



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

October 15, 2019

Chief Troy Davenport
Pueblo Police Department
Pueblo Municipal Center
200 S. Main Street
Pueblo, Colorado 81007

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

Coda Hutton-Hayes
909 Court Street
Pueblo, Colorado 81003

**Re: District Attorney CIT Decision Letter
Pueblo Police Department Officer Use of Force on January 9, 2019
Location: Alley between W. 13th Street and West 14th Street east of Francisco Street
Officer Involved: Joshua Landers
Injured Subject: Coda Michael Hutton Hayes, DOB 02/19/1999**

Dear Chief Davenport and Sheriff Taylor:

On January 9, 2019 the 10th Judicial Critical Incident Team (CIT) was activated at the request of Chief Davenport to investigate the use of force by an officer of the Pueblo Police Department which resulted in injury to Coda Michael Hutton Hayes (DOB 02/19/1999). The Pueblo County Sheriff's Office was designated as the lead investigative agency. Other participants included the Colorado Bureau of Investigation (CBI), the Colorado State Patrol (CSP), the 10th Judicial District Attorney's Office (DA) and the Pueblo Police Department (PPD). When the investigation was completed the investigative file was submitted to the District Attorney's Office for review. The investigative file has been reviewed in its entirety, including body worn camera video, dash camera video, witness interviews, scene photos, videos and reconstruction, radio traffic and medical records. The investigation has been thorough and complete, and further investigation is unlikely to produce additional material information. Pueblo Police Cpl. Dennis Bogard was struck by a vehicle and injured during this incident but did not discharge his weapon. Therefore, the investigation and this review concern only the actions of Officer Joshua Landers. This letter is the District Attorney's Decision Letter pursuant to CIT protocol.

Summary of the Events:

On January 9, 2019 at approximately 12:47 p.m., Pueblo Police Officer Joshua Landers contacted a suspicious vehicle parked in an alley off of West 13th Street and Francisco Street in Pueblo, Colorado. Officer Landers initially contacted a male who identified himself as "Elijah Gurule (4/18/97)" standing outside the door of an outbuilding off the alley at 1312 Francisco Street. This individual was later positively identified as Simon Elijah Eugene Gurule (4/18/96). A black Volkswagen Passat with a dark tinted rear license plate cover obscuring the license plate and a brown Subaru Outback bearing Colorado license plate QUI887 were both parked in the alley. There were two parties in the Subaru and the driver's door was ajar. The driver was later identified as Coda Hutton-Hayes and the front seat passenger was later identified as Gabrielle Martinez (11/4/95). The Volkswagen had dark tinted windows but two females were visible inside it, later identified as Ieasha Rodriguez (10/11/97) and Adelaide Benitez (3/14/03).

As Officer Landers spoke with Gurule he cleared the license plate on the Subaru. Gurule explained that his belongings were in the Volkswagen. Officer Landers learned the Subaru had been reported stolen from Denver, Colorado. Ieasha exited the Volkswagen and began to speak to Officer Landers as well. Officer Landers requested additional help and for responding officers to "step it up" via his portable radio because he was out with multiple parties and the male parties (Gurule and Hutton-Hayes) were moving about and not complying with his instructions. Officer Landers ordered Gurule not to put his hands in his pockets. Gurule began to walk toward the Volkswagen. Officer Landers drew his weapon and told Hayes not to start the Subaru as it had been reported stolen. Hayes stepped out of the driver's door, telling Officer Landers to put his gun away and that he was going to record the incident. Gurule continued to approach the Volkswagen claiming he wanted to record the incident. Officer Landers ordered him to keep his hands out of his pockets two more times, and eventually ordered him to the ground. Gurule then crouched next to the driver's side of the Volkswagen but would not sit down. The parties continued to talk among themselves about recording the incident, and Officer Landers stated he was recording the incident himself and pointed to his body worn camera.

Officers Dennis Bogard and Jeffrey Charleston arrived to assist Officer Landers.

Upon hearing he was being recorded, Gurule stood up and quickly entered the Volkswagen through the driver's door. Officer Landers went to the driver's door of the Volkswagen and ordered Gurule out of the car, threatening to shoot him if he moved the vehicle. Officer Landers struggled with Gurule through the driver's window and warned Gurule not to drag him as Officer Bogard was making his way toward the Volkswagen to assist Officer Landers. Hayes started the Subaru as Officer Landers was struggling with Gurule and drove it toward him. Officer Landers disengaged the struggle with Gurule, and Gurule quickly drove the Volkswagen out of the alley onto Baxter Street. Hayes steered the Subaru and drove it east toward Officers Landers and Bogard. Officer Landers was able to move out of the path of the Subaru and fired two rounds from his duty weapon, but the Subaru struck Officer Bogard causing a proximal (near the knee) femur microfracture to his left leg. The Subaru also struck a building in the alley, knocking the front bumper off of the vehicle as Hayes drove out of the alley. Officer Landers chased after the Subaru calling out that shots had been fired and Officer Bogard had been hit by the Subaru. Officer Landers returned to Officer Bogard who was sitting on the ground in the alley with Adelaide.

Multiple PPD officers pursued Hayes with lights and sirens as he eluded them in the Subaru until he crashed at the corner of E 9th Street and N. Norwood where he was taken into custody without further incident. Upon arrest it was discovered that Hayes had a bullet wound to his side under his left arm. He was transported to Parkview Hospital for treatment of his wound, after which he was taken to the Pueblo Police Department for interview. After the interview Hayes was taken into custody and was booked into the Pueblo County Jail.

Interview: Officer Landers

Officer Landers was interviewed by CIT detectives at the Pueblo Police Department on January 15, 2019. He was advised pursuant to Garrity v. New Jersey and was interviewed in the presence of his attorney.

Officer Landers advised that he had gotten out of roll call when his shift began on January 9th and he was not dispatched to a call right away. He had a habit of checking the area of 13th St. and Francisco at the start of his shift when time permitted, and he did so that day. He was on routine patrol and knew the area to be a high crime area, so he was looking for suspicious or criminal activity. He approached the area traveling west on W 13th St. and turned north onto Francisco St. He observed an open door with a lockbox on it at the first house north of 13th St. on Francisco. He had met the people who bought the home and it seemed weird that the door was open. He did not know if someone was working on the home or not. Just before he saw the open door on the home he had observed a vehicle blocking the alley that borders the south side of the property. He drove down the alley and saw a male standing behind a shack located at the back of the same property. The male peeked around the shack at him, then walked back behind the shack. The shack was known for people running from the police, wanted persons, and people in possession of guns and drugs.

He stopped his patrol car, got out and contacted the male standing at the front door of the shack. He advised the man his vehicle was blocking the alley and asked who he was. The man appeared to be nervous and asked if he could just go. He told the man no and asked for his name. The man gave him his name (Elijah Gurule) and said he was at the shack to see a friend. He noticed a Subaru behind Elijah. There was a male, later identified as Coda Michael Hutton Hayes, getting in and out of the Subaru. Hayes looked like he did not know what to do. There was also a female passenger in the Subaru, and she looked nervous as well. He cleared the license plate on the Subaru and found out it was stolen. Hayes was still shuffling around in the Subaru and reaching around his waistband. He did not want to go hands on with any of the parties at that time and called for backup. He was getting nervous.

Officer Landers continued to talk to Elijah, and while he was talking to Elijah a female approached him from behind. He realized he was dealing with at least four or five people and he was by himself. He drew his weapon when he learned the Subaru was stolen and saw Hayes getting in and out of it. He told Hayes the Subaru was stolen and Hayes became confrontational. Hayes continued to reach around, reaching into the car and toward his waistband. He knew from his experience that people in stolen cars are willing to take extreme measures to get out of the situation. He had seen stolen vehicles driven on sidewalks when kids were getting out of school, he had seen them driven through lawns and yards and driven erratically. He did not know what Hayes would try to do to get away, but he knew Hayes was trying to think of what to do.

Officer Landers was trying to keep his eye on everyone he was dealing with. There were people to his side, behind him and in front of him. Elijah was moving around and not listening to commands. He kept putting his hands in his pockets. Officer Landers became scared as he had no backup and was dealing with several people who kept putting their hands in their pockets and were not listening to commands. His backup was still not there, and it felt like it was taking them forever to get there.

Elijah started walking toward his car, and Officer Landers told him to sit. Elijah did not sit all the way down, but instead knelt down or hovered next to the black car with Florida plates. Elijah told Officer Landers he was getting his phone when Officer Landers told him to sit down. Elijah knelt down for about 10 or 20 seconds before he ran to his car and shut the door. Elijah entered the car through the driver's door and the window in that door was down at the time. Officer Landers ran after Elijah and grabbed Elijah's arm through the window. He struggled with Elijah for what seemed like quite a while. He was

telling Elijah to get out and trying to pull him. Officer Landers was trying to keep an eye on the Subaru, but he had his back to it. He feared a gun would be pulled on him or the Subaru would ram him because there was only one way out. He did not know if Hayes would try to push past Elijah or not. He felt vulnerable and alone, like he could have been shot in the back or rammed by the Subaru at any time.

As he fought with Elijah through the window, he looked back and saw the Subaru moving back and forth. It appeared Hayes was trying to figure a way out. He gave Elijah several warnings not to drive his car, but Elijah eventually drove the car through a small area between his partner's (Officer Charleston) car and the wall of a building. When Officer Landers heard the Volkswagen turn on he disengaged with Elijah and put his gun away as Elijah immediately struck the wall and passed him. Elijah's vehicle struck the wall as he was squeezing between it and Officer Charleston's vehicle. There was no room right there. Officer Landers stated he did not recall being drug by the Volkswagen, but that he had reviewed dashcam video from Officer Charleston's car and he could see on the video that he slid alongside the car as it was moving. He felt lucky that he was able to get away. He remembered putting his gun away as he disengaged with Gurule. He felt he had done that because he felt the car moving away and did not want to drop the gun in the event his arm or gun hit the car.

He saw the Subaru start to drive toward him and knew the wall was directly behind him. He knew the Subaru would have to go between the wall and Officer Charleston's vehicle as well. Cpl. Bogard had arrived on scene as well and had positioned himself between the Subaru and the spot Elijah's car had been. Hayes steered the Subaru toward Cpl. Bogard and drove toward the small area between Officer Charleston's patrol vehicle and the wall. Hayes struck Cpl. Bogard and continued toward him. The Subaru was pointed toward him and the tires were turned right at him. Hayes had already hit Cpl. Bogard and he thought he was going to hit him as well and squish him between the Subaru and the wall or drive right over him. He was up against the wall with nowhere to go and he was scared. He knew people went through extreme measures to get out of situations involving the police and had seen it before. He drew his duty weapon to protect himself and fired two shots through the window toward Hayes. Hayes struck the building (wall) right after that. Officer Landers stated he was in fear for his life and Officer Bogard's life at the time he fired his weapon. He felt like he was pinned against the wall, he saw the car turn toward him, and saw the wheels pointed right at him. If he had been a little farther over, Hayes would have pinned him to the wall because he drove right into it, crashing really hard. He had also just seen Hayes hit his partner with the Subaru, and felt he would have done anything just to get out of the situation. Hitting Cpl. Bogard indicated to him that Hayes was willing to do anything to go to extreme measures to get out of the situation. Whether Hayes hit one officer or two, he was going to do it. He knew he had additional officers responding and did not know if one of his other cover officers would walk through that path Hayes had taken, or even if a civilian, Hayes would have hit them. He ran after the Subaru to see if it would crash again and aired what had happened over his radio. He saw Cpl. Bogard on the ground and ran back to him. He did not know how bad Cpl. Bogard was hit or the extent of his injuries, so his first thought was to help him. He aired descriptions of the vehicles over his radio and requested medical help. It felt like forever until people showed up to help, but they did.

Officer Landers also described the scene in the alley and the locations of the vehicles and parties involved by using a map. The wall that was struck was the back of a one-story apartment complex that bordered the alley. He indicated where the apartments were on the map and confirmed the wall that was struck was part of a structure. He described the route he had taken when he approached the alley. He indicated he had driven west on W 13th St. to Francisco St where he turned right. He then drove north to the first residence on the east side of the street where he observed the door to be open. He had also observed a car parked in the alley as he passed by, so he turned around in the street and proceeded east down the alley that borders the property where the residence is located. Officer Landers marked an X in the spot he parked his car, an X past the intersection left of his own car for the Volkswagen, and an X in the adjacent alley where he said Hayes was sitting in the parked Subaru facing the intersection. There was a truck

parked behind the Subaru as well which he indicated with an additional X on the map. Officer Landers explained that the only way out of the alley at that time was straight east for the Volkswagen, and south to the intersection and then east for the Subaru. Officer Landers indicated that while he was struggling with Elijah, Officer Charleston arrived and parked his vehicle in the alley, facing the Volkswagen. Officer Bogard arrived and parked his vehicle directly behind Officer Landers' vehicle. He marked an X for each of their vehicles as well, and indicated the area between Officer Charleston's vehicle and the wall was the only way out for both the Volkswagen and the Subaru. It was such a narrow area that both vehicles had to strike the wall to get out.

Interview: Officer Bogard

Officer Bogard was interviewed by CIT detectives on January 9, 2019 in the Emergency Department of Parkview Hospital where he was being treated for injuries received during the event. Officer Bogard said that he responded to PPD Officer Joshua Landers' location in an alley at W 13th St and Francisco after Landers aired he was out with a suspicious vehicle. Officer Bogard stated that Landers queried the New Mexico license plate, but it returned as clear no record. Bogard said Landers then queried the VIN number which returned as a stolen automobile from the Denver, CO area. Bogard said that he was one to two blocks away when Landers aired for cover to "step it up" (meaning expedite the response) and that he was in contact with multiple parties.

Upon his arrival Officer Bogard pulled into the West end of the alley. Officer Bogard exited his vehicle and observed Landers at the driver's door of a black sedan. Bogard said Landers was yelling and struggling at the driver's window. Bogard said he observed Landers had drawn his gun. As Officer Bogard arrived at the driver's side rear of the black sedan, the driver of the vehicle started to drive away, and Landers then removed himself from the car window. Bogard stated at that time a Subaru drove up behind Bogard, driving directly at him. Bogard stated that he believed the driver intended to "take me out". Bogard was able to move just enough out of the Subaru's path to avoid a direct collision, but the driver's side, front rounded quarter panel, struck Bogard's leg. Bogard said the collision spun him away from the vehicle and the driver of the Subaru continued driving Eastbound in the alley, towards Landers' location.

Officer Bogard said he looked down and heard what sounded like two gunshots. When he looked up he observed the driver of the Subaru attempt to strike Landers with the vehicle as it continued Eastbound in the alley. Bogard said the driver of the Subaru struck the wall of the apartments adjacent to the alley. He described the Subaru as possibly a wagon style SUV and tan in color.

Officer Bogard clarified he approached Southbound on Francisco and pulled Eastbound into the alley on the North of W 13th St (parallel to W 13th St). Officer Bogard said that his hand was on his firearm, but he neither drew nor fired his firearm during the incident. Bogard said PPD Officer Charleston was on scene, but he did not think Charleston fired his weapon. Officer Bogard said that when he observed the Subaru accelerating towards him he was in fear for his life, and if the vehicle had struck him straight on it could have caused his death. Bogard stated he knew the vehicle was traveling at a high rate of speed and he could hear the wheels spinning as it accelerated. Officer Bogard could not describe any of the vehicle occupants.

Body Worn Camera and Dash Camera Review

Officer Landers' Body Cam shows he is talking to Gurule in front of the Subaru. The driver door is open and there is a male later identified as Hayes in the driver's seat and a female in the front passenger seat. Officer Landers clears the vehicle registration and it comes back stolen. Officer Landers calls for additional units. Officer Landers draws his duty weapon to and points it toward Hayes and tells him if he

turns on the car he is going to shoot him. Gurule starts walking over to the Volkswagen and starts to get in the driver's seat. Officer Landers orders Gurule to sit on the ground. Gurule squats down but does not sit. Gurule stands up and gets in the driver's seat and starts the car. The entire time Officer Landers is giving loud verbal commands to get out of the car. Officer Landers is holding on to the left arm of the black jacket Gurule is wearing. Gurule starts driving away while Officer Landers has a hold of him. Officer Landers disengages from Gurule and the black Volkswagen, and Hayes drives the Subaru at him. The Subaru hits Officer Bogard first and then hits the wall of a building. Officer Landers fires his duty weapon at Hayes as he is driving by. Officer Landers then runs after the vehicles and loses them at the end of the alley. He then returns to render aid to Officer Bogard. One female that is on scene is placed into handcuffs.

Officer Bogard's Body Cam shows him arriving at the scene and parking behind a Pueblo Police Vehicle and the suspect's vehicle. As he is approaching the scene you can hear officers giving loud verbal commands to show me your hands and to get on the ground. A black Volkswagen can be seen leaving the scene and driving around another Pueblo Police Vehicle. As Officer Bogard gets to Officer Landers, Bogard is struck by another vehicle as it is leaving the scene. This is the Subaru that strikes him.

Officer Charleston's Body Cam shows he is arriving on scene as Gurule starts to drive away. A female gets out of the back passenger side of the Volkswagen just before it is driven away by Gurule. It shows Hayes driving the Subaru towards Officer Landers and striking Officer Bogard and then the wall of a building. Hayes continues to drive away as Officer Landers and Charleston pursue on foot. They chase the Subaru to the end of the alley where they lose him. They return to render aid to Officer Bogard and Officer Charleston places handcuffs on the female who got out of the Volkswagen and she is removed from the scene.

Officer Landers' Dash Cam shows Gurule in the alley as Officer Landers arrives. Gurule is walking back and forth as he is contacted by Officer Landers. Neither the Subaru nor its occupants can be seen on the dash cam because they are out of frame, but it is apparent that Officer Landers is interacting with someone who cannot be seen in the frame of the dash cam. The dash cam shows Gurule walking back and forth in the alley near the black Volkswagen and it shows a female getting out of the Volkswagen and walking toward the location of Officer Landers who has his back toward the female. Officer Landers draws his weapon and points it out of the frame of the dash cam and leaves the frame of the dash cam. Gurule can be seen crouching or squatting down in the alley between the Volkswagen and the wall. Gurule gets up and moves closer to the Volkswagen, Officer Landers reenters the frame and continues to point his firearm out of the frame as he positions himself so that Gurule is in front of him. Gurule squats down again. The female continues to be behind Officer Landers' back. Gurule stands up and gets into the driver's seat of the Volkswagen as Officer Landers grabs the sleeve of Gurule's jacket and begins struggling with him at the driver's door. Officer Landers is holding onto the driver and pointing his firearm at the driver. The female gets back into the front passenger seat of the Volkswagen as Officer Landers is struggling with Gurule, and the Subaru appears in the frame driving around the Volkswagen. At this time Officer Charleston's vehicle enters the alley and partially blocks the Subaru's egress around the passenger side of the Volkswagen. The Subaru backs up and a different female gets out of the rear passenger seat of the Volkswagen and raises her hands. Officer Charleston gets out of his vehicle and begins approaching as the Volkswagen hits the wall of a building and drives past Officer Charleston's car and out of the alley. As the Volkswagen is driving away Officer Landers disengages from the driver and holsters his firearm. Officer Bogard enters the frame as the Volkswagen is driving away and the Subaru strikes him, spinning him around. Officer Landers and Officer Bogard are between the Subaru and the wall of the building. Officer Landers draws his firearm and points it at the Subaru as the Subaru strikes the wall of the building and exits the alley. It is not possible to see the precise moment Officer Landers fires his weapon from the dash cam video. Officer Bogard stumbles and falls to the ground as Landers and Charleston pursue the Subaru on foot. The female who got out of the rear passenger seat of the

Volkswagen walks over to Officer Bogard and sits down on the ground next to him. Officers Landers and Charleston return quickly to the scene and the female is handcuffed and removed from the scene. Landers and Charleston place cones in the scene and render aid to Bogard. Other officers and medical personnel arrive on scene and Officer Bogard is transported from the scene.

Officer Processing:

Each officer who was at the scene when shots were fired was processed according to CIT protocol. Officer Landers and Officer Charleston were processed at the Pueblo Police Department ID office. They each came to the PPD ID office for processing separately. Pictures were taken of each individual and then an ALS (Alternative Lights Source) was used on their clothing. The ALS is used by shining a bright white light over the officer's body in an attempt to find any blood spatter. No blood spatter was located on either officer so their clothing was not collected as evidence. After the ALS examination was completed their weapons were placed on clean parchment paper with their spare magazines. The findings from the weapon search is as follows:

Officer Landers: Glock 17 9mm SN: BBBP662

1 live cartridge in chamber, 14 live cartridges mag (Magazine) from gun, 16 live cartridges spare mag #1, 17 live cartridges spare mag #2, 1 live cartridge located at scene = 49 live cartridges out of a possible 52 max. Officer Landers weapon, live cartridges and magazines collected as evidence.

Officer Charleston: Glock 19 9mm SN: BESW903

1 live cartridge in chamber, 15 live cartridges mag from gun, 15 live cartridges Spare mag #1, 15 live cartridges spare mag #2 = 46 live cartridges out of a possible 46. Officer Charleston items were not collected as evidence as he was not involved in the shots fired.

Officer Bogard was transported to the hospital for treatment, but his duty belt was transported to the PPD ID room to be processed. His information is as follows:

Officer Bogard: Glock 34 9mm SN: UYT881

1 live cartridge in chamber, 17 live cartridges mag from gun, 17 cartridges from spare mag #1, 17 cartridges from spare mag #2 = 52 live cartridges out a possible 52 Officer Bogard items were not collected as evidence as he was not involved in the shots fired.

Suspect Interview: Coda Michael Hutton Hayes

Coda Michael Hutton Hayes was treated at Parkview Hospital for injuries sustained during this incident. Medical personnel determined that Hayes received a bullet wound to the left side of his torso. The bullet did not penetrate the rib cage and was removed without complication in the Emergency Department. Hayes was interviewed by CIT detectives on January 9, 2019 after he was treated and released by Parkview Hospital. Hayes was in custody at the time of the interview and agreed to speak with detectives after being advised of his Constitutional rights pursuant to *Miranda v. Arizona*.

Hayes initially claimed that he had come to Pueblo from Denver the evening before the events of January 9th with an acquaintance named Simon, Simon's girlfriend whose name he eventually recalled as "something like Isha", and another girl he only knew by the name "Gabby". Hayes claimed that they had come to meet Simon's grandmother and to "get Simon's things", but they had not yet done either, and that they had spent the previous evening with Simon's friend "Hoodrich" at the home where they were first contacted by Officer Landers. He claimed that he did not know the Subaru he was driving was stolen until Officer Landers told him, and he also claimed that he drove into Officer Bogard and fled the scene

because Gabby aimed a gun at him and told him to “dip” because she had a warrant, so he drove. Hayes claimed that Simon also had a Glock 30 gun that he always carries in a holster on his hip, and although he couldn’t say whether Simon had the gun when he was talking to Officer Landers, the gun never leaves his hip.

When challenged by detectives about the purpose of the trip to Pueblo, Hayes eventually admitted that the purpose was to commit a robbery. Hayes went on to describe the planned robbery by saying that it was supposed to occur at an address of 1735 Hugo or Hulo, or some street name like that, and it may have been in Colorado Springs. He described the area as full size houses that were mobile homes. Hayes said they met a guy in Fountain who was in on it and had been “licked” by the guy they were in town to “lick.” The guy in Fountain had all of his rims taken from his store there, and the guy at the 1735 address was supposed to have 300 rifles and money in a gun room downstairs. The guy in Fountain gave them the address where the rifles were supposed to be. They were in Pueblo to hit the house the man in Fountain gave them the address to. Hayes said Simon forced him to come with him. He also stated he had the address on his phone and would give it to detectives if he could have his phone. At that time Hayes declined to give detectives permission to download his phone. He said he thought Simon had sent him the address on Facebook. Hayes said he was sorry he lied, but he was scared of Simon.

Hayes said that he had done one other “lick” with Simon. He had only driven on the last one; Simon got in the back seat with a backpack and told him to drive. Simon had a gun in his hand and was hanging it over the driver's seat. Hayes told detectives that Simon forced him to do things he did not want to do. He feared losing his career (as a rapper) now because of Simon.

Hayes stated Simon had given Gabby the gun before they left Denver for Pueblo. Simon and Gabby were standing behind the car when he gave her the gun, but he watched it in the rear view mirror. He knew Gabby had the gun, but thought she had it for safety and did not think she was going to pull it on him. Hayes explained that he and Gabby met Simon in Fountain and they went to Iesha's uncle's house. It was dark, about 11:30 p.m., when they arrived in Fountain and he did not know what street they went to. Iesha's uncle got in the back seat with him, and Simon was in the front seat. Iesha's uncle put the address into Google maps and Simon told Hayes to follow him. They drove to the address to check out the house. Hayes said that he was following Simon to the address they were supposed to rob but lost him, so Simon texted him the address. He drove to the address, but Simon was not there, so he drove around the corner and waited for him. He did not remember the address, but knew it was 1735 and the street started with an H. He did not know the name of the man they were supposed to hit. All he knew was that he had done Iesha's uncle dirty. Iesha's uncle said the guy had taken him for “40 racks,” and that they were going to get it back. Detectives asked Hayes who else was in on doing the robbery and Hayes said he didn’t know about the girl they had just picked up before Officer Landers contacted them, but everyone else was supposed to be involved. Hayes said that the address where the robbery was supposed to take place would be on his Facebook Messenger app, and he provided detectives with the login information for his account. Detectives accessed Hayes’ Facebook Messenger account and saw a conversation between Coda and “Elijah Gurule.” They also observed two messages sent to Hayes from Elijah at about 3:30 a.m., the first was a map and the second was the address 1735 Harlow Ave., Pueblo, CO 81006. When detectives stated “Harlow”, Hayes confirmed that “Harlow” was the address where the robbery was supposed to occur.

Hayes said that while they were at the Harlow address Simon went into the backyard, but that he did not. Hayes said that Simon went into the backyard with a smaller person who had to be Iesha or someone else he could have picked up while they were apart. Hayes said he was posted up the block in the Subaru with Gabby watching out and he thought Simon was just scoping the place out, not trying to get in. He said Simon came right back and peeled out and didn’t even tell him he saw anybody.

With respect to the events that occurred in the alley, Hayes stated the officer was not in his path when he took off, but instead moved into the path of the car. He said he had no intention of striking the officer and even stopped the car after he hit him. He stated he was not a criminal and would never want to hit a cop. He said he had two guns pointed at him and did not know what to do. He tried to stay out of situations like that but did not know how to. When he was told that the officer he hit was going to be okay, Hayes said that was good, he was happy that the officer was going to be alright, and that he did not try to run the officer over. Hayes also said that he was not mad at all about being shot, that he deserved it, and that he would have done the same thing.

Hayes pled guilty to Second Degree Assault on a Peace Officer (F4 felony) and Vehicular Eluding (F5 felony) on July 11, 2019 and was sentenced on September 20, 2019.

Scene Processing

The area of 13th St. and Francisco where the shooting took place was processed by CIT detectives. The scene included two alleyways, including an alley which runs east to west from Francisco to Baxter St., and another intersecting alley which runs north to south. The scene, including PPD patrol vehicles present were photographed. The following items were identified and collected:

- #1 ZTE Q-link wireless cell phone
- #2 9mm FC spent shell casing consistent with the live cartridges in Officer Landers firearm
- #3 9mm FC spent shell casing consistent with the live cartridges in Officer Landers firearm
- #4 pieces from the interior portion of a front bumper (CAR Bumper)
- #5 front car bumper with Subaru logo and LP# QUI-887, red scrapes along the left portion
- 1-live FC cartridge 9mm consistent with cartridges from Officer Landers

The scene was examined and documented. Two separate acceleration marks were observed. One was located at the intersection of the two alleyways and continued east. Detectives followed the tire impressions and located damage to a red in color building on the north side of the alley way. The car bumper that was collected from the scene red scrapes along the left front portion consistent with the red paint on the building. A second set of tire impressions were located to the east just beyond where the car bumper was collected. Those marks continued east down the alley.

A separate scene was processed at 9th St. & Norwood where the suspect vehicle crashed and came to rest. The scene was secured with crime scene tape and fully marked patrol vehicles. The suspect vehicle (brown Subaru Outback bearing CO license plate #QUI887) came to rest in the yard on the west side at 1501 9th St. on the corner of Norwood. The passenger side front door was open and the keys were in the ignition. A black purse was on the passenger floor along with a gray coat/clothing and plastic bag. A black bandana was hanging from the rearview mirror. Yaw marks started approximately on 9th St. at the West side of Norwood and continued to the final resting position of the vehicle. The driver's side back passenger window was broken out and there appeared to possibly be a defect on the metal part of the door by the broken window. The driver's side mirror was broken, and the front tires were missing. The vehicle was also missing the front bumper and had extensive damage to the front. A search of the scene was completed and the Subaru was removed and impounded at the Pueblo Police Department for further processing.

Vehicle Processing

On January 15, 2019 at approximately 10:30 AM a 2008 Subaru Outback LP# QUI887 was processed by CIT detectives at the Pueblo Police Department located at 200 S. Main St. Pueblo, CO.

The processing began by taking overall pictures of the vehicle. Once pictures were completed, detectives attempted to obtain latent fingerprints. No viable finger prints were located. DNA swabs were collected and packaged.

The following items were collected from the vehicle:

- 1- Lorcin .25 cal semi-automatic handgun (passenger side floor).
- 1- black beanie (driver side headrest)
- 1- Purchase agreement/Pawn record Denver Hutton (driver side door bucket)
- 1- Samsung Galaxy S6 35232
- 1-LG Cellphone 355867
- 1- Samsung Cell phone
- 1-LG Cricket 35343
- 1- Motorola Cell phone
- 1- Visa Credit/Debit card Hopkin
- 1- BB gun compact 45 black/silver
- 1- black rag hanging from rearview mirror
- 1-Pink black RCA Model: RCT6873V
- 1- Black zip up jacket located in trunk
- 1-Black hat in trunk
- 1-Black Dell computer (Trunk)

Legal Guidelines

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

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

In evaluating whether a person is justified by self-defense, the person is entitled to act on appearances. *People v. La Voie*, 395 P.2d 1001 (Colo. 1964). The United States Supreme Court evaluated whether officers used excessive force under the Fourth and Fourteenth Amendments by approaching the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. *Plumhoff v. Rickard*, 143 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. In its ruling the Court said " ... It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended ... " Further, the Court took into account that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation - in circumstances that are tense, uncertain, and rapidly evolving.

Conclusion

As he was beginning his shift Officer Landers observed an open door with a lockbox on it at the first house north of 13th St. on Francisco. He had met the people who bought the home and it seemed weird that the door was open. Officer Landers knew the area to be a high crime area, and just before he saw the

open door he noticed a vehicle blocking the alley that bordered the property. Officer Landers acted reasonably in contacting the occupants of the Volkswagen (driven by Gurule) and the Subaru (driven by Hayes) that were parked in the alley. Officer Landers was alone in the alley with five people who were acting nervous when he learned that the Subaru had been reported stolen out of the Denver area. Officer Landers became involved in a struggle with Gurule who was attempting to flee in the Volkswagen. By the time Gurule and Hayes attempted to flee, other officers had begun to arrive on the scene and the only path of escape was partially blocked by another patrol vehicle. Gurule escaped by driving into the wall of a building to squeeze past the parked patrol vehicle. At this point Officer Landers was standing in the only path the Subaru could take to escape, he was trapped on one side by the wall of a building, and Officer Bogard had arrived on the scene to assist. Hayes drove the Subaru toward Officer Landers and Officer Bogard and struck Officer Bogard causing serious bodily injury.

Hayes' actions were deliberate and intentional and constituted the unlawful use of deadly force against Officer Bogard and Officer Landers. Officer Landers had reasonable grounds to believe and did believe that both he and Officer Bogard were in imminent danger of being killed or receiving great bodily injury. Officer Landers reacted by firing two rounds at Hayes, one of which struck Hayes in the left side. Officer Landers had reasonable grounds to believe and did believe that a lesser degree of force would be inadequate. Officer Landers' actions were rationally based upon his own observations and perceptions, and his actions were reasonable.

After careful review of the CIT investigative file, it is my conclusion that Officer Landers' actions in defending himself and Officer Bogard were justified by the Self Defense and Defense of Others provisions of the laws of Colorado. There is no evidence of criminal misconduct by Officer Landers, and his use of deadly force was lawful and justified.

Dated this 15th day of October, 2019.



J.E. Chostner
District Attorney

JEC/eb