

CARSON CITY DISTRICT ATTORNEY

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Legal Analysis Concerning
the Death of Carl Howell and
the Death of Jonathon Lee Pope
on August 15, 2015

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INTRODUCTION

The violent death of a police officer in the line of duty and the death of a citizen at the hands of an officer are the two most catastrophic possible outcomes that can happen when people interact with their government. In the course of a few seconds in the early morning hours of August 15, 2015, both occurred in Carson City. This report is intended to be a comprehensive, objective review of the circumstances that resulted in the death of Jonathon Pope and Carson City Sheriff's Deputy Carl Howell. As there can be no criminal charges in this matter, there will never be a trial. Nevertheless, it is important that the citizens of Carson City have an opportunity to examine this incident for themselves, and to scrutinize the conduct involved in a way a criminal trial would allow.

The objective of this report is to condense thousands of pages of raw investigative material and dozens of hours of witness interviews into a reasonably succinct format to allow for meaningful public review. When reliable evidence about one or more facts allows for a reasonable conclusion as to another, implicit fact, this report endeavors to explain and support the inference. Despite, or, more precisely, because of, the hundreds of hours dedicated to this investigation, there is conflicting information concerning several important particulars. With respect to many details, the balance of reliable evidence resolves these conflicts. However, for a few details, the conflict cannot be resolved with sufficient reliability.

It goes without saying that this report is based on information which is known at this time. Given the quality and scope of the investigation, it is difficult to conceive of any important information that was not discovered. However, that is always a possibility, so an explicit disclaimer is appropriate.

SUMMARY OF MATERIAL FACTS

For purposes of evaluating the state of mind and conduct of Deputy Howell and Jonathon Pope, the most important time period begins when police were summoned to Pope's residence and ends upon the conclusion of gunfire. To the extent facts and circumstances before and after that time period inform this analysis, those are examined as well.

A. CALL FOR SERVICE THROUGH EXCHANGE OF GUNFIRE

1. Domestic disturbance report and initial law enforcement response

On August 15, 2015, at approximately 2:18 a.m., a neighbor ("Neighbor A") called the Carson City Dispatch Center ("Dispatch") to report a male and female engaged in a physical altercation outside the residence at 4136 Montez Drive in Carson

City. Carl Howell and Kevin Cook, Deputies of the Carson City Sheriff, began to respond to the incident in separate vehicles. As they were responding, Dispatch advised the neighbor was reporting a “physical between a male and female, yelling at each other, threatening to kill one another.” Dispatch also notified the Deputies that the male and female had three children. The reporting party did not know whether the children were home.¹ During their response, Dispatch notified the Deputies that a second neighbor (“Neighbor B”) had reported the incident, indicating that a male and female were “arguing very loudly.”

Deputy Howell was the first officer to arrive at approximately 2:27. As he arrived, he saw Jonathon Pope, the male involved in the incident, enter the residence and heard him lock the door. At that point, Pope was clothed and unarmed. He was also extremely intoxicated.²

2. Preliminary investigation

Upon his arrival, Deputy Howell made contact with Jessica Lambert, the female involved in the incident, who was still outside the residence. Under the circumstances of his interaction with Ms. Lambert, Deputy Howell would have observed that Ms. Lambert had fresh wounds, consistent with a recent physical altercation, and that she was intoxicated.³ The precise nature of Deputy Howell’s initial communication with Ms. Lambert is not certain. Most likely, Deputy Howell would have asked about her physical condition and gathered general information about the incident. Additionally, as addressed in more detail below, Deputy Howell probably inquired about firearms and was advised that there were no firearms in the residence Pope had just entered.

Deputy Cook arrived at approximately 2:30 and joined Deputy Howell and Ms. Lambert outside the residence. Ms. Lambert told the Deputies that she and her boyfriend, “Jonny” Pope, “got into a fight.” Ms. Lambert advised that Pope had “slammed her on the ground,” injuring her head.

3. Pope’s activity during preliminary investigation

At some point after entering the residence, Pope disrobed. The three children, ages 13, 11, and 10, were awake and in the backyard. He went to a screen door facing

¹ Over the radio, Dispatch communicated that the parties involved in the dispute “have three children.” Dispatch made a contemporaneous textual entry into the communications system of the Carson City Sheriff’s Office stating, “PARTIES HAVE 3 CHILDREN, UNK IF THEY ARE THERE”. It can be safely assumed that Deputy Howell would have heard the radio communication and reasonably assumed that he would have reviewed the textual entry prior to or upon his arrival at the residence.

² Pope’s blood alcohol content at the time was approximately 0.338 g/dL.

³ Nearly five hours later, at approximately 7:10 a.m., Ms. Lambert’s blood alcohol content was measured at 0.172 g/dL.

the backyard, covering himself with his hands. Pope asked the children if they were okay. One of the children responded affirmatively, and Pope walked away. He then retrieved a Smith & Wesson .357 Magnum revolver from a location inside the residence. The firearm would have been already loaded with at least three and probably six live rounds at the time.

4. Deputy Howell's approach to the front door

At approximately 2:31, Deputy Howell separated from Deputy Cook and Ms. Lambert and began to approach the front door of the residence where Pope had entered. Deputy Cook remained with Ms. Lambert, communicating with Dispatch to request medical assistance for her and to gather information regarding Pope's local criminal history.

a. Incorrect information about firearms

As the investigation of this matter would reveal, Pope had multiple firearms in various locations throughout the residence. One of the more significant questions remaining in this matter is whether Deputy Howell had received misinformation that there were no firearms in the residence prior to approaching the front door. On the whole, it is reasonably likely that this erroneous information had been communicated to Deputy Howell, but that conclusion is not certain.

There is no evidence to indicate that Deputy Howell received information from a source external to the incident regarding the possible presence of firearms. Dispatch had no information to convey. Nothing indicates that Deputy Howell independently accessed any records or data regarding Pope or the residence. Even if he had, nothing in those records or data would have necessarily alerted him to the possible presence of firearms. There is no suggestion that Deputy Howell had prior interaction with Pope or knew anything about him.

Deputy Cook specifically recalls Ms. Lambert denied that firearms were present in the residence, but also remembers that the denial occurred outside Deputy Howell's presence. After Deputy Howell separated from Deputy Cook and Ms. Lambert and began to approach the residence, Deputy Cook asked Ms. Lambert, "Are there any guns in the house, any weapons?" He recalls that she responded, "Absolutely not." Deputy Cook indicated that he made the inquiry "multiple times, 'Does he have any guns?'" According to Deputy Cook, Ms. Lambert responded, "No, there are no guns in the residence."

In regard to the information she conveyed, Ms. Lambert's recollection is substantially consistent with that of Deputy Cook. She recalls that the officers "asked if he had guns in the house," and she responded, "as far as I knew, right now, no." Ms.

Lambert explained, “I didn’t think that—he has like rifles and stuff and a handgun—like he carries on him normally, but that’s normally in the car.” In a subsequent interview, Ms. Lambert reiterated the exchange, recalling that she had been asked, “Does he have any guns?” She explained, “Of course. He has tons of guns in the house. But I thought they were asking me, ‘does he have a gun on him?’ So I’m like, ‘No. No.’” Later, Ms. Lambert expanded, indicating Deputies asked, “if I’m okay; is he in the house; and the guns—does he have guns?” She remembered, “And I wasn’t even thinking. I’m just like, no, he doesn’t have a gun on him. But I didn’t think like yes, there’s guns in the house.”

Ms. Lambert’s recollection is less consistent with respect to the recipients of that information. In her interviews on the morning of August 15,⁴ her statements suggest a simultaneous communication to Deputy Howell and Deputy Cook that there were no firearms in the residence. This information is not reliable. First, it is contrary to Deputy Cook’s recollection. And second, Ms. Lambert was intoxicated, both at the time she interacted with Deputy Howell and Deputy Cook and when she was interviewed in the hours after the incident.⁵

Ms. Lambert was also interviewed on August 21. During that interview, she described the officer with whom she had discussed firearms. Her description of the officer is vague, but generally consistent with Deputy Howell and generally inconsistent with Deputy Cook. However, in the August 21 interview, she failed to articulate a memory of providing information of firearms to Deputy Cook, which she surely did.

Alone, Ms. Lambert’s memory is too imprecise and too erratic to rely upon in concluding that she told Deputy Howell there were no firearms in the residence before Deputy Cook arrived. However, it may be reasonably assumed that the communication took place. Under the circumstances, an inquiry about firearms would have been consistent with Deputy Howell’s training. Further, the tactical characteristics of Deputy Howell’s approach to the front door are consistent with that of a trained officer who has been informed that the occupant of a residence has no access to firearms. First, it is reasonable to conclude that Deputy Howell would not have approached the front door at all without inquiring about firearms in the residence. The fact that he began his approach before Deputy Cook asked about firearms suggests Deputy Howell received this information independent of Deputy Cook. Second, Deputy Howell approached the

⁴ Ms. Lambert was interviewed from 4:00 a.m. until about 5:00 a.m. and from 8:30 a.m. to approximately 9:45 a.m.

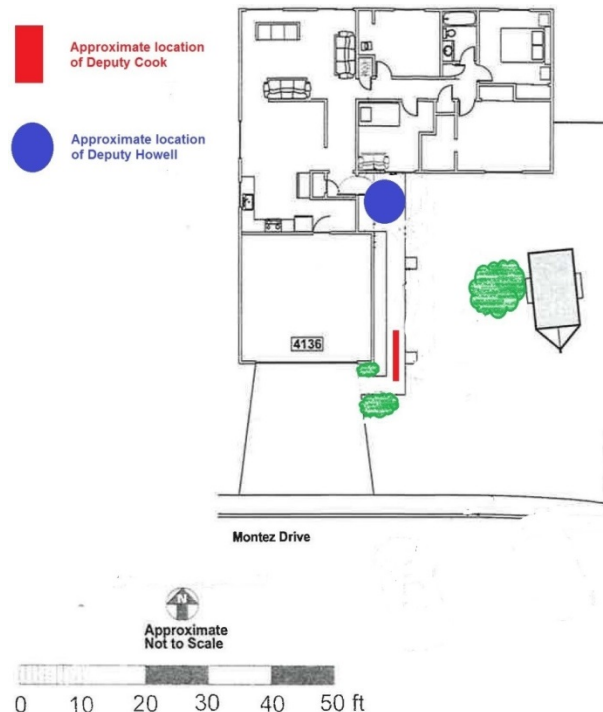
⁵ Ms. Lambert’s blood alcohol level likely would have been at least 0.220 g/dL when Deputy Howell arrived at the scene. During the first interview, her blood alcohol level would likely have been at least 0.200 g/dL. When her second interview began, her blood alcohol level would likely have been at least 0.120 g/dL.

residence alone, even though another officer was on scene. Third, Deputy Howell made no effort to draw Pope out of the residence before placing himself in the exposed exterior entry area. Fourth, Deputy Howell approached the front door openly and directly without taking any ostensible precautions to avoid a potential firearm threat from within the residence. This conduct corroborates the otherwise unreliable memory of Ms. Lambert, reasonably permitting a conclusion that Deputy Howell likely approached the front door with the understanding that there were no firearms in the residence.

5. Deputy Cook's approach; Deputy Howell's arrival at the front door; exchange of gunfire

After requesting medical assistance, inquiring about Pope's local history, and inquiring about firearms, Deputy Cook left Ms. Lambert, instructing her to remain seated on the curb in front of the residence. Deputy Cook then began to approach the front door. As he turned a corner and began to walk toward the entry area, Deputy Cook saw Deputy Howell arriving in the exterior entry area, "two to three feet away" from the front door. It appeared to Deputy Cook that he was "just getting ready to knock." Based on Deputy Cook's description, he would have been approximately 20 to 30 feet away from Deputy Howell at that point. See *Figure 1; Photographs 1-2*.

Figure 1



Photograph 1⁶



Photograph 2⁷



⁶ *Photograph 1* depicts the east side of the 4136 Montez Drive residence. The closest Carson City Sheriff's unit depicted in *Photograph 1* was assigned to Deputy Chris Rivera and was not in the depicted location when the shooting occurred.

⁷ The vantage point of *Photograph 2* is the south end of the front sidewalk looking north. This photograph generally replicates Deputy Cook's perspective just before the gunfire started.

Deputy Cook then saw Deputy Howell “jump back startled” from the front door. “From his reaction,” Deputy Cook believed the front door was being opened and someone was coming out. As he was “jumping backwards,” Deputy Cook saw Deputy Howell reaching for his firearm, holstered at that point on his right hip. Deputy Howell said something. Deputy Cook then heard “a rapid succession” of “multiple gun shots.” At 2:32:19, Deputy Cook reported to Dispatch “shots fired.” 44 seconds later Deputy Howell reported “multiple shots fired.”

Deputy Howell fired 16 rounds from his Glock 17 9mm semi-automatic handgun during the incident. Pope fired at least three rounds from his Smith & Wesson .357 Magnum revolver. Most likely he fired six rounds.⁸ No other firearms were discharged.

a. Deputy Howell’s injuries

Deputy Howell had been shot three times. All shots likely originated from a distance exceeding three feet away from Deputy Howell. One round entered his right nostril, exited the right side of his neck, re-entered his right shoulder area and lodged above his collarbone. The trajectory of that round was from Deputy Howell’s front to back, left to right, and downward.

Deputy Howell’s was also shot in his left thigh. The round causing this injury entered the inner side of his thigh, 21 inches above his heel and just above his knee. The round caused a comminuted fracture of Deputy Howell’s femur and major vascular damage. Three projectile fragments were recovered from Deputy Howell’s thigh, approximately 21¼ inches above his left heel. The round’s trajectory was from Deputy Howell’s right to left and slightly back to front.

Another round entered the front and exited the back of his left outside calf. Deputy Howell’s calf wound was through and through, and the projectile was not recovered during the autopsy. Both the entrance and exit wounds were 13¼ inches above his left heel. The trajectory of the round that caused this wound was from Deputy Howell’s front to back and slightly left to right.

b. Pope’s injuries

Pope had been shot twice. One of his wounds was in the chest. That wound was caused by a round that entered through the front of his left chest and exited through the left side of his back. The entrance wound was 50 inches from Pope’s left heel and 1½ inches left of his anterior mid-line. The exit wound was 51¼ inches from his left heel and 3¾ inches left of his posterior midline. The trajectory of this round was

⁸ The cylinder of Pope’s .357 Magnum had six chambers. All six contained shell casings from expended rounds.

from Pope's front to back, right to left, and slightly upward. The bullet perforated Pope's left lung and the right and left ventricles of his heart and fractured three of his left ribs.

Another round struck Pope's right middle finger and the tip of his right ring finger.

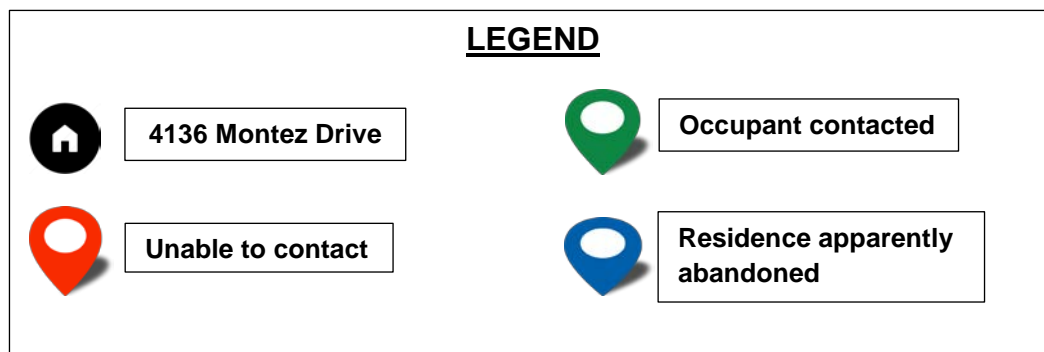
c. The order of gunfire is uncertain

There is insufficient evidence to conclusively determine whether Deputy Howell or Pope fired first or whether the first rounds were simultaneously fired. Neither Deputy Cook nor Ms. Lambert could provide definitive, percipient information in that regard. Eyewitness accounts of two neighbors suggest Pope fired at least two and up to as many as five shots before Howell returned fire. However, certain physical evidence at the scene appears to be inconsistent with some aspects of their accounts.

Investigators canvassed the neighborhood following the incident, going door to door, contacting every neighbor in a possible position to perceive the incident. See *Figure 2*.

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Figure 2



Neighbor A and Neighbor B,⁹ the reporting parties who called Dispatch, were contacted during the neighborhood canvass and interviewed by investigators. Both continued to observe the 4136 Montez Drive residence after calling Dispatch. They watched, more or less continuously, throughout the entire incident, including the exchange of gunfire. According to both, Pope fired first.

⁹ Neighbor A and Neighbor B do not live in the same residence and have no known familial or social relationship. Law enforcement interviewed them separately and they did not speak with each other in advance of their interviews.

(1) Interview of Neighbor A

Neighbor A was interviewed at the location from which the events were observed in the morning on August 15, a few hours after the incident. Neighbor A offered the following information:

NEIGHBOR A: [Jon¹⁰] flipped off the—the porch light and about then opened—started opening fire on him. And I want to say he got off like—I think there was a total of like seven shots is what I saw, but he didn't shoot—I don't think he shot all seven shots. I think he maybe got off four or five himself, and I think the officer got off maybe two. And—and he managed to hit him, but he immediately started opening fire on the officer. The officer didn't even have—have any clue that it was coming. It was just like he shut that—flipped that light off, and it was like “bam bam bam.”

....

NEIGHBOR A: [Deputy Howell¹¹ was] walking up that way, and Jon flipped off the—the lights because you could tell it got really, really dark all of a sudden because those lights are usually pretty bright, but when you turn it down it goes down a notch, and then the front porch lights went off completely.

INVESTIGATOR: Okay.

NEIGHBOR A: And then all of a sudden like I say [unintelligible] the sound was—you know—the flash of the lights—you know—Jon was firing at him and then the other one—

INVESTIGATOR: So, okay when—when they're—when you hear the firing, did you see Jon?

NEIGHBOR A: No, I didn't see. It was dark because—the whole front was dark because he had flipped the lights off. You couldn't see. You could not see. You couldn't—

INVESTIGATOR: So as the lights go off—

NEIGHBOR A: I—you can't—I mean my eyes weren't adjusted enough. I couldn't see him specifically or he was not in my line of vision. I'm not sure. I just saw the flashes of light at that point, and the—and I could hear the gunfire

¹⁰ Neighbor A identified Pope as “Jon.”

¹¹ Neighbor A did not know Deputy Howell and did not identify him by name. However, Neighbor A accurately described the two initial officers on scene, Deputy Howell and Deputy Cook.

and I saw the—the sides of—flashes of light and then this side. And I want to say it was like—like I said it was like seven of them I think is what I—uh—counted, but I'm not a hundred percent certain. But the majority of them came from—on Jon's side. You know, I think the officer maybe got off two rounds I think is what it looked like—two or three is all I saw. But I saw Jon was “bam bam bam.”

INVESTIGATOR: You saw Jon then, or no?

NEIGHBOR A: Well it—not—

INVESTIGATOR: Or just the flash?

NEIGHBOR A: Well, just the flash, you know. But I know he was on this side [indicating] and the officer was on this side [indicating] because I'd seen the officer walking up this way.

....

NEIGHBOR A: Like I say I don't think the officer ever had even a chance to do—you know—he did not see it coming at all. I think Jon was probably standing right about—because he flipped the—like I said—the hall or the front light went off. He was probably standing right about—probably right along where that bush is right there—you know. Not this bush but the little one you just see the end of—bottom of it right there.

INVESTIGATOR: The small one?

NEIGHBOR A: He was probably standing either on the other side of that right there or on this side of it. I'm not quite sure.

INVESTIGATOR: But he was by the house?

NEIGHBOR A: Yeah. He was by the house because he had shut the porch light off and then was like right—I mean—probably count of maybe five seconds maybe. Maybe. Then he starts firing immediately.

INVESTIGATOR: And where was the officer? By the trailer?

NEIGHBOR A: He was—yeah. He was [unintelligible] by the trailer by that point. Like I said it was dark, I can't be a hundred percent certain exactly where the officer was standing at that point, but I know that he fell right there—right in that area. So—and because—when they had to—see—as you can see where they had to drag him. So he—he was walking up just this way at—towards him so Jon had to have been over there on either on the bushes or on that side—

....

INVESTIGATOR 2: At what point in time did you notice that Jon was back inside?

NEIGHBOR A: [unintelligible] I can't—I don't know—

INVESTIGATOR: Did he go inside before the officers arrived?

NEIGHBOR A: I don't know because when I walked back in to call the first time, they were still out here.... I honestly don't know.

INVESTIGATOR: I've got another question for you. So when the light turned off—

NEIGHBOR A: Mm-hmm.

INVESTIGATOR: How long after that did you hear the shots?

NEIGHBOR A: I want to say it was within five seconds. It was “bam bam bam.” I mean it was like—the lights went off and you know and the officer he said something I don't know what he said. It was—you know. Shots. Bam bam. And they came first from this side. They came first from the side that Jon was on. I don't think the officer fired at him first. I think he fired at him first.

(2) Interview of Neighbor B

Neighbor B was interviewed at the Carson City Sheriff's Office the morning of August 15, 2015, a few hours after the incident.¹² Neighbor B stated the following:

NEIGHBOR B: ...[R]ight as they got close to the front door, the guy that was beating the woman just charged that door full force and it flung open. Male cop was in front, female was in back,¹³ and before he could pull his gun, the man just fired two shots at him and I saw him just drop dead right then and there.

....

INVESTIGATOR: Okay. And you describe seeing the male from the residence—you describe it as bum rushing the front door?

¹² Neighbor B was demonstrably mistaken about a number of details in regard to the incident. In part, this was likely due to the distance between 4136 Montez Drive and Neighbor B's vantage point, estimated at 250 feet.

¹³ One of the details about which Neighbor B was mistaken was the recollection that the two officers initially on scene were a male and a female.

NEIGHBOR B: Yeah.

INVESTIGATOR: From the inside?

NEIGHBOR B: Yes.

INVESTIGATOR: Okay.

NEIGHBOR B: He didn't step out of the house. Um, he—I mean, you could hear it, too. He charged at that door. I don't know if he kicked it open or if he pushed it open with his sides of his arms or what, but the second that door swung open, you could just see somewhat of a flash and just two loud bangs and I saw one of the officers at that point just drop....

Like Neighbor A, Neighbor B remembers exterior lights at the residence being turned off. Unlike Neighbor A, however, Neighbor B recalls that occurring immediately after the exchange of gunfire, not immediately before.

a. Neighbor B's recollection of sound

Neighbor B also believed a larger caliber weapon had fired the first two shots, and that other subsequent shots came from a different, smaller caliber weapon.

NEIGHBOR B:I mean, it was straight forward just two shots. It was a loud, loud gun. I'm assuming it was a 40 to be honest, because it just—there was just a punch to it, that, like hearing it hurt. Um, and then the officer ... the female officer pulled her gun and fired.¹⁴ It was a completely different size round. Um, a little bit quieter. It had more "pop" to it....

Most of the neighbors perceived at least some portion of the incident. A total of 26 told investigators they heard sounds they could identify as gunshots. However, Neighbor B is the only one who claimed to be able to distinguish between the sound of the first shots and shots that followed as coming from different firearms. Notably, Deputy Cook indicated that he "could not say" whether the shots he heard were from a single weapon or multiple weapons.

Intuitively, one might assume the report of Pope's larger caliber weapon could be readily distinguished from that of Deputy Howell's 9mm. However, the sound of a gunshot report can vary depending on a multitude of factors including, without limitation: environmental conditions, such as air temperature and humidity; the location, orientation, and physical qualities of structures, objects, and natural conditions relative to the gunshot and the listener; the proximity of the listener to the firearm; interference

¹⁴ Neighbor B was mistaken that the female officer Neighbor B believed to be on scene returned fire after the male officer had been shot by Pope.

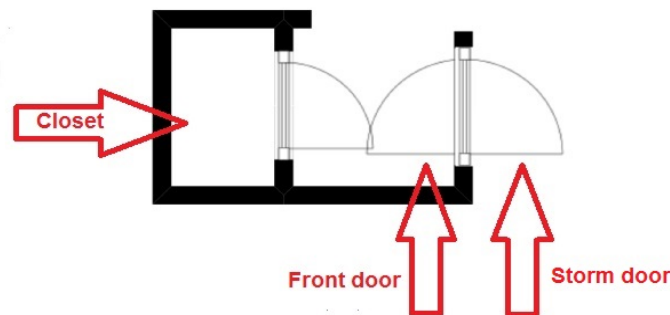
from other noise; the length of the firearm's barrel; the direction of the firearm's muzzle; and the ammunition fired. It is not possible to reasonably replicate the conditions that existed at the location and time at which the incident occurred to test the accuracy of Neighbor B's memory on this detail. It is possible that Neighbor B did perceive a difference between the sound of the first two shots and those that followed. It is also possible that Neighbor B correctly attributes that difference to the larger caliber weapon being fired first and the smaller caliber weapon being fired second. However, under the circumstances, those possibilities are insufficiently reliable to factor into this analysis. Therefore, they have been disregarded.

(3) Physical evidence

The front entry to the 4136 Montez Drive residence consisted of two doors. Viewed from the exterior, the front door is hinged on the left, swinging inside the residence. Outside the front door was a storm door, hinged on the left, swinging to the exterior of the residence. A few feet inside the residence behind the doorway, there was an enclosed closet with a door hinged on the left and swinging toward the front door. See *Figure 3*.

Figure 3

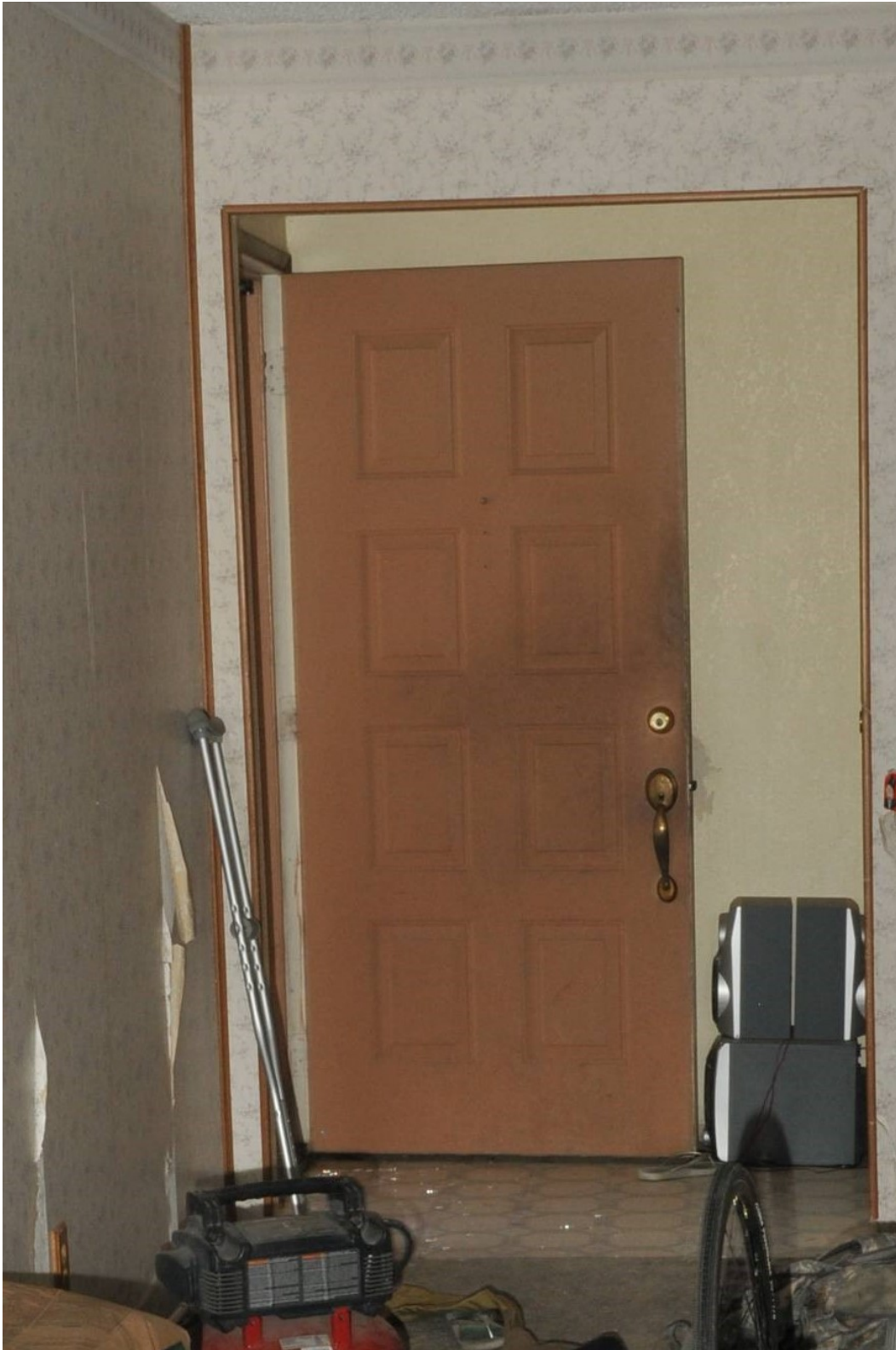
4136 Montez Drive: Entry area schematic



Not to scale

The front door, the closet door, and the closet walls facing the front door were free of any defects that could have been caused by the gunshots. See *Photographs 3-7*.

Photograph 3



Exterior side of front door

Photograph 4



Interior side of front door

Photograph 5



Closet door and wall

Photograph 6



Closet wall

Photograph 7



Interior closet wall

The storm door, however, had been struck. Near the handle, a round had penetrated the exterior glass and screen behind it. The screen bent inward, meaning the round had been fired from the exterior side of the storm door. The storm door's glass had been shattered and fallen to the step below. See *Photographs 8-12*.

Photograph 8



Photograph 9



Photograph 10



Photograph 11



Photograph 12



The existence and location of the defect in the storm door coupled with the absence of any corresponding defect in the front door, the closet door, or the closet walls facing the storm door necessarily indicate one of the following conditions existed at the moment that particular round was fired: (1) the storm door was fully or partially open; (2) there was something on the interior side of the storm door; or (3) both. The physical evidence in this case indicates that both conditions existed.

a. Evidence Pope was on interior side of storm door

During the autopsy, the Washoe County Medical Examiner's Office observed the following about Pope:

An extensive pattern of pseudo-stippling abrasions, with minute fragments of glass, were noted on the anterior left chest and left arm, suggesting an intermediary target (a glass window/door) through which the decedent was shot.

Thus, Pope was positioned on the interior side of the storm door when Deputy Howell fired a round from the exterior side.¹⁵ Pope was facing Deputy Howell at the time. It is

¹⁵ No other glass was hit by any of the gunfire.

virtually certain that the round fired through the storm door was one of the two that struck Pope, most likely the shot that hit him in the chest.

b. Evidence storm door was open or partially open

Had Pope been inside the residence behind the closed storm door at the time the shot was fired from the exterior, there would have been conclusive physical evidence to indicate such. Blood, defects, a projectile, or projectile fragments necessarily would have been present in or around the entry area within the residence. Investigators did not locate any of these things.

Rather, investigators found blood, a defect, and a projectile fragment outside the residence in a location that strongly suggests an association with the round fired through the storm door. See *Photographs 13-16*.

Photograph 13



\\\\\\

Photograph 14



Photograph 15



Photograph 16



When the storm door is opened to a certain angle, the defect in the exterior siding identified with marker “40” (“Defect 40”) is spatially aligned with the hole through the screen. Additionally, some of the blood surrounding Defect 40 is high velocity spatter, which is associated with an injury caused by a gunshot. This indicates Pope was struck by the round that caused Defect 40. No projectile or projectile fragments were found within Defect 40, and the projectile did not fully penetrate and pass through the siding.

On the concrete step at the base of the front door, investigators found a bullet fragment identified with marker 22 (“Fragment 22”). Fragment 22 was almost directly below Defect 40.

(4) Possible discrepancy between physical evidence and eyewitness accounts

The physical evidence establishing that Pope was shot behind the open or partially open storm door raises uncertainty about the accounts of eyewitnesses. The evidence indicates that Pope would have held the firearm in his right hand when firing at Deputy Howell.¹⁶ The evidence also indicates that Pope’s right hand cleared the storm door before firing. Any number of perfectly plausible scenarios might explain how the storm door came to be positioned between Deputy Howell and Pope after Pope had initially cleared the storm door and fired. As such, the eyewitness accounts are not irreconcilable with the physical evidence.

However, the unassailable physical evidence suggests the possibility that Deputy Howell fired first, hitting Pope before he cleared the storm door. That possibility is at least equally plausible with those possibilities that would be consistent with the eyewitness accounts. The existence of this plausible possibility establishes a reasonable basis for uncertainty as to who fired the first shot or shots. Therefore, for purposes of this analysis, the question of who fired first will be deemed unresolved.

6. Location and movement of Deputy Howell and Pope during gunfire

By all accounts, the duration of the gunfire was no more than a few seconds. Prior to the gunfire, Deputy Cook’s final transmission to Dispatch ended at 2:31:58. At 2:32:19, Deputy Cook initiated his transmission that shots had been fired. Thus, the physical movement of Deputy Howell and Pope was rather limited, as there was little time for such movement.

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¹⁶ Pope was right handed, and his firearm was still partially gripped in his right hand when his body was discovered.

a. Pope

Pope's body was located underneath a tree in the front yard of the residence. The tree under which Pope was found is depicted to the left of the trailer in the photograph below. See *Photograph 17*.

Photograph 17



Pope was nude and face down. His body was oriented north and south, more or less, with his head toward the south. Next to his body, still partially gripped by his right hand was the Smith & Wesson .357 Magnum revolver. The wooden grip of the revolver had been damaged, and was not connected to the frame. See *Photograph 18*.

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Photograph 18

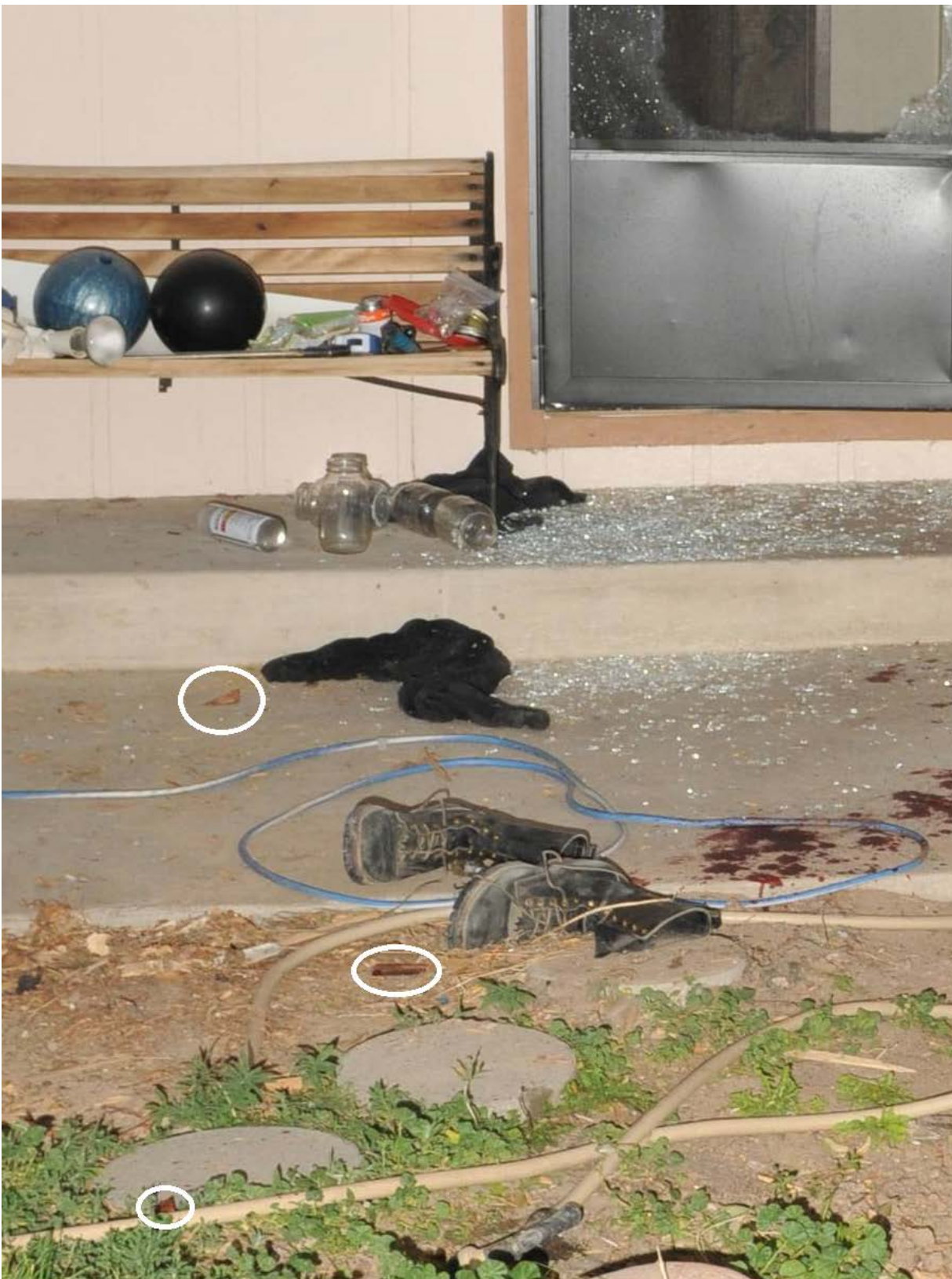


The right side wooden grip was intact and located under the revolver. Fragments of the left side grip were located on and near the landing¹⁷ in front of the front door. See *Photographs 19-22*.

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¹⁷ In this analysis, the term “landing” is intended to reference the entire concrete area on the exterior of the residence adjacent to the front door.

Photograph 19



Photograph 20



Photograph 21



Photograph 22

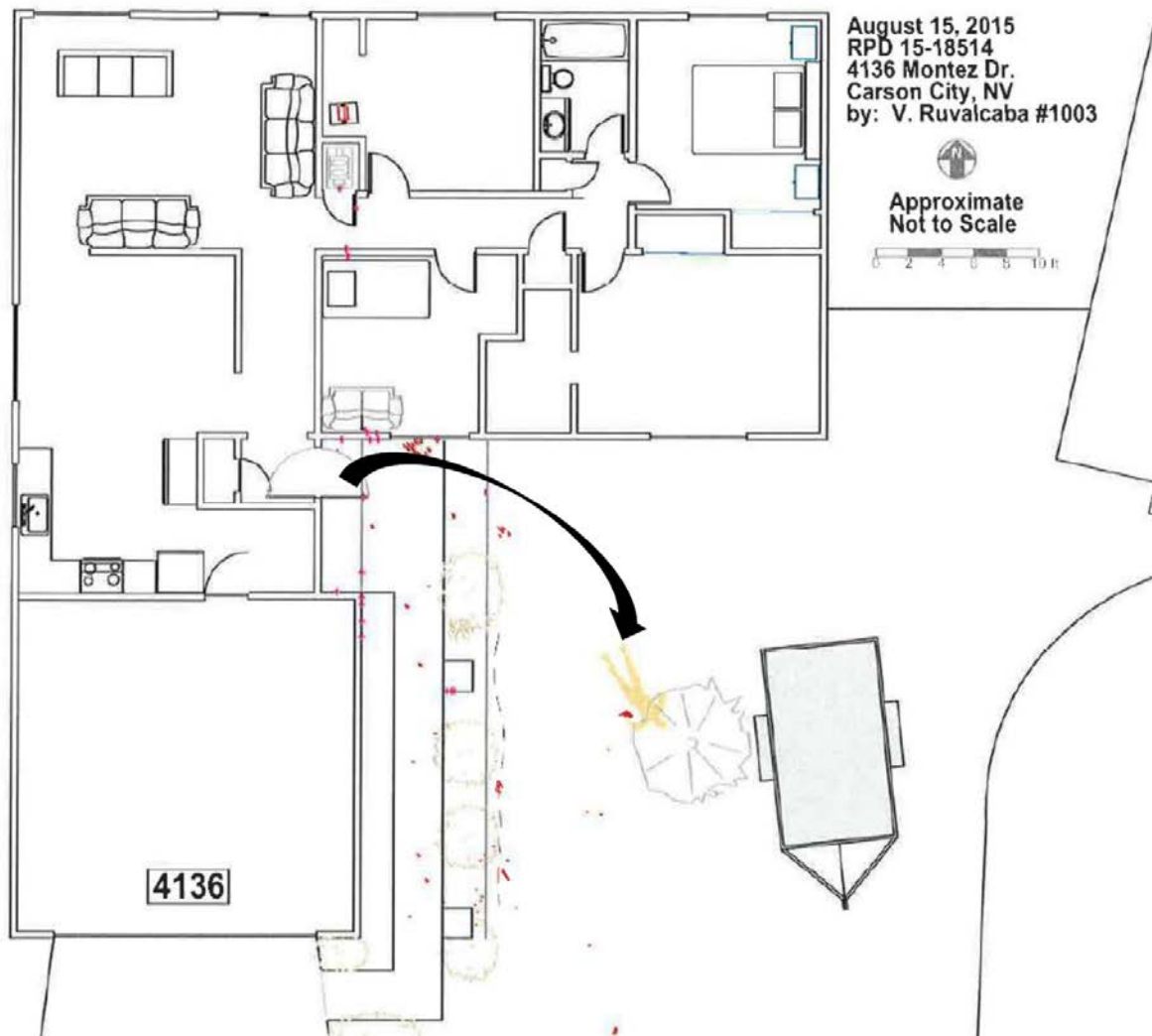


Blood evidence on Pope's body and the landing indicates he was upright and ambulatory for some period of time after being shot. However, the Medical Examiner determined the shot through his chest would have been almost immediately fatal, so Pope's movement would have been substantially restricted, if not completely agonal, once he sustained that wound.

The evidence indicates that Pope moved directly from the front door, across the landing, to where he came to rest at the base of the tree. Pope did not reenter the residence after the exchange of gunfire. Pope sustained at least one, likely both, gunshot wounds between the front door and the end of the landing.

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Figure 4



Pope's path of movement during gunfire

b. Deputy Howell

Deputy Howell was near the front door, backing away toward the north pillar when the gunfire began. As the gunfire ended, or soon thereafter, Deputy Howell was lying on his left side at the base of the south pillar, near the southeast corner of the garage. He was positioned, more or less, north to south with his head toward the north, facing the front yard. See *Photograph 23* (yellow circle depicts Deputy Howell's approximate location).

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Photograph 23



The most reliable evidence by which to track his general movement is the location of defects caused by gunshots.¹⁸ Investigators located a total of 24 defects in the exterior and interior of the residence. Those 24 defects appear to have been caused by 13 different shots. The evidence indicates that Deputy Howell certainly fired most of the shots that left defects in the residence, and he probably fired them all.

As previously explained,¹⁹ one shot struck the exterior side of the storm door as it was fully or partially open, causing the defect marked as identification number 39. The shot struck Pope after it passed through the screen door. The same shot then likely struck the south wall of the residence, causing the defect previously identified as Defect 40.²⁰ Three more shots, causing the defects marked with identification numbers 41, 42,

¹⁸ Spent shell casings from all 16 shots fired by Deputy Howell were located at the scene as was an ejected magazine. The location of these items are depicted on the scene diagram, attached as Appendix A. Several factors can influence the ultimate location where a shell casing or magazine may come to rest, and there can be significant variability in those factors. As such, caution is necessary when drawing conclusions about a shooter's location based only on where a shell casing or magazine is ultimately discovered. In general, the location of the ejected shell casings and magazine, as well as blood evidence, supports the conclusions in regard to Deputy Howell's movement during the gunfire.

¹⁹ See *supra* §A(5)(c)(3).

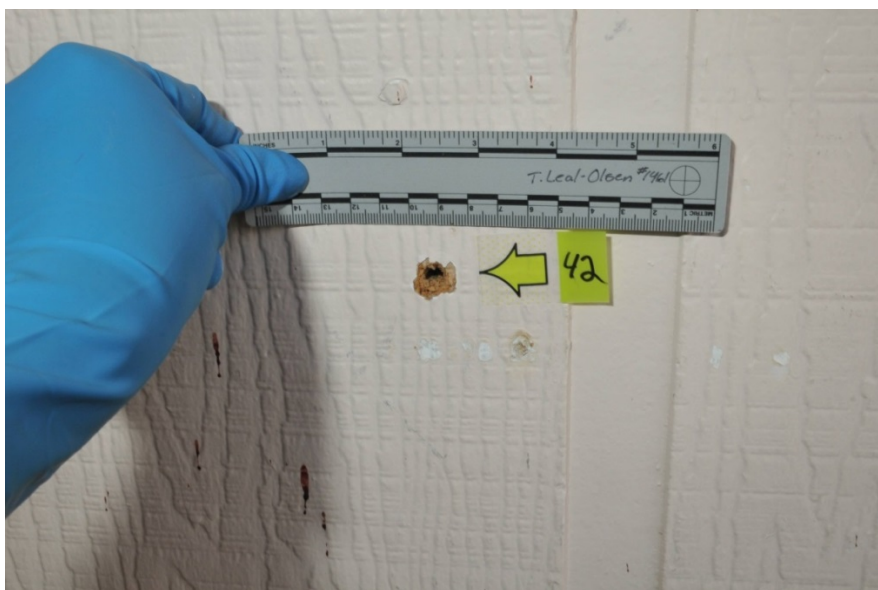
²⁰ The shot that caused the defects marked as identification numbers 39 and 40 was quite likely one of the first and perhaps the very first shot Deputy Howell fired. However, with that exception, it is not possible to draw any reliable conclusions with regard to the sequence of the shots fired by Deputy Howell.

and 43, struck the south wall of the residence further to the east. See *Photographs 24-28*. The shots marked with identification number 41 and 42 passed through the exterior wall into the residence, causing a total of eight additional defects marked as identification numbers 41a through 41f and 42a through 42b respectively.²¹

Photograph 24



Photograph 25



The order in which the defects are discussed in this report and their assigned identification numbers is not intended to imply any conclusion as to their sequencing.

²¹ 41a through 41f and 42a through 42b are not pictured.

Photograph 26



Photograph 27



Photograph 28



Another round struck the eaves extending to the east of the residence's front door. See *Photographs 29-30*. The defect caused by that shot is marked as identification number 44.

Photograph 29



Photograph 30



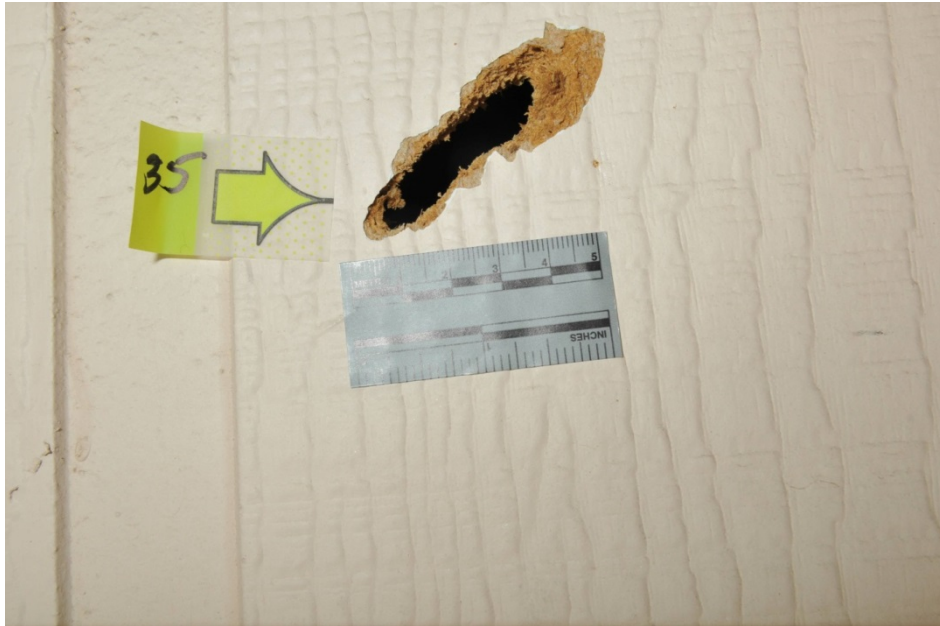
Two other shots hit the gable above the east wall of the garage. These two shots caused two defects that were marked with identification numbers 35 and 36. See *Photographs 31-33, 42-43*. A round also struck the trim at the bottom of the gable between the north garage wall and the front door. A defect caused by that round was marked with identification number 45. See *Photographs 31, 34*.

Photograph 31



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Photograph 32



Photograph 33



Photograph 34



Another shot struck the east side of the exterior garage wall and passed through the north side of the exterior garage wall. That shot caused two defects, marked with identification numbers 37 and 37a. See *Photographs 35-37, 42*. Another shot passed through a piece of sheetrock leaned against the east wall of the garage and then into the east wall of the garage, causing the two defects marked with identification number 38 and 38a. See *Photographs 38-40*.

Photograph 35



Photograph 36



Photograph 37



Photograph 38



Photograph 39



Photograph 40



Three shots hit the south side of the north pillar. These three shots caused three defects that were marked with identification numbers 47, 48, and 49. See *Photographs 41-43*.

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Photograph 41



Photograph 42

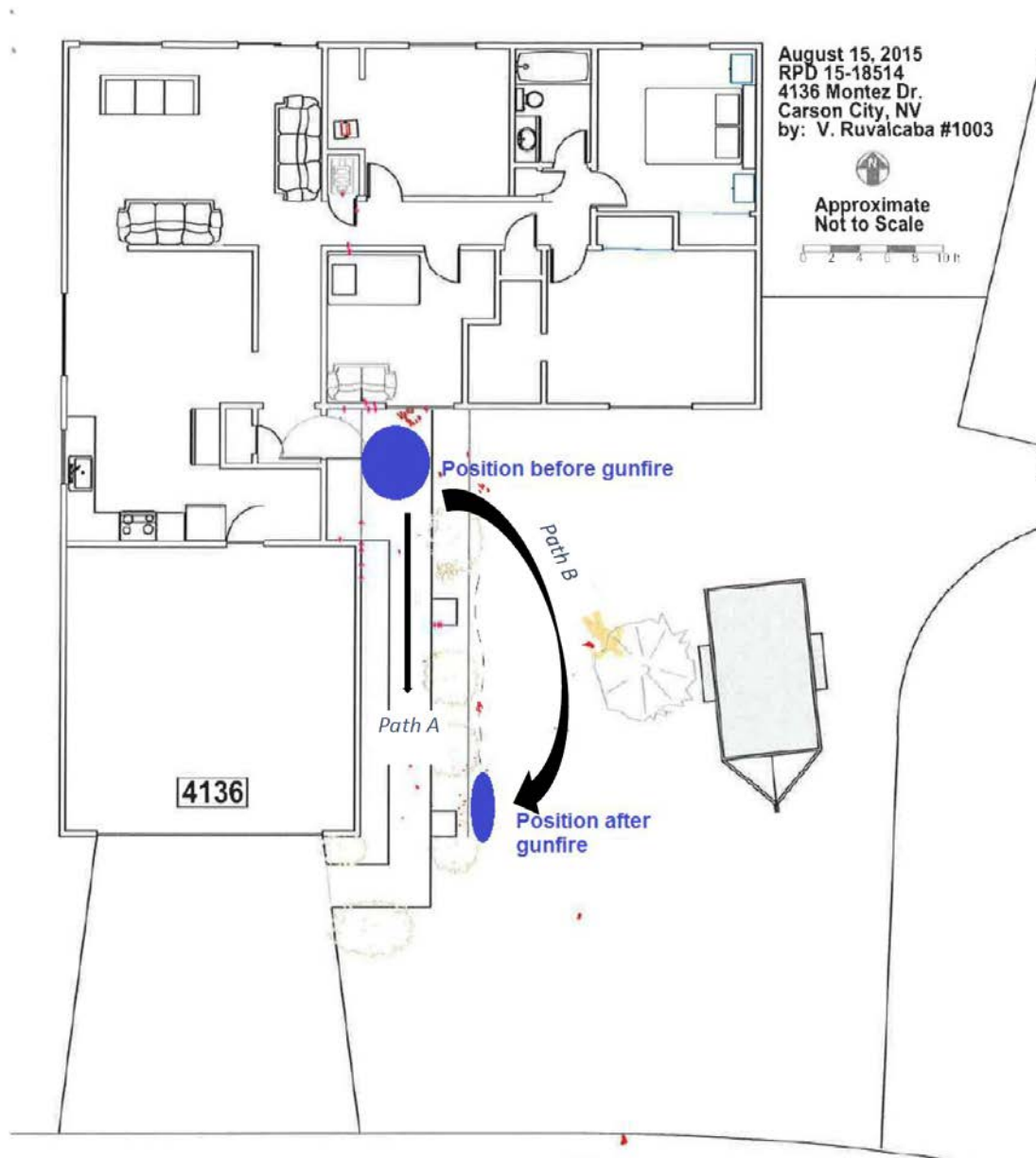


Photograph 43



As the gunfire began, Deputy Cook last observed of Deputy Howell backing away from the front door. Deputy Howell's exact path of movement away from the front door is uncertain. There are three possibilities. Deputy Howell could have moved south down the walkway in front of the garage. See Path A, *Figure 5*. Alternatively, Deputy Howell's path may have been southeast, into the front yard. See Path B, *Figure 5*. Or he may have changed his location one or more times between these two paths.

Figure 5



No evidence categorically excludes any of these possibilities. One certainty is that Deputy Howell fired at least some of the shots from a position south of the north

pillar. The location and apparent angle of the defects suggests Deputy Howell's initial path of movement was Path A identified in Figure 5, south along the walkway. In particular the defects associated with identification numbers 41 and 42 indicates the rounds that caused those defects were fired from a position almost directly south. That would be consistent with Path A and inconsistent with Path B. Additionally, if Deputy Howell moved directly east or southeast toward the front yard, his first shots would likely have been directed back toward Pope to the west. If this was the case, one would expect to find defects in the area of the wall facing east around the front door. See *Figure 6*, depicting the referenced wall in yellow. There are no such defects.²² One would also expect to find shell casings ejected from Deputy Howell's semi-automatic pistol in the area east of the landing and north of the north pillar.²³ See *Figure 6*, depicting the referenced area with a yellow oval. No shell casings were found in that area.

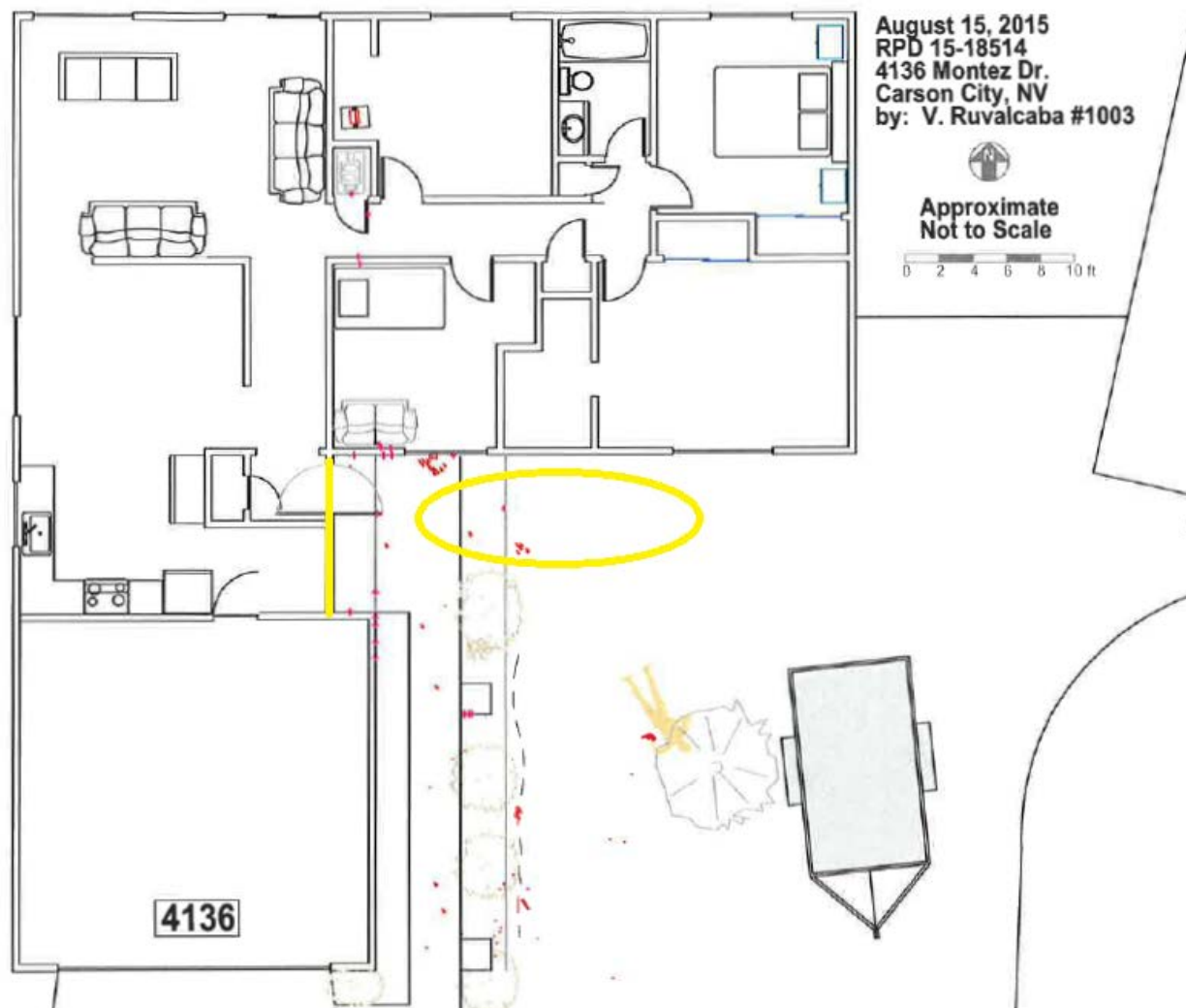
This is not to say that Deputy Howell never fired from a position in the front yard east of the walkway. That is possible. However, it appears that Deputy Howell's initial path of movement away from the front door area was south along the walkway.

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²² As previously explained, the defect in the storm door occurred when it was fully or partially open and facing southeast or south.

²³ Deputy Howell's firearm ejected shells on its right side.

Figure 6



B. EVENTS FOLLOWING EXCHANGE OF GUNFIRE

Immediately or nearly immediately after the gunfire, Ms. Lambert entered the residence. At least two and possibly all three of the children had entered the residence from the backyard around the time of the gunfire. Ms. Lambert encountered the children inside and probably told them to go into the backyard.²⁴ Ms. Lambert then exited to the front of the residence. She did not recall seeing Pope or Deputy Howell.

²⁴ Two of the three children recall having contact with Ms. Lambert inside the residence immediately after the gunfire. The youngest, 10, remembers encountering Ms. Lambert in the hallway and hearing her ask if the child knew where Jonny was. She then said that Jonny “was shooting at the cops.” The other, 13, recalls that all three children were in the house when they encountered Ms. Lambert, at which time she “yelled at them to go back outside to the backyard.”

From his cover positions, Deputy Cook had been unable to see Deputy Howell or Pope during the gunfire because of the large foliage in and around the area where the incident took place. When the gunfire stopped, Deputy Cook did not know the location of either Deputy Howell or Pope. Deputy Cook shouted for Deputy Howell, trying to determine his location and condition. Deputy Howell responded, and Deputy Cook saw Deputy Howell against the south pillar. Deputy Cook learned that Deputy Howell had been shot.

Once it was reported that shots had been fired, all available units immediately responded. Deputy Jessica Chrzanowski arrived on the scene at 2:35, followed seconds later by Sgt. Don White.²⁵ Deputy Chris Rivera and Deputy Mike Gibson arrived simultaneously at 2:38.

The officers clearly understood the urgent need to retrieve Deputy Howell and get him to medical assistance. However, Pope's body was substantially obscured and not readily visible at the time. Consequently, officers had no information about the location or condition of the other individual involved in the shooting. As such, officers had to establish coverage for the threat of a possible shooter in or around the residence before coordinating a rescue effort. The officers quickly assembled the necessary coverage, and Deputy Rivera dragged Deputy Howell to the street.

Deputy Howell was loaded into a police unit and transported to a nearby location where an ambulance was waiting.²⁶ Paramedics immediately commenced emergency treatment on the way to the Emergency Room at Carson Tahoe Health Regional Medical Center. The ambulance arrived at the hospital at 3:07 where Deputy Howell was pronounced deceased. The ME concluded the mechanism of Deputy Howell's death was exsanguination.

Shortly after Deputy Howell's evacuation, the three children were secured. The 13 year-old exited the residence through the front door around the same time of Deputy Howell's evacuation. At approximately 3:04, the 11 and 10-year-olds exited the front door of the residence. As they did, the 11-year-old observed Pope, face down and motionless, under the tree. The child alerted Sgt. Daniel Gonzales²⁷ of Pope's location and condition who reported the information over his radio.

²⁵ Upon her arrival, Deputy Chrzanowski encountered Ms. Lambert in the street near the residence. Ms. Lambert was hysterical and unable or unwilling to provide substantive information regarding the situation. She was placed in Deputy Chrzanowski's patrol unit.

²⁶ Emergency medical personnel could not go directly to the scene because it was not yet secure.

²⁷ Sheriff Furlong had ordered a "full call out" to the incident, so there were numerous officers on the scene at that point.

Sheriff Ken Furlong, Deputy Rivera, Deputy Cook, and other officers approached the residence and confirmed Pope's reported location. They determined that he was deceased and left his body in place. At approximately 3:10, Sheriff Furlong advised Dispatch that Pope had been located.

Precautionary coverage and surveillance of the residence remained in place until the residence was cleared by the S.W.A.T. Team at approximately 4:23. Pursuant to Carson City Sheriff's Office policy, the Reno Police Department was contacted and led the officer involved shooting investigation, assisted by the Nevada Department of Public Safety Investigation Division. The Carson City Sheriff's Office had no investigatory role in this matter.

C. EVENTS PRECEDING THE CALL FOR SERVICE

1. Pope

Pope worked during the day of August 14, 2015. At some point, after Pope had returned home from work, he left the residence on a motorcycle with Ms. Lambert as his passenger. Sometime between 7:00 and 8:00 p.m. that evening, Pope and Ms. Lambert met and dined with family at a Carson City establishment. Pope and Ms. Lambert then went to a second location, a Carson City bar. They next went to a third and then to a fourth Carson City bar. Both Pope and Ms. Lambert were consuming alcohol. They travelled to each location on the motorcycle driven by Pope.

At the third location, Pope exchanged tense words with a male customer who had inserted himself between Pope and Ms. Lambert as they sat at the bar. The exchange was brief and did not escalate to physical violence.

Pope and Ms. Lambert arrived at the fourth location at approximately 11:00 p.m. on August 14. Both were intoxicated when they arrived. Both continued to consume alcohol at the bar, eventually becoming "extremely intoxicated" to an extent that they were both cut off from any further alcohol by the establishment. A friend of Pope's arrived and joined them at the bar at approximately 12:40. Initially, Pope and Ms. Lambert were "having fun" and "lovey dovey." However, the bartender indicated that Ms. Lambert began "flirting with other customers" and "causing problems." Ms. Lambert claimed a male in the bar had called her a derogatory name, and she wanted Pope to confront the individual. According to Pope's friend, Ms. Lambert was "acting crazy" and "freaking out." Pope's friend recalled that she and Pope were "kind of getting into it" and "in each other's faces" at the bar. At approximately 1:06, Pope's friend took Ms. Lambert to the 4136 Montez Drive residence, just a short drive from the bar. He then returned to the bar and left with Pope at approximately 1:16.

From the fourth location, Pope and his friend returned to the third bar where Pope and Ms. Lambert had been earlier. Pope answered two telephone calls from Ms. Lambert while at the third bar, one at 1:27 that lasted 51 seconds and another at 1:52 that lasted one minute, 40 seconds.²⁸ According to Pope's friend, Ms. Lambert was "yelling at him" and "getting on his case." At or around the conclusion of that call, Pope left the bar and rode his motorcycle home, about 2.9 miles away. Ms. Lambert called his cell phone at 2:01, but Pope did not answer that call. That last call would be very close to the time Pope arrived home.

Once he arrived, he and Ms. Lambert had a verbal and physical dispute outside in front of the residence. Ms. Lambert's statements characterized Pope as the initial and primary physical aggressor. Ms. Lambert did admit her own use of physical force during the incident, but characterized it as exclusively defensive. In general, her account concerning the physical force involved in the altercation was scattered, vague, and inconsistent. Ms. Lambert stated:

- "He put me in a chin hold. I had to tap. I couldn't breathe. I begged and he did it three times."
- "He was choking me."
- "I got my [expletive] whipped for a good 20 minutes."
- "I got choked out at least three times."
- "He punched me, he actually physically punched me."
- "He wrestled me down."
- Pope "slammed my [expletive] head against the concrete."
- She said she was "pushing him away" and "trying to choke him with my fingers."
- "I got tackled."
- "I met him in the front yard and he kicked my [expletive]."

²⁸ Ms. Lambert also made calls at 1:36, 1:38, and 1:39. Pope did not answer those calls.

- “He was already, I believe, set off, and then it’s a blur of—I mean, I’m on the ground. My head hits. I know I was punching—he’s punching me, so I [expletive] hit him back, you know? Doing anything I can, but he’s bigger than me. Stronger. He’s a boy.”
- “I know I was on all fours, as you can see, like my legs are—I was pushed down on all fours, and he came behind me, choked me and [unintelligible]. And then I woke up.”
- “He grabbed me and choked me, and I fell, and it scraped my skin. And I fell back on him, and he rolled me to the side. And when he let me go, I yelled at him. And he did it again.”
- “I mean, obviously, I know he yelled at me and pushed me down. I fell. I was hurt and I don’t take kindly to that.”
- Pope “banged my head” and “punched me a lot in the face.”
- “I lost consciousness.”
- She was “laying on the ground,” and “every time I tried to get up he’d choke me again.”

There was clearly a physical altercation between Pope and Ms. Lambert, and Pope clearly had general advantages in terms of size²⁹ and strength. However, reliable evidence refutes certain aspects of Ms. Lambert’s account. In fact, it appears that Ms. Lambert was the initial physical aggressor. Upon Pope’s arrival at the residence, she pushed him into the side of a vehicle parked in the driveway almost immediately after he dismounted his motorcycle. Additionally, the evidence strongly suggests that some, if not all, of the altercation that followed involved mutual combat. Third-party eyewitnesses characterized the altercation as mutual. Both parties suffered injuries during the altercation. Ms. Lambert’s face was bruised and swollen in her left cheekbone area. She also had bruises on her upper arms and her knees were scraped and bruised. Pope had scratches and abrasions on his face, neck, and arms. There were also several contusions on both his knees.

Additional evidence suggests Ms. Lambert was upset that neighbors had called the police. One neighbor requested anonymity with Dispatch due to concern that Ms. Lambert would be upset that police were called. When Deputy Howell arrived, another

²⁹ Pope was 5’8 and 150 pounds, while Ms. Lambert was 5’1 and approximately 120 pounds.

neighbor heard Ms. Lambert say “in an angry voice, ‘someone called the cops?’” If the altercation had been as one-sided and perilous as she later described, one would expect her to be relieved to see law enforcement arrive.³⁰

a. Pope’s animosity toward police

There is substantial evidence indicating Pope harbored deep disdain toward police officers. Pope’s concerns seemed to be directed toward perceived excessive force and abusive tactics by law enforcement in particular. He regularly professed anti-law enforcement opinions to his friends and family, and posted social media communications on the subject. He appears to have spent a fair amount of time researching and acquiring information about improper police conduct. Pope also claimed an affiliation with an organization generally considered to be anti-law enforcement. It is not known when Pope first adopted his position or what event, if any, may have prompted his interest in the subject. There is no indication that Pope had any particular animosity toward Deputy Howell.

2. Deputy Howell

The Carson City Sheriff’s Office hired Deputy Howell on March 13, 2006. After working a few months in detention, Deputy Howell was moved to patrol which was his assignment for the next eight years. He returned to detention in July, 2014. In July, 2015, Deputy Howell was temporarily reassigned to cover patrol division staffing shortages.

Shortly after he was hired, Deputy Howell completed the Peace Officers Academy at Western Nevada College and was certified as a Category I peace officer. In March, 2015, he earned an intermediate POST certificate. On the date of this incident, Deputy Howell was current on all his training requirements, including training regarding use of force; defensive tactics; and firing range qualification with pistol, shotgun, and rifle. During his career, Deputy Howell had not been the subject of any formal complaint involving excessive force or any other type of improper conduct. Deputy Howell was also a veteran of the United States Marine Corps.

Prior to his response to this incident, Deputy Howell’s shift had been uneventful. There is nothing to indicate or suggest that Deputy Howell’s judgment or ability to perform his duties were impaired at the time of the incident. A toxicology report indicates he did not have any alcohol or drugs in his system.

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³⁰ Then again, Ms. Lambert may have made the statement for Pope to hear in an effort to avoid potential repercussions for law enforcement’s arrival.

D. ADDITIONAL INFORMATION

1. Pope's wallet

Pope's wallet was located on the landing and marked with identification number 23.³¹ See *Photographs 44-46*.

Photograph 44



Photograph 45

³¹ The wallet was seized during the execution of a search warrant at the residence. Some of the photographs taken at the scene depict identification marker 23 without the wallet after it had been removed.



Photograph 46



The contents of the wallet included the credit card he used to pay the bill at the fourth location where he was with Ms. Lambert. As such, it can safely be assumed that the wallet was in his possession when he arrived at home.

Although it is difficult to see due to its dark color, there is blood on the side of the wallet that was facing up at the time it was photographed and recovered by investigators. There is no blood on the concrete underneath the wallet. This indicates that the wallet was on the landing at the time Pope was shot by Deputy Howell. There is no evidence to clearly establish whether it was left there before Pope entered the residence or whether it was in his possession when he encountered Deputy Howell near the front door. However, the evidence does support a reasonable inference in support of the former proposition.

Deputy Howell told Deputy Cook that he had heard Pope lock the door. As it was loud enough to hear, this would tend to indicate the deadbolt on the front door had been engaged. The evidence indicates Pope came to the front door with the revolver in his right hand. If his wallet was in his left, it would be difficult for him to disengage the deadbolt. His level of intoxication would likely exacerbate the difficulty of this task. And finally, even if Pope could negotiate the deadlock with both hands full, that unwieldy act would be inconsistent with the statements of the two eyewitnesses who described a rapid movement by Pope out the front door.

Under normal circumstances, it would certainly seem unusual to leave one's wallet outside the front door of one's residence. However, the presence of a set of keys, presumably Pope's, on the landing is also unusual. See *Photograph 47*.

Photograph 47



Given's Pope's impaired condition at the time, the items may have been inadvertently left in these locations or they could have become dislodged during the physical altercation. As such, the evidence supports a reasonable inference that the wallet was already on the landing when Pope confronted Deputy Howell at the front door.

2. Video surveillance equipment

Exterior video surveillance equipment had been installed at the 4136 Montez Drive residence. Investigators located and took custody of a digital video recorder attached to the surveillance equipment during the execution of a search warrant of the residence. A forensic analysis of the recorder was completed and no recorded footage could be found.

APPLICABLE LAW

There are two legal contexts potentially implicated by Deputy Howell's use of deadly force in this case.³² The first, applicable to the use of deadly force during the effectuation of an arrest, does not apply to these circumstances. The second, applicable to deadly force used in self-defense, does.

A. USE OF DEADLY FORCE DURING ARREST

The law authorizes a peace officer to use deadly force under some limited circumstances when effecting an arrest.³³ However, the law on that subject does not bear upon the question in this case because the evidence indicates Deputy Howell had not made up his mind to arrest Pope as he approached the residence.³⁴ Nevada law

³² Strictly speaking, there could be a third. NRS 200.140 addresses justifiable homicide by a public officer, providing:

Homicide is justifiable when committed by a public officer ... in the following cases:

....

2. When necessary to overcome actual resistance in the discharge of a legal duty.
3. When necessary:

....

- (d) In protecting against an imminent threat to the life of a person.

However, under the circumstances of this case, there is no meaningful distinction between the legal standards applicable to self-defense and the legal standards applicable to a justifiable homicide by a public officer. See 1985 Nev. Op. Att'y Gen 47 (1985). Therefore, the circumstances will be evaluated utilizing the self-defense framework only.

³³ See generally NRS 171.1455; *Tennessee v. Garner*, 471 U.S. 1 (1985); *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014).

³⁴ This is not to say that such a decision would have been unlawful. An arrest must be supported by probable cause to believe a person has committed a crime. Ms. Lambert's statements indicating that

mandates that an officer arrest an individual when there is probable cause that the individual committed a domestic battery.³⁵ However, Nevada law also provides that if an officer suspects the incident involved a

mutual battery, the peace officer *shall attempt* to determine which person was the primary physical aggressor. If the peace officer determines that one of the persons who allegedly committed a battery was the primary physical aggressor involved in the incident, the peace officer is not required to arrest any other person believed to have committed a battery during the incident.³⁶

Additionally, an interview of the suspect, coupled with observation of his physical condition and demeanor is an important, if not essential, element of a competent investigation in a case like this. As such, Deputy Howell would not have made a unilateral decision to arrest Pope without the further investigation mandated by Nevada law and clearly recognized as a sound practice. Therefore, his conduct will not be analyzed against the legal standards applicable to the use of deadly force during the effectuation of an arrest.

B. SELF-DEFENSE

Like everyone else, a peace officer is authorized to use deadly force in self-defense.³⁷ Killing in lawful self-defense is “justifiable homicide” and not a crime.³⁸ Several Nevada statutes address the scope and nature of self-defense.³⁹ *Runion v. State*⁴⁰ is the lead Nevada case on the issue and synthesizes the pertinent law on the subject as follows:

The killing of another person in self-defense 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 him or cause him great bodily injury; and

Pope had battered her, corroborated by the nature of her observable injuries provided probable cause that Pope had committed a domestic battery, thereby authorizing his arrest.

³⁵ See NRS 171.137(1).

³⁶ NRS 171.137(2) (emphasis added).

³⁷ See NRS 200.120; see *also* NRS 200.140.

³⁸ See NRS 200.190.

³⁹ See NRS 200.120, 200.140, 200.130, 200.200.

⁴⁰ 116 Nev. 1041, 13 P.3d 52 (Nev. 2000).

2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

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, 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.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

The right of self-defense is not available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to stand his ground and need not retreat when faced with the threat of deadly force.

Actual danger is not necessary to justify a killing in self-defense. 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 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 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.⁴¹

⁴¹ *Runion*, 116 Nev. at 1051-52, 13 P.3d at 59.

ANALYSIS

By definition under the circumstances of this case, if Pope fired the first shot or if Pope and Deputy Howell fired the first shots simultaneously, Deputy Howell's use of deadly force was a justifiable act of self-defense. However, as explained above,⁴² the sequence of gunfire cannot be conclusively determined. Therefore, the remainder of this analysis will evaluate the question of whether or not the evidence establishes that Deputy Howell acted in lawful self-defense, assuming, for the sake of argument, he shot Pope before Pope actually fired his weapon.

On this question, two key facts stand out. First, Deputy Howell approached the front door without drawing his firearm or any other kind of weapon. Second, Pope approached the front door with his firearm in his hand. These facts prompt reasonable inferences as to the intent of each.

Deputy Howell's intent was to investigate. He had no notion of introducing force or even a show of force into the situation. A weapon is not a tool of investigation and can be counterproductive to the acquisition of information. Deputy Howell's investigatory intent combined with his belief that there was no firearm threat from within the residence made his immediate possession of a weapon inapt.

Jonathon Pope's intent was altogether different. Approaching the front door with a firearm in his hand was a *decision*. Obviously, it was not a thoughtful decision. But it was not an accident or a coincidence. It was a conscious, intentional decision. And a conscious, intentional decision necessarily implies a purpose. The reliable evidence decisively demonstrates that Pope's purpose was either to shoot Deputy Howell immediately or to threaten him with the firearm. Either categorically justifies Deputy Howell's use of deadly force in response.

Without exception, every circumstance in this case indicates aggression on the part of Pope and dispassion on the part of Deputy Howell until the gunfire began. Pope was agitated. Deputy Howell was not. Pope was intoxicated. Deputy Howell was not. Pope's movement was constantly toward Deputy Howell, suggesting an effort to induce violent engagement. Deputy Howell's movement was away from Pope, suggesting an effort to avoid violent engagement. Pope had already been violent that night. Deputy Howell had not. Pope harbored animosity toward police. Deputy Howell did not know Pope. Pope had the last clear opportunities to avoid armed conflict by withdrawing into the residence, relinquishing his firearm, or otherwise neutralizing the threat he posed to Deputy Howell. He declined each of those opportunities.

⁴² See *supra* at SUMMARY OF MATERIAL FACTS: §A(5)(c).

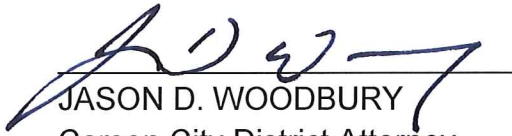
Finally, the evidence reliably establishes Pope turned off the porch light before coming out the front door. This strongly suggests a willful, deliberate, premeditated effort to gain a tactical advantage in preparation for an armed conflict.

The balance of reliable evidence decisively establishes that Pope intended to shoot or to threaten Deputy Howell with his firearm, and that he conducted himself in accordance with that intention. Deputy Howell's use of deadly force was a reasonable response to Pope's conduct.

CONCLUSION

Under any plausible scenario supported by the evidence in this case, Jonathon Pope presented an imminent, deadly threat to Deputy Howell. Deputy Howell actually perceived that threat. Deputy Howell's use of deadly force in response was justified as self-defense under Nevada law.

DATED this 10th day of July, 2017.



JASON D. WOODBURY
Carson City District Attorney


MELANIE A. BRANTINGHAM
Deputy District Attorney

APPENDIX A

APPENDIX A

Legend

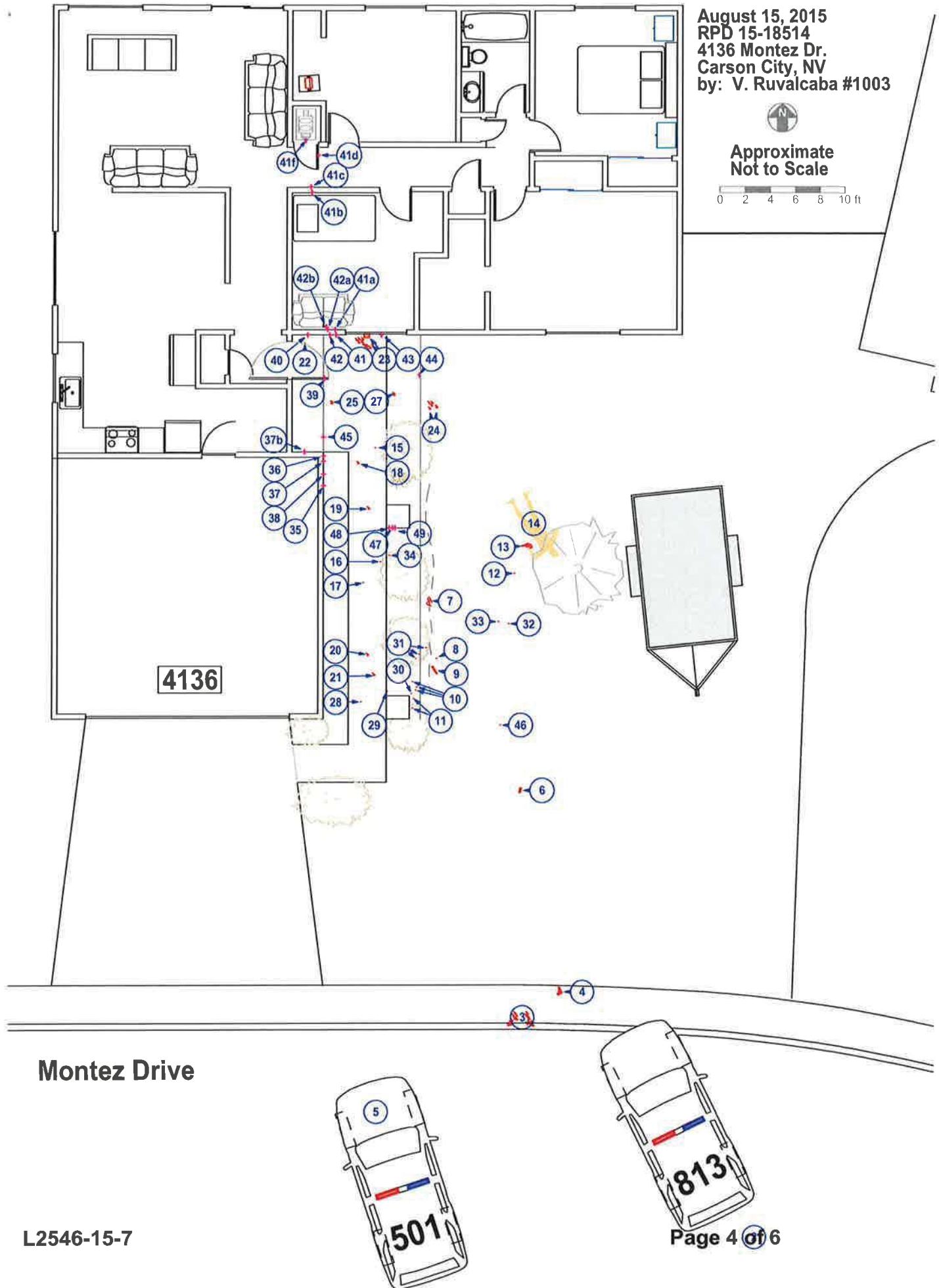
Placard	Description
1	Carson S.O. Vehicle #406, Chevrolet Tahoe
2	End of red stain trail
3	Red staining
4	Black Glock Model 17, s/n AYP006
5	Carson S.O. Vehicle #501, Chevrolet Tahoe
6	Black semi-auto pistol magazine
7	Prescription eyeglasses
8	One (1) white and yellow metal cartridge with "FC 9mm +P" headstamp
9	Black flashlight
10	Three (3) white metal spent casings with "FC 9mm +P" headstamp
11	Two (2) white metal spent casings with "FC 9mm +P" headstamp
12	One (1) white metal spent casing with "FC 9mm +P" headstamp
13	White metal Smith & Wesson 357 magnum revolver, s/n AWW6028
14	Suspect Jonathon Pope
15, 16 & 17	One (1) white metal spent casing with "FC 9mm +P" headstamp (each placard)
18 & 19	Red staining
20 & 21	Red staining
22	One (1) projectile
23	One (1) wallet and red staining
24, 25 & 27	Portions of wooden pistol grip
26	
28, 29 & 30	One (1) projectile (each placard)
31	Three (3) white metal spent casings with "FC 9mm +P" headstamp
32, 33 & 34	One (1) white metal spent casing with "FC 9mm +P" headstamp (each placard)
35 & 36	Defects in upper rafter area of exterior garage wall
37, 37b & 38a	Defects in exterior garage wall
39	Defect in screen door
40, 41 & 42	Defects in exterior south wall of the residence
41a thru 41f	Defects in the interior of the residence
42a	Defect in the interior of the residence
42b	Defect and one (1) projectile in the couch in the residence
43	One (1) defect in exterior south wall of residence and one (1) projectile
44	Defect in the beam of the front porch cover/roof
45	Defect in the upper area of exterior garage wall
46	One (1) white metal spent casing with "FC 9mm +P" headstamp
47, 48 & 49	Defects in the north pillar in front of the residence

August 15, 2015
RPD 15-18514
4136 Montez Dr.
Carson City, NV
by: V. Ruvalcaba #1003



Approximate
Not to Scale

0 2 4 6 8 10 ft



Montez Drive

L2546-15-7

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