

1 error or the initial decision was manifestly unjust, or (3) if there is an intervening change
2 in controlling law.” *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255,
3 1263 (9th Cir. 1993).

4 The Defendants request for the Court to reconsider its Order (Doc. 92), arguing that
5 the Court committed manifest error in denying summary judgment on the Plaintiff’s claims
6 for negligence and intentional infliction of emotional distress. (Doc. 93 at 1–2) The
7 Defendants argue that the Court incorrectly found that Giralde’s intentional act of shooting
8 into a vehicle containing the Plaintiff could provide the basis for a negligence claim. (Doc.
9 93 at 1) The Defendants also argue that the Court committed manifest error in finding that
10 the Plaintiff’s anxiety, nightmares, and crying spells suffice to support a claim for
11 intentional infliction of emotional distress. (Doc. 93 at 2)

12 Under Arizona law, a plaintiff cannot assert a negligence claim based solely on an
13 officer’s intentional use of physical force. *Ryan v. Napier*, 425 P.3d 230, 233 (Ariz. 2018).
14 A plaintiff *may*, however, base a negligence claim on conduct by the officer that is
15 independent of the intentional use of physical force. *Id.* If an actor has in mind either the
16 desire to bring about the consequences that follow or the substantial certainty that those
17 consequences will occur, he acted intentionally. *Id.* at 236. In the present case, Giralde
18 acted intentionally when he fired his weapon into the vehicle containing the Plaintiff and
19 her husband. At minimum, it is clear to the Court that Giralde was substantially certain
20 that firing his weapon into the vehicle could bring about the future pain, economic loss,
21 mental anguish, and loss of companionship, services, affection, and consortium that
22 ultimately befell Plaintiff, who was the decedent’s wife and who was sitting in the
23 passenger’s seat at the time. The Court finds that Giralde did not engage in any other
24 conduct that was by itself negligent and the cause of Plaintiff’s harm. Regardless of who
25 the plaintiff is, the act that serves as the basis of the claim is Giralde’s firing of his weapon.
26 Because this was an act that was done intentionally, it cannot be the basis of a negligence
27 claim under Arizona law. Therefore, the Court committed manifest error in denying
28 summary judgment on Plaintiff’s claim of negligence.

1 Turning to the Plaintiff’s claim for intentional infliction of emotional distress, a
2 plaintiff must show that she suffered from severe emotional distress, such as “where the
3 distress inflicted is so severe that no reasonable man could be expected to endure it.”
4 *Pankratz v. Willis*, 744 P.2d 1182, 1190–91 (Ct. App. 1987). A plaintiff need not show
5 that the distress is disabling nor must she show any sort of physical manifestation of the
6 distress. *Id.* By this standard, the Court finds that a genuine issue of material fact exists as
7 to whether Plaintiff suffered severe emotional distress from witnessing the shooting of her
8 husband. For over two years, Plaintiff has suffered from daily severe anxiety, frequent
9 nightmares, difficulty getting out of bed and functioning in daily life, and daily crying
10 spells. While it is true that some of these symptoms are similar to those suffered by the
11 plaintiff in *Midas*, there is a stark difference in the harm suffered in the two cases. *Midas*
12 *Muffler Shop v. Ellison*, 650 P.2d 496, 498 (Ct. App. 1982). In *Midas*, the plaintiff endured
13 a number of harassing phone calls from a debt collector. Here, Plaintiff witnessed the
14 shooting and death of her husband. The Court finds that Plaintiff’s symptoms meet the
15 requisite level of severity required, especially considering the unendurable character of a
16 harm such as the permanent loss of a spouse. It follows that such a loss likely created
17 distress of the requisite proportion. Therefore, the Court finds that it did not commit
18 manifest error in allowing Plaintiff’s claim for intentional infliction of emotional distress
19 to go forward.

20 Accordingly,

21 **IT IS ORDERED** that Defendant’s Motion for Reconsideration (Doc. 93) is
22 **granted in part;**

23 **IT IS FURTHER ORDERED** that the Court’s Order (Doc. 92) is revised to hold
24 that Defendants’ Motion for Summary Judgment (Doc. 76) is granted in part as to Counts
25 3, 5, and 6; and

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