



**OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO
J.E. CHOSTNER
District Attorney**

August 14, 2017

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

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

RE: District Attorney CIT Decision Letter
Officer involved shooting on February 5, 2017
Deceased: Andrew John Byrd (03/21/81)
Location: Small and Acero, Pueblo, Colorado
Police Officers involved: Todd Whittemore, Neal Robinson, Bernadette Lambert

Dear Acting Chief Davenport and Sheriff Taylor:

This investigation involved a shooting incident on February 5, 2017 which resulted in the death of Andrew John Byrd. The Critical Incident Team (CIT) met and selected the Pueblo County Sheriff's Office to be the lead investigative agency. Other participants in the CIT investigation included the Pueblo Police Department and the Colorado Bureau of Investigation. After the investigation was completed, the CIT prepared and submitted an Executive Summary of the Investigation, together with the investigative reports and materials, to the District Attorney for review. This is the District Attorney's Decision Letter based on those materials and the CIT protocol.

OVERVIEW OF THE INCIDENT

On 02/04/17 at approximately 10:33 p.m., Pueblo Police Officers Todd Whittemore and Bernadette Lambert were sent to Acero and Small (844 Acero) in reference to a possible stolen vehicle that was parked in front of 844 Acero. Officer's contacted Breanne Griego who told officers her gray 2005 Lexus Sedan, Colorado license plate 667SBT was parked in front of 844 Acero and a male named Lou Arbour had her car key. Griego explained she had wrecked her car and a friend, Emily Luna, took it to someone to fix it and the car was never returned. Griego later

learned Lou Trujillo-Arbour was the one who had her car. Officers discovered Arbour had warrants for his arrest and was a known Sureno gang member. Griego reported Arbour had a gun in his waistband when she spoke with him. Officers determined Griego's report of the auto theft was a civil matter but stayed with her while she attempted to recover her car.

At approximately 12:20 a.m. on 02/05/17, Ms. Griego called the Pueblo Police Department reporting Arbour was back at the house in a gray Toyota Camry with a Florida license plate, HHZ-U94. Griego said she saw Arbour along with another male party in the Camry. Dispatch aired, "the reporting party said the car drove by again and the male parties had guns in their laps".

When Officer Whittemore arrived, in his fully marked patrol SUV, he drove by the Camry, which was parked facing westbound on Small Avenue behind a semi-trailer. The Camry was parked in the street on the south side of 844 Small Avenue. Officer Whittemore drove by the vehicle traveling east putting the driver's side of his patrol vehicle facing the driver's side of the Camry and used his spot light to look in the car. Whittemore was not able to see anyone in the car. Officer Whittemore made a U-turn and pulled behind the Camry. The Camry's brake lights came on and Officer Whittemore initiated his overhead emergency lights. After Officer Whittemore activated the emergency lights, the driver of the Camry, later identified as Andrew Byrd (03/21/81), backed up striking Officer Whittemore's patrol vehicle. At this time, Officer Robinson was approaching eastbound on Small towards Officer Whittemore. Byrd accelerated rapidly forward while turning to the left, which is toward the westbound lane of traffic to get out from behind the semi-trailer as Officer Robinson pulled up next to the semi-trailer. Then Byrd turned right, after the front of the Camry passed the trailer, crashing the right side of the Camry against the semi-trailer causing the front end of the Camry to go underneath the trailer. Officer Robinson positioned his fully marked police SUV near the front and alongside of the Camry as it sat underneath the semi-trailer. Officer Whittemore exited his car and attempted to conduct a felony stop at gun point on the Camry; Officer Robinson exited his patrol car from his driver's side door, which is near the front of the Camry, and ordered Byrd at gun point to turn off the car. Byrd put his hands up and then reached down to the console shifter and turned around to look back at Officer Whittemore. Then Byrd pulled back disregarding commands and violently took off in reverse slamming into the front of Officer Whittemore's SUV knocking Officer Whittemore backwards. Byrd then turned in the direction of Officer Robinson and accelerated as Officer Robinson stepped back and closed the driver's door to his SUV as the back of his body is against his patrol car. Officer Robinson took aim as Byrd drove towards him and was tracking the driver of the car as it drove toward him. As Byrd drove by Officer Robinson, Officer Robinson fired one shot into the driver's side window. Officer Robinson was on the north side of his patrol car between his patrol car and the tractor trailer. Officer Bernadette Lambert ran westbound on the south side of Officer Robinson's car towards the Camry. Officer Lambert fires one shot at the Camry as the Camry crashed into the wall that surrounds the Fairgrounds. The Camry sat stationary with the brake lights on as Robinson approached on foot. As Robinson's weapon mounted light lit the car up, the brake lights go off, the car accelerated forward striking a light pole and the brake lights flash again. The Camry's front tires continue to spin. Officers approach the car and eventually turned off the ignition after breaking the passenger's side window. The male was pronounced deceased after medical checked him.

INTERVIEW WITH POLICE

Officer Todd Whittemore

On 02/05/17, Officer Todd Whittemore was interviewed by CIT investigators. Officer Whittemore stated the following:

Around 10:30 p.m., Officer Whittemore was dispatched to Small and Acero on what originally as dispatched as a recovered stolen auto. When Officer Whittemore got there he made contact with the reporting party (RP) Ms. Griego. She had told dispatch that these parties who were the suspects in this case had come out of this residence at 844 Acero or Small right there on the corner of Acero and Small and they had mentioned seeing guns, but the car had left. "It circled around the block, um, the car they were in fact speaking about wasn't an actually stolen vehicle it turned out to be a civil issue." Officers had handled that call and Officer Whittemore remember a little bit later, that it was the same RP, dispatch told us had called back saying the vehicle associated with that or one of the suspects was back at that house. She described the car as being, although Officer Whittemore could not be 100 percent certain, a Toyota Camry possibly or something like that with Florida license plates. Officer Whittemore wasn't initially dispatched to that call but was near the area and heard it go out and since he handled the initial incident so he was heading back that way to assist Officer Lambert and Officer Robinson. As Officer Whittemore started coming into the area on Small facing westbound there's a big semi-trailer like a gas tanker. Officer Whittemore had observed, Officer Lambert was driving northbound down Acero so Officer Whittemore continued going eastbound on Small. While Officer Whittemore was going eastbound on Small, he observed a car parked there, the car that had originally been dispatched as the vehicle involved in the incident by the RP. She described it as having Florida plates. Officer Whittemore immediately recognized the Florida plates. As Officer Whittemore was driving by, the vehicle looked to be unoccupied. Officer Whittemore didn't know if the seat was all the way down or what had happened but it initially looked unoccupied so he flipped his patrol vehicle around to get behind the vehicle and as he was doing this coming up on the vehicle, that's when he noticed the brake lights were coming on. Officer Whittemore activated his overhead lights and Officer Robinson at that time was driving eastbound on Small. At that time the vehicle started to back up towards Officer Whittemore's patrol vehicle. "Officer Robinson was right here, positioned his vehicle kind of in front of that vehicle. I don't know what happened, but the driver took off and wrecked into that tanker right there." When the vehicle pulled forward, Officer Whittemore pulled his vehicle forward behind the Toyota Camry kind of angled to the side and Officer Whittemore got out of his car, drew his gun and was giving the driver commands. "At that time, it just happened so fast, he was kind of - the tanker was here parked facing westbound. His car was in it right like somewhat underneath the tanker, and my car was positioned towards the side. He, uh, just reversed it and slammed into my car. Like I said I had my driver door open and was in the wedge between the door and the actual frame of the car with his gun drawn and seen him gas it towards me and I don't remember if I started to like jump back into my vehicle because I was in fear for my life knowing that he was going to hit me and possibly get drug by the car door or even get hit by him. So I remember kind of leaning back into the car a little bit and feeling him hit the car and the door come into me and at that time, he just gunned it forward and I knew Officer Robinson was somewhere like in that vicinity, because his car was there. I was basically positioned facing westbound and Neal's

car was facing eastbound. So I know Neal was out of his car in front of me and he took off in that direction.”

Officer Whittemore was asked about when they were dispatched to the first call, which car they were looking for. Officer Whittemore stated, “I can’t be completely certain right now but they said that - I want to say it was maybe like a grey car or something like that and this suspect had gone out into the car they had circled around and they had mentioned a passenger in the vehicle having a gun in his lap.” Officers did not make contact with the suspect vehicle during the first call.

Officer Whittemore was asked what the nature of the second call was. Officer Whittemore stated, “I believe it was that the suspect vehicle was back in the area. So one of the suspects mentioned in the initial call was, uh, Lou Arbour and he was cleared in the call and was found to have, a - a felony warrant for I believe it was aggravated motor vehicle theft.” Officer Whittemore was asked who gave them Arbour’s name and he said Brianne Griego, Jose Segura and Breanne Gallegos were talked with on the first call and this is who had given them Arbour’s name.

Officer Whittemore was asked if he saw what happened next after the vehicle backed into his patrol car. Officer Whittemore said, “It backed into me and then turned towards, uh, Neal’s direction, like that general area where Neal was and started taking off that way.” Officer Whittemore was asked if he saw Officer Robinson shoot and he stated, “I heard Neal shoot, yeah, it was happening so fast, I don’t know exactly where Neal was I just knew he was in front of me.” He said he also heard a second shot.

Officer Whittemore was asked if he felt pain when the vehicle struck his car and he replied, “you know, my adrenaline was going so fast at that point. I didn’t feel - I felt the door hit me, you know, I perceived a - the deadly threat - that’s why I started like I want to say going back towards my vehicle because first thing that entered my mind is he is going to hit my vehicle and I am going to get drug under the door and ran over by him.”

Officer Whittemore was asked who reportedly had the weapon on the first call. Officer Whittemore stated, “they described it as being the passenger in that car.”

Officer Whittemore was asked if he has ever had any contact with Lou Arbour and he said he has not.

On 02/09/17, Officer Whittemore requested to speak with CIT investigators again stating he had recalled additional information and wanted to make sure he had stated these facts.

Officers on scene had cleared Lou Arbour, and Officer Whitmore was informed he had felony warrants. The reporting parties him as leaving that residence, getting in a car. They indicated he was the passenger in the car and they had told Officer Whittemore that in this car, Officer Whittemore could not remember if they said it was a gray car or whatever, but they said the passenger had a gun on their lap, and in Officer Whittemore’s investigation with them he asked did they say they had a gun? Did you actually see a gun? And there were two other male

parties there with them who said they seen the gun in his lap. This would be the passenger in that car.

As Officer Whittemore was coming eastbound on Small, the reporting party had provided the Florida license plate and that's the thing. Officer Whittemore saw the car was sitting behind that semi gas tanker trailer and Officer Whittemore recognized the Florida plates. As Officer Whittemore was driving by, he was spotlighting it but couldn't see anybody initially inside the car. So Officer Whittemore backed up a little bit to see and then pulled around to go out with the car. Officer Whittemore believes he aired it to Bernadette over the radio. Officer Whittemore even said it was unoccupied because it didn't look occupied at the time. But when Officer Whittemore started to turn around and get up on the car that's when he noticed the brake lights to the car come on. Officer Whittemore believes it was at that time he turned on my overhead lights. When Officer Whittemore turned on his overhead lights he began to back up so Officer Whittemore pulled forward a little bit further to prevent him from doing so. Officer Whittemore had his vehicle off camber like he was taught. Officer Whittemore indicated he was not sure if he hit him or not. Officer Whittemore could not say with a certainty if the Camry hit him there or not, but that's when Camry kinda gunned it forward. At that time Officer Whittemore remembered Officer Robinson coming forward and placing his vehicle right there. The Camry guns it forward and that's when he clips that trailer and goes under. Officer Whittemore pulled forward and got out of the car and at gunpoint tells the driver of the Camry to turn the car off. Officer Whittemore indicated he wasn't giving him verbal commands, but was yelling, turn the car off. Officer Whittemore indicated the first thing that went through his head is, the only cover he had was in his vehicle. Officer Whittemore stated he didn't have enough room to run out of the way. He indicated he knew he had to get back in his vehicle, he feared the door was going to come over him and he'd end up under the car, if he continued coming back, Officer Whittemore he would end up under his car. So his initial thought was get inside this vehicle. Officer Whittemore felt scared, and that's when the Camry hit him, he don't wanna say he got all the way in his vehicle. Officer Whittemore remembered the door coming back or something hitting him because it pushed his car into him. That's when he knew Neal Robinson was in front of him. Officer Whittemore then remembered the car taking off that direction. He indicated he takes off through that gap between those two cars where Neal had positioned his vehicle.

Officer Whittemore was asked if he ever at any time, felt like he was going to fire his weapon to stop this car. Officer Whittemore stated, "you know, that's, like, an instinct I had after is, maybe I should've shot when he was coming back towards me, but I - I - I guess at the time to - to avoid what I believed I was gonna get ran over was to get inside the car. Cause my door was open. I was standing outside my door basically giving - you know how there's the - y-y- your door opens you'll have the - the door frame and that little V where you give commands during, like, a felony stop. That's where I was and that's what - when I - he was coming back and I envisioned basically him hitting me and that door was gonna come into me and either throw me back down, make me lose my balance and have a car come over me or his car continue to come back towards me."

Interview with Police Officer Bernadette Lambert

On 02/10/2017, at approximately 9:10 a.m., CIT investigators interviewed Bernadette Lambert about her involvement in this incident.

Bernadette was asked to give a summary of what happened on Sunday morning February 5th and she stated the following:

We were sent to this same address earlier. The earlier call concerned a recovered stolen motor vehicle. The reporting person, Breanne Griego-Segura, reported she found her black Lexus parked in the area of Acero Avenue and Small Avenue. Officer Todd Whittemore and I were both sent to this call. As we responded, the call was changed to a man with a weapon call. Griego-Segura reported, while she was at this location attempting to recover her stolen vehicle a person she knows as Lou Arbour arrived. Griego-Segura stated this was the person who had stolen her vehicle. Griego-Segura reported Arbour confronted her as she was attempting to recover her vehicle. Griego-Segura stated she seen a handgun in Arbour's waist band area and then when Arbour talked to her again he had the handgun in his lap. The initial call was a civil matter because Griego-Segura had loaned the vehicle to another female who wrecked the car and then Arbour was hired to fix the car.

I was familiar with Lou Arbour from working in "Quad 1" for a while and Arbour was involved in the murder of Carlos Leveigh on Club Manor. I know Arbour is a bad guy who is wanted and is usually armed when we contact him. Arbour is the person who "chipped" (PPD Officer) Capito's tooth when Arbour was stopped and then tried to elude officers. (PPD Case #16023955 11/15/16)

Griego-Segura told me Arbour had asked her while he was there, "Why they were in front of his brother's house?" I didn't realize Arbour had any brothers. Todd and Officer Bellamy made contact at the residence (844 Acero). The occupants of the residence appeared to be Mexican-Nationals from Florida and did not speak much English.

I was dispatched back to the same area on the second call. This call came out as an attempt to locate. The dispatcher didn't give much information over the air, instead just put the information in the call notes. Before I started toward the call I looked at the call notes and observed the person we were attempting to locate had felony warrants. This person was Lou Arbour and this is who Griego-Segura said it was. Arbour was in the silver car and they were circling the blocks and Griego-Segura was afraid he was going to try to steal the car again."

I came in from the west going east on Small from Prairie. I turned from Small onto Acero, because I believed they were going to be there trying to steal the car. As I was driving by the car going north on Acero I observed there is no one around the stolen car. Todd aired he is out with the silver car. I drove up Belmont and turned west on Small. I set up behind Todd, believing we were going to do a felony stop, because we believed Lou Arbour was in the car and he was armed. Todd had also aired he thought the vehicle was unoccupied. I see the lights come on and aired via the police radio 'the car was occupied'. As I am waiting in my car Todd airs "He just 10-50'd." I see Todd get out of his car. Todd was in the felony stop position between

his car door and his car. I got out of my car and can hear Todd yelling at the driver, but did not really hear what was being said. I thought it may have been something like 'show us your hands, drop the gun you know, stop the car things like this, but I wasn't exactly sure what it was.' I saw the car backup and smash into to Todd's car and I saw Todd jolt; I wasn't even sure if he was okay. I start "jogging" toward them and then I heard a gunshot. Right before the car hit Todd, I could see the back of Todd and that Officer Neal Robinson had arrived. I could see Neal before I heard the shot but after the shot I could not see Neal. I believed the suspect shot Neal. I knew Todd was okay and thought he could take care of Neal, so I decided I was going to go get the car. I went around Neal's car, using the patrol car as cover in case the suspect was going to fire at me. As soon as I heard the shot, I seen the car accelerate, "like super-fast." I thought the suspect had shot Neal and was trying to get away. As the car was about 15 yards away I looked at the driver, held my gun up and shot at the car. I was not sure I hit the car. After I fired, I could see Neal and Todd going toward the car and then the car crashed into the wall. After the car hit the wall the tires were still spinning causing a lot of noise and smoke. I told Todd to pin the car in and Todd pinned the car against the wall with his patrol car. I didn't know if the suspect had shot and missed or if Todd or Neal had shot.

Once we were able to break the car window, I looked into the car and, at that point, I realized it was not Lou Arbour. After that other officers started arriving.

Bernadette was asked if the first call was dispatched as a man with a gun and she said yes. Bernadette was asked if she talked to Griego-Segura on the first call. She said she did briefly and the conversation should be on her body worn camera. Bernadette was asked to go over again what Griego-Segura told them during the first call. Bernadette said there were two other males with Griego-Segura but I cannot recall their names. These two males were there to help Griego-Segura get her car. Griego-Segura told us she loaned the car to a friend. The friend wrecked it so she gave it to Arbour to fix. Arbour never returned the car. I told Griego-Segura it looked like it was going to be a civil matter because she allowed her friend to take possession of the car and then she allowed somebody else to use it. Griego-Segura said while she was sitting there trying to get her car, Arbour came up to her and he had a gun in his waistband and he told her something, like, why are you parked in front of my brother's house. And she said, "well, I'm just trying to get my car, you know, this is my car." Griego-Segura also told us, Arbour got back in his car and she could see he had the same gun on his lap. Griego-Segura said Arbour was the only person who had a gun but there was another male in the car.

Bernadette was asked to confirm that during the second call when they were getting ready to do the felony stop she thought Arbour was in the car and Bernadette said "yes".

Bernadette was asked if she was still in her car when she saw the car back into Officer Whittemore's car and she said, "I was, but then exited at that point. As soon as I saw Todd get out of his car, I got out, but I didn't want to get too far away from my car because I didn't know if the suspect was going to take off and we were going to have to pursue or what. I stood right by my car when I got out, waiting to see what was going to happen next. I could see Todd's back and that he had his gun drawn and he was yelling at the driver something like 'stop the car, put the gun down or show me your hands,' all the things we say during felony stops. I stayed by my car until the car hit Todd's car and when I started running towards the cars was when I heard the

shot. Once I heard the gunshot, I didn't know who shot. I couldn't see Neal anymore and that is when I determined Neal is shot. The suspect would have had to shoot back at Todd. I could see Todd was somewhat okay. At that time, I ran towards where the vehicle accelerated. The vehicle was going fast and I tried to catch up with it around Neal's patrol car because I wanted to stay by the car in case I needed cover if the suspect fired at me. I was about 15 yards away from the car and the vehicle was right in front of me."

Bernadette was asked what she was trying to accomplish when she fired. Bernadette said, "I was trying to shoot the driver because, I believed the driver had shot Neal and the driver had already hit Todd and I didn't want the driver to hurt anyone else. I was afraid the driver was not going to stop."

Bernadette was asked if she had a sight picture and she said she did. Bernadette stated, "I saw him in the - inside of the car as the driver and I looked right at him. I couldn't - I didn't see - it - it was really dark. Kinda dark. I could see his chest and he wearing either a light-colored jacket or a light-colored shirt. I aimed at his chest but I can thin- I can remember thinkin' exactly what I was doin' and I was taking breaths but I - I - I guess I couldn't control my adrenaline because my hands were shaking uncontrollably and all I thought was, 'Stop shaking. Stop shaking. Front sight, front sight'. And then when I pulled the trigger, I mean, when I pulled the trigger, I felt myself jerk and I was tryin' to hold onto just - tryin' to aim at his chest but I felt myself jerk and then he hit the wall and I thought, 'Well, somethin's gonna happen right now'. After I shot, I could see Neal and Todd in my peripheral vision."

After a short break, Bernadette was asked how tall she is, she said "about 5 feet 2 inches". Bernadette was asked what she was wearing, she said she was wearing her police uniform, a badge and a ball cap. Bernadette was asked if she had her emergency lights on. Bernadette said "I did not turn my emergency lights on initially because I did not want to put any additional light on Todd or make it easier for the driver to see where Todd was".

Bernadette was asked to explain what she heard from dispatch for the second call, what she was told? What was happening at that moment? Bernadette stated, "Dispatch aired, copy call, blah, blah, blah. I turned it on, looked at it. I thought I saw these warrants and stuff and it was for (Lou) so I said 'Okay, 10-4 from Prairie and Tulane'". Bernadette was asked about when she attempted to locate Arbour earlier, if she was told Arbour was in this silver sedan. Bernadette said "yes". Bernadette was asked what she was thinking when she was going back the second time for the attempt to locate call and she said, "That it was Lou". Bernadette said it was the same car on both calls.

Bernadette was asked, "When you're going down Acero and you pass the Lexus, go from that moment and explain what route you took and then we'll go over what you saw when you pulled up." Bernadette stated, "I went down Acero. I looked at the car that was stolen. I kept going and then I aired, um, 'There's nobody here, you know, it looks okay.' And then I turned right. I remember turning right and I don't remember if I went one block or two blocks and I was still in route to where (Todd) hadn't even said where - that he had that car yet. And then I think as I was turning up, it might be Belmont, it might've been Brown. Todd had already had, uh, that car pulled over and it was right behind that semi. So I pulled up slowly in front of - right

behind Todd, kinda getting' - thinkin', 'Okay, we're gonna do this felony stop'. Uh, he said it was oc – unoccupied, but as I'm pullin' up, I saw that the lights turned on and I told him, 'It's occupied', and I aired that, 'It's occupied'. I'm still pullin' in as I'm sayin' that and, uh, I'm thinkin', 'Okay, we're gonna do this felony stop. Where am I gonna wanna put my car?' You know, everything you wanna think about to do this safely and as - at that time when I was still pullin' up, I - I stopped and I kinda waited and as I - I think I was still stoppin' when Todd said it 10-50'd into the semi."

Bernadette was asked if she seen the driver hit the semi and she stated "no".

Interview with Officer Neal Robinson

On 02/17/17, CIT investigators interviewed Officer Neal Robinson.

Officer Neal Robinson was asked to tell the detectives what occurred during this incident and leading up to the incident. Neal stated the following:

Between 10:15 p.m. and 10:30 p.m., I cleared on Pueblo Boulevard. I overheard Officer Bernadette Lambert go in the area of that same intersection, Small and Acero on a disturbance. I arrived on scene. I heard her say, "Hey, there's, there's guys in a car, two guys in a car and they've got guns in their lap." That immediately triggered me. She's over there by herself. Other officers were coming, so I did go over there. Once I got there they said everything was under control. I didn't get out of my car. I didn't make any contact with anybody but I rolled down my window. I said, "Hey, you guys okay?" They said, "Yeah, it's, um, Lou Arbour and the boys. I don't know if it was Todd Whittemore or Bernadette who told me that but I'm pretty sure it was Whittemore. I know Lou Arbour. I've dealt with him since I've been here. I know he's a gangster. I know in the past he's carried firearms. So, at that point, what they were telling me on that incident was credible; there are people driving around with guns in their laps. So I ran a few calls. Whittemore and I were just down the block from that intersection on a different welfare check call just prior to that incident. We talked for a minute and he went one way and I went the other way. I was just going through the streets, just doing my rounds when I overheard them send, I believe it was Bernadette and I back over there for an attempt to locate. Exact same address. This time they put the exact address as 644 Acero. I started driving that direction. I heard Bernadette go in the area and Todd must have been close, because I heard Todd go in the area. As I get closer, I was onto Prairie about ready to turn onto Small there. I hear Todd say something to the effect of, "Hey, Bernie, did you check this car out right here?" So that's when I'm turning down Small. As I turn down Small, I see Todd do a U-turn and pull in behind the car and turn his spotlight on. Todd hadn't lit him up yet and I'm coming straight at them. So as I get closer I see Todd activate his lights. That is when I noticed the car's tires turned. And the car went in reverse and hit Todd. As it hit Todd, it then turned to come out onto the roadway and I was driving right at it. I thought, "Man, I'm going to just pin this car in", but I was driving a brand new SUV and I didn't want to wreck a brand new SUV so I stopped and I hit my spotlight as I'm driving. I put my spotlight on him as well. That's when he lunged forward and as he came off of Todd he came at my car. That's the first time I see him and now you got to understand I can clearly see the gearshift. That's the first time his hand drops like this (Neal demonstrated the driver's right hand dropping to his side). He turns real fast and that's when he goes underneath

the semi. I'm still inside my car. I'm like, "He's got, he's got the drop on me now, um, because I'm confined in this car". So I'm trying to get out of the car fast and I do exit the car and immediately drew my weapon and I started giving verbal commands, "Turn the car off, turn the car off". I don't remember what else I said. I just clearly remember saying, "Turn the car off, turn the car off". He looks at me initially and puts his hands up, and, so I'm like, "We're in a good spot. Let me see your hands. Turn the car off. Turn the car off." I continue, and that's when I see his hand go back down and he throws it into reverse. He turns the wheel all the way and goes back as fast as he can. Now he's really going fast because you hear the engine. And I hear him just really hit Todd this time. I don't know where Todd's at. I'm afraid for Todd because he just hit that car really hard, and then he spins the tires towards me. I step back. I don't remember closing the door but I remember grabbing the door. He spins at me and that's when he throws it in drive, and what's different about his movement was he didn't just turn. He turned and he leans and his right hand goes back underneath the seat. At that point, I felt my life was in danger. I thought, "He's gonna shoot me right now". At this point, I made my decision to shoot. And I fired one time. I knew it was a good shot. As soon as I shot I saw the car kind of do this (Neal demonstrated a swerving motion). I didn't shoot anymore because, at that time, I knew I'd shot him. I wasn't going to spray, pray and hope. I knew I shot him once and the threat was done. I saw the car kind of twiddle off. I saw his head kind of slumped over, and I saw the blood coming from his head. That's when I knew I hit him. He went down and then coordination was made to block the car and I think Bernie was telling Todd, to block the car in, because he hit that wall and the tires were spinning. Everybody is pretty amped and, actually, I got pretty calm because I'm used to sitting on this side of the table and that I needed to coordinate now, this is a crime scene. So I'm like, "I need to start setting this up". That's what I was telling myself in my mind. So I'm calmly saying, "I need cars here. I need cars here." They showed up. I told Bellamy to turn the car off after they finally broke the window. I know the car is one factor, but in my mind, I felt there are two things that could've killed me that night. One was the car, because when he turned this way I didn't know if he was going to hit me with the car. I had nowhere to go. And the second thing was the second time he reached for whatever it was that he had on his seat right here. And he leaned like this (Neal demonstrated by leaning to the right, moving his right hand near his right leg, lowering his right shoulder and moving his left shoulder to the rear), because just as we're taught in the range to lean and rock when shooting, he could have easily done that and we're not any further than you and I are in that situation.

Neal was asked why he chose to park where he parked. Neal said, "I'm coming down Small, I see him hit Bellamy, uh, excuse me Whittemore. And that's when I knew that I was just going to pinch him in at that point. But I have, I'm driving a brand new SUV, and I didn't want to wreck a new SUV."

Neal was asked to describe how close he was or how close he felt he was when he got out of the car. Neal stated, "it's no further than you and I are sitting right now. What's this? Three feet? Four feet? I remember looking the guy in the eyes. When he turned to come towards me he looked me in the eye. When he, I looked right at him and I, and even in the back of my mind I thought, I know this guy. I didn't but I, at first, I'm like, 'I recognize this guy'. I could clearly see his face. I mean, that, it's a very in close encounter."

Neal was asked why he closed the door and he stated, "Due to proximity. I mean, I knew when he spun his wheels towards me there wasn't much room to begin with and with that, like I said, I was just stepping back. Cause, um, either he's gonna hit me with the car or he's gonna make it through that position. I don't know how Todd got through there to, to go in and pin that car. I just remember stepping back because he'd hit Todd and then I, I could see the tires coming, the front-end of the car coming my direction. So I just stepped back. And that's when I saw his ha- you know, his hand come off the, I clearly remember that too. His hand come off the gearshift and went down to the seat."

Neal stated, "Something like this (Neal raised his left hand). Um, and I'm like, turn off the car, dude, turn off the car, and I see his head look back at, backwards probably to see where Todd was or whatever, and I don't know if he's getting the gumption up I guess to take off or whatever but that's when, I'm still screaming at him, turn the car off, and he puts his hand down and he throws it in reverse. It was almost like a fluid movement, and then I can remember the car really accelerating. The engine, and that's when he, cause he was kind of stuck, and it popped out and. It was fast. He come outta there and he hit Todd. If Todd wasn't there, I mean, he probably would have gone all the way around. But he hit Todd's car again. Um, and then I remember him looking up, putting it in drive and the wheels, I just remember the front end of the car start coming my direction. So as that front end of that car starts coming my direction, I know I need to start stepping backwards. Cause I, I had come out of my car quite a ways. You know, almost to his window. Um, and then when that came out I stepped back. And then as he's, his head, er, the front of the car starts coming towards me is when I, I, uh, I start stepping backwards even more. So I'm like, that front end of that car's gonna come and get me. So like I said, I don't remember closing the door. I've reviewed a tape since and seen that I had but I remember putting my hand up to get back backwards. And that's when that car came loose and it, and it came out like this of course to get between us two, but that's when his hand, I clearly saw his hand on the gearshift go from here just as I'm sitting, you know, with his hand to this movement here and his hand here (Neal demonstrated by placing his right hand on the side of his right thigh). That is the point when I decide in my mind, let's go. I ha- I have to shoot this guy. I am going to have to shoot him. And that's when I fired my one round. Um, I, I don't know what he was thinking. I we, I was clearly a police officer. I was dressed just as I am today. Um, I have a badge. I have a uniform. I have a police car. There's already a police car behind him with the lights going. There was no question that we were the police that was there. Um, I was at a face to face confrontation with him. I mean, any normal person knows I have a badge on. I have patches on. I'm probably a police officer."

Neal was reminded he told us earlier he was familiar with Lou Arbour and was asked to explain his interactions or calls involving Lou Arbour. Neal said, "I've worked the whole, my, almost my entire patrol career at the Pueblo Police Department on the south side of town. He's been a south sider as long as I can remember. Um, I can't specifically name one case that pops off but I know a lot of the cases, um, we knew his grandma lived in the 100 Block of Bridle Trail. We knew of drive-by shootings that he's done. Um, I've contacted him in front of bars before with known gangsters. Um, he's identified in Spillman as a known gangster. Um, I've known him to do, he's on our most wanted list right now for warrants associated with narcotics, um, and, uh, just generalized gang-type behavior."

Neal was asked if there came a point when he realized it wasn't Lou Arbour in the car? Neal said, "Not until the Coroner released the name". Neal said he had no idea who it was until that occurred.

Neal was asked if he felt anything behind him when he fired and he said, "No. I was, I was, I was locked on. Um, when I made the decision to go I remember I'm like, I know I'm going to do this." Neal described there was about one second difference between the time he decided he was going to fire and when he actually fired. Neal said, "When his hand went down which was prior to him actually getting by me. My decision was back here after he'd hit Todd and his hand dropped. That's when I was locked on and I said, I'm going to shoot (Neal demonstrated by showing how he had his firearm raised toward the vehicle at a certain point knowing he was going to fire and then moving his hand as he followed his target). Now if it moved a little bit I guess it did but I know here I was locked on. I was ready to shoot."

Neal was asked if he has ever had any negative dealings with Lou Arbour and he said, "I've never been in a f- like, a - a fight with Lou Arbour on the streets. I've never been in anything like that. I know his reputation. I know his reputation precedes him. Um, I know he's committed a lot of crime in this town. Um, I know he's a documented gang member with the City of Pueblo." Neal said he has never had any negative issues with Arbour.

Neal was asked if he could see the driver's right hand, he said, "No I was focused on my target. Meaning that he's sitting down. I'm standing up. I mean, it was just almost naturally just straight out. I was locked on and I just shot him once and I know I hit him in the head."

Neal was asked if he realized he was pressed against his car when he fired? Neal stated, "I don't remember it. I, I mean, like you said, I've seen the video, um, I don't remember that part. I just remember going, making this movement with the door and when he dropped his hand is when I, I mean, I was just locked on him. I, I pulled, I remember closing the door and I remember being locked on. Now how far back I went, I mean I don't remember. I was so focused on him at that point that, um, I didn't, didn't even think." Neal was asked if he felt he had anywhere to go or if he thought there was any other option to get out of the situation at that time. Neal stated, "No, um, there's, there's two forms of threat that I'm facing. I've got a car that's driving at me, I've got a guy reaching under the seat. I knew I was next to my SUV and obviously, subconsciously, something was going on because I closed the door, that created a little more space. Um, I knew there was my, my SUV's right here. Um, so, I, I've got two threats and really nowhere to go."

Interview with Breanne Segura-Griego (DOB 09/12/85)

On 02/05/17, Breanne Segura-Griego was interviewed by members of the Pueblo Police Department concerning this incident.

Breanne was asked to start from the beginning and tell the detectives everything she knows and why she called the police. Breanne said she loaned her car to her friend, Emily Luna, about three weeks prior to this. She said it was during one of the snow storms and Emily wrecked her car. Emily did not bring her car back and would not return her calls. When she

finally talked to Emily, Emily told her she was going to have her friends Lou Arbour (DOB: 11/15/88) and Michael Byrd fix the car. They took her car to Lou's house at 210 Encino and parked it.

Breanne was asked who was going to fix her car and she said, Lou Arbour and a guy she knows his last name is Byrd. She said she saw Byrd in the car last night with Lou when she called the Police. She called Emily, (Emily Luna DOB: 08/02/83) over and over trying to get her car back but Emily would not return her calls. Emily told her she went to Lou's house to get the car and it was no longer at Lou's house and he would not tell her where the car was. Another friend of hers finally told her what was going on with the car and gave her Lou's address and phone number. She called Lou and told him she wanted her car back and Lou hung up on her. She started texting Lou and threatened to call the police and Lou threatened to kill her. She stopped texting him and just started looking for her car. One day, she was in a taxi and spotted her car and Lou was driving it. She knew what Lou looked like because she looked him up on Facebook.

Breanne was asked if she knew Lou before this and she said "no". Ms. Griego was asked if she knew Byrd before and she said no but heard Emily talk about him and that's when she remembered his name is Andrew Byrd. Breanne did not know either one of them before this.

Breanne had the taxi follow her car but they lost it. Last night, she received a text message from Emily saying she thought she found her car near the corner of Small and Acero. She asked Emily to pick her up and take her to get her car. Breanne said they went there at approximately 10:00 p.m. and saw her car. Breanne said Emily left her and her boyfriend there because Emily was scared. Breanne said she called the police because she did not want any trouble as she got her car. Breanne said as they were waiting for the police, Lou and Byrd showed up. She said she got scared so she called the police three or four times. Breanne said they were in the dark gray Toyota with Florida license plates. Breanne said Lou pulled up next to where they were standing and asked them why they were standing in front of "his peoples house." She said, at that time, Lou was driving and Byrd was in the passenger seat. Breanne was asked which house was he referring to, and she said the one on the corner, she thought the numbers on the house were 344. The actual address of the corner house where her car was parked in front of is 844 Acero. Breanne said when Lou and Byrd pulled up next to where she and her boyfriend were standing; they were close enough to see in the car and Byrd had a handgun sitting in his lap.

Breanne told the guys the car belonged to her and it was stolen. She said she was on her phone at that time so Lou asked her who she was talking to and she told him she was talking to the police. Breanne said Lou backed the car he was driving up and put his headlights on high beams. She said after a short time he drove off. She said they must have only driven around the block because she saw them on Small Street, which is the street on the side of the house at 844 Acero. Breanne said she thought she saw someone come out of the side door of the house and get into the car with Lou and Byrd.

Detectives asked Breanne to describe the gun she saw on Byrd's lap. She said it was black and Byrd had his hand on it. She described it as a .22 or maybe a 9mm. Breanne said Byrd

was in the passenger seat so she could see it clear. Breanne said she got scared because she thought they were going to do something and that's what made her call 911 back and told them they needed to come now. Breanne said she called a friend to help them get her car and that's when he showed up.

Breanne said Lou and Byrd left before the Police arrived. Breanne said when the Police arrived she told them the story about her car not being returned to her. She said the Police contacted the guys in the corner house and she could hear the people in the house did not speak English. Breanne said the Police told her they did not feel the guys in the house had anything to do with her car being there but she insisted she saw someone come out of the house and get in the car with Lou and Byrd. Breanne said she did not have her keys and did not want her car to disappear again so they had to break the window to get in it and then they disabled it so it could not be driven away.

Breanne said, as they left with her friend they saw the dark gray car that Lou and Byrd were in earlier was now parked against the curb behind a semi-truck and trailer. They were parked on Small Street next to the corner house. Breanne said that's when they were able to get the license plate number off of the Florida license plate so she called and told the police the plate number and told them the car was back. Breanne said they did not stay around to wait for the police to arrive because they did not want any trouble. Breanne said it was not until she woke up this morning that she heard about the police being involved in a shooting at that location.

She said when they broke the window to get into her car they found several different license plates from different states. She said her plates were not on or in the car. She said the Police took all the license plates the first time they were there. She said there was some papers in her car with the name of Alisa Calderon on them and she heard she is Lou's girlfriend.

Breanne was asked if she could describe what the guys in the car were wearing and she said she only remembers Byrd wearing a light blue jersey with a number on it. Breanne said she could not see what Lou was wearing because he was driving and on the other side of the car when they pulled up next to them. This clothing description matched the clothing Byrd was wearing at Autopsy.

Occupants at 844 Acero

Detectives contacted the following parties, Dunier Sanchez (05/05/84), Yamnier Ortiz-Aguilera (DOB: 07/29/85) and Asiel Rodriguez (DOB: 09/09/89) at this residence. *Note: Asiel and Yamnier both had Florida Driver's licenses. These parties stated they could not speak English and a Pueblo Police Officer who spoke Spanish arrived on scene to translate.*

Dunier Sanchez invited officers into the residence so they could speak with them about their knowledge of the events of previous night and early morning. Upon clearing the house for officer's safety, detectives observed approximately 15 marijuana plants in the basement of the residence, along with another large room in the basement that was empty but was set up for a marijuana grow room.

While detectives spoke to these individuals, they were very evasive in their answers and their story kept changing concerning if they knew the party who was involved in the shooting. Asiel Rodriguez, at first, denied knowing the deceased party at all. However, while speaking with these parties, detectives were informed a credit card with Asiel's name on it was located in the same vehicle the deceased party was in. When Asiel was confronted about this, he then stated that he rode in the car one time with the party and knew his name as, "Byrd." These parties continually stated they had no further information about any of this. Asiel had several outstanding warrants out of Florida and he was taken into custody on these warrants.

Interview with Asiel Rodriguez (DOB: 09/09/89)

On Wednesday, 02/08/17, CIT investigators interviewed Mr. Rodriguez concerning this incident.

Detectives spent some time explaining to Mr. Rodriguez, he did not have any criminal charges as a result of anything that transpired from Sunday morning. Detectives told him he had several warrants out of Florida and was arrested on those. Detectives explained he was not a suspect in this incident and they were wanting to speak with him about his possible relationship to Andrew Byrd. Detectives told him they were informed Lou Arbour and Andrew Byrd were at that house earlier that evening.

Asiel was reluctant to speak with detectives, but finally stated, "I'm going to tell you the truth, I buy drugs from them."

Asiel went on to explain how he knew "Byrd" because that is where he (Asiel) purchased his cocaine from. Asiel would also say he also knows, Lou Arbour. Detective Fillmore showed Asiel a photo of Lou Arbour and Asiel confirmed that was the person he knew. However, Asiel stated he did not see Lou on the night or morning of this incident. He said Lou and Byrd were usually together and that they were from Pueblo and not Florida or Cuba. Asiel did not know if Byrd or Lou carried a gun with them. Asiel again said he was not friends with these two and his only association with them was that he purchased cocaine from them.

Asiel stated the reason he had some items in the car was because he borrowed the car a few days prior as he drove to Colorado Springs to complete his community service.

Asiel stated he did not want to say who the owner of the car was and would only say he was from Florida. Asiel did not know why Byrd was driving the car on the night of the incident. Asiel stated he had no idea about the car parked in front of their house. He stated they would obviously not park a stolen car in front of their house.

Asiel stated on the night of the incident he ordered a pizza and Byrd agreed to give him a ride to pick up the pizza. Asiel said he was walking out of the house to meet with Byrd when he saw a cop car driving down Small Ave. Asiel said he saw the cop car turn around and pull in behind the car Byrd was in. Asiel said he went back into the house and looked out of the window from the living room. Asiel explained how he saw Byrd's car as it went under the trailer of the

semi and then backed up. The car then went forward slowly before hitting the concrete fence. He saw the wheels of the car spinning and smoke coming from the tires.

Asiel was asked if he saw the police officer that was parked next to the trailer. Asiel stated he only saw the cop car that was pulled up behind Byrd's car. Asiel could not see Officer, Neal Robinson as the large tanker trailer was between Asiel's house and where Officer Robinson was standing. Asiel stated he heard what sounded like three gunshots but could not say where the shots came from. Asiel explained how he saw the car Byrd was in roll forward and then it went into the wall. He then saw the smoke coming from the car tires as it spun out on the pavement.

Asiel explained how he has been in Florida but was originally from Cuba. He came to Pueblo due to the marijuana business. He told us how marijuana back east is going for \$4,600.00 for one pound.

Interview with Lou Arbour

On 03/07/17, Lou Arbour (11/15/88) was taken into custody and was detained at the Pueblo County Judicial Building. Arbour was arrested on several outstanding warrants. CIT investigator interviewed about the incident. Police Officers were trying to locate Arbour when Andrew Byrd rammed a police vehicle and was eventually shot by an Officer.

Arbour was told detectives wanted to talk to him about Andrew Byrd. Arbour was asked if he knew anything about it. He said he knows the Police went there to look for him. Arbour was asked how he knew that and he said the house the Police went to, they asked for him. Arbour was asked if he talked to the guys at that house later on and that is what they told him. He did not answer and said he was nervous because the recorder was on. Arbour was told he did not have to talk to detectives, but detectives wanted to know if he had any information.

Arbour was asked if he was there or at that house and he said, "Andrew did not have a problem with anyone in this world". He said he figured Anthony probably got scared and tried to get out but didn't need to be shot for it. He said he felt guilty because the cops were looking for him and he feels the cops intended to kill him but not Byrd. He said he has been told from different sources at the PD that the cops intended to kill him. Arbour continued to talk about how he hated his life and was tired of living this way. He also began talking about his case where he is accused of assaulting cops and he would not do that. Arbour was told detectives could not talk to him about his case, but wanted to talk to him about Byrd's case. He said he knows what happened to Byrd was murder. Arbour was asked how he knew that and if he was there? Arbour did not answer. Arbour was told detectives were trying to find out what happened. Arbour said at the same time that happened, he was being chased out of something. Detectives could not understand what he said so he said he was just being chased out of another thing. He then said whatever he says is not going to make a difference. Arbour was told detectives were trying to talk to everyone who knows anything. He said whatever he had to say was not going to bring Byrd back or get the cops charged with murder. Arbour was told detectives can't make him tell them what he thinks or what he knows. Arbour was told detectives were giving him a chance to talk. He said this was not going to benefit him so "it does not matter". Arbour was told it is not about it benefiting him. Arbour said, "It is not going to change what happened to Byrd."

Detectives continued to talk to Arbour about his history and changing his life. He continued to talk about his dealings with the Police and said he runs from the cops so he won't get shot. Arbour was told, if he does not run, he won't be shot. Arbour said there was no cops in front of Byrd so what cops was Byrd trying to run over. Arbour was told he did not know and he said he saw it. Arbour was asked how he saw if he was not there. He laughed and said that is what he was talking about when he said it did not matter what he said. He said, he knew and then said he did not assault a Police Officer. Detectives told him they did not know anything about that. He asked detectives to talk to the Police Officers involved in the case. Arbour quit talking and was asked if he wanted to tell detectives anything else. He said unless it could get him out of his cases he did not have anything else to say. Detectives told him it was not getting him out of this and all they wanted to know is if he had any information about Byrd. He said he did not and the interview ended.

OFFICER PROCESSING

On 02/05/17, CIT investigators processed the three Officers involved identified as Bernadette Lambert (DOB: 12/18/77), Neal Robinson (DOB: 02/12/75) and Todd Whittemore (DOB: 04/02/86).

Officer Lambert arrived in full police uniform wearing a light police jacket and baseball cap. Officer Lambert was wearing a duty belt with a 9mm handgun Glock 17 with an insight rail light, magazine pouch with two magazines, Taser, flashlight, handcuff pouch with handcuffs, OC spray, police radio, empty body camera holster, open face handcuffs in the rear, tourniquet and glove pouch. A cell phone was in the right rear pocket along with a pair of black nylon gloves and pocket knife in the front left pocket.

Detective Roldan collected GSR (Gun Shot Residue) from Officer Lambert's face, and both hands, before she was taken into a dark room wherein ALS (Alternative light source) was used. (Note No evidence of blood was observed on Officer Lambert's clothing or equipment). Officer Lambert removed her duty belt, which was placed on a table covered with brown paper. The duty belt was photographed before removal of any of its attachments.

Officer Lambert's duty belt contained the following:

1. Black 9mm handgun Glock 17 bearing serial # LEE173 with an attached insight rail light, which contained the following:
 - i. One Live cartridge of hollow point F.C. 9mm Luger ammunition in the gun's chamber.
 - ii. One 17 round Glock Magazine with 16 Live cartridges of hollow point F.C. 9mm Luger ammunition.
2. An extra 17 round Glock magazine #1 from the magazine pouch contained 17 Live cartridges, 11 Live cartridges of hollow point F.C. 9mm Luger ammunition and 6 Live cartridges of Speer 9mm Luger ball ammunition.
3. An extra 17 round Glock magazine #2 from the magazine pouch contained 17 Live cartridges of hollow point F.C. 9mm Luger ammunition.

Officer Lambert also possessed a backup handgun Ruger LCP .380 caliber bearing serial number 371339735 on the upper left inside of her uniform. The backup handgun contained 1 live Hornady .380 auto cartridge in the gun's chamber and 6 live .380 auto cartridges of Hornady ammunition in the gun's magazine with one of the five being .380 auto Hornady ball ammunition.

Officer Neal Robinson was processed next arriving in full police uniform. Officer Robinson was wearing a duty belt containing a black 9mm handgun Glock 17 with a TRL 1 rail light, Taser, handcuff pouch with handcuffs, OC spray, police radio, and a magazine pouch with two magazines.

GSR (Gun Shot Residue) was collected from Officer Robinson's face and both hands, before he was taken into a dark room wherein ALS (Alternative light source) was used. (Note No evidence of blood was observed on Officer Robinson's clothing or equipment). Officer Robinson removed his duty belt, which was placed on a table covered with brown paper. The duty belt was photographed before removal of any of its attachments.

Officer Robinson's duty belt contained the following:

1. Black 9mm Glock 17 bearing serial # XGB762 with an attached TRL1 rail light, which contained the following:
 - i. One Live cartridge of hollow point F.C. 9mm Luger ammunition in the gun's chamber.
 - ii. One 17 round Glock Magazine with 16 Live cartridges of hollow point F.C. 9mm Luger ammunition.
2. An extra 17 round Glock magazine #1 from the magazine pouch contained 17 Live cartridges of hollow point F.C. 9mm Luger.
3. An extra 17 round Glock magazine #2 from the magazine pouch contained 18 Live cartridges of hollow point F.C. 9mm Luger ammunition.

Officer Whittemore was processed next and arrived in full police uniform wearing a pull over sweater. Officer Whittemore was also wearing a duty belt containing a .40 caliber Glock 22, Taser, flashlight, police radio, two handcuff pouches with handcuffs, OC spray, a magazine pouch with two magazines and a key keeper. (Note: Officer Whittemore stated he did not fire his weapon, but the driver's door to his patrol vehicle struck him in the chest when the suspect vehicle backed into him, causing him to fall backward, Officer Whittemore's body was photographed for injuries and none were observed).

Officer Whittemore's weapon and equipment were also processed. Officer Whittemore's duty belt contained the following:

1. black .40 caliber Glock 22 bearing serial # UKG454 with an attached TRL1 rail light
 - i. One Live Federal S&W .40 caliber cartridge in the gun's chamber.
 - ii. One 15 round Glock magazine with 15 live cartridges of Federal .40 S&W ammunition.

2. An extra 15 round Glock magazine #1 from the magazine pouch contained 15 live cartridges of Federal .40 S&W ammunition.
3. An extra 15 round Glock magazine #2 from the magazine pouch contained 15 live cartridges of Federal .40 S&W ammunition.

Officer Whittemore also possessed a backup handgun .40 caliber Glock 27 bearing serial # ULA442 on a right ankle holster. The backup handgun contained 1 live Federal .40 S&W cartridge in the gun's chamber and 9 live cartridges of Federal .40 S&W ammunition in the gun's 9 round Glock magazine. (Note: Officer Whittemore's weapons and equipment were not collected).

All items collected were photographed and later entered into evidence at the Pueblo County Sheriff's Office.

SCENE PROCESSING

Detective Charles Roldan of the Pueblo County Sheriff's Department arrived at the crime scene and made the following observations:

Pueblo Police vehicles were blocking Small St. at the intersections of Acero Ave. and Belmont Ave.

There was a Pueblo Police Vehicle (Robinson's) Unit #629 bearing Colorado TXQ-164 parked in the middle of Small St. facing East with its headlights and spot lamp on. A Red Semi tractor trailer bearing Idaho TG4451 was parked unattended along the north curb facing West. Laying on the ground in front of the driver's side rear semitrailer tire, was a piece of gray plastic mirror housing. The trailer's, rear tire, rim, fender and under carriage had damage. Gray paint chips were laying on the ground next to the damaged trailer's rear tire and rim.

A single orange traffic cone was observed on the South rear side of Unit #629 which was used to preserve a single spent shell casing. Another single orange traffic cone was observed on the north rear corner of Unit #629 also used to preserve another single spent shell casing, along with three extra traffic cones on top of each other next to the single northwest cone.

On the South side of the roadway was a Pueblo Police Vehicle (Whittemore) bearing Unit# 637 and Colorado license plate TXQ176 with its headlights on. Unit #637 front bumper was up against a Gray Toyota Camry bearing Florida HHZ-U94. The Gray Toyota Camry's driver's side bumper was up against the south wall and light pole of the Colorado State Fair Grounds.

The Toyota's driver's side door was slightly open and the driver's door glass was shattered and had a defect in the doors glass. The passenger side front bumper, fender, and door was damaged and the door glass was broken out. The passenger side door handle was laying on the ground north of the passenger side door. The passenger side front tire spun leaving a pile of rubber behind the front tire.

Inside the Toyota Camry seated in the driver's seat in a laying position was a deceased male later identified as Andrew John Byrd (DOB: 03/21/83). Andrew was wearing a dark heavy blue jacket with a #23 blue North Carolina Jersey, blue jeans and white tennis shoes. A white and blue shirt was laying on the passenger side seat which contained blood spatter and glass shards, the passenger's side seat also contained blood spatter.

Parked in the roadway north of Unit# 637 and in front of the red Truck Tractor was Pueblo Police Vehicle Unit # 450 bearing Colorado license plate 343-ZST.

Detective Roldan took complete photographs of the crime scene placing numbered evidence cones and letters identifying the following:

- #1 Gray Toyota Camry
- #2 Andrew Byrd
- #3 White & Blue Shirt
- #A Blood swab from passenger side seat
- #5 North West Spent shell casing
- #6 South West spent shell casing
- #7 Gray Mirror plastic housing
- #8 Tractor Trailer
- #9 PPD Unit #629
- #10 PPD Unit #450
- #11 PPD Unit #637

While placing the evidence placards out, Pueblo Police Detectives were in contact with an Asiel Rodriguez (DOB: 09/09/89) at 844 Acero Ave. Det. Roldan was asked to photograph a gray Lexus which was parked in front of this residence without any license plates. The Lexus was identified by VIN #JTHBD192350101420 which listed to a Gabriel Jaya Maltsberger of 1029 28th Lane Pueblo Colorado on a gray 2005 Lexus 300. The gray Lexus had a shattered rear passengers side window and two flat rear tires.

CBI (Colorado Bureau of Investigation) Agent's Tanya Atkinson and Dennis Honeycutt arrived and completed a FARO scan of the crime scene. PPD Officer Jacober also arrived and took several photographs and video of the crime scene using a drone.

Moments later, Pueblo County Deputy Coroner Investigator Jim Cody arrived and removed Andrew (#2) from the vehicle, but not before Det. Roldan collected the white and blue shirt (#3) and Blood swab (#A) from the front passenger seat.

Once Andrew was removed from the vehicle by Investigator Jim Cody, Jim checked Andrew for any identification and none was found. Roldan took complete photographs of Andrew and assisted Investigator Cody with the removal of Andrew's jacket in an attempt to photograph several tattoos on both of Andrew's arms.

Andrew was placed into a white body bag sealed with kinder print tag #59548 and removed from the scene.

The Toyota Camry was sealed with red evidence tape which was removed from the scene and transported to the Pueblo Police Department's Evidence Bay at 200 S. Main St.

VEHICLE PROCESSING

On 02/06/17, CIT investigators processed the vehicle that was in possession of Andrew Byrd (DOB: 03/21/83) the night of the incident. The vehicle was a gray 2012 Toyota Camry Florida license plate #HHZU94 (vin #4T1BF1FKXCU079675). The vehicle registration is listed to Nelson M Monte De Oca Escobar, address 13830 SW 268 Street 208 Homestead, FL 33032. The search warrant on the vehicle was executed at the Pueblo Police Department in the evidence bay at their facility.

Detective Howard took 360 degree photographs of the exterior of the vehicle, and observed damage to the front driver's side quarter panel, bumper and hood. The front driver's side window was shattered but still in one piece with a defect in the middle of it. The defect in the window was approximately 5 cm by 5 cm. On the passenger side rear bumper was a dent and a defect. The defect appeared to have been created by a bolt that holds a license plate on a vehicle, it had hexagon pattern. The defect measured approximately 1 cm by 1.2 cm. On the passenger of the vehicle from the front quarter panel continuing along the side of the vehicle to the rear passenger door were scrape marks. The door handle was gone, the glass from the window was gone and side mirror on the front passenger door was damaged.

Detective Howard took 360 degree photographs of the interior of the vehicle. Inside the front driver's side of the vehicle Detective Howard observed shattered glass on the seat, floor, and dash board. The front driver's seat was laid all the way back and the back of the driver's seat was on the back passenger seat. On the upper part of the driver's seat was blood. On the driver's seat was a gray scarf. On the back driver's seat was blood saturation and pooling. On the seat was a black scarf, black Hurley hat, and on the floor were misc. items. Detective Howard observed shattered glass on the seat and the floor. On the rear passenger seat was a blue duffel bag that was opened. On the floor of the rear passenger side was shattered glass. On the front passenger side Detective Howard observed shattered glass on the seat, floor board, and center console area. On the center console was blood. By the drink cup holder were two empty containers, Cherry Coca Cola and Pepsi. Detective Howard observed a pack of Marlboro cigarettes, phone charger, and an orange container. The gear shifter had blood on it and on the upper passenger seat closest to the center console had blood on it. It had been already labeled (A) from the night the incident happened. Inside the trunk Detective Howard observed windshield wiper fluid, some plastic bags, and a female black flip flop.

After the vehicle was documented Detective Howard started collecting DNA swabs from the vehicle. Detective Howard collected swabs from the following areas exterior and interior door handles, trunk handle, steering wheel, rear view mirror, and gear shifter. While Detective Howard was collecting DNA swabs Det. Thomas, and Det. Reno were searching the vehicle. Detective Howard then labeled the bloodstains and kept the upper passenger seat labeled bloodstain (A), labeled the upper driver's seat as bloodstain (B), and labeled the back driver's seat as bloodstain (C). Detective Howard collected blood samples from all bloodstains. The

defect in the driver's side was labeled (1a), it was photographed and measured. Det. Thomas collected paint transfer from the vehicle, due to the damage on the passenger side. Paint transfer from a semi-truck which was parked near the passenger side of the Toyota Camry had been collected. The paint on the semi-truck appeared to be from the Toyota Camry.

The following evidence was collected from the Toyota Camry:

1. DNA swabs: Exterior and Interior door handles, trunk handle, steering wheel, rear view mirror, and gear shifter
2. Paint transfer scrapings
3. Hat: black Hurley brand collected from rear driver's seat
4. Scarf: black collected from rear driver's seat
5. Registration for the Toyota Camry
6. Scarf: gray collected from the front driver's seat
7. Cell phone: model Cool pad 3320A IME#867441022641052 collected from driver's seat
8. Lap top: HP model G62 no serial number collected from duffel back on the back passenger seat
9. Document: Release of Bond 16CR5503 from El Paso County Defendant: Asiel Rodriguez
10. Receipt: Western Union Location: King Soopers West 29th St Date: December 2, 2016 2:58 PM
11. Document: Front Range Community Services 10CR5503 Assigned location: Pueblo Intervention Defendant: Asiel Rodriguez
12. Gift Card \$50.00: VISA #4847 1886 3194 4164
13. Colorado Quest Card: #5076 8100 3157 0948
14. Debit Card: MasterCard #5220 9503 3102 8174 valid thru 7/18
15. Colorado Quest Card: #5076 8100 2987 0938
16. Card: Kickback Points
17. Card: Colorado State Patrol contact card Trooper Glanton
18. Charlotte Russe Card: #6006491399750435730
19. Debit Card: Visa#4147 0990 1499 3453 Asiel Rodriguez valid thru 04/20
20. Card: Wildcats Central High School Athletics card
21. Gift Card: Victoria Secrets
22. Gift Card: Victoria Secrets
23. Sams Club Card: #101 42220 612119594 Elizabeth Gallegos
24. EZ Exit Card: #6062 7400 0578 3546 valid thru 3/18
25. Gift Card: Walmart
26. Credit Card: VISA #4447 9623 3920 7262 valid thru 12/19 Lindsey Gordon
27. Pueblo Library Card: #1 2222 0541938 Leah Gordon
28. Insurance Card: Colorado Access Member name: David Vega card issued: 11/03/2015
29. Credit Card: MasterCard #5178 0066 0713 4451 valid thru 01/31/20 Lindsay Gordon
30. Card: Hobby Lobby exchange card
31. (5) Visa prepaid Card Reloadable card \$10-\$500 all in packages
32. (3) Green Dot Visa reloadable Card all in packages

33. Gift Card: MasterCard \$100

All evidence that was collected was transported to the Pueblo County Sheriff's Office Investigations Annex, 920 N Main St Pueblo, CO 81003 and tagged into evidence.

AUTOPSY

On 02/07/17, Detective Caitlin Howard attended the autopsy of Andrew Bryd (DOB: 03/21/83). The autopsy was conducted at Mckee Medical Center, 2000 Boise Ave Loveland, CO 80538, by Forensic Pathologist Wilkerson.

Detective Howard observed three defects to the left side of Byrd's head. No other injuries were observed on the body. Both the right and left foot were deformed, some of the toes were fused together.

On the left side of the head, where the defects are located, underneath the scalp was the copper jacket off the projectile. In the skull, where the defects were located, two fragments from the projectile were collected. The copper jacket and fragments were photographed with scale. The following items were collected at the autopsy:

1. DNA Card
2. DVD: X-rays
3. Homicide Kit
4. Pants: blue jeans w/ belt
5. T-shirt: gray
6. T-shirt: Jersey
7. Socks: right and left
8. Jacket/ Fragments from projectile
9. Underwear
10. Shoes: left and right
11. Jacket: black

PROCESSING OF COOLPAD CELLPHONE

PCSO Detective Velasco processed the Coolpad cellphone that was removed from the Toyota Camry. No relevant evidence pertaining to this case was located.

REVIEW OF DASH CAMERAS AND BODY CAMERAS

On 02/14/17, at approximately 9:00 a.m., PCSO Sergeant Beery and PPD Detective Purvis reviewed and documented the Dash Cameras and Body Cameras for Officer Whittemore, Officer Robinson, Officer Bellamy, Officer Lambert and other Body Cameras. Detectives slowed the videos down and documented the times of important events throughout both calls. The information is as follows: (The times noted below are in minutes and seconds of the recording not time of day.

Detectives started with the call earlier in the night when Officers Whittemore, Lambert and Bellamy were dispatched to 844 Acero at approximately 10:40 p.m., on a disturbance/possible stolen vehicle.

In observing Officer Whittemore's camera #4 at: (The times below are minutes and seconds into the video being viewed not actual time of day.

2:23 - Officer Whittemore tells Breanne Griego-Segura DOB:9-12-1985, her husband Jose Segura 5-26-1984 and their friend Brad Gallegos DOB: 4-23-1986 so now your saying they have guns on their laps, it's not worth your life. Officer Whittemore was shown a bill of sale for the Lexus that Breanne was saying had been stolen by Lou Arbour and confirms it with the vin number. The car was also locked and Lou Arbour was supposed to have the one solo key.

5:40 - Officer Whittemore was told that Lou Arbour lives at 210 Encino and knows of him and that he is 10-5- Felony. Officer Whittemore asks Officer Bellamy, you guys want to head up there and attempt to locate Arbour? and states, isn't he living in the garage?

6:00 - Officer Whittemore asks what kind of car is Lou Arbour in and they say a gray corolla.

6:13 - Breanne was asked if she got a license plate number for the car and she said no she was scared.

6:35 - Breanne told Officers the car went around the block and came back by 844 Acero and somebody came out of the house and picked them up.

7:20 - Jose says me and her were just standing here and they pull up, (referring to Lou Arbour) and he says what are you guys doing here? Jose said this is our car and it is stolen. Lou Arbour asks who are you telling that too as Breanne is on the phone. Lou tells her to put down the phone.

7:35 - Lou Arbour tells them this is my peoples house referring to 844 Acero, and says actually this is my brother's house.

7:40 - Breanne and Jose say the gray Toyota backed up and kept flashing the lights at them.

7:45 - Breanne points northbound on Acero and says some guy came out of the house and he picked him up over here pointing towards the tanker, where the shooting took place and then said they made a U-turn and went back eastbound on Small Ave.

7:55 - They say the police pull up and then the car drives back by and they didn't know what they (Arbour and passenger) were doing.

8:00 - They said the guys in the Toyota looked like they were wanting to get out and fight and the guy in the front passengers seat looked like he was going to shoot.

8:08 - Breanne was asked did you see guns? They both said yeah.

8:12 - Officer asks what did it look like and said they saw black on it. Officer Whittemore asks how did you guys see the gun? They answered saying cause the he pulled up real close to us.

8:25 - They say it was in their laps and then they kind of picked it up. They were asked who was the passenger and they said they don't even know the guys.

10:00 - Officer Whittemore clears Lexus plate DWQ-346.

10:58 - Officer Lambert says she cleared the vin and it lists to Breanne and Jaya Maltzberger.

11:30 - Officer Lambert says Breanne hasn't got the car registered in her name yet.

14:00 - Breanne keeps looking around at every car that passes as if she is afraid.

15:55 - Officer Whittemore contacts Officer Lambert who is in her car and on her computer and confirms Lou Arbour is 10-5 wanted with felony warrants.

16:20 - Officer Whittemore calls Sergeant Ballas to explain the call.

16:50 - Officer Whittemore speaks to Sergeant Dodge and explains to him this is a civil issue with Lou Arbour.

18:55 - Breanne and Jose say passenger has a gun in his lap but never pointed it at anyone.

21:00 - Brad Gallegos continues to try and unlock the car as police keep looking around as cars drive by using caution.

BERNADETTE LAMBERT'S dash cam on the second call on 02/05/17 at 12:20 a.m. Officer Lambert arrives in the area first:

7:01 - Officer Lambert is approaching Acero while traveling eastbound on Small Ave. On the dash cam you can see the semi-trailer and what appears to be the Toyota Camry parked behind it as Officer Lambert turns off of Small northbound onto Acero Ave.

8:15 - Officer Lambert is southbound on Belmont approaching Small as you see Officer Whittemore drive by westbound on Small Ave towards the Camry parked behind the Semi Truck.

8:42 - As Officer Lambert is on Small Ave traveling westbound you can see Officer Robinson's headlights traveling eastbound on Small Ave towards Officer Whittemore.

8:50 - Officer Lambert travels westbound on Small Ave approaching Officer Whittemore as he is parked behind the Camry the brake lights on the Camry come on.

8:53 - Officer Whittemore turns his overhead emergency lights on.

9:00 - Camry pulls forward

9:03 - Camry crashes into the semi-trailer

9:05 - Officer Whittemore pulls forward behind the Camry as it sits underneath the semi.

9:10 - Officer Whittemore exits his patrol car.

9:17 - Officer Whittemore gets hit by the Camry backing into his car at a violent impact knocking him back as his car moves hitting his arms.

9:19 - See Officer Lambert running westbound on the Southside of Officer Robinson's patrol car pulls her gun.

9:23 - Officer Lambert fires at the Camry with one hand.

9:39 - Officer Whittemore pulls his patrol car up behind the suspect in the Camry as it is crashed into the Fairground wall.

10:12 - Officer Lambert runs back to her patrol car.

10:21 - Officer Lambert pulls her patrol car to the right of Officer Whittemore.

TODD WHITEMORE'S patrol car dash camera as he is driving eastbound on Small Ave and spotlights the Camry as it is parked behind the semi-trailer Officer Whittemore slows down the Officer Whittemore makes a U-turn to pull up behind the vehicle.

00:50 - Officer Whittemore pulls in behind the Camry and stops.

00:52 - You can see Officer Robinson approaching eastbound on Small Ave toward Officer Whittemore at the same time the brake lights on the Camry come on.

1:05 - Officer Robinson is stopping patrol car and the Camry is driving toward Officer Robinson's patrol car as it turns and crashes into semi-trailer.

1:07 - Camry crashes into semi-trailer

1:08 - Camry is stopped underneath semi as Officer Whittemore pulls forward and behind the Camry as Officer Robinson opens the door to his Patrol car.

1:15 - Officer Robinson pulls his duty weapon and has the driver later identified as (Andrew Byrd DOB: 03/21/83) of the Camry at gun point yelling at him to stop the car and turn off the car, at the same time the reverse lights go off as it appears the driver (Byrd) put the car into park.

1:16 - Hear audio of Officers telling Byrd to stop the car.

1:18 - See the driver of the Camry (Byrd) making movement inside the car as he puts the car in reverse. Byrd's left hand is up and you cannot see the right hand. The car moves backward slightly.

1:20 - Byrd turns around looking over his right shoulder.

1:22 - The Camry rapidly accelerates backward crashing the rear of the Camry into the front end of Officer Whittemore's Patrol Car.

1:23 - Byrd shifts into drive and Officer Robinson steps backwards and shuts his door to his Patrol Car and again steps back.

1:24 - Officer Robinson aims his weapon at the driver with both hands on the weapon and begins tracking the driver.

1:24.50 - Officer Robinson pushes himself up against his Patrol Car trying to back away.

1:25 - Officer Robinson's body is against his driver's side door on the patrol car pushing backwards.

1:25 - Officer Robinson fires one shot into the driver's side window.

1:25 - Officer Robinson continues to track the driver as the car drives forward accelerating.

1:28 - Officer Lambert fires one shot at the Camry as the car slows and the brake lights go on.

1:31 - Camry hits the wall and the brake lights are still on.

1:41 - Brake lights to Camry go off, car accelerates as Officer Robinson is approaching the Camry to the right side almost parallel as Officer Robinson's light is shining on Camry.

1:43 - Camry accelerates again and crashes into light pole as the front tires are spinning as some smoke arises from the tires spinning.

1:55 - Officer Whittemore contacts the right rear of the Camry with the front of his Patrol car to pin it in.

NEAL ROBINSON'S dash cam:

8:17 - Officer Robinson turns onto Small Ave eastbound from Prairie Ave.

8:42 - The camera shows Officer Whittemore's emergency lights go on.

8:49 - Camera shows Camry pull forward towards Officer Robinson.

8:51 - Officer Robinson spotlights the driver Byrd in the Camry as he drives away from Officer Whittemore.

8:53 - Camry crashes into semi-trailer

9:07 - Camera shows Camry crashing into Officer Whittemore's car you cannot see Officer Robinson's position, at this time.

NEAL ROBINSON'S body cam #S-4 file #2:

0:04 - Officer Robinson goes gun point on driver Byrd in Camry.

0:05 - light goes on attached to Officer Robinson's weapon, Byrd's left hand is up and you cannot see the right hand.

0:07 - right hand goes up and then back down.

0:09 - Byrd's left hand goes down.

0:10 - Byrd turns to his right over his right shoulder and looks back at Officer Whittemore.

0:11 - Byrd is pointing at Officer Robinson with right hand as he backs his car into Officer Whittemore's patrol car.

0:12 - Officer Robinson shuts his driver's side door to his patrol car.

0:14 - Officer Robinson shoots as you see a hand coming up after slowing video down it appears to be the left hand on the steering wheel cannot see the driver's right hand as car turns toward Officer Robinson.

1:10 - Officer Robinson airs the male is not moving and calls for a supervisor.

2:05 - Officer Robinson airs he needs car at Small and Acero and Small and Scranton avenues.

4:55 - Officer Robinson tells Sergeant Dodge who has arrived on scene as he took off towards me, "I shot him."

CONCLUSION

At approximately 10:30 p.m. on 02/05/17, Officers Lambert, and Whittemore were dispatched to Small and Acero (in front of 844 Acero) where they received information from Breanne Griego-Segura and Jose Segura. They had been contacted by two men, one of which she identified as Lou Arbour Trujillo and both persons had handguns in their possession when they confronted Breanne about her reason for being at 844 Acero. In a later interview, Breanne identified Andrew Byrd as the second male and described him as wearing a blue jersey with a number on it which matches the clothing description of Byrd at Autopsy. This call was overheard by Officer Robinson who responded to the area. Dispatch aired information there was a vehicle circling the area of the call and two male persons had guns in their laps.

At approximately 12:20 a.m., they were dispatched to the Acero address again and notified the same two men, Byrd and Arbour were driving in the area in a brown four-door car with Florida plates. Breanne specifically identified Byrd as being a passenger and at that time had a gun in his lap. Breanne and Jose called the police three separate times as they were afraid of the men circling the block with guns.

Officers Robinson, Lambert and Whittemore responded to the call with the knowledge they we're dealing with possibly armed men who had assaulted officers in the past.

When Whittemore arrived, he located the Camry with Florida plates HHZU94, it was parked on the south side of 844 Acero. He slowly drove by and shined his spot light in the car and was not able to see anyone in the car. Whittemore made a U-turn and pulled in behind the vehicle. The brake lights of the Camry came on and he activated his overhead lights. At this time the Camry backed up making contact with his marked police car and then started to pull away. At this time Robinson pulls up in his marked police vehicle and the suspect rapidly accelerated striking a semi-trailer which forced the suspect vehicle to go under the trailer. Whittemore pulls forward and gets out of his patrol vehicle and stands between the open door and the windshield pillar with his gun drawn giving verbal commands for the driver to stop the car while Robinson

is standing next to the suspect vehicles driver's side window with his weapon drawn giving verbal commands for the driver to stop the car.

Byrd puts the car in reverse, looks back at Whittemore's vehicle, accelerates and rams Whittemore's vehicle. At this time, Whittemore reports he is struck by his vehicle and believed his life was in imminent danger from being run over by his or the suspect's vehicle. Whittemore did not respond with deadly force, at this time, as he was in fear of being run over by his or Byrd's vehicle and was trying to get into his vehicle. Robinson maintained the suspect vehicle in his weapon's sight picture during the suspect vehicle's contact with Whittemore's patrol vehicle. Byrd then put the car in drive and began driving in the direction of Robinson.

Robinson is now in a lane between the semi-trailer and his patrol vehicle. Robinson closed his door to provide space between the suspect vehicle and the door and stepped back against his patrol vehicle as Byrd got closer to him. At this point, Robinson attempts to give space between Byrd and himself and is not creating jeopardy by standing in front of Byrd's Camry. Robinson stated he was in danger of being struck by Byrd's vehicle and he had seen Byrd reaching past the console shift lever toward the floor and then lean to the right. Robinson equated Byrd's body movement to his training in Close Quarter Combat Training, where he was taught to pull his firearm, bring it to his waist, lean back and fire. Robinson stated he was in fear he would be shot so he aimed and shot Byrd one time as the vehicle moves forward. The video shows the time between Byrd's impact with Whittemore's patrol vehicle and the shot being fired are approximately two seconds however, a slow motion review of the video shows approximately one second is the time which Robinson saw the hand movement and responded with his shot being fired.

Officer Lambert parked her marked patrol car to the east (behind) Whittemore's patrol car and began approaching on foot when she saw Byrd ram Whittemore's patrol vehicle. As Byrd pulled forward, Lambert continued on foot and was on the south side of Robinson's patrol vehicle which is a SUV. At this time, she hears a shot fired while Byrd is driving. Lambert had no sight of Robinson at this point since the SUV was between Lambert and Robinson. Lambert stated she had just seen the driver hit Whittemore and she believed the driver had shot Robinson and she was afraid the driver would continue on and injure or kill someone else so she fired one shot at the moving vehicle. The investigation never revealed where this projectile went. It was not located in the car and a search of the neighborhood proved futile.

Pending Function testing on Robinson and Lambert's firearms. No ballistic comparisons were requested in this case. The projectile recovered it too damaged and the casings are not probative.

Captain Don P. Leach 12725, 05/19/17

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, and he may use a degree of force which he reasonably believes to be necessary for that purpose. §18-1-704(1), C.R.S.

Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe and does believe that he or another person is in imminent danger of being killed or of receiving great bodily injury. §18-1-704(2)(a), C.R.S.

In evaluation whether a person was justified by self-defense, the person is entitled to act on appearances. *People v. La Voie*, 395 P.2d 1001 (1964). The United Supreme Court reviewed a situation to determine whether officers use excessive force under the Fourth and Fourteenth Amendments. *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). In that case officers fired a total of 15 shots at a suspect in a fleeing car that was determined to constitute a grave public safety risk. The Court analyzed the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Further, the court said that it allowed for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation-in circumstances that are tense, uncertain and rapidly evolving.

Conclusion

It is my conclusion that based on these circumstances that Police Officers Neal Robinson, Todd Whittemore, and Bernadette Lambert were justified by the laws of the State of Colorado regarding Self-Defense and the Defense of Others (C.R.S. 18-1-704) in using the actions they employed to defend themselves and others from what they reasonably believed to be the use or imminent use of unlawful physical force and deadly physical force by Andre John Byrd, DOB: 03/21/81; and that they reasonably believed a lesser degree of force would be inadequate. The officers had reasonable grounds to believe, and did believe, that they or another person was in imminent danger of being killed or receiving great bodily injury. Therefore, the actions of Officers Neal Robinson, Todd Whittemore, and Bernadette Lambert were justified under the law and are not criminal. Given this situation, criminal charges would not be appropriate, and therefore, criminal charges will not be filed.

Dated this 14th day of August, 2017.



J. E. Chostner
District Attorney

Pc: Colorado Bureau of Investigation