

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Kenneth Busse Jr. on October 10, 2018

INTRODUCTION

On October 10, 2018, 21-year-old Kenneth Busse, Jr. (hereinafter “Decedent”) was shot and killed by Las Vegas Metropolitan Police Department (“LVMPD”) Officer Chad Betts. The incident took place at approximately 7:12 a.m., in the area of South Rainbow Boulevard and West Gary Avenue, Las Vegas, Nevada.

SYNOPSIS

On October 10, 2018, at approximately 7:12 a.m., a call was received by LVMPD Dispatch Call Center, reference a traffic accident at the location of South Rainbow Boulevard and West Gary Avenue. Details of the call indicated vehicles had stopped behind a school bus at the railroad tracks located on South Rainbow Boulevard, just south of West Gary Avenue. While stopped, a white Nissan Frontier driven by Decedent rear-ended a white Pontiac G6, which was occupied by J.Z. (driver) and her fiancée, L.A. After J.Z.’s vehicle had been struck by Decedent’s vehicle, J.Z.’s vehicle was forced into the vehicle in front of her, a silver Kia Soul. The Kia Soul was occupied by D.D. After the collisions, L.A. called 911 to report the accident and requested medical assistance for J.Z., who had suffered a seizure. LVMPD officers and medical personnel were notified and responded to the scene.

LVMPD Traffic Officers Chad Betts and Kenneth Pilette were assigned to the call. They responded to the scene and contacted the parties involved. J.Z. was transported to the hospital by ambulance as officers continued the accident investigation. During the investigation, D.D. and L.A. informed Officer Pilette they believed Decedent was possibly impaired due to him acting strangely prior to the officers’ arrival.

As Officer Pilette completed the accident report with L.A. and D.D., Officer Betts approached Decedent who was standing to the rear of his vehicle. Officer Betts asked Decedent if he

would complete field sobriety tests and Decedent declined. Officer Betts asked Decedent several more times if he would perform the tests, and Decedent continued to refuse. Officer Betts instructed Decedent numerous times to turn around and place his hands behind his back, but Decedent failed to comply. Officer Betts informed Decedent he was being arrested for driving under the influence. Decedent argued with Officer Betts and refused to comply with his instructions. After the brief encounter, Decedent tossed his keys and a water bottle into the bed of his truck and walked away from Officer Betts, in the direction of the desert area. Officer Betts advised Officer Pilette and followed Decedent.

Decedent jogged toward a small bush that was located west of the accident scene. There, he retrieved a semiautomatic handgun from the bush and racked the slide. Officer Betts retreated and ran for cover toward Decedent's truck. Decedent raised his firearm in the direction of Officer Betts. As this occurred, Officer Pilette drew his firearm and fired four (4) rounds at Decedent. Decedent focused his attention toward Officer Pilette and exchanged gunfire with him. L.A. and D.D., whom were initially standing with Officer Pilette, hid behind their vehicles. As Officer Betts found cover behind Decedent's truck, he drew his handgun and fired at Decedent, striking him twice in the chest area. Officers Betts and Pilette approached Decedent, who was lying on the ground, and Officer Pilette secured Decedent in handcuffs. Medical personnel were immediately summoned for Decedent; however, Decedent was pronounced deceased on scene.

Due to the officer-involved shooting ("OIS") aspect of the incident, detectives from the Force Investigation Team ("FIT") were requested and responded to the scene to conduct the investigation. Enterprise Area Command ("EAC") patrol detectives assisted with the investigation.

This report explains why criminal charges will not be forthcoming against LVMPD Officer Betts. 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 August 16, 2019.

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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

DESCRIPTION OF THE SCENE

The scene was located on the west side of the southbound lane of Rainbow Boulevard, south of Gary Avenue. Rainbow Boulevard extended in a north/south direction and consisted of one northbound lane, one southbound lane, an east shoulder, and a west shoulder. There was desert area on both sides of Rainbow Boulevard. A set of railroad tracks extending in a northwest/southwest direction intersected Rainbow Boulevard. There was vehicle debris in the roadway of Rainbow Boulevard, north of the railroad tracks.

An LVMPD motorcycle (V4) was located on the west shoulder of Rainbow Boulevard, north of the railroad tracks. It was facing south.

The Pontiac GT (V2) was in the desert area on the west side of Rainbow Boulevard, north of the railroad tracks and just southwest of V4. It was facing southwest. There was damage to the rear end and to the front end of the passenger side.

The Kia Soul (V3) was in the desert area on the west side of Rainbow Boulevard, north of the railroad tracks and railroad crossing sign and just southwest of V2. It was facing south.

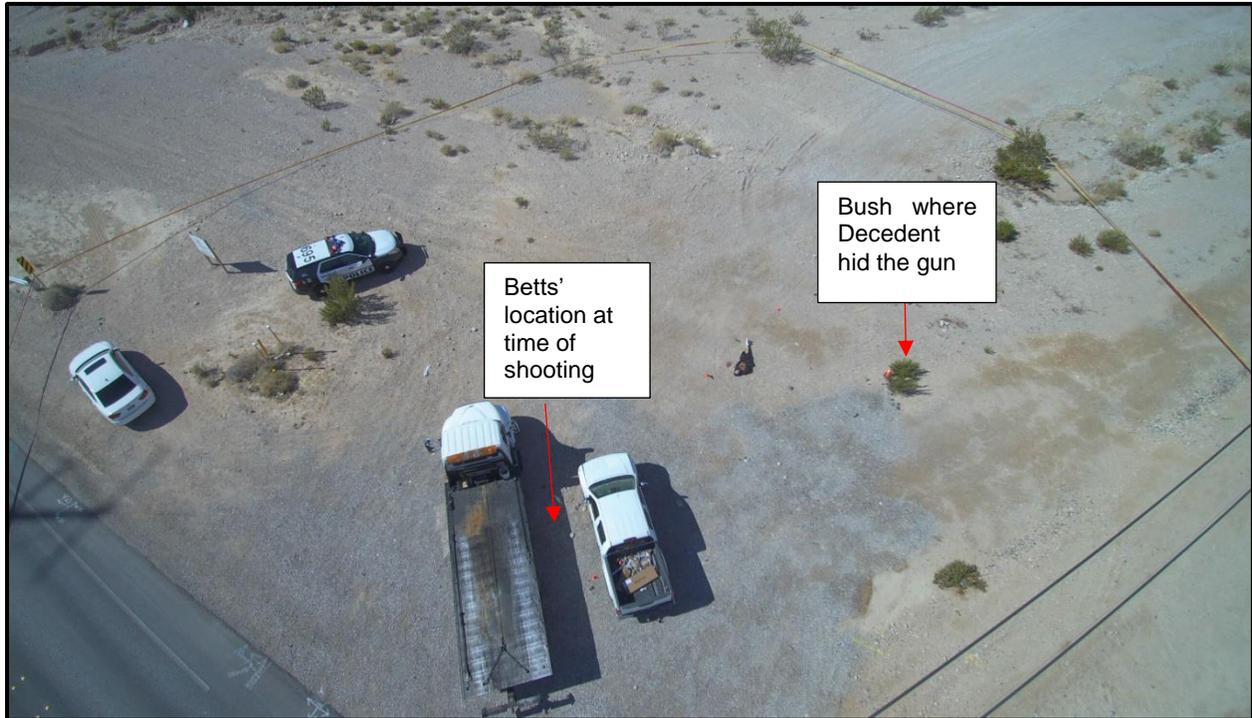
Another LVMPD motorcycle (V5) was located on the west shoulder of Rainbow Boulevard, north of the railroad tracks and just south of V3. The motorcycle was facing south.

The Nissan Frontier (V1) was in the desert area on the west side of Rainbow Boulevard, south of the railroad tracks, and was facing southwest. There was damage to the front end as well as damage to the rear driver's side quarter panel and a defect in the tailgate. The front driver's side airbag was deployed. A pair of keys and a water bottle were inside of the bed of the truck. Additionally, a business card for "Psycare" was located inside the truck.

One (1) cartridge case bearing headstamp "SPEER 9MM LUGER +P" was located on the ground in the desert just south of V3 (Item 1). Two (2) cartridge cases bearing headstamp "SPEER 9MM LUGER +P" were located on the ground in the desert area south of the railroad crossing sign (Items 2&3). One (1) cartridge case bearing headstamp "SPEER 9MM LUGER +P" was located on the ground in the desert area west of the front passenger tire of V3 (Item 4).

An additional cartridge case bearing headstamp "SPEER 40 S&W" (Item 5) was located on the ground in the desert area adjacent to the rear driver side tire of V1. Another cartridge case bearing headstamp "SPEER 40 S&W" (Item 6) was in the bed of V1 on the front driver side.

There was a bush located north of Decedent. A cartridge case bearing headstamp "WIN 9MM LUGER" (Item 7) was located on the ground west of Decedent. Additionally, a black HK P30 semiautomatic 9mm handgun was located on the ground southeast of Decedent's left shoulder (Item 8). A cartridge bearing headstamp "WIN 9MM LUGER" (Item 9) was inside the chamber, and the magazine (Item 10) contained thirteen (13) cartridges bearing headstamp "WIN 9MM LUGER."



SCENE WALK-THROUGH

Officer Chad Betts

On October 10, 2018, at approximately 12:24 p.m., Officer Betts provided a walk-through of the scene. Officer Betts stated he believed Decedent fired in the direction of his partner (Officer Pilette) and the accident victims (L.A. and D.D.). Officer Betts stated he fired his weapon as Decedent moved toward Officer Betts for his partner's (Officer Pilette's) safety as well as his own. When Officer Betts was asked, "So, you fired to defend yourself, your partner, and the other citizens?" Officer Betts responded, "Yes."

Officer Kenneth Pilette

On October 10, 2018, at approximately 12:31 p.m., Officer Pilette provided a walk-through of the scene.

Officer Pilette described how Decedent grabbed a gun from the bush, at which time he fired his duty weapon. When Officer Pilette was asked whether he fired his weapon to defend his

partner, Officer Pilette stated he fired his weapon when Decedent turned toward his partner (Officer Betts) because he believed Decedent was going to shoot him. Officer Pilette also believed Decedent fired his weapon but was not sure.

OFFICER PUBLIC SAFETY STATEMENTS

Officer Chad Betts

On October 10, 2018, at approximately 10:58 a.m., Detective Blake Penny interviewed Sergeant Robert Hubbard in reference to the Public Safety Statement he obtained from Officer Betts. Also present during the interview was LVPMSA representative Russ Wood. Below is the transcript of the interview.

RH: Yes. Um, so, I read, uh, Sergeant Betts...or, I'm sorry, Officer Betts the Public Safety Statement at 820 hours.

First question I asked him is #1: "Did you discharge your firearm?" Um, he answered to me, "Yes."

Um, question 1, subsection A: "If so, in what direction?" He stated, "West, the desert lot."

Um, subsection B: "Approximately where were you located when you fired?" He stated, "Behind the suspect's vehicle, which was a white truck."

Um, subsection C: "How many shots do you think you fired?" And he stated, "Two."

Uh, question #2: "Is anyone injured?" Um, his statement was, "Yes."

"If so, where are they located?" Um, that's subsection A. He said the suspect was in the desert area, west of Rainbow, south of the railroad tracks.

Uh, question #3: "Are there any outstanding suspects?" Um, his answer to that is, "Not that I know of."

Um, subsection A: "If so, what's their description?" Again, wasn't aware of another suspect.

Subsection B: "What direction and mode of travel?" Again, didn't have any other suspect.

Subsection C: "How long have they been gone?" Again, not applicable.

Subsection D: "What crimes have they committed?" Um, again, not applicable.

And subsection E: "What type of weapon do they have?" Again, not applicable.

Um, he did make a statement to me when I was talking about question 3. He said prior to the shooting occurring he was out on a traffic accident, and that's how this originally started, was a...was a traffic accident.

Question #4: "Is it possible the suspect fired rounds at you?" Um, his statement to me was, "Don't know if at me, but towards Officer Pilette," is how he described it. So, he believed that the suspect was firing at Officer Pilette.

Um, subsection A: "If so, what direction were the rounds fired from?" He states in subsection A, "Suspect shot towards northeast, towards Officer Pilette."

Um, subsection B: "How many shots do you think the suspect fired?" He said, "At least once."

Subsection C: "Approximately where was the suspect located when they fired?" Um, his answer to that was, "In the desert area, west-southwest of his truck."

Subsection 5: Um, "Do you know if any other officers discharged their firearms?" His statement to that was, "Not sure."

Um, again, subsection A: "If so, who are they?" It's not applicable. He wasn't sure.

Subsection B: "Approximately where was the officer(s) located when they fired?" Again, not applicable. He wasn't sure if another officer discharged.

Question 6: "Are there any weapons or evidence that need to be secured or protected?" His answer to that question was, "The firearm of the suspect. It was laying on the ground near the suspect."

And that answered subsection 7: "If so, where is it located?" Again, "On the ground, near the suspect."

Question #7: "Are you aware of any witnesses?" Um, "If so, what is their location?" He said he thought girlfriend in the truck, and people in two other vehicles. Um, he then stated that he believed those people who were witnesses were at the CP with detectives.

Officer Kenneth Pilette

On October 10, 2018, at approximately 10:53 a.m., Detective Penny interviewed Sergeant Hubbard about the Public Safety Statement he obtained from Officer Pilette. Also present during the interview was LVPMSA representative Russ Wood. Below is the transcript of the interview.

RH: *I can. Um, so the first officer I contacted was Officer Pilette. Um, this was on, uh, October 10, 2018, at 805 hours. That's when I started the Public Safety Statement. Um, I read off the Public Safety Statement card.*

Uh, the first questions I asked him was #1: "Did you discharge your firearm?" His statement to me was, "I did."

Um, the next portion of that is, is subsection A: "If so, in what direction?" He stated he discharged it to the west.

Um, subsection B: "Approximately where were you located when you fired?" He said he was at Rainbow at the railroad tracks, by a blue sign next to a silver Kia SUV.

Uh, subsection C: "How many shots do you think you fired?" He answered he believed three shots.

Question #2 I asked: "Is anyone injured?" He said, "Yes, the suspect." And then the...subsection A: "If so, where are they located?" He stated, "The southwest of Rainbow, south of the railroad tracks, in the desert."

Uh, question #3: "Are there any outstanding suspects?" He answered that, not to his knowledge.

Um, subsection A: "If so, what is there description?" Was not applicable.

Um, subsection B: "What direction and mode of travel?" Again, not applicable.

Subsection 3: "How long have they been gone?" Not applicable.

Subsection D: "What crimes have been committed?" Not applicable.

And subsection E: "What type of weapon do they have?" Again, no outstanding suspects, so it wasn't applicable.

Question #4: "Is it possible the suspect fired rounds at you?" The answer that the officer gave is, "Suspect fired one round." He believes it was at his partner.

Um, and then, uh, subsection A: "If so, what direction were the rounds fired from?" Uh, didn't answer that.

"How many shots do you think the suspect fired?" He answered, "He fired one shot."

And, uh, subsection C: "Approximately where was the suspect located when they fired?" Um, he didn't state, he just pointed over to the desert where he was laying down.

Uh, subsection 5: "Do you know if any other officers discharged their firearm?" His answer to that is, "I don't know."

Um, subsection A: "If so, who are they?" He stated, "The other officer said he shot." Um, and I've come to find out that was Officer Betts.

Um, and then subsection B of question 5: "Approximately where was the officer located when he fired?" Uh, subsection B, he said, "Officer was by the suspect vehicle," and he pointed to the vehicle and stated, "It was the white truck."

Question #6: "Are there any weapons or evidence that need to be secured or protected?"

Um, subsection A: "If so, where are they located?" So, he said, "The firearm and the suspect." Um, "That firearm is laying on the ground with the suspect," and it was just, just off away from his body.

Number 7: "Are you aware of any witnesses?" Um, he said, "Yes, two females."

Um, "If so..." or sor...I'm sorry, subsection A: "If so, what is their location?" He said, "One was a passenger of suspect vehicle." Um, I think may have been confused. And he said, "The other was in a silver Kia," and that's the information that, uh, that Officer Pilette gave me.

SUMMARY OF RELEVANT WITNESS STATEMENTS

L.A.

On October 10, 2018, at approximately 10:40 a.m., Detective Andrew Ubbens conducted an audio recorded interview with L.A. at the intersection of South Rainbow Boulevard and Richmar Avenue. Below is a summary of the interview.

L.A. was a passenger in a white Pontiac G6 while her fiancée, J.Z., was driving. They were stopped in traffic on South Rainbow Boulevard when she felt a vehicle rear-end their vehicle. L.A. called 911 for medical assistance because J.Z. suffered a seizure after the accident. Medical personnel arrived and transported J.Z. to the hospital.

L.A.'s brother-in-law, A.K., arrived at the accident scene and assisted with moving the vehicles out of the roadway. L.A. noticed another unidentified female who also arrived at the scene. L.A. was not sure who she was or why she was at the scene.

After J.Z. was transported to the hospital, Officers Betts and Pilette arrived and obtained written statements from all the involved parties of the accident. L.A. was talking to the female driver (D.D.) from the car in front of her when she noticed the at-fault driver (Decedent) move

something from the center console of his truck and put the item in the bed of the truck. L.A. told Officers Betts and Pilette about Decedent removing an item from the center console.

Officer Betts approached Decedent, who was standing by his truck. L.A. noticed that Decedent became agitated and threw his hands up in the air. Then, Decedent slowly jogged over to a bush, picked up a gun, and started to shoot. L.A. saw Decedent “cock back” the gun before he fired. Officer Betts retreated and hid behind a car. L.A. could not remember any more specific details about the shooting. She said she felt scared as Decedent began shooting his gun.

From the time of the accident, to the time of the shooting, L.A. did not see anyone else near the bush where Decedent retrieved the gun. L.A. did not have any direct contact with Decedent other than when he asked her if everything was okay.

L.A. confirmed that J.Z. and A.K. left the accident scene prior to the shooting. L.A. also confirmed the only people on scene during the shooting were D.D., Decedent, Officers Betts and Pilette, and her.

D.D.

On October 10, 2018, at approximately 10:58 a.m., Detective Paul Quinteros conducted an audio recorded interview with D.D. at the intersection of South Rainbow Boulevard and Richmar Avenue. Below is a summary of the interview.

D.D. was driving her silver Kia Soul southbound on South Rainbow Boulevard toward West Gary Avenue. After she passed the intersection, traffic came to a halt due to two school buses stopping at the nearby railroad tracks. As she stopped her vehicle, D.D. heard a loud crash in back of her and looked in the rearview mirror. D.D. noticed a white truck had struck the vehicle directly behind her. At that point, D.D. released the brakes and attempted to drive forward. As she did so, the vehicle that was behind her then struck the rear of her vehicle. After being hit, D.D. exited her vehicle and contacted the driver of the vehicle that struck her, J.Z..

D.D. said J.Z. appeared to be under medical duress. D.D. also contacted the driver of the truck (Decedent). She described Decedent as a white male adult, skinny build, facial hair, and wearing dark clothing. D.D. said Decedent had a different demeanor and she believed he may have been driving while impaired. In addition, she observed Decedent continuously fidgeting with something inside the center console of his truck.

D.D. called her co-workers who arrived on scene and helped guide the cars onto the adjacent dirt lot. Decedent’s truck was inoperative, so D.D.’s co-workers pushed the truck while Decedent steered it off the road. As the vehicle was being pushed, D.D. saw Decedent fidgeted with something inside the center console again. Decedent almost struck D.D.’s vehicle because he was not paying attention. Eventually, they got Decedent’s truck pushed into the desert area.

When Officers Betts and Pilette arrived at the scene, D.D. informed them she believed that Decedent was impaired. As the accident investigation continued, D.D. observed Officer Betts talking with Decedent. During that time, D.D. was standing near her vehicle and was facing southbound as she continued to watch them. She believed Officer Betts and Decedent were involved in a verbal altercation but could not hear what they were saying. Decedent ran away, and Officer Betts gave chase. At that point, D.D. saw Decedent stop at a bush and retrieve a gun that was hidden. The firearm was described by D.D. as a black handgun. Once Decedent had the firearm, D.D. saw Decedent point it toward Officer Betts and fire shots toward him. After Decedent began to fire the weapon, D.D. ran for cover behind her vehicle.

L.D.

On October 11, 2018, Sergeant Jerry McDonald, along with Detectives Scott Mendoza and Joseph Patton, responded to L.D.'s residence and spoke with L.D. L.D.'s daughter, V.D., was the girlfriend of Decedent. L.D. gave detectives insight into Decedent's history involving suicidal statements he made to her in the past. She also stated Decedent was struggling with family issues, including a recent fallout he had with his grandfather. According to L.D., Decedent and V.D. recently broke up. Decedent was extremely upset and had a hard time dealing with the recent events in his life. L.D. gave detectives screenshots of text messages that were sent to her by Decedent while he was at the scene of the traffic accident, before the OIS occurred.

No he doesn't and I don't care about him anymore. I'm broken. I'm shattered. I'd rather be dead than here

I got in a car accident. I'm going to jailed

I need help

I'm more depressed and suicidal than I've ever been and I want to do it right now

Screenshot of text message sent by Decedent to L.D.

C.S.

C.S. contacted Detective Patton via email and stated Decedent texted her on October 9, 2018, the night before the OIS. Although Decedent and C.S. had not spoken to each other in three (3) years, Decedent sent C.S. a text message stating he was going to kill himself. Decedent stated he had a question for her and wanted her to let everyone know what

happened to him since no one was answering their phones. Screenshots of the messages were obtained by detectives.

BODY-WORN CAMERAS

Officer Chad Betts

Officer Betts was wearing a body worn camera (“BWC”) at the time of the incident. Officer Betts’ camera captured approximately 44 minutes and 46 seconds of footage related to the incident. The following is a summary of the captured footage:

Officer Betts’ camera footage began as he rode his LVMPD motorcycle from the Traffic Bureau, along with Officer Pilette, toward the accident scene. Officers Betts and Pilette arrived on scene while medical personnel were preparing to transport a victim (J.Z.) to the hospital. Officer Betts contacted the involved parties of the traffic accident and obtained their information for the accident report. Officer Betts then contacted Decedent and he gave his side of the story reference the accident. Decedent also stated he had left a friend’s house before the incident occurred.

Officer Betts continued the accident report and asked Decedent if he wanted a tow truck for his Nissan Frontier, which had been disabled due to the collision. Decedent was standing next to his girlfriend, V.D., who arrived on scene. An ambulance left the scene and transported J.Z. to the hospital.

Officer Pilette approached Officer Betts and informed him that the other subjects who were involved in the collision felt Decedent was impaired. Then, Officer Betts approached Decedent, who was standing by his truck, and began a conversation with him. Officer Betts asked Decedent to perform Field Sobriety Tests (“FSTs”) and Decedent refused. Decedent argued with Officer Betts about being impaired, and again refused to complete any FSTs.

Officer Betts instructed Decedent several times to turn around and put his hands behind his back, but Decedent refused to comply with those instructions. Decedent tossed his keys and a water bottle in the bed of his truck. Then, he walked away from Officer Betts and headed toward the desert area. Officer Betts yelled for Officer Pilette as Decedent ran westbound toward a small bush. As Officer Betts followed, Decedent stopped, retrieved a handgun from the bush, and racked the slide of the handgun. Officer Betts retreated toward Decedent’s truck to find cover and gunshots were heard.



Still image from Officer Betts' BWC Video depicting Decedent after he retrieved the firearm from the bush

After Officer Betts found cover, he turned around and Decedent was seen walking toward him. As Decedent was walking toward Officer Betts, he aimed his firearm in the direction of Officer Pilette. Officer Betts drew his firearm and fired two (2) shots, striking Decedent. As Decedent was seen on the ground, facedown, Officer Betts yelled, "Don't touch it! Don't touch it!" As Officers Betts and Pilette approached Decedent, a black handgun was seen on the ground next to Decedent's body. Officer Pilette handcuffed Decedent, and Officer Betts checked Decedent for a pulse. Medical personnel arrived on scene.



Still image from Officer Betts' BWC video depicting Decedent aiming the firearm in the direction of Officer Pilette

Officer Kenneth Pilette

Officer Pilette was wearing a BWC at the time of the incident. The following is a summary of the captured footage:

Officer Pilette's camera footage began when he rode his LVMPD motorcycle from the Traffic Bureau, along with Officer Betts, to the accident scene. Officers Pilette and Betts arrived on scene as medical personnel prepared to transport a victim (J.Z.) to the hospital.

Officer Pilette contacted medical personnel and the victims for information about the accident and their injuries. Then he continued the accident report and approached Officer Betts to speak with him. As they conversed, Decedent began wandering about in the desert area, specifically near a small bush located west of Decedent's vehicle. Officers Pilette and Betts discussed whether Decedent seemed impaired as he continued to wander around the bush. The victims of the accident, L.A. and D.D., spoke to Officer Pilette and informed him they thought Decedent was impaired due to several actions they observed from Decedent prior to officers arriving on scene.

Officer Pilette spoke to Officer Betts about the information he received from L.A. and D.D. Officer Betts stated he was going to administer FSTs to Decedent. As Officer Pilette completed his accident report, Officer Betts yelled, "Ken!" As Officer Pilette looked up, Decedent ran into the desert area, and Officer Betts chased him. Decedent stopped at a bush and picked up a handgun. Decedent pointed the firearm at Officer Betts as Officer Betts retreated for cover. Officer Pilette drew his weapon and fired four (4) times toward Decedent's direction. Officer Pilette retreated behind a vehicle and broadcasted on his LVMPD radio that shots were fired. L.A. and D.D. hid behind their vehicles during the exchange of gunfire.

Officer Pilette, with his gun still drawn, moved from the vehicle he was at and took a position of cover at the rear of Decedent's vehicle. Officer Pilette requested medical personnel for Decedent. Officer Pilette broadcasted on his radio that Decedent was down, but still had the firearm next to him. As officers approached Decedent, Officer Pilette secured Decedent in handcuffs and conducted a pat down for more weapons. Officer Pilette requested medical to expedite to the scene. Medical personnel, along with assisting officers, arrived on scene.



Still image from Officer Pilette's BWC Video depicting Decedent aiming the firearm in the direction of Officer Betts after he retrieved the firearm from the bush while Officer Betts is running away

AUTOPSY

On October 11, 2018, at 12:10 a.m., Doctor Chiara Mancini performed an autopsy on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner.

During the autopsy it was determined Decedent suffered two (2) gunshot wounds – one (1) to the right chest and one (1) to the left chest. Doctor Mancini opined Decedent died as a result of multiple gunshot wounds. The manner of death was homicide.

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

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Cotinine	Positive	ng/mL	001 - Peripheral Blood
Levamisole	Positive	mcg/mL	001 - Peripheral Blood
Flubromazolam	30	ng/mL	002 - Peripheral Blood
Cocaine	280	ng/mL	001 - Peripheral Blood
Benzoylecgonine	3700	ng/mL	001 - Peripheral Blood
Delta-9 Carboxy THC	11	ng/mL	001 - Peripheral Blood
Delta-9 THC	1.8	ng/mL	001 - Peripheral Blood
Creatinine (Vitreous Fluid)	0.85	mg/dL	005 - Vitreous Fluid
Sodium (Vitreous Fluid)	135	mmol/L	005 - Vitreous Fluid
Potassium (Vitreous Fluid)	12	mmol/L	005 - Vitreous Fluid
Chloride (Vitreous Fluid)	116	mmol/L	005 - Vitreous Fluid
Urea Nitrogen (Vitreous Fluid)	15	mg/dL	005 - Vitreous Fluid
Alprazolam	11	ng/mL	006 - Urine
Alpha-Hydroxyalprazolam	67	ng/mL	006 - Urine
Delta-9 Carboxy THC - Total	77	ng/mL	006 - Urine
Cocaine	>20000	ng/mL	006 - Urine
Benzoylecgonine	>50000	ng/mL	006 - Urine
Dihydrocodeine / Hydrocodol - Free	37	ng/mL	006 - Urine
Hydrocodone - Free	130	ng/mL	006 - Urine

OFFICER WEAPON COUNTDOWNS

On October 10, 2018, Officers Pilette and Betts had their duty weapons counted down.

Officer Chad Betts

At the completion of the countdown, it was determined Officer Betts discharged his Glock 22 firearm two (2) times during this incident.

Officer Kenneth Pilette

At the completion of the countdown, it was determined Officer Pilette discharged his Glock 17 firearm four (4) times during this incident.

FIREARM EXAMINATIONS

LVMPD Forensic Laboratory Requests were submitted on the firearms of Officers Betts and Pilette and Decedent for function testing and ballistic comparisons to the evidence cartridge cases.

On November 15, 2018, Forensic Scientist Kathy Geil submitted the Report of Examination: Firearms.

Decedent's H&K model P30 pistol was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of sixteen (16) cartridges.

Officer Betts' Glock model 22 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of fifteen (15) cartridges.

Officer Pilette's Glock model 17 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of seventeen (17) cartridges.

The seven (7) evidence cartridge cases were examined and compared to test fired cartridges from all three (3) weapons. The four (4) SPEER 9mm Luger cartridge cases were identified as having been fired from the Glock 17. The two (2) SPEER 40 S&W cartridge cases were identified as having been fired from the Glock 22. The WIN 9mm Luger cartridge case had similar class characteristics as the test fired cartridge cases from the H&K pistol; however, the cartridge case did not have sufficient markings for a conclusive identification to or elimination from the H&K pistol. The WIN 9mm Luger cartridge case was eliminated as having been fired from the Glock 17.

CELLULAR PHONE EXAMINATION

On December 19, 2018, a LVMPD Forensic Lab Request was submitted to the Digital Forensics Lab for a download of Decedent's impounded cell phone.

On December 28, 2018, Detective Steven Keith, downloaded the data from Decedent's cell phone, with the assistance of Decedent's mother, M.C. M.C. gave detectives the password to unlock the cell phone, so an extraction of the data could be completed. Data was retrieved from Decedent's cell phone which revealed several messages indicating that Decedent was suicidal. The messages revealed that Decedent suffered from depression, used numerous types of illegal drugs, and was addicted to cocaine.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal 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 or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

A. The Use of Deadly Force in Defense of Self or Defense of Another

The authority to kill another in self-defense or 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 ... another person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the person or other person.¹ 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).

¹ 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 self-defense [or 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 himself [or the other person] or cause himself [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [self-defense or 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 [himself or the person(s) 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 self-defense [or 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 self-defense [or 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 he [or 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 himself [or 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 exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that Decedent did not act in self-defense [or defense of another]. *Id.* at 1051-52.

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

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officers Betts and Pilette as well as to D.D. and L.A. Prior to addressing Decedent regarding the FSTs, Officer Betts was aware that both D.D. and L.A. believed him to be intoxicated, that prior to the officers' arrivals he was fidgeting with something in the console area of his truck, and that he moved an object from his center

console to the back of his truck. Decedent became argumentative with Officer Betts when Officer Betts asked him to perform FSTs and disregarded his commands to turn around and place his hands behind his back. Then, Decedent tossed his keys and water bottle into the bed of his truck and ran toward the desert. Decedent stopped at a bush, retrieved his firearm from the bush, and then pointed it in the direction of both Officer Betts and Officer Pilette. At some point during the incident, Decedent fired a round.

The totality of the evidence, to include BWC video and witness statements, illustrates that Officers Betts had a reasonable belief that Decedent would cause great bodily harm or death to him, to Officer Pilette, to D.D. and/or L.A. Officer Betts was confronted with the appearance of imminent danger and acted out of a reasonable belief that someone was about to be shot by Decedent. At the time Officer Betts fired his weapon, Defendant was walking in his direction with his firearm drawn and aiming the firearm in the direction of Office Pilette, D.D. and L.A. Here, Officer Betts reasonably acted in defense of himself and others. Consequently, the shooting of Decedent is justifiable under this legal theory.

B. Justifiable Homicide by a Public Officer

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

In this case, evidence indicates that Officer Betts had probable cause to believe that Decedent posed a threat of serious physical harm to him, Officer Pilette, D.D. and L.A. Immediately preceding the shooting, Decedent refused to comply with Officer Betts’ lawful orders to turn around and put his hands behind his back. Then, he fled from Officer Betts’, retrieved a handgun, and pointed it at both officers. At some point while the gun was being aimed in the direction of Officer Pilette or Officer Betts, Decedent discharged one round. D.D. and L.A. were both close to Officer Pilette at the time Decedent aimed the firearm in his direction. D.D. and L.A. could have been injured or killed. At that point, Officer Betts had a reasonable belief that Decedent could cause serious physical harm to himself, Officer Pilette, D.D. and L.A. Thus, the use of deadly force by Officer Betts was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Officer Betts 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.” See NRS 200.190.

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