members but told the court that he was "estranged" from his brothers and "did not associate with them" anymore.

28. On November 5, 2021, the Decedent appeared in Court to answer for his PFA violation. He admitted he violated the PFA when he texted A.H. The Court sentenced the Decedent to pay a fine of \$500.

**D. DESPITE THE PFA ORDER AND SUBSEQUENT VIOLATION, A.H. INITIATED CONTACT WITH THE DECEDENT REQUESTING REPAIRS TO HER VEHICLE. ON THE EVENING OF THE OFFICER-INVOLVED SHOOTING, THE DECEDENT REFUSED TO RETURN HER VEHICLE. A.H. REQUESTED STATE POLICE INTERVENE, OBTAIN HER VEHICLE, AND ENFORCE THE PFA ORDER. STATE POLICE RESPONDED, INVESTIGATED, AND TOLD BOTH PARTIES TO CEASE ALL CONTACT.**

29. Within forty-eight hours of the PFA Violation Hearing, A.H. and the Decedent initiated contact with one another. That contact continued through November 7, 2021, the day of the Decedent's death.

30. On November 7, 2021, A.H. phoned the Pennsylvania State Police. She acknowledged a PFA Order existed that prohibited contact between the parties, but admitted she had driven her vehicle to the Decedent's residence, where she requested that the Decedent perform mechanical work on her car. He agreed to do so.<sup>6</sup> The PFA Order prohibited the nature of communications undertaken by A.H.

31. Later that same day, A.H. demanded the Decedent return her vehicle. A series of text messages and attempted phone calls occurred between the parties. When the Decedent

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<sup>6</sup> As will be addressed more fully in the Advisory Comments and Recommendations section of this Report, issues with the enforcement of PFA Orders arise with the plaintiffs they protect – in this case A.H. – initiate contact with the defendants named in the Order – in this case, the Decedent. When the parties do not have mutual PFAs against one another, a violation of the existing PFA Order arises only from the defendant's contacts with the plaintiff. As a result, law enforcement is unable to violate the plaintiff for initiating or encouraging prohibited contact between the parties, despite the existence of a PFA Order prohibiting contact by the defendant.

demanded that A.H. come alone to his property and retrieve her vehicle, A.H. phoned the Pennsylvania State Police.

32. The State Police attempted to speak with the Decedent at his home before they spoke with A.H. The Decedent did not answer the door. At approximately 3:00 p.m., Pennsylvania State Troopers responded to A.H.'s residence. A.H. again admitted to the responding troopers that she had contacted the Decedent and asked that he fix her car. She further acknowledged that she took her vehicle to his home and left it in his possession. Thereafter, however, the Decedent refused to return her vehicle. She accused him of "playing mind games" with her.
33. A.H. showed the troopers a text message she received from the Decedent while she was speaking with the troopers. The Decedent asked in his text "why the police were just at his home."
34. Troopers again tried to contact the Decedent at his home; he again failed to answer his door.
35. The Decedent phoned into the State Police Barracks. Troopers informed the Decedent that they were not charging him with a PFA violation, since A.H. had mutually initiated contact with him. They reminded the Decedent to cease all communications with A.H. due to the PFA Order.

**E. THAT SAME EVENING, THE DECEDENT CONTINUED TO CONTACT AND HARASS A.H.; A.H. AGAIN PHONED THE STATE POLICE, REQUESTED INTERVENTION, AND ENFORCEMENT OF THE PFA ORDER.**

36. At approximately 10:30 p.m. that same day, A.H. again phoned the Pennsylvania State Police. She stated that the Decedent continued to text and contact her. She reported that



their shared, minor children were in his care, and she feared for their safety. She requested the assistance of law enforcement.

37. At approximately 10:45 p.m., two PSP Troopers, Trooper Justin Achenbach and Trooper Jay Splain, wearing State Police uniforms, responded to A.H.'s residence in a marked State Police patrol vehicle.
38. The location of A.H.'s residence is rural and heavily wooded. The area lacks artificial light aside from light emanating from the individual houses.
39. The Decedent, his mother, and his brothers all live within 1000 feet of A.H.'s residence.
40. The troopers initially took an incorrect turn and mistakenly drove to home of the Decedent's mother. The troopers noticed lights were on inside that home. They turned their patrol vehicle around and proceeded to A.H.'s home.
41. A.H.'s home sits at the end of a narrow, single-lane driveway. The troopers parked their patrol car in the driveway and proceeded to the front door.

**F. A.H. TOLD TROOPERS THE DECEDENT KEPT HER VEHICLE, REFUSED TO RETURN THEIR CHILDREN, AND CONTINUED TO CONTACT AND HARASS HER. A.H. FURTHER RELATED THE DECEDENT UTILIZED METHAMPHETAMINE ON A REGULAR BASIS.**

42. The troopers then spoke with A.H., who stated the following: She had agreed that the Decedent could visit and see their children that day, and he took them to his residence for that purpose. Despite the PFA Order prohibiting such communication, A.H. admitted she also asked the Decedent to fix her disabled vehicle, and he agreed to do the mechanical work at no cost. She had phoned law enforcement earlier that day when the Decedent refused to return both her vehicle and their children. Later, the Decedent later demanded

she go to his house alone and retrieve the children. She told troopers she feared the Decedent and refused to go alone in the dark.

43. At that time, A.H. also told the troopers that the Decedent's drug of choice was methamphetamine.
44. Even while the troopers spoke with A.H., the Decedent continuously sent text messages to her cell phone. He texted a picture of one of their shared children with a tick bite that appeared infected and in need of medical care. The Decedent also placed phone calls to both A.H.'s cellular telephone and landline during this time.
45. After speaking with A.H., the troopers returned to their patrol vehicle. They obtained approval from Lebanon County Assistant District Attorney Daniel Linares-Herrador to file a Protection From Abuse Violation against the Decedent based upon his repeated text messages and phone calls to A.H. The Troopers then exited their vehicle and attempted to re-initiate contact with A.H. They intended to photograph the text messages from the Decedent as evidence for the PFA Violation.

**G. DURING THE TROOPER'S INVESTIGATION AT A.H.'S HOME, THE DECEDENT DROVE TO HER RESIDENCE. HE SCREAMED OUT OF HIS CAR'S WINDOW FOR A.H. TROOPERS NOTED HIS AGGRESSIVE BEHAVIOR AND BELIEVED IT CONSISTENT WITH THE USE OF METHAMPHETAMINE.**

46. As troopers walked towards A.H.'s house, the Decedent arrived, "flying up" in his car and driving through the back and side yard of A.H.'s residence. The Decedent had his car window rolled down and behaved aggressively. He repeatedly yelled and demanded that A.H. come outside and speak with him.

47. The Decedent was driving the vehicle known to be his, the red Volkswagen he had previously identified as his own during his arraignment on the PFA.
48. The troopers approached the Decedent on the driver's side of his vehicle. As the troopers interacted with the Decedent, they observed signs he was under the influence of methamphetamine, including that he was "wide-eyed" and had a "thousand-yard stare."

**H. TROOPERS ATTEMPTED TO ARREST THE DECEDENT FOR A PFA VIOLATION. THE DECEDENT RESISTED AND TROOPER ACHENBACH TRIED TO PHYSICALLY TAKE THE DECEDENT INTO CUSTODY. WITH TROOPER ACHENBACH'S BODY HALFWAY INTO THE VEHICLE, THE DECEDENT AGGRESSIVELY ACCELERATED FORWARD AND DRAGGED TROOPER ACHENBACH.**

49. The troopers told the Decedent he was under arrest for violating the PFA Order. They directed the Decedent to exit his vehicle multiple times; the Decedent refused to exit the vehicle. The troopers tried to open the door to the vehicle; the Decedent locked the door.
50. Trooper Achenbach explained that he asked the Decedent to exit the vehicle and talk to police. The Decedent said "no" and that the police weren't going to "do this to him." The Decedent started to look around, causing Trooper Achenbach to conclude that the Decedent was about to try to drive off and escape arrest. As a result, Trooper Achenbach leaned his body into the vehicle through the open, driver's side window and attempted to grab the steering wheel and unlock the Decedent's car door. Trooper Splain saw Trooper Achenbach reach past the wheel and try to remove the vehicle's ignition key. The Decedent pushed and struggled with Trooper Achenbach.
51. The Decedent then hit the gas pedal and accelerated his car forward, dragging Trooper Achenbach, whose body was still partially inside the driver's side window.

52. Trooper Splain observed the interactions between the Decedent and his partner, Trooper Achenbach. He observed his partner's body, which was halfway inside the vehicle. He observed the Decedent continue to resist arrest and refuse to exit his vehicle, all the while pushing and struggling with Trooper Achenbach.
53. Trooper Splain expressed concern as to Trooper Achenbach's exposed physical position; he worried the Decedent could easily grab and use a weapon. He worried that, as the Decedent drove his vehicle and dragged Trooper Achenbach, his partner might fall and be run over or rammed into trees or other, parked vehicles on the property.<sup>7</sup>
54. Trooper Splain drew his firearm and began chasing the forward-accelerating vehicle. He did not fire his weapon at that time.
55. The Decedent continued to accelerate forwards, towards the driveway in front of A.H.'s home, where the troopers' parked patrol vehicle prevented the Decedent from fleeing using the driveway.

**I. THE DECEDENT STOPPED HIS VEHICLE DUE TO THE TERRAIN AND PARKED STATE POLICE PATROL CAR; HE WAS UNABLE TO PHYSICALLY ESCAPE THE SCENE WITH CONTINUED FORWARD MOTION. TROOPER ACHENBACH REMAINED TRAPPED HALFWAY INSIDE THE VEHICLE. THE DECEDENT AGAIN RESISTED ARREST AND AGGRESSIVELY REVERSED THE VEHICLE, WITH THE TROOPER DRAGGED ALONGSIDE.**

56. When the steep, wooded terrain and parked patrol car prevented any additional forward progress as a means for the Decedent to flee the property, he brought his vehicle to an

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<sup>7</sup> The size and speed capabilities of a motorized vehicle create a risk of death or serious bodily injury for persons who are run over or run into by that vehicle.

abrupt stop, with Trooper Achenbach still partially trapped inside the driver's side window. As the Decedent reversed, Trooper Achenbach clung to both the car and the Decedent's person as the car continued to drag him.

57. Trooper Splain began approaching the stopped vehicle.

58. Meanwhile, Trooper Achenbach continued commands with the Decedent. Trooper Achenbach repeatedly told the Decedent he was under arrest and needed to exit the vehicle. The Decedent did not obey those commands.

59. Still partway inside the vehicle, Trooper Achenbach pulled the Decedent by his coat.

60. The Decedent began moving his hand past the gearshift, reaching and searching within areas of the car.

61. Given the nighttime conditions and lack of artificial light, the troopers feared the Decedent stored a weapon somewhere in the vehicle and was reaching to grab it. As specifically stated by Trooper Splain, when the Decedent's hand moved past the gear shift and began reaching around into the car's compartments, it was a "big red flag."

**J. TROOPER SPLAIN CHASED THE DECEDENT, HIS VEHICLE, AND THE DRAGGED TROOPER FOR A SECOND TIME. TROOPER SPLAIN FIRED HIS WEAPON AT THE DECEDENT AND WOUNDED HIM IN THE ARM. THE DECEDENT MOMENTARILY STOPPED HIS VEHICLE, CONTINUED TO RESIST ARREST, AND REFUSE THE TROOPERS' COMMANDS.**

62. The Decedent then put the car into reverse. As Trooper Achenbach hung onto the driver's side of the Decedent's vehicle, the Decedent accelerated the car backwards.

63. While the Decedent accelerated backwards, he continued to struggle with Trooper Achenbach. Trooper Achenbach stated the Decedent tried to throw him out of the car.

64. Trooper Splain stated that, at that point: "I knew if I didn't end this, either [Trooper Achenbach] or I was going to get seriously injured by this car or killed." Trooper Splain chased the vehicle and fired his weapon.
65. His shots wounded the Decedent, and the vehicle stopped.
66. Trooper Splain again told the Decedent to exit the vehicle. The Decedent again refused.
67. Trooper Splain observed a gunshot wound to the Decedent's arm.
68. The troopers attempted to take the Decedent into police custody and provide the necessary, emergency medical care. Trooper Splain stated their efforts felt like "pleading with him to get out of the car." The Decedent continued his refusal to exit the car, and the car remained "on" with the engine running.
69. Trooper Achenbach described the Decedent as wholly unaffected by the initial gunshots. The Decedent continued to say "no" and repeated his refusal to exit his vehicle. The Decedent continued to struggle and fight with Trooper Achenbach.
70. A.H. stated she was inside during the first gunshots. After the first gunshots, she ran outside and heard the Troopers repeatedly tell the Decedent to exit his car. A.H. heard the Decedent refuse to comply with police and submit to arrest.
71. The troopers realized the Decedent would not comply with their commands to shut his engine off or exit his vehicle.
72. Instead, the Decedent continued to rev the engine of the car.

**K. THE TROOPERS ATTEMPT TO TASE THE DECEDANT AND TAKE HIM INTO CUSTODY. DUE TO THE DECEDENT'S POSITION WITHIN HIS VEHICLE AND USE OF A HEAVY OVERCOAT, THE TASER EFFORTS PROVED UNSUCCESSFUL. THE DECEDENT CONTINUED TO STRUGGLE WITH TROOPER ACHENBACH, RESISTED ARREST, AND AGGRESSIVELY ACCELERATED BACKWARDS WITH TROOPER ACHENBACH STILL PARTYWAY TRAPPED INSIDE FOR THE THIRD TIME.**

73. In reviewing their options to take the Decedent into custody and provide him with emergency care, the troopers considered the use of their tasers. Because the probes of a taser must make contact with a suspect's skin to have any effect, the troopers knew their tasers would not penetrate the metal of the Decedent's car door. Likewise, it was questionable whether their tasers could penetrate the Decedent's heavy winter jacket.
74. Despite their concerns regarding the effectiveness of a taser in the circumstances at hand, Trooper Splain attempted to take the Decedent into custody utilizing his taser.
75. Trooper Splain's first taser deployment made contact with the Decedent's body and appeared to momentarily incapacitate the Decedent.<sup>8</sup>
76. Trooper Achenbach attempted to capitalize on the taser's effect on the Decedent. He reached into the Decedent's vehicle with the intent to turn off the engine and retrieve the keys. As Trooper Achenbach reached his arm into the open window, the Decedent started to put his window up, and, with Trooper Achenbach partially trapped inside, the Decedent once again accelerated the vehicle backwards, dragging Trooper Achenbach alongside the moving car for a third time.

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<sup>8</sup> The incapacitation effect of a properly deployed taser typically lasts no more than a few seconds.

77. At that point, Trooper Achenbach stated that he believed the Decedent's intentions were to escape and avoid arrest at any cost. He believed the Decedent intended to run over either trooper to effectuate those intentions.

78. Although the Decedent was accelerating rapidly<sup>9</sup> backwards, Trooper Splain attempted to deploy his taser against the Decedent a second time.<sup>10</sup> The probe of his taser bounced off the vehicle, with no effect on the Decedent or the Decedent's demonstrated determination to accelerate his vehicle in reverse while Trooper Achenbach, still trapped, was being dragged.

**L. TROOPER SPLAIN CHASED THE DECEDENT AND HIS VEHICLE AS HE AGAIN DRAGGED TROOPER ACHENBACH. TROOPER SPLAIN FIRED UPON THE DECEDENT UNTIL THE VEHICLE CEASED ACCELERATING; THE SHOTS PROVED FATAL TO THE DECEDENT.**

79. Trooper Splain stated that, at that point, he had "no doubt" that the Decedent intended to escape arrest and was willing to run over or seriously hurt either trooper to do so. He feared that his partner would be seriously injured or killed and believed he had no other choice but to use his firearm to stop the potentially deadly actions of the Decedent against his partner and himself. Indeed, Trooper Splain feared that, even if he used his firearm against the Decedent, "it was not going to be fast enough" to save Trooper Achenbach's life.

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<sup>9</sup> In both instances in which the Decedent accelerated his vehicle in a backwards direction, its tires spun so quickly that it appeared that the Decedent had floored the gas pedal.

<sup>10</sup> A later-examination of Trooper Splain's taser confirmed he had deployed his taser on two (2) separate instances on the night in question. The deployments occurred ten (10) seconds apart.



80. Trooper Splain chased the Decedent, his vehicle, and his trapped partner for a third time.

Trooper Splain fired his weapon at the Decedent until the vehicle finally came to a stop.<sup>11</sup>

81. Trooper Splain then approached the vehicle, where he and Trooper Achenbach observed that the Decedent had sustained multiple gunshot wounds. It was apparent the Decedent was beyond life saving measures.

**M. DURING ALL OF THE TROOPERS' OBSERVATIONS OF THE DECEDENT, HE REACHED INTO VARIOUS AREAS OF THE VEHICLE IN A SEARCHING MOTION. A SEARCH OF THE DECEDENT'S VEHICLE AFTER HIS DEATH REVEALED A CLAW HAMMER BEHIND THE PASSENGER SEAT WITHIN THE DECEDENT'S REACH.**

82. Troopers Splain and Achenbach observed the Decedent from his initial arrival at A.H.'s home. At all times, the Decedent remained in his vehicle. He refused to exit despite multiple commands by the Troopers.

83. When the Decedent refused to submit to arrest, he accelerated the vehicle once; he reversed the vehicle twice. During the acceleration and reverse, Trooper Achenbach remained halfway stuck inside the vehicle.

84. The Decedent struck and pushed Trooper Achenbach. He also reached through various compartments of his vehicle and utilized a 'reaching' motion.

85. Investigators from the Pennsylvania State Police conducted a search of the Decedent's vehicle immediately after the shooting. Troopers located a claw hammer behind the passenger's seat, at a location within reach of the Decedent. The Decedent, in his position of final rest, had his hand extended to the rear seat area of the vehicle.

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<sup>11</sup> A later search of Trooper Splain's firearm revealed that additional bullets remained in the magazine of the firearm. Thus, while Trooper Splain fired multiple rounds during the two (2) deployments of his weapon against the Decedent, he did not fire every round in the weapon.

**N. A FORENSIC PATHOLOGIST CONDUCTED AN AUTOPSY UPON THE DECEDENT; THE DECEDENT'S TOXICOLOGY RESULT SHOWED HE CONSUMED TOXIC LEVELS OF BOTH METHAMPHETAMINE AND AMPHETAMINE ON THE NIGHT OF HIS DEATH.**

86. A forensic pathologist performed an autopsy on the Decedent's body. The Decedent died from multiple gunshot wounds inflicted by Trooper Splain.
87. As part of the Decedent's autopsy, medical personnel drew and analyzed his blood.
88. The toxicology report prepared after analysis of the Decedent's blood revealed the presence of both Amphetamine and Methamphetamine.
89. The effects of both substances depend on how often a person utilizes the drug, the amount ingested, whether the substances are combined, and/or the person's biographical dynamics.
90. The effects of Amphetamine include tenseness, nervousness, hostility, aggressiveness, and a sense of both power and superiority. Regular use of Amphetamines leads to psychosis with symptoms of hallucinations, delusions, paranoia, and violence.
91. The effects of Methamphetamine include clouded judgment, memory loss, difficulties in concentration, lack of logical progression in thoughts, rapidly changing thoughts, and intense focus on one subject. Psychosocial symptoms include feelings of irritability, invincibility, depression, anxiety, mania, paranoia, hallucinations, psychosis, and worsening emotional and mental health.
92. The therapeutic range – or medically prescribed and permissible range – of Amphetamine is anywhere from 30-110 ng/mL; the Decedent's blood showed 264 ng/mL of Amphetamines in his system.

93. The therapeutic range – or medically prescribed and permissible range – of Methamphetamine is anywhere from 10-50 ng/mL; the Decedent’s blood showed 2012 ng/mL of Methamphetamine in his system.
94. The levels of each substance contained within the Decedent’s blood were toxic.
95. The symptoms and behavior described by Trooper Achenbach, Trooper Splain, and other witnesses of the incident are consistent with the Decedent’s toxicology results and the known effects of the drugs indicated therein.

**O. FORENSIC RESULTS OF CELLULAR TELEPHONE EXAMINATIONS CONDUCTED ON THE PHONES OF A.H. AND THE DECEDENT CONFIRMED ONGOING TEXT MESSAGING BETWEEN THE DECEDENT AND A.H. IN THE WEEK LEADING UP TO DECEDENT’S DEATH.**

96. During the investigation, law enforcement collected the cellular telephones utilized by A.H. and the Decedent on the night in question.
97. Investigators subsequently conducted a forensic download of the telephones.
98. Forensic downloads reveal text messages, phone calls, videos, photographs, and other information stored within each phone. Under certain circumstances, the forensic examination can retrieve items previously-deleted by the telephone’s user.
99. A review of forensically-obtained information from both A.H.’s and the Decedent’s cellular telephones revealed ongoing text message communication between the two in the week prior to the Decedent’s death. That communication continued throughout the day and night of the Decedent’s death.<sup>12</sup>

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<sup>12</sup> Records showed 325 texts and 13 phone calls between A.H. and the Decedent on the day of the Decedent’s death alone.

**P. WITNESS STATEMENTS DESCRIBED THE DECEDENT AS A CHRONIC ABUSER OF METHAMPHETAMINE, WHO BEHAVED ERRATICALLY AND ABUSIVELY. THE DECEDENT'S BEHAVIOR APPEARED TO ESCALATE IN THE WEEKS LEADING UP TO NOVEMBER 7, 2021.**

100. Investigators interviewed members of A.H.'s family. Those family members disclosed the Decedent's chronic use of methamphetamine and his behavior towards A.H. A.H.'s mother described the Decedent as both physically and emotionally abusive to A.H. The boyfriend of A.H.'s mother told police the Decedent threatened A.H. in the past and tried to break into their residence.
101. The investigation revealed prior acts of violence committed by the Decedent towards A.H. Approximately one month before the incident in question, Decedent stalked and followed A.H. at a local park. As A.H. tried to drive to safety, the Decedent followed in his vehicle. He drove aggressively and attempted to run a friend of A.H.'s vehicle off the road. When A.H. drove to a local gas station for help, the Decedent still followed her. A.H. escaped safely only because the Decedent struck another vehicle in the gas station's parking lot.
102. Various neighbors also spoke with police. They described the Decedent as a chronic drug abuser with erratic behavior.<sup>13</sup>
103. One neighbor stated the Decedent threatened to burn his house down and feared the Decedent would shoot members of the neighborhood.
104. A second neighbor reported the Decedent pulled a firearm and threatened his life over a property dispute. The neighbor called the police to file a report but requested no charges due to his fear of the Decedent and retaliation.

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<sup>13</sup> The Decedent's family resides in close proximity to all neighbors interviewed during the course of this investigation. The issuance of this Report with the inclusion of any specific names could pose a risk to the safety to witnesses. As a result, the statements of neighbors are reported without the actual use of their names.

105. A third neighbor stated the Decedent tried to run him off the road with his car within days of the Decedent's death.
106. Police questioned neighbors about any observations of, or interactions with, the Decedent on the night in question. Neighbors stated the Decedent requested a "head's up" if police were headed to his residence. Neighbors saw the Decedent parked near A.H.'s home after dark, with his headlights turned off. They indicated that the Decedent utilized a flashlight to see as he drove his darkened vehicle down the roadway.

**Q. PRIOR INSTANCES OF DEADLY FORCE BY TROOPERS  
SPLAIN AND ACHENBACH.<sup>14</sup>**

107. On the night of the Decedent's death, Trooper Splain was a seventeen-year veteran of the Pennsylvania State Police.
108. Over the course of his police career, Trooper Splain responded to 8,025 *known* incidents, traffic stops, and/or crime scenes.
109. The reporting system of the Pennsylvania State Police changed in 2016 and in 2018; statistics prior to those years are not included in this Report. Thus, in the thousands of instances during which Trooper Splain acted as a State Trooper, he fatally utilized a firearm on only four (4) occasions.
110. The percentage of times he acted as a police officer and used deadly force thus equates to .00048%.

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<sup>14</sup> Various media accounts have referenced Trooper Splain's involvement in previous officer-involved shootings. Trooper Splain's involvement in previous officer-involved shootings has no relevance to the legal determinations that must be made regarding the shooting that is the subject of the instant investigation. For purposes of transparency, however, this Report acknowledges that Trooper Splain utilized deadly force in the line of duty three prior times. The prior shootings occurred in Lehigh, Northampton, and Lebanon Counties. In each shooting, the respective District Attorneys of those counties investigated Trooper Splain's actions, deemed them justified, and he returned to duty.

111. On the night of the Decedent's death, Trooper Achenbach was a four-year veteran of the Pennsylvania State Police.
112. Trooper Achenbach previously served honorably in the United States Marine Corps.
113. Over the course of his police career, Trooper Achenbach was never involved in a fatal use of deadly force prior to the night in question.

## **IV. STATEMENT OF GOVERNING LAW**

A legal determination as to the lawfulness or unlawfulness of Trooper Splain's actions on the night in question must apply the facts as the investigation determined them to be, to the law as it exists. This Report will thus next review the applicable Federal and Pennsylvania law to Trooper Splain's uses of deadly force upon the Decedent; the authors hope the following explanation(s) serve as an understandable, approachable statement of the law.

### **A. THE LEGAL DETERMINATION REQUIRED BY ANY USE OF DEADLY FORCE: JUSTIFIED OR NOT JUSTIFIED.**

Whenever an individual uses deadly force upon another, the appropriate authority<sup>15</sup> must initially determine if the actor did so lawfully or unlawfully. When the individual using deadly force on another is a private citizen, local law enforcement initially responds and investigates. If police and the subsequent investigation determine that the actor's use of deadly force was lawful, the citizen is cleared of wrongdoing and does not face legal charges. If, however, police and the subsequent investigation determine the actor's use of deadly force was unlawful, charges are filed against the individual and the case proceeds to Court.

In cases of officer-involved shootings, law enforcement must still complete an investigation. The Office of the local District Attorney retains jurisdiction and commences its own

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<sup>15</sup> *Commonwealth v. Stipetich*, 652 A.2d 1294, 1295 (Pa. 1995) (noting that "the ultimate discretion to file criminal charges lies in the district attorney")

investigation.<sup>16</sup> Ultimately the same evaluation and determination applies – whether the use of deadly force was justified or unjustified. Put another way, regardless of the class or status of the shooter, the investigation must determine whether the fatal action confined to the boundaries created by law. In such officer-involved shootings, the determination states whether the use of deadly force was lawful or unlawful.

The District Attorney, following the investigation, issues a final determination stating whether the arresting officer used his weapon, and thus deadly force, in a lawful or an unlawful manner. If unlawful, the officer must be charged with assault, manslaughter, or homicide, just as if he or she were a private citizen. If, however, the officer’s use of deadly force was lawful, no charges are filed against the officer, just as they would not be filed against a private citizen.

With the ultimate legal determination in mind, this Report now turns to discuss the law as it pertains to a police officer’s use of deadly force against a private citizen.

## **B. THE RIGHTS OF THE INDIVIDUAL UNDER THE UNITED STATES CONSTITUTION AS INTERPRETTED BY *TENNESSEE v. GARNER*.**

The Fourth Amendment to the United States Constitution protects individual liberty, specifically protecting individuals from unlawful searches and seizures by the government.<sup>17</sup> In

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<sup>16</sup> The District Attorney may refer the matter to the Commonwealth’s Office of the Attorney General if either the District Attorney lacks the necessary resources for the investigation or if the District Attorney believes a conflict exists between her Office and the officer-involved shooting. In this matter, despite the charged attempts to allege conflict, none existed between the Lebanon County District Attorney’s Office, Trooper Splain, and/or the Pennsylvania State Police. While District Attorney Graf is married to a Corporal in the State Police, her husband was not stationed at the Jonestown Barracks at the time of the incident. He further had no involvement in the incident or the State Police’s efforts after the shooting. The Corporal possessed no personal knowledge of what occurred nor was he ever questioned by the State Police in relation to the shooting. While much discussion has occurred as to the ‘appearance of a conflict’ within the media, the mere allegation of a conflict and the circulated misconceptions which resulted therefrom are not legitimate reasons for District Attorney Graf to fail to carry out the duties inherent to her elected position. Lastly, a formal Memorandum which stated when a conflict would occur between District Attorney Graf and cases which involve the State Police was sent to the Lebanon County Court of Common Pleas and the State Police in early 2020. This Memorandum was followed to the letter in the investigation at hand.

<sup>17</sup> U.S.C.A. Const. Amend. 4.



practical application, it requires police to have probable cause that an individual committed a crime prior to making an arrest. It also provides individuals with protection as to the methods police use in conducting searches and seizures by specifically prohibiting unreasonable searches or seizures of a person or area. Thus, even when law enforcement may lawfully arrest and detain a suspect, the method by which it does so must be reasonable.

The United States Supreme Court has held that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.<sup>18</sup> In *Tennessee v. Garner*, the Court applied Fourth Amendment considerations to an officer-involved shooting.<sup>19</sup> The Court opined that the severity and degree of a police officer's intrusion into an individual's right against unlawful search or seizure must be balanced against the basis for the police officer's actions.<sup>20</sup> *Garner* recognized that there is no greater intrusion on an individual's rights than when an officer uses deadly force.<sup>21</sup> Therefore, an officer's need and basis for the use of deadly force must therefore be equally severe and equally serious.

Applying this balancing test, the Court ruled that an officer cannot use deadly force to arrest in instances where a suspect poses no immediate threat to the police officer or others. However, if deadly force is necessary to prevent escape and the officer possesses probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others, the officer may use deadly force. As stated by *Garner*, “[I]f the suspect threatens the officer with a weapon or there is probable cause to believe that [the suspect] has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used

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<sup>18</sup> *Tennessee v. Garner*, 471 U.S. 1 (1985).

<sup>19</sup> Throughout this report, the term “officer-involved shooting” refers to an officer's use of deadly force during an attempted arrest of a suspect.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 9.

[by police] if necessary to prevent escape, and if, where feasible, some warning” to submit to police has been given.<sup>22</sup>

### **C. PENNSYLVANIA LAW GOVERNING SELF DEFENSE AND USE OF FORCE.**

In addition to the basic parameters of individual rights and limitations upon government recognized by the Fourth Amendment to the United States Constitution, individual states and Commonwealths may enact state laws that further protect their citizens. This Report must thus explore not only a citizen’s rights under the United States Constitution, but also the laws of Pennsylvania which apply.

The Pennsylvania legislature enacted multiple “self-defense” and “defense of others” statutes. These statutes set forth the legal ways in which an individual may lawfully use varying degrees of force in defense of himself or another. For an individual’s actions to be deemed lawful and justified, those actions must fall within the applicable statute’s requirements. When the force utilized is deadly, regardless of whether the actor is a police officer or a private citizen, Pennsylvania law employs a higher threshold for justification.

The Pennsylvania legislature has created a specific statute for when and how a police officer may use force to effectuate an arrest. Title 18 Pa.C.S. §508 states that a police officer “need not retreat or desist from efforts to make a lawful arrest because of [a suspect’s] resistance or threatened resistance” during the arrest itself.<sup>23</sup> Rather, the officer is “justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest.”<sup>24</sup>

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<sup>22</sup> *Id.* at 11-12.

<sup>23</sup> 18 Pa.C.S. § 508 (a)(1).

<sup>24</sup> *Id.*

However, when the force involved is specifically deadly force, Section 508 sets forth additional requirements. To be justified in using deadly force, such as firing a gun at a suspect, a police officer must believe “that such force is necessary to prevent death or serious bodily injury to himself or another person.”<sup>25</sup> Section 508 further provides that an officer is also justified in his use of deadly force, if he believes such force is necessary in any of the following scenarios: 1) to prevent the suspect’s escape from arrest and the suspect committed a “forcible felony;” *or* 2) the suspect attempts to escape while he possesses a deadly weapon; *or* 3) if the suspect’s actions indicate he is a danger to human life or the suspect will inflict serious bodily injury unless immediately arrested.<sup>26</sup>

The Pennsylvania Crimes Code defines the critical terms used in Section 508 as follows:

1. “Police or Peace Officer” – any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term “peace officer” shall also include any member of any park police department of any county of the third class.<sup>27</sup>
2. “Deadly Force” – force which, under the circumstances in which it is used, is readily capable of causing death or serious bodily injury.<sup>28</sup>
3. “Believe” – means “reasonably believes” or “reasonable belief.”<sup>29</sup>
4. “Serious Bodily Injury” – injury which creates “a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.”<sup>30</sup> Put more simply, serious bodily injury is one which *could* kill a person, seriously maim a person, and/or severely alter a person’s bodily function(s).

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<sup>25</sup> *Id.*

<sup>26</sup> 18 Pa.C.S. § 508 (a)(1) (i); 18 Pa.C.S. § 508 (a)(1) (ii).

<sup>27</sup> 18 Pa.C.S. § 501.

<sup>28</sup> 18 Pa.C.S. § 501.

<sup>29</sup> 18 Pa.C.S. § 501.

<sup>30</sup> 18 Pa.C.S. § 2602.

#### D. APPLICATION OF EXISTING LAW TO OFFICER-INVOLVED SHOOTINGS.

The application of Section 508 to any officer-involved shooting is focused upon the officer who utilized deadly force. Pennsylvania law requires the officer's belief that deadly force was necessary be objectively reasonable. Thus, the review of the officer's actions focuses on the individual officer's beliefs and perceptions about the suspect and the suspect's potential for danger, as the officer knew them from the circumstances at the time of the incident.<sup>31</sup>

The reasonableness of the officer's actions hinges on the specific facts and circumstances of the scene itself, the severity of the suspect's underlying criminal activity which led to his arrest, and whether the suspect actively resisted arrest when the officer used force against him.<sup>32</sup> The officer's conduct is thus to be judged from the standpoint of his or her reality at the moment the incident which predicates the officer's use of deadly force.<sup>33</sup> In issuing this Report, we must consider the officer's perception of whether the suspect posed an immediate threat to the officer's safety, another officer's safety, or the public at large. Existing caselaw recognizes an officer is justified in his use of deadly force if he reasonably believes it necessary to defend himself or a fellow officer from serious injury or death. Caselaw further recognized an officer may use deadly force to prevent the escape of a suspect who committed a forcible, or violent, felony and possessed a deadly weapon.<sup>34</sup>

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<sup>31</sup> Media accounts of officer-involved shootings often focus on statements made or conclusions drawn with 20/20 hindsight by everyone *other* than the officer in question. This practice of Monday-morning quarterbacking perpetuates a common and often inflammatory misconception. The legal question of reasonableness—and therefore lawful or unlawful justification for the use of force—turns on the officer's perceptions at the time of the incident.

<sup>32</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989), citing *Tennessee v. Garner*, 471 U.S. at 8–9.

<sup>33</sup> *Nash v. U.S.* 897 F.Supp, 180, 183 (E.D.Pa. 1994)

<sup>34</sup> *Belcher v. United States*, 511 F.Supp. 476 (E.D.Pa. 1981); *Dolan v. Golla*, 481 F.Supp. 475 (M.D.Pa. 1979)

In reviewing the officer's use of force, his judgment must be considered in the context of his "on scene," "at the moment" response and not with a calm, after-the-fact reflection.<sup>35</sup> Arrest scenarios are ongoing, tense, and rapidly evolving. A suspect may start his interaction with police in a completely peaceful manner; at any moment, the suspect may draw a weapon or turn physically reactive or violent. Police officers are required to make split-second decisions based on all the facts they perceive in that moment.<sup>36</sup> Thus, the legal determination of whether an officer's use of force was "reasonable" is based solely upon the circumstances presented to the officer at the time of the incident itself. The analysis behind that determination does not look backwards through the lens of 20/20 hindsight.<sup>37</sup>

An evaluation of the reasonableness of an officer's actions also considers the "inherent dangers of police work,"<sup>38</sup> which include the unknown volatility of an ongoing arrest with a resistive suspect. The inherent nature of policework requires law enforcement to render in-the-moment determinations if a suspect struggles, fights, and resists. The officer must contemplate whether this violent behavior will cease, continue, or escalate. The officer must consider whether an actively-resisting suspect may have additional weapons concealed on his person or within reach.

Under Section 508(a)(1), police officers have no duty to retreat. Even if officers could safely take cover from a suspect's potentially lethal actions, law enforcement may utilize the force necessary to instead arrest their suspect.<sup>39</sup> This principle is especially important when the suspect

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<sup>35</sup> *Graham, supra*, 490 U.S. at 396.

<sup>36</sup> *Id.* at 396-97 ("The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.")

<sup>37</sup> *Id.* at 396 ("The luxury of hindsight is not one afforded to police. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.")

<sup>38</sup> *Id.* at 396.

<sup>39</sup> 18 Pa.C.S.A. §508(a)(1).

poses an active threat to the safety of the officers themselves or the public. Police officers must quickly evaluate the current dangers posed by the suspect, but also react to prevent the dangers posed by the suspect in the near-immediate future. The officers must consider the value of their own lives, the lives of the suspect, and the public as a whole.

In determining whether an officer's use of force is lawful in a rapidly evolving arrest scenario, each stage of escalating conflict between officer and suspect is evaluated. As the officer's interaction with a suspect escalates from non-confrontational to one increasingly confrontational, the evaluative process begins again.<sup>40</sup> At each instance of force, the officer's actions must be reasonable to be lawful. For example, if the officer uses both non-deadly and deadly force against a suspect, each application of force is judged separately. An officer may have lawful reason to utilize a greater degree of force as an attempted arrest grows more dangerous and out of control.

#### **E. APPLICABLE STATUTORY DEFINITIONS AS APPLIED TO THE CASE AT HAND.**

The analysis of Trooper Splain's use of force on November 7, 2021 begins with application of the statutory definitions of 18 Pa.C.S.A. §501 and 18 Pa.C.S.A. §2602 to the factual determinations outlined in the Findings of Fact section of this Report. Section §501 defines Police Officer, Deadly Force, and Believe. Section §2602 defines Serious Bodily Injury. The facts as determined by this investigation, applied to the relevant definitions, are as follows:

1. "Police or Peace Officer" – To fall under 18 Pa.C.S.A. §508, Trooper Splain must have used deadly force within his official capacity as a State Trooper. Trooper Splain was on-duty, drove a marked State Police Vehicle to the scene, wore his State Police uniform, and acted in his official capacity as a Pennsylvania State Trooper at all times relevant to his use of deadly force. He thus satisfies the requirements of a "police officer" or "peace officer" as defined by law.

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<sup>40</sup> *Wargo v. Municipality of Monroebille, PA*, 646 F.Supp.2d 777 (W.D.Pa. 2009).

2. “Deadly Force” – To determine which legal requirements apply, the investigation must determine whether Trooper Splain used deadly or non-deadly force as defined by law. Trooper Splain utilized his State Police-issued firearm and fired multiple bullets at the Decedent. His use of force first wounded the Decedent and then directly caused the Decedent’s death. There is no question Trooper Splain utilized “deadly force” as defined by law.
3. “Believe” – Applicable law allows Trooper Splain to use the degree of force he believed necessary as he effectuated the suspect’s arrest. “Believe” as defined by statute requires that a police officer’s belief be “reasonable” in light of all circumstances known to *him* at the time he fired his weapon. The determination of whether Trooper Splain lawfully utilized deadly force thus focuses solely on his perception of the incident and the attendant circumstances, and whether resulting fatal actions were objectively reasonable.
4. “Serious Bodily Injury” – For Trooper Splain’s use of deadly force to be lawful, the statute requires that Trooper Splain reasonably believe that the Decedent’s actions were imminently capable of killing, seriously maiming, or altering the bodily organs or functions of Trooper Achenbach or himself.

**F. THE LEGAL STANDARDS AS APPLIED TO THE TOTALITY OF TROOPER SPLAIN’S ACTIONS ON THE NIGHT IN QUESTION**

Trooper Splain’s actions must be considered within the framework of justification provided by 18 Pa.C.S.A. §508. As suggested by the Findings of Fact, Trooper Splain’s use of deadly force in arresting the Decedent may fall within two of the potential scenarios described as lawful by Section 508(a)(1):

1. He believed that such force was necessary to prevent death or serious bodily injury to Trooper Achenbach or himself; and/or
2. He believed such force was necessary to prevent the Decedent from defeating the arrest through resistance or escape, and the Decedent had committed or had attempted to commit a forcible felony. In this instance, the forcible felony would be aggravated assault on a police officer.<sup>41</sup>

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<sup>41</sup> Under 18 Pa.C.S.A. §§2702(a)(3) and (c)(1), a person is guilty of aggravated assault if he attempts to cause or intentionally or knowingly causes bodily injury to a police officer in the performance of duty. The offense of aggravated assault on a police officer is graded as a felony of the first degree. 18 Pa.C.S.A. §2702(b). While Trooper Achenbach and Trooper Splain initially sought to arrest the Decedent for the PFA violation, once the Decedent dragged Trooper Achenbach, the surrounding incident transitioned from an arrest for an ungraded PFA violation to an arrest for an active, felony assault on Trooper Achenbach.

With the full understanding of applicable law as stated in the prior sections of this Report, we now turn to the analysis of Trooper Splain's uses of deadly force against the decedent.

**G. ANALYSIS OF THE INTERACTION BETWEEN THE DECEDENT AND TROOPERS SPLAIN AND ACHENBACH LEADING UP TO TROOPER SPLAIN'S USE OF DEADLY FORCE.**

This Report now turns to the ultimate analysis of the officer-involved shooting of the Decedent—the analysis of the interactions of the Decedent with Troopers Achenbach and Splain leading up to and during Trooper Splain's use of deadly force. On the evening in question, the troopers' initial interaction was limited to A.H. and her family when they responded to A.H.'s residence to investigate the Decedent's reported PFA violation. Thereafter, the troopers engaged in multiple stages of interaction with the Decedent. Those stages of interaction with the Decedent were as follows:

1. Despite the existence of a PFA prohibiting such contact with A.H., the Decedent unexpectedly drove to and arrived at A.H.'s residence in his vehicle and began shouting at her out of his open driver's side window. Troopers approached the Decedent, told him to exit his vehicle, and told him he was under arrest. The Decedent, who appeared to be under the influence of methamphetamine, refused to comply with their commands and actively resisted arrest.

2. In his first attempts to turn off the Decedent's vehicle and/or control the Decedent through the open driver's side window, Trooper Achenbach's upper body became partially trapped inside. The Decedent accelerated his vehicle forward, dragging Trooper Achenbach and ceasing the forward acceleration only when the terrain and parked patrol car prevented further forward movement. While the Decedent continued to resist arrest, Troopers observed him reaching past the gear shift into various compartments of the



vehicle. The Decedent then accelerated backwards, once again dragging a partially- trapped Trooper Achenbach. After the Decedent dragged Trooper Achenbach this second time, Trooper Splain fired his weapon at the Decedent and wounded him.

3. Despite being wounded, the Decedent, who had temporarily stopped his backwards acceleration after the initial round of fire, again refused the troopers' order to exit his vehicle. The Decedent continued to resist arrest. Trooper Splain's use of a taser on the Decedent did not stop the Decedent from attempting to raise his driver's side window on Trooper Achenbach's arm, again trapping Trooper Achenbach partially inside, or from resuming his backwards acceleration, dragging Trooper Achenbach for a third time. As the Decedent dragged Trooper Achenbach for a third time alongside his vehicle, Trooper Splain fired his weapon again at the Decedent. This time, Trooper Splain's shots were fatal to the Decedent.

As is evident from the above summary, Trooper Splain applied deadly force in two of the described stages of interaction with the Decedent—first when he fired upon the Decedent and wounded him in the arm, and second, when he shot and fatally wounded the Decedent. Since Trooper Splain utilized deadly force twice against the Decedent, this Report will offer two separate conclusions as to whether those applications of deadly force were lawful and justified.

## **V. LEGAL DETERMINATIONS AS TO TROOPER SPLAIN'S USE OF DEADLY FORCE ON NOVEMBER 7, 2021**

Based on the Findings of Fact and governing law as applied to the circumstances of the officer-involved shooting on November 7, 2021, the District Attorney of Lebanon County, following investigation by the Lebanon County Detective Bureau, has made the following determinations:

**A. TROOPER JAY SPLAIN ACTED LAWFULLY AND JUSTIFIABLY WHEN HE FIRST UTILIZED DEADLY FORCE AND SHOT THE DECEDENT IN THE ARM AS THE DECEDENT DRAGGED TROOPER ACHENBACH ALONGSIDE HIS VEHICLE FOR A SECOND TIME.**

At all times on the night in question, Trooper Splain acted in his official capacity as a police officer. He acted to make a lawful arrest, initially on the PFA violation and thereafter for Aggravated Assault on Trooper Achenbach.

During the first use of deadly force, Trooper Splain saw the Decedent drag Trooper Achenbach; Trooper Achenbach's body remained partially trapped inside the Decedent's vehicle as he dragged the Trooper a second time across rough, wooded, and dark terrain. Trooper Splain reasonably believed deadly force was necessary to prevent the Decedent from killing or causing serious bodily injury to Trooper Achenbach. Thus, Trooper Splain acted lawfully and justifiably under the general provision of 18 Pa.C.S.A. §508(a)(1).

Trooper Splain also acted lawfully and justifiably in the first application of deadly force against the Decedent under a second category of justification, as stated in 18 Pa.C.S.A. §508(a)(1)(i)(ii). The Decedent dragged Trooper Achenbach with his vehicle twice at a high rate

of speed. The Decedent thus committed the forcible felony of Aggravated Assault against Trooper Achenbach. The Decedent's actions prior to the assault indicated his utter resistance to arrest and his complete desire to escape police. Trooper Splain's use of deadly force was therefore justified to prevent the Decedent's escape during the commission of a violent felony.

**B. TROOPER JAY SPLAIN ACTED LAWFULLY AND JUSTIFIABLY WHEN, AFTER THE SITUATION CONTINUED TO ESCALATE, HE UTILIZED DEADLY FORCE AND FATALLY SHOT THE DECEDENT AS THE DECEDENT DRAGGED TROOPER ACHENBACH ALONGSIDE HIS VEHICLE A THIRD TIME.**

Trooper Splain acted in his capacity as a police officer during his second use of deadly force upon the Decedent. Trooper Splain continued his attempts to arrest the Decedent for both the PFA Violation and Aggravated Assault against Trooper Achenbach.

During the second use of deadly force, the Decedent previously dragged Trooper Achenbach with his vehicle twice. The Decedent continued his resistance of arrest and his assaultive efforts on Trooper Achenbach despite the wounds from Trooper Splain's initial use of deadly force and Trooper Splain's attempts to use a Taser. The Decedent then dragged Trooper Achenbach a third time, again with the Trooper's body trapped partially inside his vehicle. Trooper Splain reasonably believed that deadly force was necessary to prevent the Decedent from killing or causing serious bodily injury to Trooper Achenbach. Thus, Trooper Splain acted lawfully and justifiably, under 18 Pa.C.S.A. §508(a)(1), when he fatally shot the Decedent.

Trooper Splain's fatal shots of the Decedent were also lawful and justifiable based upon 18 Pa.C.S.A. §508(a)(1)(i)(ii). The Trooper's second use of force occurred while the Decedent continued his assault on Trooper Achenbach; the Decedent therefore continued the commission of a violent felony. Despite being wounded, despite the attempted use of a taser, and despite the repeated commands of the Troopers to submit to arrest, the Decedent resisted. He accelerated his

vehicle and dragged Trooper Achenbach for a third time. In light of such circumstances, Trooper Splain reasonably believed that deadly force was necessary to prevent the Decedent from defeating the arrest through resistance or escape.

In summary, Trooper Jay Splain acted lawfully and justifiably in each instance he shot the Decedent. Trooper Splain acted to defend Trooper Achenbach and himself on the night in question.

## VII. ADVISORY COMMENTS

The investigation into Trooper Splain’s use of force against the Decedent has highlighted, for the authors of this Report, the often-incendiary context of PFA enforcement for both law enforcement and the parties involved. Two particular aspects of the PFA obtained by A.H.—aspects inherent in many PFA Orders routinely entered in the Commonwealth—played a role in the events leading up to the officer-involved shooting on November 7, 2021. This section of the Report, while not relevant to the question of whether Trooper Splain acted justifiably, addresses those two issues, with the ultimate hope of working towards solutions that prevent future incidents of domestic violence and unnecessary police involvement to the benefit of both law enforcement and the parties to PFA Orders.

### A. PFA ORDERS WHICH PERMIT CONTACT FOR CUSTODY PURPOSES

Protection From Abuse Orders exist to protect victims of abuse from their attackers. They can be obtained on an emergency or temporary basis based *solely* on the word of the victim. The Orders exist to prevent all contact between the covered parties. The Orders give police the power to immediately arrest an abuser for violating the terms of the Order.

Some PFA Orders, like the one Troopers Splain and Achenbach attempted to enforce on November 7, 2021, include child-custody agreements and/or allow contact for child-rearing purposes. In this type of PFA Order, the Order prohibits communication and contact between the parties but nonetheless allows them to communicate “for purposes of the children.” Such Orders also often provide a mechanism for exchange of the physical custody of the children.

This type of PFA Order often leads to continued and potentially dangerous conflict between the parties, as well as difficulty for police officers who are asked to enforce such Orders. For the parties, the broad language of communication “for the purposes of the children” creates a window of opportunity for continued harassment and abuse. In most relationships marked by domestic violence, the perpetrator seeks to capitalize on any opportunity to torment the victim he or she views as vulnerable. In Orders that permit communication “for the purposes of the children,” the perpetrator of domestic violence can stretch and manipulate what “communication for purposes of the children” means. Then, when the victim calls for police assistance, responding officers are expected to intervene and parse out which communications were allowed under the PFA and which were prohibited.

This scenario is exactly what occurred between A.H. and the Decedent. A.H.’s final PFA Order against the Decedent— an Order with terms consistent with many PFA Orders routinely entered in this Commonwealth— specified that the parties were to communicate only as to their shared children but left ambiguous the specific details of custody arrangements for those children.<sup>42</sup> Since no formal Custody Order or Agreement existed between the parties, the parties thus had to agree upon the details of the physical custody of their children on an ongoing, *ad hoc* basis—an arrangement virtually guaranteed to result in repeated, frequent, and likely contentious communication in an already volatile relationship. After the final PFA Order was entered, neither A.H. nor the Decedent filed for a formal Custody Order or Agreement to address the uncertainty of the custody arrangements and alleviate the need to communicate. Predictably, the Decedent

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<sup>42</sup>As stated previously in the findings of Fact Section of this Report, the PFA Order allowed the Decedent to “have temporary custody and/or partial custody and/or visitation [of the parties’ minor children] to be arranged between [A.H. and the Decedent].” The Order further prohibited either party from withholding custody of their minor children from one another.

took advantage of this window of opportunity to continue to harass A.H. He manipulated and twisted his constant calls, text messages, and in-person comments to A.H. to try to make them fall under the umbrella of custody discussions permitted by the PFA Order and thereby set into motion a chain of events that eventually led to his death: He persisted in contact with A.H.; A.H. phoned law enforcement to intervene on her behalf; troopers responded; and the incident that is the subject of this Report ultimately occurred.

Any time police are called to a scene, they face potential danger. Domestic violence calls, because of the heightened, sometimes explosive emotions of the parties involved and the potential presence of minor children, are particularly dangerous and challenging. PFA Orders that prohibit contact but nonetheless permit communication regarding minor children and custody arrangements—particularly when there is no formal custody Order in place—send a mixed message to abusers and heighten the danger to both the plaintiff and any law enforcement officers who are called upon to resolve the disputes that predictably arise.

The authors of this Report believe a better practice for the community, for families, and for law enforcement is to encourage detailed, formal Custody Orders that are separate from the PFA process and final PFA Order. Custody arrangements should be resolved and specified through formal Agreement of the parties, the local custody conciliation process, or a Custody Hearing before a Judge. In emergency circumstances – such as those which lead to a PFA Order – custody can be resolved through an emergency Custody Hearing with the Court of Common Pleas. The resulting Custody Orders can be detailed, fully outline the time allotted to both mother and father, and give clear guidelines for police as to what is allowed with respect to the children. Formal Custody Orders can also thoroughly address potential points of concern, such as custody exchanges between the parties, and tailor specific, appropriate safeguards—like predetermined

public places and third parties for exchange—to reduce the potential for escalating conflict. Following this practice eliminates any ambiguity for either parent, reduces unnecessary communication between otherwise contentious parties/parents, and prevents or lessens police involvement in already tumultuous circumstances.

**B. PFA ORDERS WITH “NO CONTACT” PARAMETERS THAT ARE NOT MUTUALLY FOLLOWED OR ENFORCEABLE.**

A second aspect of the PFA Order between A.H. and the Decedent that led to the events of November 7, 2021 was its lack of mutual enforceability against A.H., such that she may have felt free to initiate contact with the Decedent on a matter unrelated to the children. The authors recognize that cases which involve inter-family violence or threats are always difficult. Cutting off contact with a loved one, a former paramour, the father or mother of one’s children is life-altering. This principle is true whether or not drug abuse and violence is part of the relationship dynamic. It is not uncommon for a victim to leave and then return to his or her abuser multiple times over the course of their relationship. While that pattern of behavior is understandable, it creates serious issues for law enforcement called to enforce PFA Orders.

In the case at hand, A.H. and the Decedent contacted one another. Some contact involved communication about their minor children.<sup>43</sup> Some contact did not involve the children, including A.H.’s contact with the Decedent regarding her vehicle. She initiated the contact with him about repairs to her vehicle. She drove the vehicle to his residence. She interacted with the Decedent and spoke with him about the vehicle’s repairs. All of this contact occurred after A.H. obtained her final PFA Order, which barred any and all contact with the Decedent. Predictably, issues between the parties arose, and A.H. then turned to the State Police for assistance. She reported the Decedent

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<sup>43</sup> The dangers of this type of contact were previously discussed in Section V(A) of this Report.



possessed her car and refused to return it. She reported the Decedent demanded she travel alone to his residence and retrieve the vehicle. She wanted police intervention as to the vehicle's return. Because there was a PFA Order in effect against the Decedent, they did intervene.<sup>44</sup>

When a plaintiff obtains a PFA Order, he or she is effectively requesting a legal ruling that prohibits and prevents *any and all* contact between the parties. If a plaintiff contacts the PFA defendant, it erodes the power and meaning behind the Order itself. It encourages the defendant to then initiate contact with the plaintiff. If family members, partners, and parties to a PFA wish to have contact with one another, the PFA should be formally withdrawn and no longer in effect. If, however, a plaintiff wants a PFA Order preventing contact from the defendant to remain enforceable, then the plaintiff should adhere to the "no contact" parameters of the Order.

Currently, unless the parties to a PFA Order have mutual PFAs against one another, only the defendant of an existing Order is legally discouraged from engaging in contact or communication prohibited by the Order. Because the initiation of contact by a plaintiff for any reason prohibited by the Order endangers the plaintiff and leads to unnecessary police involvement, once a PFA Order is obtained, both parties should be encouraged to refrain from any and all contact, for any reason whatsoever.

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<sup>44</sup> Misconceptions exist as to police powers and authority. The State Police and other police officers have authority to act only within the parameters of a criminal investigation or related, statutorily-created civil actions. Outside of a criminal investigation, police are unable to assert authority, make demands, or control the general behavior of private citizens. Traditional civil disputes, such as the voluntary loan or giving of property and a subsequent demand of its return, generally fall outside of police powers. Moreover, the insertion of police into these civil scenarios immediately escalates tension and often creates defensive behavior in one side or the other, as it did in this case.