

Office of Internal Oversight Review
Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal
780 East Pyle Avenue – November 11, 2017

Purpose

The purpose of this report is to publish key findings, conclusions, and/or recommendations of the Las Vegas Metropolitan Police Department's (LVMPD) internal review of this incident. There are a variety of actions that can be taken administratively in response to the Department's review of a deadly force incident. The review may reveal no action is required or determine additional training is appropriate for all officers in the workforce, or only for the involved officer(s). The review may reveal the need for changes in Department policies, procedures, or rules. Where Departmental rules have been violated, formal discipline may be appropriate. The goal of the review is to improve both individual and Department performance.

Synopsis of Event

On November 11, 2018, at approximately 1730 hours, the Las Vegas Metropolitan Police Department (LVMPD) was involved in a critical incident under LVMPD Event LLV171111002780. The incident occurred near 780 East Pyle Avenue, Las Vegas, Nevada 89183. This address was located within the LVMPD South Central Area Command (SCAC); sector beat Ida 4 (I4).

The incident was an officer-involved shooting (OIS), and Officer David Nesheiwat was the involved officer who discharged his firearm at suspect Phillip Pitts, who was armed with a firearm (handgun). Pitts was struck multiple times and was later pronounced deceased at the hospital.

At the time the officer discharged his firearm, Pitts was in a physical domestic altercation with his wife in front of a convenience store. As Officer Nesheiwat arrived and observed Pitts and his wife, Pitts was pointing his firearm toward his wife and had refused verbal commands from another officer to put down the firearm.

The Criminal Investigation

LVMPD Force Investigation Team (FIT) conducted the criminal investigation of this incident. FIT's investigation was submitted to the District Attorney's Office for review. The District Attorney's Office determined that, "no criminal prosecution of the officer or officers involved in the referenced case is appropriate."

For additional information related to the investigation of this incident, please refer to LVMPD's FIT Report and the Clark County District Attorney's Legal Analysis Report and/or the Clark County District Attorney's Decision document.

LVMPD Administrative Review and Critical Incident Review Process

It is the policy of this Department to provide both the LVMPD and the community with a thorough review of incidents wherein deadly force was used by Department members. The Critical Incident Review Process (CIRP), includes the participation of citizen board members who reside within the LVMPD jurisdiction, who are not personally affiliated with the Department, who are not related to any of its members, and who have not had prior law enforcement experience.

The CIRP is comprised of two (2) related boards whose sole purpose is to conduct comprehensive administrative review of the tactics utilized by involved Department members as well as decision-making, Department policy, training, supervision, and the use of deadly force.

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The Use of Force Review Board (UFRB) consists of both commissioned and citizen members. The Critical Incident Review Team (CIRT) presents the facts related to the use of deadly force. The board issues findings regarding the actions of Department members who used, directly ordered, or directly influenced the use of deadly force, whether such force resulted in death or serious injury. The UFRB may choose from one (1) of four (4) findings after hearing the presentation of facts from CIRT. The findings are Administrative Approval, Tactics/Decision-Making, Policy/Training Failure or Administrative Disapproval.

The Tactical Review Board (TRB) reviews CIRT conclusions. The TRB can validate, overturn, or modify the conclusions regarding the actions of Department members.

The matter was heard by the UFRB and TRB on December 6, 2018. Below are the key findings, conclusions, and/or recommendations from the CIRP determined by the UFRB and TRB members and approved by the Sheriff.

Use of Force Review Board

UFRB: Officer David Nesheiwat

The Board's finding was Administrative Approval. Administrative Approval is defined as: "objectively reasonable force was used under the circumstances based on the information available to the officers at the time." This finding acknowledges that the use of force was justified within the Department policy.

Tactical Review Board

Communication

Communication can be verbal or non-verbal. It includes electronic transmission or in-person. A review of these recordings can provide valuable evidence of the circumstances surrounding a particular event.

A call-taker took the first call from a person reporting (PR). The PR reported witnessing a domestic disturbance between Pitts and his wife. The call-taker obtained the initial information and created a call, which was forwarded to the SCAC dispatcher.

Next, the call-taker ensured he kept the PR on the phone until officers arrived. In doing so, the PR informed the call-taker another witness mentioned Pitts may have a firearm, but the PR did not observe one. The PR was able to give real time information, and the call-taker was able to get it to the dispatcher, who broadcast it to responding units.

- The administrative review determined the call-taker performed within standardized LVMPD training and policy.

The dispatcher properly broadcasted information from the CAD document. He also properly broadcasted over the radio and documented CAD information from LVMPD officers and supervisors who advised and/or requested throughout the incident.

As the violent family disturbance progressed at 780 East Pyle Avenue, the dispatcher provided real time information he was receiving from the call-taker. The dispatcher relayed the information regarding Pitts possibly having a firearm on the SCAC radio channel for responding units.

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- The administrative review determined the weapons information being broadcast when officers were en-route to the convenience store was within standardized LVMPD tactics, training, and policy.
- The administrative review determined the OIS incident managed and documented by the dispatcher was within standardized LVMPD communications tactics, training, and policy.

During this event, an officer broadcast fragmented information. The officer did not broadcast to responding units he had arrived on the call. The officer's first radio traffic when arriving was "416 (fight) give me a Code Red."

As the call progressed, the officer's next transmission was "413 (gun)." The two-transmissions led responding units and the SCAC dispatcher to believe the officer was in a fight with a suspect who had a firearm, changing the call to a 444 (Officer Needs Help Emergency call).

- The administrative review determined the radio traffic information given by the officer for this incident was not within standardized LVMPD tactics, training, and policy.

De-escalation

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest or to protect the officer, other officers, or members of the community from risk of harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations based on their decision-making and the tactics they choose to employ. As a strategy to diminish the likelihood and the severity of force, officers will attempt to de-escalate confrontations.

Prior to their arrival, Officer Nesheiwat and another officer knew the incident was a violent domestic disturbance incident. While en route, the officers utilized their emergency equipment and began to conduct an "incident rehearsal" to prepare.

Prior to his arrival, and based on an officer's radio traffic, Officer Nesheiwat believed an officer was in a fight with Pitts and Pitts was armed with a firearm.

- The administrative review determined Officer Nesheiwat and another officer's pre-planning to 780 East Pyle Avenue prior to his arrival was within standardized LVMPD tactics, training, and policy.

When Officer Nesheiwat arrived, the information he had was that an officer was in a physical fight with Pitts who possessed a firearm. The situation changed when Officer Nesheiwat closed the distance utilizing a vehicle as cover. At this time, he observed Pitts with a firearm, which was pointed at his wife's head.

After shots were fired, Officer Nesheiwat was aware of the other officer's location, who had moved due to potential crossfire between the officers. Next, the officers started using team tactics of contact and cover as they approached Pitts, recovered the firearm, and took Pitts into custody.

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- The administrative review determined the contact and cover tactics used by Officer Nesheiwat and another officer as they approached Pitts to take him into custody and provide medical aid after the use of force was within standardized LVMPD tactics, training, and policy.

When an officer was first dispatched to the family disturbance call, the details were a female (Pitts' wife) was being choked. The officer went en route to the call Code 3. While en route to the call, the dispatcher broadcast Pitts may have a gun, but no one had observed one.

When the officer arrived at the convenience store's east parking lot, he was still operating his emergency equipment. As he pulled into the east parking lot, the officer failed to shut down his siren prior to pulling into the parking lot. He also left his red and blue lights activated drawing attention to his arrival.

- The administrative review determined the officer's tactical approach when arriving at 780 East Pyle Avenue, prior to contact with Pitts and his wife, was not within standardized LVMPD tactics, training, and policy.

When an officer arrived at the convenience store, he utilized cover when he parked his patrol vehicle behind a vehicle Pitts and his wife were in-front of. As the officer exited his patrol vehicle, he used the rear quarter panel for cover.

To de-escalate the violent call, the officer shouted verbal commands directed at Pitts to "drop the gun, step away from her (Pitts' wife), and get down on the ground."

Once Officer Nesheiwat arrived, he believed an officer was in a fight with Pitts who had a firearm. Officer Nesheiwat utilized the cover of his patrol vehicle when he arrived. Officer Nesheiwat then closed the distance to save an officer's life.

- The administrative review determined the use of cover and concealment used by Officer Nesheiwat and another officer was within standardized LVMPD tactics, training, and policy.

Use of Deadly Force

It is the policy of this Department that officers hold the highest regard for the dignity and liberty of all persons and place minimal reliance upon the use of force. The Department respects the sanctity of every human life, and the application of deadly force is a measure to be employed in the most extreme circumstances where lesser means of force have failed or could not be reasonably considered.

The Department seeks to manage use of force beyond the *Graham v. Connor* (1989) standard and its minimum requirements by establishing further parameters for the application of force and to offer explicit direction to officers. Sound judgment, the appropriate exercise of discretion, and the adherence to Department policy will always be the foundation of officer decision-making in the broad range of possible use of force situations.

Officers will only use a level of force that is objectively reasonable to bring an incident or persons under control and to safely accomplish a lawful purpose. An officer's use of force must balance against the level of resistance exhibited by the subject. The level of force administered by an officer must be carefully controlled and should not be more than objectively reasonable to overcome the physical harm threatened.

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In a confrontation, an officer will continuously reassess their response and adjust any use of force accordingly based upon the level of resistance encountered. Failure to reassess each application of force can lead to a violation of law and/or policy. The use of force by an officer must be within Department Policy which may be more restrictive than the U.S. Constitution.

At the time Officer Nesheiwat drew his firearm, the call had been broadcast as a Priority 0 domestic disturbance and had a high propensity for violence. The dispatcher had broadcast the possibility of a firearm, but none was seen. A description of Pitts had been broadcast on the SCAC radio channel as a BMA, 35- 40 years old, 6'1", large build, black shirt and black shorts. Another officer had broadcast on the SCAC radio channel that he had arrived and "416 (fight)." The dispatcher had broadcast an officer was in a fight and placed a Code Red on the radio channel. An officer had broadcast "413, 413" (firearm, firearm). When he arrived, Officer Nesheiwat observed the firearm in Pitts' hand.

- The administrative review determined Officer Nesheiwat's drawing of his firearm when he exited his patrol vehicle was within LVMPD tactics, training, and policy.

When Officer Nesheiwat arrived, Pitts had his back toward him and concealed his wife with his body. Officer Nesheiwat's back drop was a wall to the convenience store and the sidewalk.

- The administrative review determined Officer Nesheiwat isolated and identified his target and was aware of his backdrop. His actions were within standardized LVMPD tactics, training, and policy.

At the time Officer Nesheiwat discharged his firearm, Pitts was pointing his firearm toward his wife and had refused verbal commands from another officer to put down the firearm.

- The administrative review determined Officer Nesheiwat's threat assessment was within standardized LVMPD tactics, training, and policy.

As an officer was en route to the violent family disturbance, he received information Pitts had a firearm, but it was not seen. When the officer arrived and exited his patrol vehicle, he deployed his ECD and not his firearm.

- The administrative review determined the officer's drawing of his ECD instead of his firearm initially when he exited his patrol vehicle was not within standardized LVMPD tactics, training, and policy.

Incident Management

Supervisors will possess a thorough knowledge of tactics and ensure that officers under their supervision perform to a standard (in accordance with LVMPD policy and training). The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of the overall response to a potentially violent encounter by coordinating officers' tactical actions.

Supervisors will acknowledge and respond to incidents in a timely manner when officer use of reportable force is probable. Supervisors will also manage the deployment of resources and equipment. In dynamic and highly-charged incidents, supervisors will provide clear direction and communication to officers

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regarding their positioning and roles. Upon observing substandard officer approaches or flaws in tactical decisions, the supervisor will promptly act to correct any deficiencies.

A sergeant arrived and managed the inner perimeter and later became the incident commander. The sergeant ensured units followed Pitts and his wife to the hospital. The Watch Commander arrived and assisted with the logistical needs regarding the event. A media staging area was established. All supervisors worked together and managed the scene of the OIS, Command Post, and the scene at the hospital.

- The administrative review determined the supervisors' response to this incident and their management of the OIS and Command Post locations were within standardized LVMPD tactics, training, and policy.

Additional Key Findings, Conclusions, and/or Recommendations

After the OIS, officers immediately provided medical attention for both Pitts and his wife as they requested medical. Officers utilized their trauma kits by placing pressure on Pitts' wife's wound. A sergeant had Pitts' handcuffs removed and placed him on his side to assist with breathing.

Medical and the Fire Department arrived shortly after shots were fired. Pitts was evaluated on scene and was transported to the hospital where he was later pronounced deceased. Pitts' wife was also transported to the hospital where she was treated for her injuries and later released.

- The administrative review determined the medical response and intervention was within standardized LVMPD tactics, training, and policy.

Officer Nesheiwat did not activate his BWC when he was assigned to the incident. He activated his BWC after he arrived at 780 East Pyle Avenue, and after the OIS occurred.

- The administrative review determined that Officer Nesheiwat's failure to activate his BWC was not within standardized LVMPD tactics, training, and policy.

During the countdown of Officer Nesheiwat's firearm and magazines, it was found to have one round extra round.

- The administrative review determined, based on evidence at the scene and during the countdown of Officer Nesheiwat's firearm and magazines, Officer Nesheiwat had one extra round in his magazine during the OIS which was not within standardized LVMPD tactics, training, and policy.