



**OFFICE OF THE DISTRICT ATTORNEY  
TENTH JUDICIAL DISTRICT, COLORADO**

**J.E. CHOSTNER  
District Attorney**

March 22, 2018

Sheriff Kirk Taylor  
909 Court Street  
Pueblo County Sheriff's Office  
Pueblo, CO 81003

Chief Troy Davenport  
Pueblo Police Department  
Pueblo Municipal Center  
200 S. Main Street  
Pueblo, CO 81003

Re: District Attorney CIT Decision Letter  
Officer Involved Shooting on August 21, 2017  
Location: 2906 Applewood Dr., Colorado City, Colorado  
Deceased: Dennis E. Flowers, DOB: 05/06/51  
PCSO Deputies Involved: Charles Roldan and Charles "CT" McWhorter

Dear Sheriff Taylor and Chief Davenport:

This investigation involved an officer involved shooting incident on August 21, 2017, which resulted in the death of Dennis E. Flowers. The Critical Incident Team (CIT) met and selected the Pueblo Police Department be the lead investigative agency. Other participants in the CIT investigation were the Pueblo County Sheriff's Office, the Colorado State Patrol, the Colorado Bureau of Investigations and the Pueblo County Coroner. After the investigation, the CIT prepared and submitted an Executive summary of the Investigation and its supporting investigative reports and materials to the District Attorney for review. Those materials were reviewed and this is the District Attorney's Decision Letter pursuant to CIT protocol.

**Overview of the Incident**

On August 21, 2017 Pueblo County Sheriff's deputies and other law enforcement agencies were actively searing for Dennis Flowers, who had an arrest warrant pending for robbing the ENT Credit Union in Rye on August 16. Throughout the day, deputies searched several locations in the Colorado City and Rye area, including the Applewood Trailer Park in Colorado City.

Just prior to 7 p.m. on the evening of August 21, Deputy Roldan met with Deputy McWhorter in the parking lot of a church close to the Applewood Trailer Park. During their meeting, Deputy Roldan



received a call indicating that Dennis Flowers was at 2906 Applewood Drive, which is about a 30 second drive from the church's parking lot. One of the reporting parties was Tony Holt, the owner of trailer at 2906 Applewood Drive. When the Deputies arrived at the location at 7:10 and 15 seconds p.m., Mr. Holt was still on the phone with the PCSO Communications Center and was standing on the porch, waving the Deputies down. Mr. Holt gave the Deputies permission to enter the trailer to detain Flowers.

Deputy Roldan entered the trailer first, with Deputy McWhorter following. The Deputies found Flowers sitting on a bed next to Mr. Holt's girlfriend, Cheril Cooper, in a bedroom in the trailer. The Deputies yelled for Flowers to "Get down" and "Show me your hands" multiple times.

Flowers got up from the bed and moved across the front of Ms. Cooper towards a window in the bedroom. Simultaneously, Deputy McWhorter stepped down into the bedroom and positioned himself to the left of Deputy Roldan. While Flowers was moving towards the window, he had his back turned towards the deputies and was reaching into his right-hand waist, which was partially covered by his black hooded sweatshirt. When Flowers turned around, he raised a small silver two-barreled derringer-type firearm and pointed it at Deputy McWhorter, who was closest to Flowers. Deputy Roldan shot Flowers twice in the chest. Deputy McWhorter shot Flowers 10 times, until Flowers fell to the ground.

At 7:10 and 30 seconds p.m., Deputy McWhorter reported to PCSO Communications that shots had been fired. Deputy Roldan escorted Ms. Cooper out of the room and secured the scene from outside the trailer while Deputy McWhorter remained in the bedroom and secured the bedroom scene until he was relieved. A PCSO sergeant who had been following Deputy Roldan and Deputy McWhorter arrived on scene shortly after the shooting at 7:10 and 52 seconds p.m. When medical personnel arrived on scene at 7:22 p.m., Deputy Roldan allowed one medic to enter the scene. The medic determined Flowers was already deceased at 7:24 p.m. A Coroner Investigator announced the time of death on August 22, 2017 at 3 a.m.

### **Processing Deputy Roldan and Deputy McWhorter**

After CIT protocols were triggered, two PCSO deputies were assigned as "gatekeepers" for Deputy Roldan and Deputy McWhorter and transported and sequestered them at the PCSO Investigations Annex located at 920 N. Main St. in Pueblo. The gatekeeping protocols were documented in supplemental reports and the Officer Involved Incident Protocol "Supervisor at the Scene" checklist. PPD and PCSO Detectives began processing the deputies' uniforms and firearms at approximately 9:30 p.m. on August 21. Roldan and McWhorter were released at 10:42 p.m.

Deputy Roldan was driving an unmarked undercover vehicle and dressed in a black t-shirt with "OAKLEY" printed on the front, blue jeans, and tennis shoes due to his plain-clothes assignment with the FBI Safe Streets Task Force. He wore a PCSO badge on a neck lanyard over the center of his chest and was armed with his duty weapon. He also had a tactical vest with "FBI" printed across the front, but had taken the vest off prior to the incident involving Flowers.

Deputy McWhorter was driving a fully marked PCSO patrol SUV and was wearing a standard PCSO patrol duty uniform with a PCSO badge on his left breast and the Department patches and markings visible on the uniform. Deputy McWhorter was also wearing a law enforcement duty belt with standard law enforcement equipment and tools visible.

No foreign biological materials were located on or collected from either Deputy. Both deputies were processed for Gun Shot Residue (GSR).

### **Firearms & Projectiles Involved**

12 shell casings were collected from the scene and 10 bullets or bullet fragments were collected from the scene and Flower's body. During the autopsy, Dr. Burson found 13 gunshot wounds and noted that wounds #7 and #8 involved a gunshot that exited Flower's arm and reentered Flower's chest. CBI was able to determine that 8 of the bullets collected were fired from #DSX6995, which is Deputy McWhorter's duty weapon. CBI was able to determine that 1 of the bullets collected was fired from #DSU6261, which is Deputy Roldan's duty weapon. 1 bullet fragment was too damaged for CBI to determine if it was fired from either deputies' weapon.

Deputy Roldan reported during his interview that he had shot Flowers twice, in a "double tap" style, in the chest. Deputy Roldan was armed with his duty weapon, a Smith and Wesson 9mm semiauto pistol #DSU6261, which holds a 17-round magazine and one additional round in the chamber. He also had a spare handgun magazine with a 17-round capacity. After the incident, Deputy Roldan's weapon and magazines were examined. His firearm contained 15 live rounds with one additional live round in the chamber. The firearm was two rounds short of its maximum carrying capacity. His spare magazine was fully loaded with 17 live rounds. CBI later determined that two of the shell casings collected at the scene were fired from Deputy Roldan's duty weapon.

Deputy McWhorter reported during his interview that he does not remember how many rounds he shot at Flowers, but that he counted 10 shell casings on the bedroom floor while he was holding the scene and awaiting additional backup. Deputy Roldan estimated that Deputy McWhorter shot 8-10 rounds during the incident. Deputy McWhorter was armed with his duty weapon, a Smith and Wesson 9mm semiauto pistol #DSX6995, which holds a 17-round magazine and one additional round in the chamber. He also had two spare handgun magazines, each with a 17 round capacity. After the incident, Deputy McWhorter's weapon and magazines were examined. His firearms contained 7 live rounds with one additional live round in the chamber. The firearm was 10 rounds short of its maximum carrying capacity. Both of his spare magazines were fully loaded with 17 live rounds each. CBI later determined that ten of the shell casings collected at the scene were fired from Deputy McWhorter's duty weapon.

A Davis .38mm derringer #D078270 was found at the scene a few feet from Flowers. The derringer, which is silver and has double-barrels, matches the descriptions Deputy Roldan, Deputy McWhorter, and eye-witness Cheril Cooper provided during their interviews. Deputy McWhorter had indicated to the PCSO Scene supervisor that the derringer had fallen by the deceased's head and he used his foot to pull the derringer towards the step of the bedroom and away from the deceased. A Pueblo Police Department ID Detective collected and later examined the derringer and observed that there was a distinctive pin strike impression on the primer of the cartridge in the top barrel, but the primer had not detonated. The firing pin for the top barrel was protruding from the breech face of the gun, while the firing pin for the bottom barrel was not. The Detective also observed a faint dimple in the primer of the cartridge in the bottom barrel, but indicated it was not nearly as apparent as the impression in the top cartridge. CBI determined that the derringer was capable of being fired, causing both the top firing pin to protrude and a firing pin impression. CBI did not examine the rounds that were in the derringer when it was collected at the scene.

### **Autopsy of the Deceased**

A PCSO Sergeant who was first to respond to the scene after the shooting indicated that he observed Flowers on the floor bleeding and still twitching. However, by the time paramedics arrived about ten to fifteen minutes later, it was determined that Flowers had died. The Coroner documented the time of death as 3 a.m. August 22, 2017. Dr. Michael Burson and Pathologist Assistant Karen Jazowski conducted the autopsy on August 23.

Dr. Burson found 13 gunshot wounds and noted that wounds #7 and #8 involved a gunshot that exited Flower's arm and reentered Flower's chest. He determined that the cause of death was multiple gunshot wounds and the manner of death as homicide. Dr. Burson did not indicate a specific gunshot wound as the singular cause of death. He did note that the respiratory system (lungs), neck, chest & back, and head (brain) suffered traumatic injuries:

- Gunshot Wound #1: (head)
  - Entrance: right scalp
  - Trajectory: right to left
- Gunshot Wound #2: (head)
  - Entrance: right scalp
  - Trajectory: right to left
- Gunshot Wound #3: (neck)
  - Entrance: right neck
  - Trajectory: right to left; slightly upward
- Gunshot Wound #4: (back)
  - Entrance: upper right back
  - Exit: left chest
  - Trajectory: back to front; slightly upward
- Gunshot Wound #5: (back)
  - Entrance: upper right back
  - Exit: right chest
  - Trajectory: right back to left front; slightly downward
- Gunshot Wound #6: (chest)
  - Entrance: left chest
  - Trajectory: left to right; downward
- Gunshot Wound #7 & #8: (arm)
  - Entrance: left upper arm
  - Exit, Reentry: left chest
  - Trajectory: left to right; slightly downward
- Gunshot Wounds #9 - #13: wounds to extremities
  - #9 trajectory: back to front; upward
  - #10 trajectory: front to back; downward
  - #11 trajectory: front to back; downward
  - #12 trajectory: graze wound
  - #13 trajectory: front to back; downward

In addition to Flower's clothing, a black holster, three bullets, and one set of bullet fragments were collected into evidence during the autopsy.

### **Crime Scene Processing**

Immediately after the incident, Deputy Roldan removed the two lay witnesses from the bedroom area of the residence while Deputy McWhorter maintained the bedroom scene of the shooting. A PCSO Sergeant, who was approximately 30 seconds behind the Deputies, arrived at 2906 Applewood Drive and directed Deputy Roldan to take the witnesses outside the residence. Deputy McWhorter was then relieved from the bedroom and Deputy Roldan was directed to place crime scene tape across the front of the house. Deputy Roldan immediately began documenting a crime scene log, which was later transcribed onto PCSO Department-issued Crime Scene Log forms. PCSO secured the scene and maintained scene security and a crime scene log with the assistance of CSP. A PCSO supervisor also maintained and documented the Office Involved Incident Protocol "Supervisor at the Scene" checklist.

The PCSO applied for and was granted a search warrant for 2906 Applewood Drive, the location of the incident. The search warrant was executed at approximately 12:15 a.m. on August 22, 2017. Deputy Roldan and Deputy McWhorter's vehicles remained unmoved at the scene until they were processed by PPD and PCSO detectives just prior to the execution of the warrant. After the vehicles were inspected and released, Detectives processed the interior of the residence. A CBI agent also conducted a FARO scan of the interior of the house.

Photographs show that the front windows of the house were open and the curtains were tied back, making the inside of the house visible from the front yard. The hallway leading to the back bedrooms is narrow. The incident took place in the middle bedroom on the north side of the house. The bedroom was two-tiered and separated by one step, with the bed on the lower-level of the room. A box fan was positioned on the step's ledge and appears to block the right third of the step. The fan appeared undisturbed. A door to an attached shed is on the left (west) wall, and a window overseeing the back yard is on the right (east wall.) A door leading to the back yard is also located on the right wall and appeared to still be closed. A tall wooden dresser is angled between the right wall and an alcove wall that separates the lower tier from the upper tier. The numerous medications on top of the dresser appeared undisturbed.

The decedent was located on the floor of the lower tier, lying face down on his left side below the window overlooking the back yard. Both of his arms were spread on the floor and bent towards the upper body at the elbows with the hands under the upper body. The body was located between the bed and a tall chest of wooden drawers and was closer to the step of the bedroom than the door leading to the yard. The decedent's feet were almost touching the wall with the window and his head was angled towards the bedroom step. Blood and tissue spatter was swabbed and documented on the floor and walls of the bedroom. The contents of the deceased's pockets were collected before the body was sealed in a body bag. The body bag was then labelled with a Kinder Tag and removed from the scene.

A small silver 2-shot pistol was located on the floor of the lower level of the bedroom, a few inches from the step that separated the upper level from the lower level of the room. The pistol was processed, opened, and unloaded by a PPD detective at the PPD Evidence Lab on August 23<sup>rd</sup>. 12 empty shell casings were documented and collected from both levels of the bedroom and attached shed. Three bullet fragments were collected from the body and clothing of the deceased. Three bullet impressions on the bedroom wall and window above the decedent were also located and documented.

At approximately 9 a.m. on August 22<sup>nd</sup>, the scene was searched again with the utilization of natural daylight. Detectives used trajectory rods to determine that two projectiles perforated the bedroom wall or window, but they were not able to find the projectiles outside the residence because the projectiles

had ricocheted off a multi-tiered retaining wall separating the yard from a field of natural foliage. One bullet fragment was found outside of the bedroom window with the help of a metal detecting device.

The residents were not allowed to re-enter the residence until after the final walk through was completed by PPD, PCSO, and CSP Captains and Detectives at approximately 11:50 p.m. on August 22<sup>nd</sup>.

Of the evidence collected from the scene, the decedent, and the Deputies, the following was processed by CBI:

- Bullets and fragments collected during autopsy (5 items)
- Bullets, fragments, and projectiles collected from the scene (6 items)
- Shell casings collected from scene (12 items)
- Firearms (3 items)
- Live rounds from firearms (26 items)

### **Interview with Cheryl Cooper**

Immediately after the incident but prior to being sequestered from the other witnesses, Deputy Roldan escorted Cheril Cooper and her boyfriend Tony Holt to their vehicle which was parked outside of their residence at 2906 Applewood Drive. While in her vehicle, she completed a written witness statement. The PCSO Crime Scene Supervisor later explained in a report that it had begun to rain outside and because of limited personnel and facilities at the time, he had to leave both Cheril and Tony in the vehicle to write their witness statements. Cheril and Tony were sequestered in separate vehicles at 7:53 p.m., about 45 minutes after the incident. Cheril was then interviewed by CIT detectives at the PCSO Investigations Annex on the same night. The interview was audio and video recorded.

Cheril immediately stated to her interviewers that “It wasn’t their fault, though—they told me to get down and then he- he- got up and went to the window...”

Cheril refers to Flowers as “Elon” throughout the interview. She explained that “Elon” is his middle name. Cheril stated she met Flowers through Tony and believed that Tony had met Flowers because Flowers was living in the neighborhood with his girlfriend Karen. She later explained that Karen got sick and when Cheril went to see her, she told Flowers that they needed to call an ambulance because she was dying. She stated that Flowers didn’t want to call an ambulance because he didn’t want the cops involved. She then went to Karen’s daughter and told her about Karen. Cheril explained that Karen’s daughter, who owned Karen’s house, kicked Flowers out of the house and believes that he was mad at her and Tony for that. Cheril later stated that Flowers told her that he doesn’t have any other family. She also indicated that at times Flowers appeared homeless and she would cook him food at her house.

Cheril explained that she immediately got bad vibes from Flowers when she first met him and that she didn’t like him. She stated that she told Tony that she didn’t want Flowers in her house. When Flowers visited their house, he would stay so long that Cheril and Tony had to explain that he had to leave because they were going to bed. Cheril stated that she also learned from a neighbor who was with a church that Flowers was a pedophile and a dangerous man. When Cheril found this out, she told Tony to tell Flowers that he couldn’t come back to their house anymore. She stated that Flowers stopped coming to her house after he was kicked out of Karen’s house, but would text them saying it was their fault [that he was homeless]. She stated that Tony told Flowers not to text or come to the house, and that Flowers stopped texting.

Cheril explained that she learned that Flowers was a suspect in a bank robbery through a neighborhood watch Facebook page. She recognized Flowers from a picture posted on the page. She was in contact with law enforcement after she found this out and stated that on one occasion, she told them that Flowers had recently knocked on their window, but they wouldn't let him into the house.

Cheril stated that she and Tony saw Flowers panhandling around 1:10 p.m. on August 21 at a gas station in Colorado City. She believes that Flowers noticed them because he put his head down as they drove by the gas station. She stated that she and Tony notified police about seeing Flowers. Later in the afternoon she spoke to a Sheriff's Deputy and learned that they had been in the area for most of the day looking for Flowers. While she was making dinner, her dogs started barking and she saw Flowers entering her house through the kitchen sliding door. She described Flowers as shaking and demonstrated his hands shaking while smoking a cigarette. Cheril stated that he walked back towards the bedrooms and guesses that he went back there to get away from the front windows, which were open. Cheril confronted him about robbing the bank and Flowers denied it. She told him that the cops are here and was trying to convince him to give himself up "peacefully." She said that they were sitting on a bed in the back bedroom while she was trying to find his photo on Facebook to show him that he was the named suspect in the bank robbery. While she was on the bed with Flowers, Tony went outside to the front with their neighbor Tasha, who had seen Flowers enter their house and came over to check on them. Cheril explained that she knew that Tony was going outside with Tasha to call the police. She explained that Tony was trying to unlock his phone and whispered to Tasha "call the police, call the police, call the police...we gotta get him right now" but did not explain if or how she heard this conversation while she was bedroom with Flowers.

Cheril estimated that Flowers was in her house for about two to five minutes and she was still pleading with Flowers to turn himself in "peacefully" when she saw two officers she thought were FBI agents in the hallway. She believed that both officers were in uniform. She later stated that there was a third officer behind them in the hallway. She believes that an officer, later determined to be Deputy Roldan, entered the room first and the taller officer, later to be determined at Deputy McWhorter, was behind him. She recalled them having their weapons drawn and saying "get down." She later recalled the officers saying Flowers' name and then "get down" repeatedly. She estimated they said "get down" more than three times. She recalled that one of the officers stepped down into the bedroom while Flowers got up from the bed and went across her towards the bedroom window. Cheril later stated that she believed that Flowers did not intend to hurt her, because he stepped across her to get to the other side of the room with the window. Cheril stated that Flowers wouldn't "get down."

She explained and demonstrated that while he was going towards the window, he was lifting his shirt to get to his waistband. Cheril did not know he had a gun until he raised his arm, pointing the gun. She described the gun as a little derringer with double barrels. She stated it "seemed like he wasn't even aiming at the officers" but that it also "seemed like he shot one time, maybe." She also stated that when he raised his arm, he was pointing in the general direction of an officer. She believed that Flowers shot first and only one time. She explained that after Flowers shot one time, the officers started shooting him. She stated that after they started shooting, it seemed like Flowers threw the gun while he was falling. She demonstrated a tossing motion towards the ground and explained that it landed away from Flowers and closer to an officer. She explained that as Flowers was falling down, he slumped over and started bleeding right away. She does not recall how many times the officers shot, but remembers hearing the shells falling on the floor. She then recalled that after Flowers was on the ground, one of the officers looked at her and exclaimed "He had a gun!" Cheril remembers previously seeing Flowers

with a black .45 caliber handgun and a long hunting knife. However, she had never seen the derringer that Flowers had with him the night of the incident.

Cheril also asked CIT detectives if she and Tony were in trouble for letting Flowers into the house and explained that she thought she might have gotten into trouble letting Flowers into her house, but that she knew “they needed to get help.” Cheril later said that the officers “did everything by the book” and clarified that the officers did not come into the room shooting and she believed Flowers shot first.

Cheril also drew a diagram of her house to explain Flowers’ movements in the house. She gave CIT detectives permission to access the contents of her phone and phone records and signed a consent waiver for law enforcement to enter the house and seize and examine her phone. She also gave additional contact information for CIT Detectives to follow-up if they needed any additional information.

### **Interview with Tony Holt**

Immediately after the incident but prior to being sequestered from the other witnesses, Deputy Roldan escorted Tony Holt with his girlfriend Cheril to their vehicle which was parked outside of their residence at 2906 Applewood Drive. While in the vehicle, he completed a written witness statement. During his interview, Tony mentioned that Cheril had told him that she didn’t see Flowers’ weapon before he was shot by the Deputies. The PCSO Crime Scene Supervisor later explained in a report that it had begun to rain outside and because of limited personnel and facilities at the time, he had to leave both Cheril and Tony in the vehicle to write their witness statements. Tony approached Deputy Roldan while he was still on the scene and hugged and thanked him for “saving their lives” because he felt that Flowers would have killed him and Cheril. Tony also told the PCSO Crime Scene Supervisor that the deputies had done their job and explained that the deputies were telling Flowers to show his hands and get down and not to reach for the gun. Tony stated that Flowers had pointed the gun at the deputies and the deputies had no choice. Cheril and Tony were sequestered in separate vehicles at 7:53 p.m., about 45 minutes after the incident. Tony was then interviewed by CIT detectives at the PCSO Investigations Annex on the same night. The interview was audio and video recorded.

Tony confirmed with CIT detectives that he lives with his girlfriend Cheril Cooper at 2906 Applewood Drive in Colorado City. Tony knows Flowers by Flowers’ middle name—Elon. Tony explained that he met Flowers “many months ago” through Flowers’ girlfriend Karen and another neighbor Paul, who both live in the same trailer neighborhood. Because Karen was disabled, Tony would take Flowers to the store and on errands. Tony recalled that he and Cheril visited Karen on one occasion and he observed black, red, and yellow bruising on her arm. He and Cheril urged and pleaded Tony to call an ambulance for Karen, but Flowers was afraid that Karen’s daughter would take Karen and the house away from him. Tony explained that he and Cheril immediately notified Karen’s daughter, who lives nearby, of the situation. Karen’s daughter subsequently kicked Flowers out of her mother’s house, and Flowers didn’t have a place to live. However, Tony also recalled that Flowers had a truck and an RV in Rye that he lived in and also had a place to stay over the summer at a ranch where he helped the owners take care of the property. Tony later stated that he believes the RV and truck had already been confiscated by the Sheriff’s Office during the bank robbery investigation.

Tony explained that a neighbor in the Applewood trailer park found out Flowers was a pedophile, information which they later confirmed with a member of the neighborhood church. Tony stated Flowers never told them that he was a registered sex offender but he and Cheril told Flowers that they did not want him to come around their house. Tony explained Flowers that started cussing at them



stating that he couldn't understand how his good friends could judge him. Furthermore, Flowers kept returning to their house because Tony owed him \$80 but was unable to pay at the time. Tony had assured him that he would give Flowers the money as soon as he could. Tony also explained that Flowers would come to their house and knock on their back windows in a distinct pattern, but they wouldn't answer. It had been about three weeks since he and Cheril had heard from Flowers. Since they found out about Flowers' criminal history, Tony had become uneasy about him and uncomfortable being around him. He also recalls that his girlfriend Cheril had told him that she had seen Flowers during a prior incident with a .45 caliber handgun.

On the day of the incident, Tony has been in contact with a law enforcement officer, later determined to be Deputy Roldan, throughout the day because he knew that Flowers was wanted for a bank robbery. Tony was giving the officer updates of neighborhood sightings of Flowers throughout the area. Tony referred to a Facebook group with information about Flowers' location. Furthermore, Tony had seen Flowers himself earlier in the afternoon on the same day panhandling at a gas station in Colorado City. He reported this citing to the law enforcement officer as well.

Tony estimated at around 7 or 7:30 that evening, Flowers walked into their house through the kitchen door. Tony stated he noticed that Flowers had something heavy in his right pocket and guessed it was a weapon. Tony got scared and Cheril appeared to be nervous. They immediately told Flowers that the "police are all over here" going "trailer to trailer" and Cheril began trying to talk Flowers into turning himself in. During this conversation, Flowers was walking towards the back bedroom and ended up sitting on the bed. He recalled Flowers repeatedly denying his involvement in the bank robbery. Tony tried to explain to Flowers that he had been positively identified with a picture and that the best thing to do is to turn himself in. Tony later clarified that he wasn't sure why Flowers came to the house and that Flowers didn't tell them why he was there. He recalled that Flowers seemed to act nervous, quiet, timid, and worn out, which not how Flowers usually behaved. Tony did not think Flowers appeared to be on any substances the night of the incident.

Tony stated that when they got to the back bedroom, Flowers told Tony to go out to the front and make sure there wasn't any police around. Tony explained he took this opportunity to leave Cheril behind with Flowers, and believed that Flowers wouldn't do anything to hurt Cheril because he was "fixated" on her since he had met her a few months ago. On his way to the front of the house, Tony took his cell phone from the kitchen table and was trying to unlock it to call the Sheriff's department. Tony didn't know if Flowers was there to kill or shoot him over the \$80 that he still owed him, but he had a bad feeling about the situation. Tony stated that as soon as he opened the front door, he ran into his neighbor Tasha, who had seen Flowers walk to the back of Tony's house. Tony was dialing on his phone and told Tasha to also call the Sheriff's Office; she ran to her house to place the call. Tony estimated Flowers was only at the house for about two minutes before he left him and Cheril in the bedroom.

As Tony walked onto his front porch and was still on the phone with dispatch, he saw and unmarked police vehicle followed by a marked Sheriff's vehicle down the road and waived them down. Tony recognized Deputy Roldan as the officer he had been talking to earlier in the day and told him that Flowers was in the house, explaining how to get to the back bedroom. Tony clarified that he gave the deputies permission to enter the house. Tony explained that they asked him if Flowers had a weapon, and Tony told them "no" because he was "100% sure" if Flowers was armed. Tony followed the deputies into the house and stated as soon as they entered, they retrieved their weapons.

Tony recalls that as soon as they entered the bedroom, they yelled "on the floor!" and "get down" at least six or seven times. He said that they said "get down" very loudly and many times. When asked, Tony stated that they identified themselves as "police officers" as they walked into the room. He could not recall if the officers said anything else before he heard the gunshots. He estimated that it was only about 15 to 30 seconds after they had entered the bedroom before he heard the gunshots, and estimated that he heard five or six shots. After the shooting stopped, Tony peaked into the bedroom and saw Flowers face down by the bedroom window and a silver object on the floor. Tony guessed that this was the suspected weapon that was weighing down Flower's pocket when he first entered the kitchen. The silver object was far enough away from Flowers that it appeared that Flowers had thrown it. However, when asked for further details, Tony stated that the gun was still close enough to Flowers' hands and demonstrated that it could be within Flowers' reach. Tony clarified that he was not in the bedroom when the shooting took place, and that both officers were in the room. Tony vaguely recalled that when he peaked into the room, he caught a glimpse of both officers to the left side of the room.

Tony said that he felt that he was blessed that the officers were so close by and that they worked as a team as they went into the house. He said that based on his army training, it appeared that did "what they were supposed to do" and "didn't do anything wrong," it was only Flowers who did something wrong because he did not comply and get down. Tony guesses that Flowers didn't want to go back to jail and had a death wish. Tony believes "from the bottom of my heart" that the officers walked into the bedroom with the intent to capture Flowers, and not to kill him. Tony reiterated that he was thankful to Deputy Roldan and how they handled the situation. He said that they "did what they had to do" and he felt sorry for what they and their families were going to have to go through because of incident.

Tony mentioned during his interview that he has a German Shephard dog in the house. He also suggested to the CIT Detectives that they should talk to his neighbor Tasha about what she saw as Flowers walked up to his house. Lastly, he signed a consent waiver for detectives to seize and access his cell phone and gave his contact information to the Detectives if they had any follow-up questions.

### **Interview with Deputy Roldan**

While on scene at 2906 Applewood, Deputy Roldan stated to a PCSO Sergeant that Flowers had shot at Deputy McWhorter and he did not know how many times he had shot at Flowers. Roldan appeared shaken and stated he needed some time to collect his thoughts, and he was not asked any further questions until he was interviewed by CIT Detectives. He was interviewed on August 25 at the Pueblo Police Department, located at 200 S. Main Street. The interview was audio and video recorded. Deputy Roldan did not opt to have an attorney present when he was interviewed by CIT detectives. He was advised orally pursuant to *Garrity*.

Roldan explained that while he works for the Pueblo County Sheriff's Office, he is assigned to the FBI Safe Streets Task Force. As a part of the task force, he wears plain clothes, carries a duty weapon on his hip, and has his badge and tactical vests identifying him as law enforcement.

Roldan confirmed that he was in the Colorado City and Rye area on August 21<sup>st</sup> because he was trying to locate a suspect in a bank robbery, Dennis Flowers. He recalled that at approximately 1pm that afternoon, he received a phone call from an FBI Agent who had received a tip from a local resident stating that Flowers was seen near the water treatment plant. Roldan went to the water treatment plant and contacted the reporting party who saw Flowers. The reporting party stated that he gave Flowers a ride to a location on Lunar Drive. Roldan recognized the address on Lunar Drive as Flowers'

ex-girlfriend's house. The reporting party stated that after he went to the house on Lunar Drive, Flowers asked for a ride to Indian Falls. Roldan also recognized the Indian Falls address as a location Flowers had been visiting in the days prior. He provided this information to the Sheriff's Office, but deputies were not able to locate Flowers at the Indian Falls address. Subsequently, Roldan and other deputies contacted residents in the neighborhood and continued their search for Flowers.

Later in the afternoon, Roldan stated he received a phone call from Tony Holt, who provided Facebook information about a possible siting at the gas station. When Roldan tried to remember what time he received the information about the Facebook post, he stated that it was possible that he didn't speak to Tony directly and that he had gotten the information through the Communications Center. He explained that he had spoken to several people in the area about Flowers and had given them his card with his number. He might have spoken to Tony over the phone previously, but could not specifically remember. Roldan stated that it was his understanding that Tony knew Flowers from previous occasions and Flowers had been to Tony's residence a few times.

Roldan stated he went to Rye and attempted to contact the party who had posted about the siting on Facebook, but he was unsuccessful. At that point, it was getting dark and starting to rain, so Roldan decided to drive by the Applewood neighborhood one more time before he returned to Pueblo. He pulled into the Church and saw Deputy McWhorter's vehicle, so he parked in the parking lot, took off his FBI tactical vest, and waited for McWhorter. Roldan clarified that McWhorter was fully uniformed and in a marked patrol unit, while he was in an unmarked vehicle wearing a black T-Shirt and jeans. Roldan stated that he was wearing his badge around his neck and it was hanging in front of his chest. As Roldan was telling McWhorter that he planned on surveying the Applewood neighborhood one more time before returning to Pueblo, the Communications Center aired over the radio that a party had called in stating that Flowers was at 2906 Applewood and that he was "in the house right now... Come get him."

Roldan and McWhorter raced to the address on Applewood, which was less than 30 seconds away. When Roldan arrived at 2906 Applewood, he saw a man, later determined to be Tony Holt, waving him down. Roldan and McWhorter exited their vehicles and Tony, while still on the phone, said to Roldan and McWhorter "He's in there right now. Go in and get him." Roldan stated that Tony gave them permission to enter the house. Roldan stated that he didn't enter the house with his weapon drawn, and even though it was getting dark out he didn't need or use a flashlight yet. Roldan explained that he opened the front door to the house and didn't see anyone in the living room or the hallway. While walking towards the bedroom, a dog exited and started Roldan so he reached for his weapon but did not draw it because he did not have reason to believe that Flowers was armed. He then peaked around the corner into the bedroom and saw Flowers sitting on the bed with his hands resting on his lap. A female was sitting on the bed to Flowers' left and Roldan could hear her telling Flowers that he needed to turn himself in. He recognized Flowers as the fugitive he had been looking for. Roldan explained that he didn't anticipate any trouble and had figured that Flowers would just give up.

Roldan stated that he walked into the bedroom and announced "Sheriff's Office." He then demonstrated and explained that Flowers looked at them entering the bedroom and stood up. Simultaneously, McWhorter, who was behind Roldan, stepped to Roldan's left and into the lower level of the bedroom. Flowers then turned in a hunched position and ran across Cheril, who was still sitting on the bed. Roldan stated that as Flowers was turning, he focused on Flowers' hands, which were lifting up his hoodie to gain access to his waistband. Roldan said he couldn't see what Flowers was doing with his hands or what he was reaching for, so he drew his weapon and started saying "let me see your hands." Roldan then recalled Flowers turning around and raising his arm and hand towards McWhorter.

Roldan said he could see Flowers raising a chrome over-and-under derringer towards McWhorter. When he saw the gun, Roldan shot Flowers in a "double tap" to the chest. Roldan explained that when he shot Flowers in the chest, he saw him cringe and start to go down. Roldan clarified that he shot Flowers first and then saw McWhorter in his peripheral vision backing up and shooting at Flowers. Roldan demonstrated and explained that as McWhorter was shooting, his aim was following Flowers as he fell to the ground. Roldan recalled that McWhorter's last shot was as Flowers' head hit the ground, and McWhorter ended up shooting him in the top of the head. Roldan estimated that McWhorter shot eight to ten times.

Roldan stated that Flowers' gun seemed to slide out of his hand and across the floor, hitting the step that divided the top tier of the bedroom from the bottom. Roldan also recalled seeing a black nylon holster in Flowers' waistband.

Roldan stated that McWhorter immediately reported to Communications that shots had been fired and Roldan told him to hold the crime scene while he escorted Cheril out of the bedroom. As Roldan escorted Cheril out of the bedroom, he saw Tony in the living room and they all went outside so Cheril could smoke a cigarette. Roldan stated that as they went outside, he requested ACOVA and a medical team and then he went to his vehicle to retrieve his tactical vest. He explained that he had taken his vest off at the Church parking lot and didn't realize he was not wearing it when he entered the house. He then continued to stay with Cheril and Tony, waiting for additional units to arrive. Roldan stated that Cheril and Tony hugged him and thanked him for saving their lives. He stated that they said that they thought Flowers was there to kill them and take their vehicle and belongings.

While waiting for additional units to arrive, Roldan asked Cheril what happened. He stated that Cheril said that she was trying to convince Flowers to turn himself in, but Flowers insisted that he didn't rob the bank and was misidentified as the suspect. Cheril then told Roldan that she was trying to pull up a picture of Flowers on her phone. Roldan recalled that a PCSO Sergeant was the first to arrive on the scene and he asked him "What happened?" Roldan could not recall what he said to the Sergeant. The Sgt. then went into the house to check on McWhorter, who was still holding the bedroom scene.

At that point, Roldan used yellow crime scene tape to tape off the yard of the residence and then began a crime scene log on a notepad. While Sgt. Keen was talking to McWhorter, medical personnel arrived. Roldan explained that based on his training and experience, it was evident that Flowers had already died he knew it was important not to disturb the crime scene with multiple people, so he allowed only one paramedic to enter the house. He clarified that he told the paramedic that she could still do what she needed to do to determine if Flowers was still alive and in need of medical attention, but she was able to conclude that Flowers was deceased based on her observations. When they returned outside, Roldan recalled an FBI agent had arrived and he handed over the crime scene log.

Roldan explained that he believed that Flowers made a specific choice, and he and McWhorter used their training to respond to the situation accordingly. He said he didn't understand why Flowers didn't just go out the door that led to the yard. Roldan stated that when he saw the barrel of the gun, he had no doubt in his mind that it was a firearm and that it was aimed at McWhorter. He did not believe that Flowers actually shot at them. He explained that he fired his weapon at Flowers because he believed that Flowers was going to shoot and kill McWhorter; he had no doubt in his mind that Flowers was going to shoot at McWhorter. Roldan said that he made the decision in "split seconds" and that even though he knew that the incident took place quickly, his memory replays the incident in slow motion. Roldan later explained that the "double tap" shots to the chest was based on his training to shoot two rounds into

the chest and one to the head. However, he did not shoot the third round because "the threat had already been taken care of" and Flowers had already begun to fall to the ground. Roldan then clarified that Flowers was still holding the gun and it was still aimed at McWhorter as he was falling to the ground. Roldan first estimated that he was about 15 feet away from Flowers, but then stated that "he was pretty close" when he was asked to mark everyone's positions and movements on a photograph of the bedroom.

### **Interview with Deputy McWhorter**

While on scene at 2906 Applewood, Deputy McWhorter told a PCSO Sergeant that he and Deputy Roldan were at a church near the Applewood neighborhood when a call came in that Flowers was at 2906 Applewood. He explained that when they arrived at the address, Tony waived them down and gave them permission to enter the house. McWhorter then stated that they entered the house and announced their presence as they made their way to the back rooms. He stated that he went down the hallway with Deputy Roldan following behind him, and they entered the bedroom. McWhorter then explained that Flowers got up from the bed and moved to McWhorter's right towards a dresser. He explained that as Flowers was moving towards the dresser he was reaching to his side and they told him to show his hands and to get down. McWhorter said that Flowers drew a pistol from his right hip but didn't think Flowers shot it and that was "a good thing" because "the pistol was pointed right at me." McWhorter could not recall how many times he shot at Flowers. McWhorter also indicated to the Sergeant that he had kicked the pistol away from Flowers when it fell on the floor because Flowers was still moving.

Deputy McWhorter was interviewed by CIT Detectives at the Pueblo Police Department at 200 S. Main on August 25, 2017. He was interviewed in the presence of his attorney, Randall Jorgenson, and orally advised pursuant to *Garrity*. The interview was audio and video recorded.

Deputy McWhorter reported to his patrol shift at approximately 1:45 p.m. on August 21, 2017 and received information from his patrol sergeant that Flowers was possibly in a house on Indian Falls in Colorado City. McWhorter also learned that Flowers was a suspect in the bank robbery in Rye and had other cases relating to elder abuse and a possible stolen firearm. McWhorter was unsure he had heard if a felony warrant was active for Flowers, but stated "we assumed" there was a warrant coming through. He was aware that deputies had been looking for Flowers in the Colorado City area the entire day. McWhorter was familiar with Flowers because he had arrested him on a prior occasion and was also provided photos from PCSO. He responded to the house on Indian Falls to help deputies search for Flowers, but they were not able to find him at that house. McWhorter remained in the Colorado City area to assist day shift deputies, Deputy Roldan, and an FBI agent with the general search. McWhorter also had to respond to other unrelated calls for service throughout the day. McWhorter explained that he was in full uniform and driving his marked SUV patrol unit.

At approximately 7 p.m., McWhorter drove to the church near the Applewood neighborhood and spoke to Deputy Roldan. While they were speaking, Roldan received a phone call from the Communications Center that Flowers was in a house in the Applewood neighborhood and the reporting party was calling for deputies to take Flowers in. Comm also notified the deputies that Flowers was in the house with the reporting party's wife. McWhorter explained that they took off towards the house, which was less than a minute away. Deputy McWhorter later stated that he was unsure who was on the phone with Roldan but he could hear parts of the conversation because the phone call was connected to Roldan's car speakers.

When they pulled up, McWhorter saw a man, later determined to be Tony Holt, in the front waving them down. Tony was still on the phone and told the deputies to go into the house. Tony told the deputies that Flowers was in the bedroom and gave them permission to go in. McWhorter recalled that Roldan open the door and McWhorter followed him into the house and down the hallway. He recalled hearing parties talking in a back room. He explained that it was still light enough outside that he could see when they entered the house without using their flashlights. Additionally, there was a light on in the bedroom.

McWhorter recalled that when they got to the back bedrooms they both had their guns drawn and he heard Roldan yelling something into a bedroom. He could not hear what Roldan was saying. McWhorter then entered the bedroom, pushed past Roldan who had stopped near the threshold of the room, and began yelling at Flowers to show his hands. Roldan remained on the higher level of the bedroom and was further away from Flowers than McWhorter. He recalled that after the shooting stopped, Roldan was still on the higher level near the bedroom door.

McWhorter believes that he announced "Sheriff's Office," which is typically what he says when encountering suspects in a room. He recalled that Flowers was initially sitting on the bed and that when he saw the deputies, he hesitated before jumping up and moving across the woman sitting on the bed towards the window on the right bedroom wall. McWhorter later stated that Flowers got up "right away" after seeing them enter the bedroom but then "paused for a second" before moving across the lady towards the right wall. He recalled that there was a door and a window on the right wall, and then a dresser. He clarified that Flowers was moving towards the dresser and not the door. He stated that Flowers did not comply with any of their commands and he was concerned that Flowers could get behind the dresser for cover and to shoot at them. McWhorter explained that as Flowers was moving towards the dresser, McWhorter stepped down and to the left in the lower level and moved towards the female, still yelling for him to show his hands. McWhorter also explained that he was still moving to the left of the room when he began shooting at Flowers. He said that he started shooting while he was still closer to the step that separated the tiers.

He estimated that he was about 3.5 feet away from Flowers when he saw Flowers reaching towards his hip and saw something silver in his hand. McWhorter thought it was a gun when Flowers' hands were still near his hip and explained that he had been trained that when a person raises an arm or hand in a certain way, that person is wielding a weapon. He eventually saw both barrels of the gun when Flowers raised his arm and hand up higher. He described the gun as a silver derringer with stacked barrels. McWhorter stated that he started shooting when he saw the barrels of the gun in Flowers' hand. He stated that Flowers was aiming the gun at him and he was "looking down both barrels." He described that the gun was aimed first at his feet and then his legs as Flowers was raising the gun towards McWhorter's body. He explained that he stopped shooting at Flowers when he was "down and no longer a threat" because "absolutely—the way he had it aimed at me, there was no doubt he wanted to kill me." McWhorter stated that he was in fear for his life. McWhorter does not believe that Flowers was able to shoot the derringer because he didn't remember seeing a flash or feeling a blast in the air around him.

McWhorter didn't recall how many times he shot at Flowers, but while he was holding the scene, he counted ten casings. He also stated that he never heard Deputy Roldan shoot his weapon. McWhorter stated that when the incident occurred, he could hear the "pops" of the rounds being shot, but it sounded muffled and he did not have ringing in his ears afterwards. He confirmed that he was not

equipped with a body worn camera or audio recorder. He was also able to demonstrate his and Flowers' movements on a photograph of the bedroom and agreed that the room was relatively small.

### Legal Guidelines

A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person. Furthermore, he may use a degree of force which he reasonably believes to be necessary for that purpose. §18-1-704(1), C.R.S.

A person is justified in using deadly physical force upon another person in order to defend himself or a third person if he reasonably believes a lesser degree of force is inadequate and he has reasonable grounds to believe, and does so believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. §18-1-704(2)(a), C.R.S.

In evaluating whether a person is justified by self-defense, the person is entitled to act on appearances. People v. La Voie, 395 P.2d 1001 (Colo. 1964). The United States Supreme Court evaluated whether officers used excessive force under the Fourth and Fourteenth Amendments by approaching the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Plumhoff v. Rickard, 134 S. Ct. 2012 (2014). Further, the Court took into account that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation—in circumstances that are tense, uncertain, and rapidly evolving.

### Conclusion

It is my conclusion based on the circumstances that Deputy Roldan and Deputy McWhorter were justified by the Self-Defense and Defense of Others provisions of the laws of the State of Colorado in using the actions they employed to defend themselves and each other from what they reasonably believed to be the imminent use of unlawful physical and deadly force by Dennis E. Flowers, and they reasonably believed that a lesser degree of force would be inadequate. They had reasonable grounds to believe, and did so believe, that Deputy McWhorter was in imminent danger of being killed or receiving great bodily injury. Given the facts and circumstances of the situation and the governing law, criminal charges against the officers would not be appropriate, and therefore no criminal charges will be filed.

Dated this 28<sup>th</sup> day of MARCH 2018



J.E. Chostner  
District Attorney