

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Phillip Pitts on November 11, 2017

INTRODUCTION

On November 11, 2017, at approximately 1735 hours, Officers David Nesheiwat and Manuel Diuguid were dispatched to a domestic violence call at the Fuel Zone Mart (since renamed Rhino Mart)¹ located at 780 E. Pyle Avenue. The officers were informed that two individuals, later identified as Phillip Pitts (hereinafter Decedent) and S.P., had arrived in a Nissan Altima, and Decedent was reported to have a firearm.

Officer Diuguid arrived and observed Decedent in a physical altercation in front of the store with his wife, S.P. Decedent and S.P. were struggling over a handgun that Decedent had in his hand. As Decedent and S.P. struggled over possession of the firearm, Decedent placed the firearm to his head and his wife's head multiple times while telling Officer Diuguid to shoot him. During the incident, Officer Diuguid transitioned from his Taser to his firearm and issued multiple commands for Decedent to put down the firearm.

Officer Nesheiwat arrived on scene and observed Decedent pointing the firearm toward S.P.'s abdomen. As a result, Officer Nesheiwat fired two rounds from his handgun. Decedent and S.P. separated and Decedent fell to the ground. Officer Nesheiwat then fired two more rounds. During this incident, S.P. was also hit by one of Officer Nesheiwat's bullets. Officer Diuguid retrieved Decedent's firearm, and the officers placed Decedent into handcuffs, rendered first aid to both Decedent and S.P., and requested medical personnel to the scene. S.P. sustained a gunshot wound to her abdomen. Decedent sustained gunshot wounds to the left forearm, right lower abdomen, and left lower back. Decedent and S.P. were transported to the University Medical Center. Upon arrival, S.P. was taken into surgery. Decedent succumbed to his injuries and was pronounced deceased at 1812 hours.

¹ At the time of the incident, the gas station was named Fuel Zone Mart. Sometime after the incident, the store was sold and renamed Rhino Mart. For purposes of this report it will be referred to as the Rhino Mart.

The Clark County District Attorney's Office has completed its review of the November 11, 2017, death of Decedent. It has been determined that, based upon the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Nesheiwat were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Nesheiwat. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on June 26, 2018.

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

INFORMATION REGARDING DECEDENT PHILLIP PITTS



Decedent Philip Pitts was a forty-one year old male who lived in Las Vegas with his wife and four (4) children. Decedent and S.P. had been married for fourteen years. Decedent worked in a maintenance position at the University of Nevada, Las Vegas.

According to family members, Decedent was a violent and angry alcoholic who consumed 6 (six) to 12 (twelve) large cans of Bud Ice with the addition of whiskey every day. Decedent was constantly physically and verbally abusive towards his wife. The abuse had been increasing in the home since around 2013. Most of the abuse occurred within the home, and S.P. never reported anything to the police. In the past, Decedent had threatened to shoot and kill S.P. if she ever told the police. During arguments, Decedent would make suicide related threats and comments.

DECEDENT'S CRIMINAL HISTORY

Decedent, who is from Hawaii, was arrested there seven (7) times between December 1995 and November of 2008. Those arrests included disorderly conduct, DUI, terrorist threat, harassment, and three separate arrests for assault. Decedent pled guilty to the DUI charge, one count of assault, and harassment. All other charges were dismissed.

Decedent had no local arrests.

OVERVIEW OF AREA



OVERVIEW OF SURROUNDING FACTS

INFORMATION RECEIVED BY CITIZENS

S.P.

S.P. stated she and Decedent had been married for nearly 14 years and had four (4) children in common. There was a long history of abusive behavior from Decedent towards S.P. that worsened in 2013-2014 after Decedent was involved in a car accident. Decedent also had an issue with alcohol and the violence would escalate when he drank. Decedent would drink six (6) to twelve (12) 38 ounce cans of Bud Ice a day, sometimes with the addition of whiskey. S.P. never contacted the police because Decedent threatened that if she ever called the police he would shoot and kill her. S.P. believed this to be a real threat and knew Decedent owned two (2) firearms.

On November 11, 2017, S.P and Decedent had dropped off two (2) of their children to different activities and were heading home. One of their minor children, P.P. (10 years old), still remained in the vehicle with them. During the drive home, S.P. told Decedent she wanted to drop him

(Decedent) off at home and then take their youngest child to the movies. For an unknown reason, that upset Decedent and caused a verbal argument, which quickly turned physical.

During the drive home, Decedent pulled S.P.'s hair, struck, and choked her. Decedent then drew his firearm, pointed it at S.P., and threatened to shoot her. In order to get away from Decedent, protect her and her daughter, and prevent the situation from escalating, S.P. pulled into the Rhino Mart gas station. From past experiences, S.P. knew that she could not go home because the violence always escalated once she was isolated from other people. Unfortunately, that night Decedent's behavior only got worse. While they were all still in the car, Decedent pulled out his gun and told S.P., "I will shoot you; I will bury you." S.P. tried to fight back while driving into the gas station. Once they arrived, he put the firearm away.

After arrival, S.P. exited the car and a woman asked her if she needed help. S.P. told the woman she did. S.P. then entered the store and after entering, the store clerk locked the door. When another patron needed to get into the store, the clerk opened the door and Decedent made his way inside. S.P. then exited the store. As S.P. exited the store, Decedent cornered her against a propane tank. At that point the initial officer arrived (Officer Diuguid). When Officer Diuguid arrived at the scene, S.P. was being attacked by Decedent, and she was fighting him for control of the gun. Officer Diuguid issued Decedent commands to drop his gun. After a few minutes, a second officer (Officer Nesheiwat) arrived and also issued commands for Decedent to drop his weapon.

S.P. stated that there were times during the incident where she believed Decedent was going to shoot her. When the officer (Nesheiwat) discharged his firearm, Decedent was trying to put the gun to his own head. The first round from the officer struck S.P., and the second round struck Decedent. Decedent started to fall to the ground when S.P. heard two (2) more gunshots. S.P. did not realize she had been hit until she saw blood coming from her abdomen.

P.P.

At the time of the incident P.P. was ten years old. P.P. stated she was in the car with her father (Decedent) and her mother (S.P.). S.P. was driving and Decedent was drunk in the front passenger seat of the vehicle. S.P. and Decedent began to argue. Decedent became very angry, pulled S.P.'s hair, and eventually pulled out a firearm and pointed it at S.P.

P.P. stated S.P. pulled into the Rhino Mart parking lot. As S.P. stopped the car, Decedent pulled out the gun and pointed it at S.P. P.P. stated she got out of the car and yelled for someone to help her. P.P. made contact with a female in the parking lot, who called the police. P.P. stated her mother got out of the car, and they both (she and her mother) went into the store. When they got inside of the store, the clerk asked them if they wanted him to lock the door, to which they replied yes; however, Decedent pushed on the door and followed them into the store a short time later. While in the store, P.P. and her mother were hugging each other crying. Decedent repeatedly tried to approach them, but the store clerk kept trying to push Decedent away from his wife and daughter. Decedent had the gun in his pocket and kept touching it on the outside of his pants with his hand. He kept trying to reach P.P. and her mother saying, "You are just going to let them take me away," and "They are going to come for me."

P.P. stated S.P. and Decedent continued to argue while in the store. They all exited the store, and Decedent was attempting to hold S.P. back. Decedent pulled out the gun and was pointing it back and forth between his head and S.P. P.P. observed a police officer arrive and the officer was holding a Taser. The officer issued commands to Decedent to put down the gun. A second

officer arrived and yelled at Decedent to drop the gun. P.P. ran to the other side of the gas pumps. A short time later, she heard gunshots.

P.P. observed Decedent on the ground and saw her mother walk away to the other side of the store and sit down on the ground. P.P. ran to S.P. and S.P. told her to call her grandpa. P.P. stayed with S.P. until the ambulance arrived and transported S.P. to the hospital. P.P. stayed at the scene with officers until a family friend arrived to be with her.

P.P. stated that the arguing between her mother and father had been going on all day. About three hours after waking up, her father began drinking. He got angry and started arguing with her mother about his job and things that he believed his wife had been keeping from him. P.P. discussed previous domestic violence incidents where her father abused her mother. Her father would punch her mother, throw things at her, and she had seen him previously hold a gun to her mother's head. Sometimes her mother would come out of a room covered in purple marks and say the dog had hurt her, but S.P. and her siblings knew the marks were from their father. P.P. was aware of the gun her father was carrying that night, and she was also aware of two (2) other guns in the home, a rifle and shotgun.

S.P.2²

S.P.2, her husband A.P., and their four (4) children arrived at the Rhino Mart to get drinks. S.P.2 exited her vehicle and walked toward the store. As she did so, she observed a vehicle enter the parking lot at a high rate of speed and stop in front of the store. She then observed a female (S.P.) in the driver's seat open the door and attempt to exit but a male (Decedent) inside of the vehicle would not let her out. S.P.2 could see that the male was choking the female. S.P.2 asked S.P. if she needed help. S.P. was crying hysterically and did not answer. S.P.2. called 911 and returned to her vehicle.

From her vehicle, S.P.2 observed as S.P. and a young minor female, who was also in the vehicle, exited the car and entered the store followed by Decedent. The store clerk exited the store, told S.P.2's husband that Decedent had a gun, and then returned to the store. A short time later, Decedent, S.P., and the minor girl exited out the front doors and moved along the front of the store. Decedent attempted to corner the adult and minor female. The minor female was crying hysterically and attempting to keep Decedent away from the older female. Decedent was crying and yelling, "Why are you gonna do this? Are you leaving me?" The older female stated, "Just go. Leave me alone." At that point, S.P.2 started hearing sirens and she saw Decedent grab the older female and pull out a gun.

S.P.2 observed police officers arrive and heard the officers tell Decedent to put down the gun. S.P.2 heard four (4) gunshots and observed Decedent on the ground.

A.P.

A.P. was with his wife, S.P.2, and their children when they arrived at Rhino Mart to get drinks. He parked in front of the store as a vehicle arrived and parked next to him. A.P. observed a male (Decedent) and a female (S.P.) in the front seats and the male was choking the female. The female in the vehicle was trying to say something to A.P.'s wife and they believed she needed help. A.P. turned to his wife and told her to call 911. A.P. watched as Decedent and S.P. got

² This is not a second statement of Decedent's wife, but a statement with another witness with the same initials.

out of the vehicle and went inside the store. An individual who worked at the gas station approached A.P. and told him that Decedent had a firearm. A.P. told his wife to tell the dispatcher that Decedent was armed with a gun. A.P. then moved his vehicle away from the front of the store because he was concerned about the safety of his children.

A.P. stated he observed Decedent and S.P. exit the store. The first officer arrived and A.P. observed Decedent pull out a handgun and yell at the officer, "Shoot me." A.P. heard the officer issue commands to Decedent to drop his gun. A second officer arrived and A.P. directed him to where the other officer was located. Shortly after the second officer arrived, A.P. heard four (4) gunshots.

A.F.

A.F. was on his bike, riding east on Pyle Avenue when he approached the Rhino Mart. As A.F. neared the business, he observed Decedent, in what he believed was a domestic disturbance at the front doors. Decedent appeared to have a female in a choke hold with his left arm and a handgun in his right hand. Decedent moved the handgun from his head to the female's head as she struggled to get away from him. A.F. used his cell phone to video record the activity as police officers pulled into the parking lot. The officers had issued several verbal commands, he believed six (6) in total, to Decedent to drop the weapon when A.F. heard three (3) to four (4) gunshots. A.F. observed Decedent fall to the ground and the officers administered medical aid to Decedent. A.F. allowed a Detective on scene to have a copy of the cell phone video.

A.J.

A.J. was smoking a cigarette outside the Rhino Mart where he worked as a cashier, when he observed a 4-door vehicle drive up to the front of the store and park. Decedent and S.P. exited the vehicle and appeared to be in an argument. According to A.J., Decedent was a tall black male and S.P. was possibly Hawaiian. During the argument, Decedent was choking S.P.

A.J. attempted to get them to separate; however, they did not respond to A.J. asking them to stop. A.J. stated Decedent and S.P. went into the store and the altercation continued. A.J. observed a firearm in Decedent's right front pant pocket. A.J. knew the object was a firearm because he could see the magazine. S.P. warned A.J. that Decedent had a gun.

After a couple of minutes, Decedent and S.P. exited the store and A.J. followed them. A short time after the subjects exited the store, a patrol officer arrived, exited his vehicle, and began yelling at them. A.J. then ran around the side of the building and heard two (2) to three (3) gunshots. A.J. came back around to the front of the store and observed Decedent in handcuffs and paramedics rendering first aid.

A.A.

A.A. was working as an engineer with the Clark County Fire Department and worked out of Station 38 on Engine 38. Engine 38 was dispatched to a call reference a stab or gunshot wound victim at 780 E. Pyle Avenue. Upon arrival to the location, A.A. saw several LVMPD vehicles and a Community Ambulance on scene. A.A. made contact with a female officer who directed him to the female victim.

Upon making contact with S.P., A.A. observed she had a gunshot wound to her right flank. As A.A. lifted S.P.'s right sleeve to obtain her blood pressure, he saw a large bruise on her right bicep that looked fresh. A.A. asked S.P. if she was shot at close range or at a distance and S.P. stated, "The cop shot me."

A.A. kept S.P. talking until Rescue 38 and another Community Ambulance arrived on scene. Once the paramedics took over care of S.P., A.A. walked away from her.

A.A. did not witness the actual shooting.

D.Z.

D.Z. is a paramedic for Community Ambulance, on duty as Unit 110, and was posted at S. Las Vegas Boulevard and E. Silverado Ranch Boulevard. He was dispatched to a shooting/stabbing at 780 E. Pyle Avenue. Upon arrival at the scene, D.Z. made contact with the female victim who was being attended to by Clark County Fire Department personnel. S.P. was transported to UMC Trauma Center to be treated for a single gunshot wound to her right abdomen.

While transporting S.P. to UMC Trauma Center, D.Z. asked S.P. what happened, and she stated, "He shot me." S.P. said the shooting occurred from about a car length away and she was shot with a handgun. S.P. did not say who shot her.

D.Z. did not witness the actual shooting.

J.A.

J.A. is a paramedic with the Clark County Fire Department and worked out of Station 38 on Rescue 38. Engine 38 was dispatched to a call reference a gunshot wound victim at 780 E. Pyle Avenue. Engine 38 requested another unit and J.A. was dispatched to the scene. Upon arrival, J.A. saw the captain and engineer attending to the female victim who had a gunshot wound to her right abdomen. S.P. was being transported to UMC Trauma Center to be treated for a single gunshot wound to her right abdomen.

While en route to UMC Trauma Center, J.A. spoke to S.P. about what occurred. S.P. stated her husband, Decedent, was drunk and they had been arguing. J.A. asked S.P. who shot her and she stated her husband. J.A. also saw bruising on S.P.'s right bicep area that S.P. said was caused by Decedent during a prior incident.

J.A. did not witness the actual shooting.

INFORMATION RECEIVED FROM OFFICERS

Officer Manuel Diuguid

Officer Diuguid responded to a domestic disturbance, where a male was reportedly choking a female. While en route, it was broadcasted that the male possibly had a firearm.

Upon Officer Diuguid's arrival, he observed the couple in front of the Rhino Mart in a physical altercation. Officer Diuguid deployed his Taser and saw something in Decedent's hand. Officer Diuguid realized it was a firearm and transitioned to his own handgun.

Officer Diuguid issued numerous commands to Decedent to drop his firearm. As he did so, Officer Diuguid retreated to cover behind his patrol vehicle. Decedent put the firearm to his head and said, "Shoot me, officer." Decedent was holding S.P. with the other hand, preventing her from getting away from him. Officer Diuguid believed he did not have a proper backdrop to fire his handgun.

Officer Diuguid observed Officer Nesheiwat arrive and park his vehicle to his left. Officer Nesheiwat exited his vehicle with his firearm drawn and told Decedent to put down his firearm. Officer Diuguid heard Officer Nesheiwat discharge his firearm four (4) times.

After Officer Nesheiwat fired his weapon, Officer Diuguid approached Decedent, moved Decedent's firearm, and rendered aid to S.P. As other officers arrived, Officer Diuguid secured Decedent's handgun in his patrol vehicle.

TIMELINE

The below timeline is a reconstruction of events which transpired during the officer involved shooting.

Time (hours)	Description of Event/Action	Source
1734	LVMPD Dispatch received a call from S.P.2 reporting a male (Decedent) was choking a female (S.P.) inside a vehicle parked in front of the Rhino Mart. Officers responded to the scene Code 3 ³ .	Computer Aided Dispatch (CAD)
1738	Dispatch advised officers that Decedent had a firearm in his pocket. Decedent was crying, and he and S.P. entered the business.	CAD
1739	Officers arrived on scene.	CAD
1741	Dispatch was advised shots were fired, Decedent was down, and S.P. was wounded. Medical personnel were requested and en route to the scene.	CAD
1742	Decedent was taken into custody.	CAD
1757	S.P. was transported to UMC Trauma Center.	CAD
1812	Decedent was pronounced deceased at UMC Trauma Center.	CAD

SCENE WALK-THROUGHS

Officer David Nesheiwat

During the walk-through, Officer Nesheiwat relayed the following information:

Officer Nesheiwat arrived on the call and observed Decedent with a firearm in his hand. He observed Decedent pin a female against the propane gas racks and put the firearm into her

³ Code 3 indicates the vehicle's red and blue lights and siren were activated.

midsection. Officer Nesheiwat gave Decedent commands to drop his weapon. Decedent ignored Officer Nesheiwat's orders and continued to struggle with the female.

Officer Nesheiwat thought Decedent was going to shoot the female so Officer Nesheiwat fired his handgun at Decedent. Officer Nesheiwat was standing next to a brown colored Jeep when he fired.

View from Officer Nesheiwat's position. Distance from Officer to Decedent = 15 ft. 6 in.



Officer Manuel Diuguid

During the walk-through, Officer Diuguid relayed the following information:

Officer Diuguid arrived at the Rhino Mart parking lot and walked towards the front of the store expecting to find the subjects from the call inside the store. Officer Diuguid pulled out his Taser expecting to encounter subjects in a physical fight. As he approached the store, Officer Diuguid observed a large black male adult wearing a black shirt (as described in the call), wrestling with a female, and holding a firearm in his right hand. The male put the firearm to his right temple and the female was pulling on his arm.

Officer Diuguid then backed up and transitioned from his Taser to his firearm. He gave verbal commands to the male to drop the firearm. The male and female continued fighting over the

firearm, and Officer Diuguid moved back from the rear driver side of the Jeep to his patrol vehicle. He stated he saw the male and female fighting over the firearm. The male kept saying, "Officer, just shoot me." Officer Diuguid said the male then put the firearm back to his right temple.

Officer Diuguid stated Officer Nesheiwat pulled into the parking lot from the opposite direction of Officer Diuguid and exited his patrol vehicle with his firearm in his hand. Officer Diuguid observed Officer Nesheiwat walk towards the male and issue him commands to drop his firearm. Officer Diuguid then heard gunshots and saw both the male and female go to the ground. Officer Diuguid approached Decedent and took his (Decedent's) firearm and placed it into his patrol vehicle.

Officer Diuguid could not recall how many shots were fired by Officer Nesheiwat. Officer Diuguid did not fire his weapon.

View from Officer Diuguid's position. Distance from Officer to Decedent = 23 ft. 7 in.



Overall View of All Positions



BODY WORN CAMERA

Officer David Nesheiwat

Officer Nesheiwat was wearing a body worn camera (BWC) at the time of the incident, and the camera was activated. The camera was collected by Sergeant MacDonald and secured.

The footage is limited due to the camera being obstructed by Officer Nesheiwat's clothing. It does show Officer Nesheiwat arrive in front of the Rhino Mart and exit his patrol vehicle with his firearm pointed toward Pitts. Officer Nesheiwat discharged his firearm four (4) times.

Officer Nesheiwat then approached Decedent, who was lying on the ground, grabbed Decedent's right arm, and placed it behind Decedent's back. Officer Nesheiwat then placed Decedent's left arm behind his back and requested gloves from other officers.

Officer Nesheiwat held Decedent's wrists together as another officer placed handcuffs on Decedent. Officer Nesheiwat directed officers to attend to S.P. Officer Nesheiwat then used his radio to request medical personnel to the scene.

Officer Manuel Diuguid

Officer Diuguid was wearing a body worn camera at the time of the incident, and the camera was activated. The camera was collected by Sergeant MacDonald and secured.

Officer Diuguid's footage depicted his arrival in front of the Rhino Mart. As Officer Diuguid exited his vehicle, he requested a "Code Red" over the radio. Officer Diuguid deployed his Taser and approached Decedent. Decedent appeared to be in a physical altercation with S.P., who was yelling. Officer Diuguid asked Decedent what he had in his hand and then yelled, "Drop the gun!" At that point, Officer Diuguid broadcasted over the radio, "He's got a 413. 413." (firearm)

Officer Diuguid gave numerous commands to Decedent to step away from S.P. and retreated back to the area of his patrol vehicle while he continued to issue numerous verbal commands.

Officer Nesheiwat arrived at the scene and Officer Diuguid advised him Decedent had a gun. Officer Nesheiwat yelled, "Drop the gun!" Four (4) gunshots were heard, and Decedent went down to the ground.

Officer Diuguid approached Decedent and then S.P. Officer Diuguid donned latex gloves and rendered first aid to S.P., who advised she had been shot.

PUBLIC SAFETY STATEMENT

On November 11, 2017, at approximately 2045 hours, Detective Trever Alsup interviewed Sergeant Aaron Lee in reference to the Public Safety Statement (PSS) he obtained from Officer Nesheiwat. Below in bold is the transcript of the interview. Note: Detective Alsup is designated by (TA) and Sergeant Lee is designated by (AL).

TA: This is Detective Trever Alsup, A-L-S-U-P, with the, Las Vegas Metropolitan Police Department Force Investigation Team, conducting a PSS interview with Sergeant Aaron Lee, A-A-R-O-N, last name is L-E-E, P# 9840. Call sign tonight was 7361C. He's assigned to South Central Area Command, and squad is South Central 33. This is in reference to Event 171111-2780, which was a domestic disturbance that resulted in an officer-involved shooting. Sergeant Lee, you understand this is being conducted, um, on tape?

AL: Yes.

TA: Okay. And we are currently parked inside a marked LVMPD vehicle, in front of 780 E. Pyle, Las Vegas, NV 89183. The date is November 11, 2017, and the time is 2045 hours. Also present is Sergeant Michelle Jotz with the PMSA⁴. Sergeant Lee, you, conducted the Public Safety Statement for Officer Nesheiwat, is that correct?

AL: Yes.

TA: Can you go down the card and read the questions you asked and his response verbatim?

AL: Question Number 1: "Did you discharge your firearm?" Answer: "Yes."

⁴ Police Managers and Supervisors Association

“If so, in what direction?” “North.”

“Approximately where were you located when you fired?” “In front of the store.”

“How many shots do you think you fired?” “Three.”

Question Number 2: “Is anyone injured?” “Yes, suspect.”

“If so, describe their description.” “Light skinned, black male adult with tattoos, bald, black shirt. A second person was also injured; a female.”

Question Number 3: “Are there any outstanding suspects?” “No.”

“What direction and mode of travel?” There was...skipped.

“What crimes have they committed?” “Battery strangulation, battery with a firearm.”

“What type of weapon do they have?” “Black semiauto handgun.”

Question Number 4: “Is it possible the suspect fired rounds at you?” “No.”

“Approximately where was the suspect located when they fired?” “In front of the store.”

Question Number 5: “Do you know if any other officers discharged their firearms?”

“No other officers fired their weapons.”

Question Number 6: “Are there any weapons or evidence that need to be secured/protected?” “Yes.”

“If so, where are they located?” “Officer Diuguid located a firearm and placed it in his trunk.”

Question Number 7: “Are you aware of any witnesses?” “Yes,” “the female witness and a little girl.” Location, did not know.

TA: “Okay. I’ll go ahead and stop the tape now. Date is the same. Time is 2048 hours, and same people are present.”

WEAPONS COUNTDOWN

On November 17, 2017, Officer Nesheiwat had his duty weapon counted down at Las Vegas Metropolitan Police Department headquarters. Officer Nesheiwat was photographed by crime scene analyst personnel for appearance purposes and his weapon was also photographed for identification purposes.

Officer Nesheiwat was dressed in standard LVMPD uniform and it should have been apparent to anyone viewing him that he was a police officer. Additionally, Officer Nesheiwat wore a black duty belt with attached tools and equipment as part of his position in patrol. Officer Nesheiwat's handgun was carried on the right side of his body and secured in a holster.

Prior to countdown Officer Nesheiwat stated he carried 17 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (17+1, 18 total).

At the completion of the countdown, it was determined, based upon evidence at the scene and the number of rounds still remaining in his magazine and firearm, that Officer Nesheiwat discharged his firearm four (4) times during this incident. Additionally, based on evidence at the scene and BWC video footage captured, detectives concluded Officer Nesheiwat loaded an additional cartridge into the magazine (18+1, 19 total) loaded into his firearm. Officer Nesheiwat's firearm, magazines, and cartridges were photographed and impounded by Senior Crime Scene Analyst Courtney.

DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

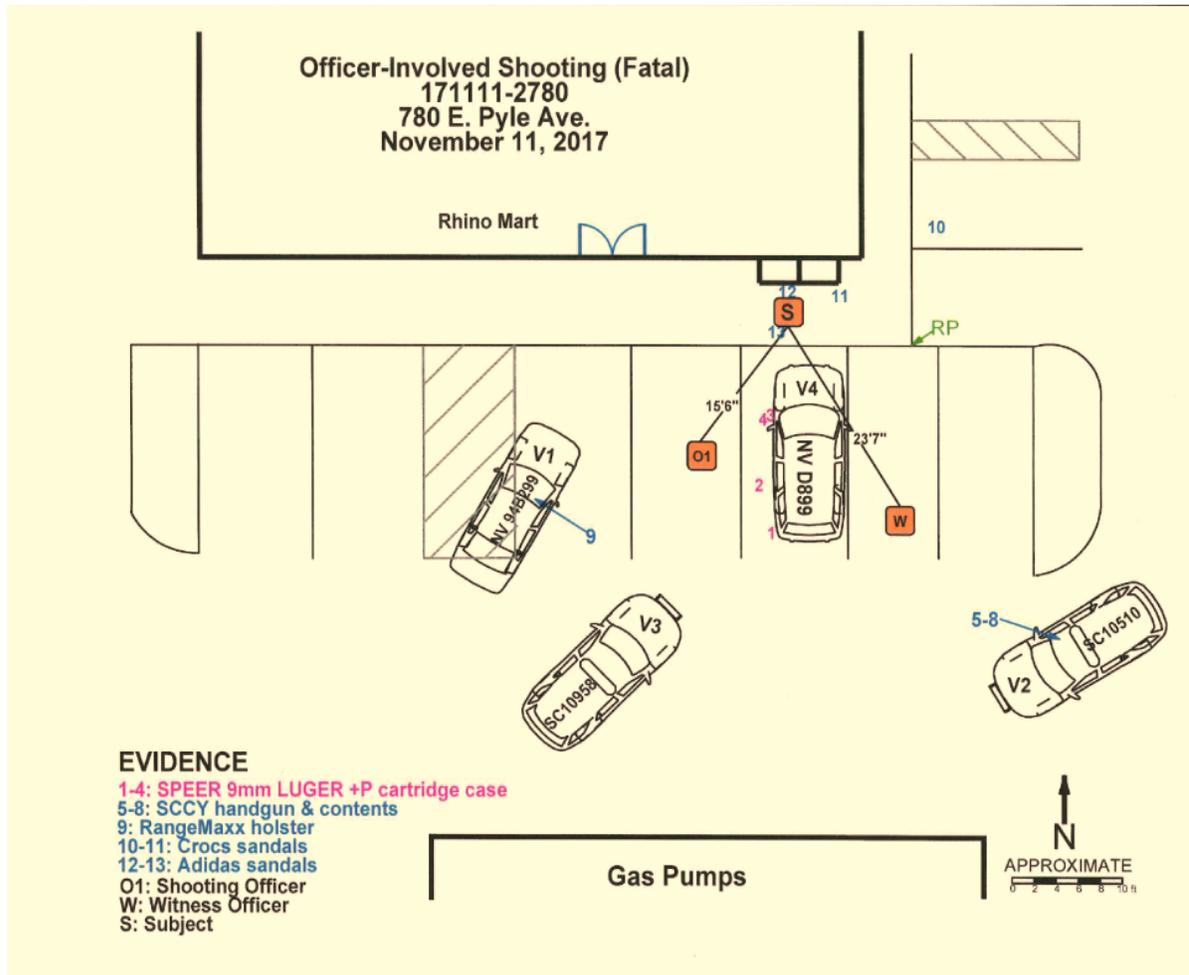
The scene was located in the parking lot of the Rhino Mart Convenience Store/Gas. The business was oriented on the northwest corner of Pyle Ave. to the south and Pollock Dr. to the east. In the same business complex was an American Mini Mart/Smoke Shop to the west and a Lefty's Pizza to the northwest in the corner of the complex. The Rhino Mart was positioned facing south with gas pumps covered with an awning to the south of the entrance. A driveway entered the complex from Pollock Dr. to the rear of the store, another driveway from Pollock Dr. northeast of the pumps, and a driveway from Pyle Rd. southwest of the gas pumps. A sidewalk bordered the business at the east and south sides. A set of double doors entering/exiting the business was centered along the south side. Seven parking spaces bordered the south sidewalk at the front of the store and parking spaces were positioned along the east sidewalk as well. A planter was positioned at the east end of the south parking spaces. Two cages of propane tanks were positioned along the south side of the store on the sidewalk east of the doors.

Surveillance cameras were visible in the following areas: Centered on the east exterior wall of the store near the roofline; centered above the south entry/exit doors at the roofline; on the gas pump awning at the northwest corner; and on the gas pump awning at the southeast corner.

During the officer involved shooting, several vehicles were stopped south of the store and positioned as follows: vehicle #1 was parked in a northeasterly direction across the 5th parking space west of the east end halfway into the space; vehicle #2 was parked in a westerly direction south of the planter at the east end of the south parking spaces and east of the other vehicles; vehicle #3 was parked in a northeasterly direction southeast of vehicle #1; and vehicle #4 was parked in the 3rd parking space west of the east end in a northerly direction. A pair of handcuffs were lying on the hood of vehicle #4. Both patrol vehicles were running with their red/blue lights

on as well as the headlights. Vehicle #1 was running, in park position, and the headlights were off. Vehicle #4 was not running.

CRIME SCENE DIAGRAM



VEHICLES NOTED ON CRIME SCENE DIAGRAM:

There are four (4) vehicles depicted on the crime scene diagram. Two (2) out of the four (4) are marked LVMPD patrol vehicles:

- 1 – 2012 Nissan Altima, NV/94B299, (Decedent's Vehicle)
- 2 – 2014 Ford Explorer (LVMPD Black & White #SC10510), NV/LVMP 0058,
- 3 – 2016 Ford Explorer (LVMPD Black & White #SC10958), NV/LVMP 0573,
- 4 – 2015 Jeep Rubicon Wrangler, NV/Veteran D899

EVIDENTIARY OBSERVATIONS:

Two (2) cartridge cases (items #1 & 2 *on crime scene diagram*) were lying on the pavement at the left rear tire and left side of vehicle #4 and two (2) cartridge cases (items #3 & 4 *on crime scene diagram*) were lying on the pavement at the left front tire of vehicle #4.

Apparent blood was visible on the sidewalk at the propane tanks and on the east sidewalk near the propane tanks. Medical gauze was also lying on the east sidewalk in this area. A black/white sandal (item #12 *on crime scene diagram*) was partially wedged under the propane tank cage on the sidewalk and the matching sandal (item #13 *on crime scene diagram*) was on the sidewalk south of the west propane cage. A black strapped slip-on sandal (item #11 *on crime scene diagram*) was lying on the south sidewalk in front of the east propane tank cage and the matching black strapped slip-on sandal (item #10 *on crime scene diagram*) was lying on the pavement in the 2nd stall north of the south end along the east side of the store.

Decedent's 9 mm semi-automatic handgun (items #5-8, *on crime scene diagram*) was lying on the front right seat of vehicle #2. The firearm was lying on its' left side with the barrel pointed forward. The safety was off, the magazine was in place in the magazine well and contained eight (8) cartridges, and there was a cartridge in the chamber.

A search warrant was executed on vehicle #1. A black firearms holster (item #9 *on crime scene diagram*) was found on the center console at the gear shift. A search for additional firearms evidence was conducted with negative results.

THIRD PARTY VIDEO AND PHOTOGRAPHIC EVIDENCE

Rhino Mart Surveillance Video

Fuel Pumps View

A Nissan Altima can be seen pulling into the parking lot and stopping abruptly in front of the store. The vehicle parks at an angle facing the store. The front driver door opens and a minor female (P.P.) exits the rear passenger side and stands outside the vehicle. Shortly thereafter, the female driver, S.P., exits the vehicle and she and P.P. move toward the store and out of camera view. Moments later, Decedent exits from the front passenger seat and moves toward the store.

Camera Mounted Above Store Entrance Facing East

Decedent and S.P. can be seen in a physical altercation. It appears Decedent is holding a handgun and S.P. is trying to gain access to it.

Cellular Phone Video

As aforementioned, a witness at the scene recorded the incident on his cell phone. The witness was physically located west of the incident and across the parking lot. The video shows Decedent and S.P. struggling over the gun when a second patrol car arrives. An officer can be heard yelling, "Drop the gun!" Shortly thereafter, gunshots are heard.

FORENSICS RESULTS

Firearm Examinations

On November 11, 2017, a request for analysis was submitted on Officer Nesheiwat's and Decedent's firearms. The purpose of the request was to determine if the weapons were properly functioning and to also perform a ballistic comparison between the weapons and evidence found at the scene.

Forensic Scientist Kathy Geil submitted the Report of Examination: Firearms & Toolmarks. The following evidence was examined and the results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
1	012712-1	1	Glock model 17 Gen4, 9x19 (9mm Luger) semiautomatic pistol, serial number TKE744, with attached Surefire model X300 Ultra light
2	012712-1	2	One magazine (fits and functions in Lab Item 1)
3	015291-1	1	One "SPEER" 9mm Luger +P cartridge case
4	015291-2	5	One SCCY model CPX-1, 9mm Luger semiautomatic pistol, serial number 267792
5	015291-3	7	One magazine (fits and functions in Lab Item 4)

Results and Conclusions:

Firearms and Magazines

The Glock pistol, Officer Nesheiwat's firearm, was examined, test fired, and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 1/2 inches, an overall length of approximately 8 15/16 inches with the light attached and an overall length of approximately 8 1/8 inches without the light attached. This pistol has a trigger pull of 7 1/4 – 7 1/2 pounds. The submitted magazine has a capacity of eighteen cartridges, although it is marked as seventeen.

The SCCY pistol, Decedent's firearm, was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 3/16 inches, an overall length of approximately 6 1/16 inches and a trigger pull of 8 3/4 – 9 pounds. The submitted magazine has a capacity of eleven cartridges.

Cartridge case

The evidence cartridge case was examined and microscopically compared to the test fired cartridge cases from the Glock and SCCY pistols with the following result:

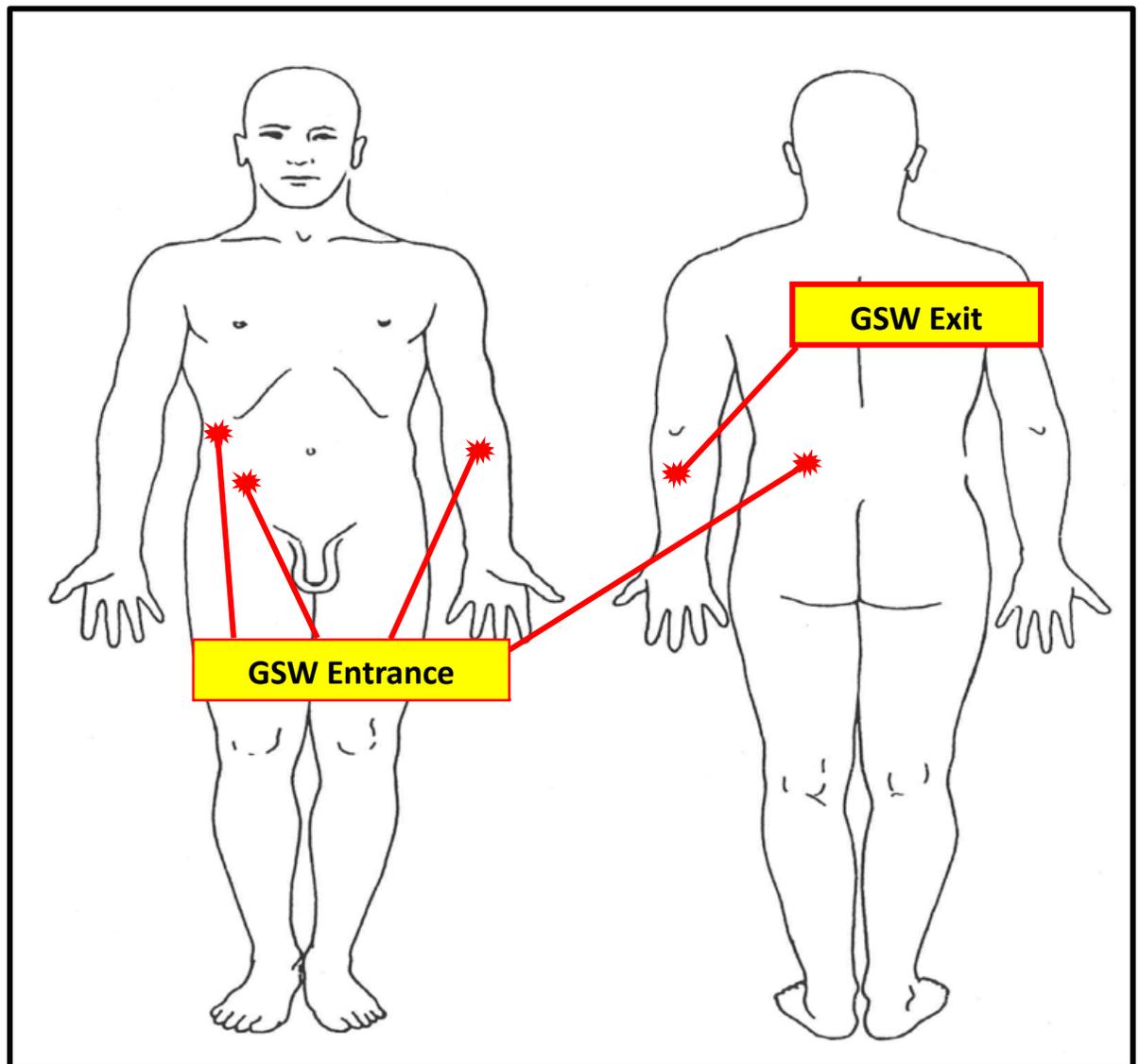
- The cartridge case was identified as having been fired from the Glock pistol. (Officer Nesheiwat's weapon)

AUTOPSY

On November 12, 2017, an autopsy was performed on the body of Decedent at the Clark County Coroner's Office by Doctor Leonardo Roquero.

The following wounds/injuries were noted on Pitts:

- 1) Penetrating gunshot wound to the abdomen (GSW #1) (deformed bullet recovered)
- 2) Penetrating gunshot wound to the abdomen (GSW #2) (deformed bullet recovered)
- 3) Penetrating gunshot wound to the back (GSW #3) (deformed bullet recovered)
- 4) Perforating gunshot wound to the left forearm (GSW #4)
- 5) A ½ inch by ½ inch abrasion on the right forehead
- 6) A ¾ inch by ½ inch abrasion on the lateral right supraorbital ridge
- 7) A ¾ inch by ¾ inch abrasion on the lateral right lower eyelid
- 8) A 1 inch by 1 inch abrasion on the lateral left frontal region of the head
- 9) A 1-1/4 inch x ½ inch abrasion on the anterior right knee



Upon the completion of toxicology testing, the following results were noted⁵:

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Ethanol	230	mg/dL	001 - Peripheral Blood
Blood Alcohol Concentration (BAC)	0.230	g/100 mL	001 - Peripheral Blood
11-Hydroxy Delta-9 THC	13	ng/mL	001 - Peripheral Blood
Delta-9 Carboxy THC	50	ng/mL	001 - Peripheral Blood
Delta-9 THC	5.5	ng/mL	001 - Peripheral Blood

After a complete autopsy, Doctor Roquero opined Phillip Pitts died as a result of multiple gunshot wounds. The manner of death was homicide.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) The killing of a human being in self-defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

A. The Use of Deadly Force in Defense of Another

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.⁶ NRS 200.120(1). Homicide is also lawful when committed:

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

NRS 200.160(1).

⁵ In layman's terms, Decedent had alcohol and marijuana in his system.

⁶ NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

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

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

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

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

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

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

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

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

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove, beyond a reasonable doubt, an individual did not act in self-defense.

In this case, Decedent posed an imminent danger to his wife, his daughter, Officers Nesheiwat and Diuguid, and the other patrons in the area of the Rhino Mart.

The facts illustrate that Decedent was behaving in an aggressive and irrational manner towards his wife. As officers approached, Decedent was asked multiple times to put his weapon down. At the point in time

Officer Nesheiwat fired his weapon, Decedent had his own firearm pointed at his wife while holding her in a headlock. Evidence collected at the scene, as well as statements given by multiple witnesses, confirmed these set of facts. Lastly, Decedent's distance ranged from 23 feet to 15 feet away from the officers. Thus, Decedent posed an objectively reasonable imminent danger to all officers and civilians in the area; therefore, Officer Nesheiwat acted in reasonable fear of a threat to his life and the lives of others at the time he fired.

B. Justifiable Homicide by a Public Officer

"Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty." NRS §200.140(2). This statutory provision has been interpreted as limiting a police officer's use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att'y Gen. 47 (1985).

In this case, the facts illustrate that Officer Nesheiwat was reasonable in his belief that Decedent posed a serious threat to the safety of all officers involved, Decedent's wife, his minor child, as well as the surrounding patrons. As aforementioned, both officers were well aware of the fact that they were responding to an individual who was being violent, aggressive, and was in possession of a firearm. As Office Nesheiwat approached, he could see Decedent holding his firearm to the body of Decedent's wife. At that point in time, Officer Nesheiwat knew that S.P. was in grave danger, he and Officer Diuguid were in danger, as were the patrons in the area, thus, he had to take action.

These circumstances illustrate that Officer Nesheiwat had probable cause to believe that Decedent posed a threat of serious physical harm either to the officers involved, Decedent's wife, Decedent's daughter, and/or other civilians in the area. Officer Nesheiwat overcame that threat by firing his weapon into Decedent's body.

In light of all the evidence reviewed to date, the actions of Officer Nesheiwat were justified and appropriate "in the discharge of a legal duty."

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Officer Nesheiwat were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS §200.190). A homicide which is determined to be justifiable shall be "fully acquitted and discharged." (NRS §200.190).

As there is no factual or legal basis upon which to charge Officer Nesheiwat, and unless new circumstances come to light, which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.