

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
IN THE DISTRICT COURT

STATE OF NEW MEXICO

NUMBER:

V.

BRAD JUSTIN LUNSFORD

DOB: [REDACTED]

SOC: [REDACTED]

Race: Caucasian, Sex: Male

Height: 5' 6", Weight: 150

Hair: Brown, Eyes: Brown

Residence: [REDACTED]

WARRANT FOR ARREST

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE HEREBY COMMANDED to arrest the above-named defendant and bring the defendant without unnecessary delay before me to answer the charges of:

Count One: Voluntary Manslaughter (Third Degree Felony), Firearm Enhancement (Discharge)

CONTRARY TO SECTION 30-2-3(A) NMSA 1978 (1 COUNT), 31-18-16 NMSA 1978 (1 COUNT)

BOND: \$ _____

Dated this _____ day of _____, 2023.

DISTRICT COURT JUDGE

RETURN WHERE DEFENDANT IS FOUND

I arrested the above-named defendant on the _____ day of _____, 2023, and served a copy of this warrant on the _____ day of _____, 2023.

SIGNATURE

TITLE

COPIES TO:

DISTRICT COURT

DISTRICT ATTORNEY

DEFENDANT

OFFICER

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
IN THE DISTRICT COURT

STATE OF NEW MEXICO

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[REDACTED]

AFFIDAVIT FOR ARREST WARRANT

The undersigned, being duly sworn, on his oath, states that she has reason to believe that on the **2nd day of August, 2022**, in **DOÑA ANA COUNTY**, the **STATE OF NEW MEXICO**, the above-named defendant committed the crimes charged:

Count One: Voluntary Manslaughter (Third-Degree Felony)

Count Two: Firearm Enhancement (Discharge)

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named defendant committed the crime charged: *(include facts in support of the credibility of any hearsay relied upon)*

STATEMENT OF FACTS

Affiant is a full-time, sworn Law Enforcement Officer with the New Mexico Office of the Attorney General. Affiant is currently assigned to the Special Investigations Unit. Affiant has been a full-time Law Enforcement Officer since 2011. Affiant has experience investigating cases ranging from white collar, burglary, abuse/neglect, homicide, and officer involved shootings. Affiant has received training and has experience in the writing and executing of Search and Arrest Warrants.

I. BACKGROUND OF INVESTIGATION

Information on an officer involved shooting (OIS) that occurred in Las Cruces, NM on August 2, 2022, was received by the New Mexico Office of the Attorney on September 20, 2023. Officer Brad Lunsford of the Las Cruces Police Department was the officer that discharged his duty weapon, resulting in the death of Presley Eze. Video and documentation of the incident were reviewed. New Mexico State Police conducted an investigation of the incident.

Specific Probable Cause

On August 2, 2022, at approximately 1623 hours, a 911 call was received from an employee at the Chevron gas station located at 2645 S. Valley Dr., Las Cruces, New Mexico. The caller stated an individual had walked out of the store with a beer and was drinking it at pump number one. The caller stated this individual was in a green/turquoise Pontiac SUV. He described the individual that left the store with the beer was a shirtless black male and stated there was another individual with him wearing a tank top. The caller said the shirtless individual attempted to buy cigarettes without an ID and that he got upset with him. The caller updated dispatch that both individuals associated with the Pontiac were outside drinking the beer. He advised that the shirtless individual was walking towards the Ramada Hotel and the individual with the tank top remained at the vehicle. The dispatch operator asked the caller if these individuals had any weapons, which the caller responded "not that I could see". The dispatch operator advised the caller that she would dispatch someone to the location and the call ended.

Affiant reviewed the lapel video footage taken from both Brad Lunsford's and Keegan Arbogast's On Body Recording Devices (OBRD) as well as cell phone footage captured by a civilian bystander. The following is description of what the video footage captured.

On August 2, 2022, at approximately 1632 hours, Las Cruces Police Department Officer Brad Lunsford arrived on scene at 2645 S. Valley Dr. (Chevron) in his marked police unit. Officer Lunsford drove by the entrance to the convenience store of the gas station. While he passed, an individual pointed and stated "Right there, the black male". Officer Lunsford then engaged his emergency siren and drove a short distance forward. Officer Lunsford parked in front of pump one while the Pontiac was now parked in front of pump three.

At approximately 1633 hours, Officer Lunsford made initial contact with the driver of the vehicle who was wearing a multi colored tank top. Officer Lunsford asked the driver what was going on. The driver stated he was messing with his door, which Officer Lunsford replied "What's the deal with the people inside?" The shirtless male in the front passenger seat, who would be later identified as Presley Eze, stated he had walked into the store with a beer in his hand and when he walked out, they started harassing him. Presley told Officer Lunsford that he could check the cameras to confirm this. Officer Lunsford asked Presley for his ID and Presley said he didn't have it. Presley stated the whole thing was about him trying to buy cigarettes and they wouldn't sell them to him. Officer Lunsford asked Presley what his name and date of birth was. Presley responded his name was Pete Ezer and his date of birth is March 8, 1990. Officer Lunsford then asked the driver for his license, which he handed to him. Officer Lunsford told the occupants of the vehicle to stay there while he gathered information from the gas station employee.

At approximately 1636 hours, Officer Lunsford made contact with the gas station employee. The employee stated Presley did not walk in with the beer. Officer Lunsford did not seek to view surveillance footage at this stage of the investigation. Officer Lunsford then proceeded to call for an additional unit on his police radio and walked back to his vehicle. From his vehicle, Officer Lunsford ran the information provided by Presley through the National Crime Information Center (NCIC) to confirm his identity. The name Pete Ezer with a date of birth of March 8, 1990 was not returning on file.

At approximately 1643 hours, Officer Lunsford approached the Pontiac to confirm the name and date of birth he was given by Presley. Officer Lunsford asked him to repeat his last name, which he stated was "Eser". Officer Lunsford returned to his vehicle and ran the name Pete Ezer through NCIC. This name also returned not on file.

At approximately 1646 hours, Las Cruces Police Department Officer Keegan Arbogast arrived on scene. Officer Lunsford briefed Officer Arbogast that there were three occupants inside of the Pontiac and that the shoplifter is located in the front passenger seat. Officer Lunsford advised Officer Arbogast that the identifying information the male in the front passenger seat (Presley) provided him was returning not on file and that he was going to detain him. According to Officer Arbogast's OBRD, at no time did Officer Arbogast inquire about surveillance footage from the store employees.

At approximately 1647 hours, Officer Lunsford and Arbogast approached the Pontiac on the passenger side. Officer Lunsford opened the passenger side front door and asked Presley to step out of the vehicle. Presley responded that he really didn't want to get out of the car. Officer Lunsford said he was not asking him and Presley asked why he needed to get out of the car. Officer Lunsford then grabbed Presley's right wrist with his right hand and told him that he was not coming back on file. Presley asked Officer Lunsford what that meant. Officer Lunsford continued to tell Presley to get out of the car and that he was not coming back on file. Presley asked repeatedly "Can I know why?" and "What does that mean?" Officer Arbogast asked Presley if he was going to cooperate, which Presley replied "Yes". Officer Arbogast then removed a closed pocketknife from Presley's lap as Presley was standing up out of the vehicle. Presley stated he was not reaching for anything. Both of Presley's hands were visible at that moment from the view of Officer Lunsford's OBRD. Officers Lunsford and Arbogast commanded Presley to turn around. Presley did not turn around and at that point both officers had a hold on Presley.

Officer Arbogast was behind Presley and had both arms around Presley's abdomen with Officer Arbogast's hands clasped in the front. Officer Arbogast then picked Presley up and both men fell backwards to the ground. Presley was now on top of Officer Arbogast and Officer Arbogast was now on his back. A male voice was heard saying "stop" and "stop it" repeatedly while Presley was on top of Officer Arbogast. No distinct commands were heard during this time. Officer Lunsford was attempting to hold Presley's arms and was positioned behind Presley. Presley had his right hand behind him and holding on Officer Arbogast's legs which were locked around Presley's torso. Presley had his left hand on the ground supporting his upper body. Presley then moved his left hand across towards Officer Arbogast's left side. Presley then moved his right hand on the ground for support. During this time Officer Arbogast's Conductive Electrical Weapon (CEW) was out of its holster and was on the ground underneath Presley between Officer Arbogast and Presley's right hand which was still on the ground supporting his weight. Presley then moved the CEW with his left hand and transferred the CEW to his right hand. Presley turned his head to the right, at which point Officer Lunsford struck Presley in the face with an open hand strike with Officer Lunsford's left hand. This knocked Presley off balance while Presley still had his right hand on the ground with the CEW in it, pointed away from the officers, and had not been discharged. Officer Lunsford then drew his duty weapon and fired a single shot to the left side of Presley's head, killing him. At the time of the incident, Officer Lunsford had two less-lethal options on his duty belt (CEW and baton) neither of which were utilized. The deceased male was later identified as Presley Eze.

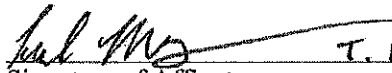
On September 29, 2023. At approximately 1148 hours, I spoke with retired Rockford, Illinois Police Chief Chet Epperson on the telephone. Chief Epperson serves as an expert in applying Constitutional Standards, State Law, policy, and practice to police and jail incidents. He has extensive experience and employs a specialized focus as a police professional in the areas of use of force and officer-involved shootings. Chief Epperson was provided with lapel camera footage from Officer Lunsford and Arbogast, along with a third video that was filmed from a civilian bystander's phone. This is the same footage affiant has reviewed in support of probable cause for this incident. Chief Epperson stated he reviewed the videos provided to him and explained what his analysis is. Chief Epperson stated in his opinion, the initial investigation into the theft from the gas station could have been more thorough. He said from the time the backup officer was called to the time he arrived was approximately 12-14 minutes. He stated during that time the occupants of the Pontiac didn't display

any signs that they were violent or a threat to officers. They stayed in the vehicle, didn't make any comments to the officers, and did not attempt to leave. Chief Epperson said the backup officer could have gone inside and checked the cameras to confirm a crime had been committed.

Chief Epperson stated he observed one officer on the ground, a male subject on top of that officer, and the second officer on the top. He observed that the officers were having a hard time controlling the male subject. Chief Epperson said he did see the male subject with the CEW in his hand, which was noticeable because it is yellow. However, he also stated he observed the CEW in the subject's right hand which the subject was utilizing for support on the ground. He said the subject's arm was extended on the pavement, with his arm straight (elbow locked), hand forward, and the CEW was not pointed at the officers. Chief Epperson also stated there were multiple less-lethal options to prevent the rapid escalation of force by Officer Lunsford. To include the use of a CEW, baton, or OC spray, depending on what was available to him at the time. Chief Epperson's expert opinion was that the level of force used was not justified due to the circumstances.

Moreover, the New Mexico Department of Public Safety (NMDPS) Policies and Procedures states that the "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. The proper use of force "requires careful attention to the facts and circumstances of each particular case, to include the severity of the crime at issue." Officers should ensure that they do not engage in unreasonable actions that create the need for the use of force because of tactical, strategic, and procedural errors that place themselves or others in jeopardy. Per NMDPS, less-than-lethal force is defined as any use of force other than that which is considered deadly force. Less-than-lethal force is not intended or expected to cause death or great bodily harm. Any use of force must be objectively reasonable under the totality of the circumstances (reasonable amount of force used to bring situation or resistive subject under control, given the totality of the circumstances.) Prior to using force, when safe and reasonable, the officer should use de-escalation techniques to slow down and stabilize a situation, to allow for more time, for more options, and for more resources to resolve the situation. It is a policy of NMDPS that commissioned personnel only use force that is objectively reasonable under the totality of the circumstances to effectively bring an incident under control while protection the lives of the officer and others.

Based on the aforementioned facts and information, probable cause exists. Your Affiant respectfully requests that an Arrest Warrant be issued for BRAD JUSTIN LUNSFORD, for VOLUNTARY MANSLAUGHTER-1 Count and FIREARM ENHANCEMENT-1 Count.


T. MARTINEZ
Signature of Affiant

Special Agent-New Mexico Office of the Attorney General
Official Title (if any)

Approved By 
Approved by A.A.G./D.A.G. R. John Duran

Subscribed and sworn to or declared and affirmed to
Before me, in the above named County, in the State
Of New Mexico this _____ day of _____, 2023.

Judge, Notary or other Officer