



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

**J.E. CHOSTNER  
District Attorney**

May 12, 2017

Chief Luis Velez  
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 October 10, 2016  
Person shot: Jonathan Neal Martinez, DOB: 11/10/93  
Location: Kohl's parking lot, 5627 N. Elizabeth St., Pueblo, CO  
Police Officers involved: Jonathan Guerrero and Carl Pagels

Dear Chief Velez and Sheriff Taylor:

This investigation involved a shooting incident on October 10, 2016, which resulted in injuries to Jonathan Martinez. 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, the Colorado State Patrol, 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 October 10, 2016, at about 7:22 PM, Pueblo Police Department Officers Jonathon Guerrero and Carl Pagels were dispatched to Kohl's, 5627 N. Elizabeth St., Pueblo, Colorado, concerning a theft and trespass in progress. A store asset protection employee had reported to police dispatch that Jonathon Martinez was in the store, and was trespassing based on a previous notice that he had been given stating that he did not have permission to be in the store. A second male, possibly associating with Martinez and later identified as Kenneth Vigil, was concealing items in his hands. A female, believed to be associating with Martinez, was at the registers. A

701 Court Street, First Floor • Pueblo, CO 81003-3077  
Telephone 719.583.6030 • FAX 719.583.6666



surveillance video showed Martinez and Vigil exit the store and enter a stolen silver Acura which was parked in a handicap spot. All of this information was relayed to the responding officers.

The video camera showed Officer Guerrero's patrol sport utility vehicle (SUV) pull in front of the Acura at an angle. Officer Pagels arrived and positioned his vehicle in the parking spot behind the Acura. Almost immediately thereafter, Jonathan Martinez, in the driver's seat, backs the Acura in reverse and hit a yellow metal pole in the parking lot. Officer Guerrero exited his vehicle and drew his handgun and gave loud verbal commands to the occupants of the Acura to stop the vehicle and to show their hands. Guerrero was positioned near the left front of the Acura, directly in front of the driver's position.

After striking the metal pole, Martinez turned the wheels toward Guerrero and accelerated toward Officer Guerrero, striking him in the upper leg and knee area. Guerrero backed up a step and Martinez drove forward again striking Guerrero a second time. Guerrero's upper torso was forced onto the hood the vehicle and he was dragged while the vehicle moved forward. Officer Guerrero, who still had his handgun in hand, fired two rounds toward the driver.

#### **Interview with Police Officer Jonathan Guerrero**

Officer John Guerrero, Pueblo Police Officer, was interviewed by CIT investigators on October 14, 2016. He stated on Monday, October 10, 2016, he and Officer Pagels had been downtown on a previous call when they were dispatched to Kohls. The initial call was dispatched as three shoplifters there and then it changed that they were no longer in the store but there was a trespassing in progress. While responding to the call, Officer Guerrero asked dispatch for any updates on the call. During their responses Officer Nuevo asked if they were going to need some more officers in anticipation of having to block off the entrance and do a search of the building. Officer Guerrero responded to Nuevo sure it wouldn't hurt having two more. Dispatch aired that the suspect was no longer in the store but was sitting in a silver vehicle parked in the first handicap parking outside of the store. Officer Guerrero stated a license plate was given but he could not recall the plate number but did recall dispatch saying that the vehicle was stolen. Officer Guerrero told Officer Pagels over the radio that they should approach from the north and then circle back around and try to block the vehicle in where they could catch him without alerting him or ending up having a pursuit. Officer Guerrero proceeded around Elizabeth and Officer Pagels came in from the north around the Famous Footwear store. Officer Guerrero indicated he unbuckled his seatbelt and activated his body camera. Officer Guerrero stated he saw a glimpse of the vehicle. Officer Guerrero turned around and thought he had it blocked off enough. Officer Guerrero immediately saw the vehicle back up, strike a pole. As he was exiting his patrol car, he then drew his weapon. The vehicle then came toward him and hit him the first time. Officer Guerrero indicated he had his hand out. Officer Guerrero told the driver "stop don't do this". Officer Guerrero said he kept telling the driver "don't do this", but the driver kept coming toward him and at that point the driver knocked Officer Guerrero onto the hood of the car. Officer Guerrero stated "I was afraid that he was going to continue to drive with me on the car. I didn't know what else to do but fire, you know, so I fired two rounds into the car so that he wouldn't run me over or he wouldn't take me with him on the car. And when I fired that second

shot, they were relatively quick shots, it just stopped. Everything stopped and you know I don't recall exactly what happened at that point but I couldn't see the guy anymore". Officer Guerrero pointed his flashlight into the car. Officer Guerrero indicated he pointed his flashlight into the car and could see the driver sitting in the car and could see him bleeding from the mouth, face and chest. He observed that the driver had blood all over his chest. At this point, Officer Guerrero indicated he moved to the side of the car trying to get the driver out. Officer Pagels was getting another person out of the car. Officer Guerrero indicated he tried to open the driver's door but the door was locked. Guerrero stated he couldn't get the guy to unlock the door and Guerrero said he thought about breaking the window but then saw the guy moving and told him to unlock the door. The driver then opened the door. Officer Guerrero didn't realize the driver was still standing on the brake and as the driver opened the door, Officer Guerrero grabbed onto him. At that point, the driver fell out of the car and the car began to move forward. Guerrero stated he tried to stop the vehicle immediately but couldn't get his foot on the brake. The car started to pinch Officer Guerrero between a van and the car so he backed off. Officer Guerrero stated he knew he was hurt. Officer Guerrero stated he did not know where the car was going but didn't want it to hit someone else so he chased after the car and steered it toward a tree. Once Officer Guerrero was able to stop the car, Officer Guerrero went back and observed the injuries on Mr. Martinez and retrieved his first aid kit. Officer Guerrero indicated he asked Martinez to hold some bandages to his face while he got more bandages out. Officer Guerrero stated he held pressure on Martinez's face to stop some of the bleeding. Officer Guerrero also noticed that when Martinez rolled over he was choking on his blood so Officer Guerrero told Martinez to roll back over on his stomach and stay there. Officer Guerrero stayed with Martinez until search and rescue personnel arrived and stated that once everything got there "it was a big relief to see him walk away". Officer Guerrero was asked at what point Martinez had seen him. Guerrero stated "as soon as I pulled up in front of him he saw me. I can remember him looking at me. He just looked over his shoulder and tried to back out". Officer Guerrero was asked if he thought Martinez was intentionally coming toward him. Officer Guerrero stated "yes, I didn't have a doubt. I mean I thought he was going to run me over". Officer Guerrero was asked by investigators to describe when he was hit by the car by investigators. Officer Guerrero said "the first time he hit me he hit my leg." Officer Guerrero stated he has had two or three surgeries on his leg. Guerrero said that when Martinez hit him the first time he hit him pretty good. Officer Guerrero said he was able to brace himself the first time and pushed away from the car. Officer Guerrero stated when Martinez hit him the second time Guerrero couldn't keep up with the car and fell on top of the hood at one point. It wasn't until later that night that Officer Guerrero felt pain in his leg. Officer Guerrero went to the emergency room where he was told that the front of his knee was sprained.

### **Interview with Police Officer Carl Pagels**

Officer Carl Pagels, Pueblo Police Officer, was interviewed by CIT investigators on October 14, 2016. Officer Pagels stated that he and Officer John Guerrero had just finished handling another call. After the call, they were dispatched to a theft in progress at Kohls. Officer Pagels indicated they were advised that there were three males and a female inside the store and one of them was at the register and some of them had concealed some items. Officer Pagels indicated on their way to the call, dispatch had aired the individuals had left the store, that there was another

individual had been trespassed from the store and was currently in the store. The information provided had indicated that the individual had not concealed anything at the time. Dispatch had aired, per loss prevention, some of the individuals had walking into the parking lot and got into a silver car. The license plate for the car and dispatch had found that the car had been reported stolen. At that point, when dispatch had aired that the vehicle was stolen, another officer came on air and asked if Officer Pagels and Officer Guerrero needed help because usually stolen vehicles will try and take off from law enforcement. At that point, Pagels and Guerrero were almost on scene. Officer Pagels indicated that Officer Guerrero told Officer Pagels via the radio to just follow him. Officer Pagels stated that they went to the far north end and entered into that entrance of the parking lot of the shopping center and then came onto the north side. Officer Pagels indicated that he crept up to the Kohls parking lot. They were not sure of the exact location of the suspect vehicle. They only knew that it was in a handicap parking spot next to a silver van. Officer Pagels indicated that Officer Guerrero saw the vehicle immediately. At this time, Officer Pagels indicated he saw the vehicle but there were two people walking in front of his patrol car so he had to wait for them to pass. Officer Pagels indicated that Officer Guerrero made a loop into the parking lot and positioned himself right in front of the vehicle. Officer Pagels stated that he boxed the vehicle in from the back but didn't realize that there were poles for the handicap parking. Officer Pagels indicated that when he was getting out of his car, the stolen vehicle started to back up and hit the pole. After the vehicle struck the handicap pole, Officer Pagels stated that he saw the car go forward toward Officer Guerrero and saw Officer Guerrero fall on top of the hood and get back up. Officer Pagels then heard Officer Guerrero yell "don't do it, don't do it, don't do it". Officer Pagels then stated he saw the car hit Officer Guerrero again and heard Officer Guerrero fire his handgun. Officer Pagels stated at that time he thought it was three shots. Officer Pagels stated "when I saw John (Guerrero) on top of the car I got scared cause I thought I thought they were going to kill him. And you know, it's just kind of hard cause I grew up with John and I've known him since since we were kids, and, um, when I thought that he was really seriously hurt, you know, I-I shot into the car cause what happened when he went towards John the second time when I got a good look I saw the driver. He like had his hands on the wheel and it looked like he was like-like tilting over like this to like, like, like not get hit you know cause John shot into the windshield, and um, so, so it to me it looked like he was trying to duck the shots and tried to ram him again and then that's when I fired." Officer Pagels said he shot through the rear driver's side door and tried to aim where he thought the driver was. Officer Pagels then noticed that there was a passenger in the back seat. The passenger started yelling "don't shoot anymore, don't shoot anymore". The passenger said "you already shot my brother, you shot my brother". The passenger was then trying to get out of the door so Officer Pagels stated he ran to the passenger side of the vehicle because he thought the passenger was going to run. Officer Pagels stated he ordered the passenger to get on the ground and then handcuffed him. Officer Pagels stated when he was handcuffing the passenger he saw the car take off again. Officer Pagels stated he observed Guerrero get pinned up against a silver van and thought the driver was trying to run Officer Guerrero over again but then realized the driver was not in the car and the car was moving on its own. Officer Pagels then told interviewers that while Officer Guerrero was trying to stop the car, he went to go check on the suspect because the suspect was bleeding kind of bad. Officer Pagels said he was checking the injured suspect. The other person (Vigil) got up and tried to walk away and he was telling Officer Pagels "please man, don't make me watch my brother die". Officer Pagels said he understood that Vigil was going through a rough time so he was trying to keep everyone calm.

Officer Pagels was asked what the vehicle did after it hit the pole. Officer Pagels stated the driver deliberately made forward movement striking Officer Guerrero and then kind of backed up and went forward again striking Guerrero a second time. Officer Pagels asked if after hitting the pole would someone have to change the car from reverse to drive and Officer Pagels stated that would be correct. Officer Pagels was asked if the driver could have turned the wheel and went another way and Officer Pagels stated "you know, I think he was trying to do anything he could to get away and what I mean by that is I believe that he was willing to hurt my partner to get away". Officer Pagels said he fired one shot into the car when he saw Officer Guerrero on the car.

### **Interview with Jonathan Martinez**

On October 20, 2016 CIT investigators responded to Denver Health, 777 Bancroft Street, Denver, Colorado to conduct an interview with Jonathan Martinez. Investigators had been in contact with Jonathan Martinez's health care providers waiting on their approval as to when they felt Mr. Martinez could be interviewed. Mr. Martinez was in the custody of the Denver County Sheriff's Office on outstanding warrants from a previous case. Investigators walked into the room and identified themselves to Mr. Martinez. Mr. Martinez indicated he understood who the detectives were and the reason they wanted to speak to him. Detectives advised him of his rights pursuant to Miranda. Mr. Martinez was able to sign the form agreeing to speak with investigators. Mr. Martinez was asked if he understood what was going on and if he would be willing to speak with detectives. He indicated "yes". Detectives indicated to Mr. Martinez he was in custody on the warrant he had before this incident and currently did not have any charges from the incident but there soon would be. Investigators asked Mr. Martinez if he could tell the investigators about the day of this incident. Mr. Martinez said the girl who he thought was "Janessa" had stolen a credit card and he took her to the Kohls to get some items. Mr. Martinez said Janessa agreed to get him a bottle of cologne for taking her there. Mr. Martinez also admitted that the car they were in was stolen. Mr. Martinez stated he did not know how it was stolen and thought someone brought it to his house. Mr. Martinez would later say that he was selling these stolen cars. Mr. Martinez said his brother Kenneth was with them. Mr. Martinez indicated he did not know where Janessa got the stolen credit card. Mr. Martinez went on to say that he drove them to the Kohls and Janessa went inside. Mr. Martinez said that Janessa was taking a long time in the store so they went in to tell her to hurry up. Mr. Martinez indicated that he and Kenneth went back to the car and waited for her. Mr. Martinez said that she texted him and said that she made the purchase and the credit card worked but she wanted to go buy some more things. Mr. Martinez said he texted her back and told her that he wanted to leave. Mr. Martinez indicated that he was aware that he had the arrest warrant and was worried the cops would be showing up. Mr. Martinez said that they were parked in the handicap spot in front of the store. Mr. Martinez said he saw a police car pull up so he started the car and put it in reverse and backed up into the handicap sign. Mr. Martinez said at this time the cops were out of their cars. Mr. Martinez said he then put the car into drive and heard the police officer say "don't run me over or I will shoot you". Martinez said he was positive that he did not press the gas pedal and this is when he was shot. Martinez said he remembered the cops pointing the gun at him and remembers the cop squeezing the trigger. Mr. Martinez said after the shots, the cop kept telling him to put his hands in the air and blood was running down his face. Mr. Martinez stated he knew he was in a state of shock and could not lift his hands in the air and this is when he was

shot again. Mr. Martinez said he got out of the car and does not know what happened until he woke up in the hospital several days later. Mr. Martinez told investigators that he and Kenneth took some meth on the day of this incident. He admitted to having a drug problem and hoped that being in the hospital would help him get over this addiction. Mr. Martinez was asked why he put the car in reverse when he saw the cop pull up. Mr. Martinez said he knew he had the arrest warrant and he was trying to get away from the cops to avoid getting arrested. Investigators explained to Mr. Martinez that they had a video of this incident but wanted to get his perspective of the incident. Mr. Martinez expressed remorse about the incident. He told investigators about his injury and how much pain he was in. Mr. Martinez said that both bullets were still inside of him.

Investigators told Martinez that while watching the video he wondered why he didn't steer the vehicle in a different direction and asked why he went towards the officer. Mr. Martinez thought it was "the adrenalin". Mr. Martinez stated he didn't remember steering the vehicle towards the officer. Mr. Martinez spoke of getting better and hoped this would change his life for the better. Mr. Martinez was asked if anyone told him about the condition of the officer and if he wanted to know. Mr. Martinez said he didn't know how the officer was doing but he was deeply sorry for putting the officer and his family through all of this.

### **Interview with Kenneth Vigil**

CIT investigators conducted an interview with Kenneth Vigil. This interview took place at the interview room at the Pueblo Police Department. Detectives identified themselves to Mr. Vigil. Detectives were initially informed that Mr. Vigil had several outstanding warrants. Mr. Vigil was given his Miranda rights and signed the form agreeing to speak with the detectives. Mr. Vigil agreed to speak with detectives but appeared very reluctant to give them information. Mr. Vigil stated Mr. Martinez picked him up and they went to the Kohls but he did not get out of the car. Mr. Vigil agreed that he was sitting in the rear passenger seat. He said he thought "they" were going to buy some clothes. Mr. Vigil stated that when police showed up, his brother backed up but hit the pole. Mr. Vigil said the car then rolled forward. Mr. Vigil said he told Jonathan Martinez that they were caught. He said Jonathon then put his hands up or he was going to put his hands up and then he heard the shots and saw the glass flying. Investigators asked Mr. Vigil if he saw the police officer in front of the car. Mr. Vigil stated "Yeah and he said to stop but Jonathan didn't stop and he stepped on the gas". Detectives informed Mr. Vigil that they had viewed the video from the Kohls and it was apparent that Jonathan Martinez was trying to run the officer over. Mr. Vigil stated the vehicle only rolled forward after hitting the pole, and the officer is the one that went forward and jumped on the hood of the car. Mr. Vigil then stated that he understood that the police "had to do what they had to do". However, Mr. Vigil then added that if his brother wanted to run that cop over, then he would have run the cop over. Mr. Vigil asked if the officer took any steps back, Mr. Vigil then demanded the detectives show him the video. At that point, Mr. Vigil asked to speak with an attorney. Detectives then stopped speaking with Mr. Vigil and exited the interview room. Officers then learned that Mr. Vigil did not have any outstanding arrest warrants.

### **Interview with Janessa Rodriguez**

CIT investigators interviewed Janessa Rodriguez. This interview took place at the Pueblo Police Department. Investigators asked Ms. Rodriguez to tell them how she and Mr. Martinez got together on the day of the incident. Ms. Rodriguez said that she and her cousin Elijah Gutierrez went to Kohls to shop. Ms. Rodriguez said they got into an argument and Elijah left her there. Ms. Rodriguez said she called Jonathon Martinez for a ride. Ms. Rodriguez said that when Jonathon arrived he called her and said that he was there and then they came into the store together and walked around shopping with her for a bit and then went outside to wait for her. Ms. Rodriguez was asked if she knew how Jonathon got to Kohls. Ms. Rodriguez said he told her he borrowed his boss's car. Ms. Rodriguez said she thought he worked for a roofing company but did not know which one or if he really works. Ms. Rodriguez said as she was getting ready to pay "that guy came up to me, he probably works there or something", took her outside to the parking lot and this is when she heard Kenneth say "my brother's going to die, they shot him". Ms. Rodriguez told investigators that she has known Jonathon for a couple years through her sister and Kenneth because they are together. Ms. Rodriguez said she and Jonathon are not really together but they engage in casual sex. Ms. Rodriguez was asked what she knows about Jonathon with respect to drugs and gangs. Ms. Rodriguez said that Jonathon does meth but does not know if he did meth today. Further, she indicated she does not know what Jonathon Martinez does to earn money. Ms. Rodriguez was asked why she thought Jonathon tried to escape the officers. Ms. Rodriguez said she believed that Jonathon had warrants for his arrest because he had cut off his ankle monitor.

### **Interview with Zachary Riley**

Zachary Riley is a loss prevention officer at Kohls. On October 11, 2016 Detective Anthony Colletti contacted Mr. Riley by phone to ask him what he saw the night of the incident at Kohls. Mr. Riley said he was watching a silver car circling the parking lot approximately three times, park and then move and park again. Mr. Riley said a female and a male got out of the silver car, came into the store and began shopping. Mr. Riley said he was following the male and female via video while they were in the store. Mr. Riley said he was watching the male and female, some other people that were shoplifting and also the car in the parking lot. Mr. Riley said at some point he called the police department because he recognized the people in the store as being "trespassed" prior. Mr. Riley said he was videotaping the silver car parked in the handicap area outside when the police arrived and everything was captured on video. Mr. Riley stated shortly after the shooting he went and found the female that was with the man in the silver car and stated that she was still inside the store by the jewelry department. Mr. Riley said he caught her and took her outside to the police officers. Mr. Riley stated after the shooting the other loss prevention officer for Kohls, Mike Aragon, came back and assisted him. Mr. Riley said they then called his immediate supervisor and told her what had happened.

### **Body worn camera Officer Guerrero**

Officer John Guerrero was wearing a body camera. It showed that he arrived in the area in front of Kohls, exited his vehicle and drew his firearm as he approached the silver vehicle driven by Mr. Martinez. The vehicle driven by Mr. Martinez can be seen backing up and striking the pole in the handicap parking spot in front of Kohls. The vehicle is then seen moving forward striking Officer Guerrero. Officer Guerrero is then heard stating "get out of the car. Let me see your hands". The vehicle then proceeds forward. Officer Guerrero is then heard say "Don't do it" multiple times. Officer Guerrero falls on the hood of the car discharging his firearm twice into the front windshield, and at that point the vehicle stops. Officer Guerrero is seen trying to open the driver's door which appears to be locked. Shortly thereafter the door opens. Mr. Martinez is taken out of the car. The car then proceeds forward and Officer Guerrero then attempts to get behind the wheel stopping the vehicle a short distance away and then returning back to the scene of where the vehicle is originally parked.

### **Body worn camera Officer Pagels**

Officer Pagels was wearing a body camera. It showed that he arrived at the Kohls parking lot approaching the silver vehicle from the back. Officer Pagels is seen getting out of the car approaching the driver's side of the vehicle. Officer Pagels is heard saying "Stay right there" and "Get on the ground" multiple times. Officer Pagels is then seen discharging the firearm after the vehicle has struck Officer Guerrero. Officer Pagels then moves to the other side of the vehicle after it begins to leave the parking slot as he then contacts Kenneth Vigil then placing handcuffs on him and having him sit on the ground.

### **Dash cam video Officer Guerrero**

The marked patrol unit being driven by Officer Guerrero that night was equipped with a dash cam. The dash cam captures Officer Guerrero positioning the vehicle in front of the silver Acura. Officer Guerrero is seen exiting his vehicle and walking to the front of the vehicle pointing his weapon at the driver. Officer Guerrero is seen positioning himself in front of the vehicle pointing his firearm. The vehicle is seen to move forward striking Officer Guerrero at approximately the knee area. The vehicle then pauses momentarily then proceeds forward striking Officer Guerrero who then ends up on the hood of the vehicle. Officer Guerrero then discharges his firearm twice into the driver's side windshield area of the vehicle. The vehicle then stops. Officer Guerrero gets off of the vehicle and is seen attempting to open the driver's door which appears to be locked. The driver's door then opens. Mr. Martinez exits and can be seen bleeding from the facial area. Once Mr. Martinez is placed on the ground, the vehicle begins to move. Officer Guerrero is seen attempting to stop the vehicle. Officer Guerrero is then seen being momentarily wedged between the vehicle and a parked silver van as it begins to move on its own. Officer Guerrero is seen running towards the vehicle, jumping in it and attempting to stop it before the silver Acura strikes a tree further in the Kohls parking lot. Officer Guerrero is seen returning to the area of the incident and contacting Mr. Martinez and then beginning to render first aid.



## **Dash cam video Officer Pagels**

The marked patrol vehicle Officer Pagels was operating that night was equipped with a dash cam. The video shows Officer Pagels coming to the area. The video is not equipped with sound. The video shows the silver Acura backing up striking the pole in the handicap spot. At that point, the vehicle proceeds forward. Officer Guerrero can be seen standing in front of the vehicle. The vehicle proceeded forward, then proceeded forward again. Officer Guerrero can be seen falling onto the hood of the vehicle. The vehicle then comes to a stop. Officer Guerrero is seen coming off the hood of the car and attempting to open the driver's door. The driver's door eventually opens. Mr. Martinez gets out of the vehicle and is placed on the ground. Officer Pagels is then seen contacting Mr. Vigil. Mr. Vigil exits the vehicle from the passenger side rear door. Officer Pagels then goes over to Mr. Vigil and begins handcuffing Mr. Vigil. The vehicle is then seen beginning to move forward. The vehicle then wedges Officer Guerrero between the vehicle and a parked silver van. Officer Guerrero is then seen running toward the vehicle as it is proceeding through the Kohls parking lot unattended.

## **Crime scene processing**

On October 10, 2016 officers responded to 5627 N. Elizabeth, the Kohls parking lot. Investigators observed a police car parked at a northeast angle just south of the first handicap parking spot and just east of the south entrance door of Kohls. Towards the east of the police car was a backpack which was opened. It was filled with medical supplies. In the middle of the first handicap spot was a large pooling of blood. In the pool of blood was a sweatshirt which had been cut off. To the west of the pool of blood was a sunglass case, a flashlight and a lighter. In the northwest corner of the first handicap spot was a battery powered string of lights which were on. In the north end of the first parking spot was a cement pole that was painted yellow with a handicap sign on the top of it. The pole was bent north like it had been struck. Northwest of the handicap pole on the ground was a 45 caliber spear spent cartridge casing. In the handicap parking spot directly north of where the incident occurred was another police car.

In the second handicap spot just east of the parking spot where the incident occurred was a silver van. Directly south of the van was were two spent cartridges. Both were .40 caliber Federal brand. East of the parking spot where the incident occurred was a silver Acura with Colorado license plate 830 VYL facing east in the seventh and eighth parking spot. Officers on scene stated the vehicle was up on the median and had struck a tree. They rolled it back off the median and turned the vehicle off. The vehicle had a projectile defect on the back passenger door on the driver's side. Between the driver door and the passenger door on the driver's side was a bloodstain which appeared to be a swipe. On the driver's side back panel near the trunk was a black streak which appeared to be made from a duty belt leather. On the hood of the vehicle was a dust imprint, a small dent and transfer from Officer Guerrero's leather gear. On the back bumper of the vehicle was a defect in yellow paint transfer which appeared to have come from the handicap pole in the first parking spot. Paint scrapings were collected from the handicap pole where the incident occurred. The paint transfer was also lifted from the bumper of the

Acura with a palm lift used for lifting fingerprints. The scene was photographed. In addition, Pueblo City Fire Department was requested to photograph the scene from an elevated view. The Colorado State Patrol also assisted with mapping the scene and conducted a laser diagram of the scene. The items seized consisted of:

- Officer Pagels patrol vehicle
- Spent cartridge casing .45 caliber Speer
- Handicap pole of the first parking spot east of the south doors
- Battery powered lighting string
- Lighter
- Blue flashlight
- Blue and silver gray sweatshirt with Superman logo on it
- Sunglass case
- Medical backpack
- Officer Guerrero's patrol vehicle
- Spent cartridge casing .40 caliber Federal brand
- Spent cartridge casing .40 caliber Federal brand
- Van with Colorado license plate 099-V6H which was in the second parking spot from where the incident occurred
- Acura with Colorado license plate 830-VYL
- Paint transfer from the handicap pole
- Paint transfer from the bumper of the Acura
- Blood stain on the edge of the first handicap parking spot
- Blood stain on the Acura between the driver and passenger door on the driver side.

In addition, Officer Guerrero and Officer Pagels patrol vehicles were also processed. Investigators could see a light dusting print on Officer Guerrero's left pant leg and hip area consistent with being struck in this area. Gunshot residue (GSR) was obtained from Officer Guerrero's face and hands. Officer Guerrero's clothing was checked with alternative light source (ALS) and found traces of what appeared to be blood spatter on Officer Guerrero's clothing. Photographs were taken of Officer Guerrero's duty belt which contained one 40 caliber Glock handgun bearing serial number CUS-557 with a 15 round magazine and two extra 15 round magazines in a separate magazine pouch. Upon processing of the duty belt, the handgun contained in the inside rail light, one live round of a 40 caliber federal hydroshock in the same gun's chamber and 13 live rounds of .40 caliber Federal Hydro Shock ammunition in the gun's magazine. The magazine pouch contained two 15 round magazines with 15 live rounds of .40 caliber Federal Hydro Shock ammunition in each magazine. Officer Guerrero's clothing and equipment was photographed and removed.

Officer Pagels' face and hands were processed for GSR. Officer Pagels clothing was checked with the ALS and nothing was found. Investigators took photographs of Officer Pagels duty belt. Before processing Officer Pagels' duty belt contained a .45 caliber Kimber custom carry II handgun bearing serial number K282962 with an eight round magazine. The gun's chamber contained one live round of a .45 caliber Speer ammunition and the gun's magazine contained seven live rounds of .45 caliber Speer ammunition. The magazine pouch contained four fully loaded eight magazines, each containing eight rounds of Speer ammunition. The following items

were collected and placed into evidence. Processing at the Pueblo County's Sheriff's office. Until they could be tagged into evidence they were as follows:

#### **Officer Guerrero**

1. A .40 caliber Glock, 22 serial number CUS557
2. .40 caliber 15 round magazine
3. Three Live rounds 40 caliber federal hydroshock ammunition
4. 1 GSR kit (from Guerrero)
5. 1 blue uniform pant
6. 1 blue uniform shirt
7. 1 black tshirt

#### **Officer Pagels**

1. .45 caliber Kimber custom carry II serial number K282962
2. .45 caliber 8 round magazine
3. Live rounds of .45 caliber Speer Ammunition
4. 1 GSR kit (from Officer Pagels)

#### **Firearms involved**

Officer John Guerrero carried a .40 caliber Glock 22 special handgun which carries a 15 round magazine. Guerrero thought he fired two or three shots. After the shooting incident, his weapon was examined and his firearm contained 13 live rounds of .40 caliber Hydro Shock ammunition in the gun's magazine. The magazine pouch contained two 15 round magazines with 15 rounds of live .40 caliber Hydro Shock ammunition in each magazine.

Officer Pagels carried a .45 caliber Kimber custom II carry handgun with an eight round magazine. Officer Pagels indicated he fired one round into the passenger door of the silver Acura. After the shooting, investigators collected and examined his firearm which contained one live round in the chamber and the gun's magazine contained seven live rounds of .45 caliber Speer ammunition. The magazine pouch contained four fully loaded 8 round magazines, each containing 8 rounds of Speer ammunition.

#### **Vehicle Processing**

On October 14, 2016, investigators processed the 2006 silver Acura bearing Colorado license plate number 830 VYL. Photographs were taken of the vehicle. Observations included a black smudge on the front of the hood near the front bumper which appeared to be caused by Officer John Guerrero's duty belt. On the hood of the Acura was an impression in the dust. In the front windshield, there were two defects from the outside to the inside of the vehicle. On the driver's side door and back driver door was a blood stain which was a swipe. In the back driver door was a defect in the door. There was a black smudge on the driver's side near the gas tank which appeared to be from a duty belt. There was paint transfer on the back bumper of the vehicle which appeared to be from the handicap post which was in the scene at the Kohls parking lot. During the processing, paint scrapings were collected from the handicap pole. Paint transfer was also collected from the back bumper of the Acura. In addition, DNA was collected from the hood of the Acura where the dust impression was. Officers also placed the trajectory rod into the

defect of the back door. The angle was at an 8.45 degree upward. In addition, several other items were collected from inside the vehicle. The driver's seat was collected due to the projectile being collected from it. All items were tagged into evidence.

### **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 evaluating 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 judgements 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 John Guerrero and Carl Pagels 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 Jonathan Martinez, DOB: 11/10/93, 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 John Guerrero and Carl Pagels were justified under the law, and are not criminal. Given this situation, criminal charges would not be appropriate, and therefore, no criminal charges will be filed.

Dated this 12<sup>th</sup> day of May 2017



J. E. Chostner  
District Attorney

Colorado State Patrol