



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

January 29, 2019

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 Incident on July 4, 2018
Location: Backyard of 1232 E. Abriendo Avenue
Deceased: Emmanuel Mark Bitsuie
Officer Involved: Jordan Roberts

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on July 4, 2018, to investigate an Officer Involved Incident which resulted in the death of Emmanuel Mark Bitsuie (DOB 12/01/1985). The Pueblo County Sheriff's Office (PCSO) was designated as the lead investigative agency and other CIT participants included the Colorado State Patrol (CSP), Colorado Bureau of Investigation (CBI), Pueblo County Coroner, Pueblo Police Department (PPD), and the 10th Judicial District Attorney's Office (DA). After the investigation, the CIT prepared and submitted an executive summary and its investigative reports and materials to the District Attorney's Office for review. Those materials were reviewed and this is the District Attorney's Decision Letter pursuant to CIT protocol.

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Protecting the Rights and Safety of the People

Overview of the Incident

On July 4, 2018, at 3:42 P.M. Pueblo Police Officers were dispatched to the area of 1200 block of E. Abriendo Ave. regarding an incident where one male party was chasing another man in the area and was actively stabbing him repeatedly. Several reporting parties (RPs) were calling to report this ongoing incident. RP's were reporting updated locations of the two male parties as they traveled on foot around the neighborhood for several blocks. RP's continued to state the male party chasing the victim had a knife and was actively stabbing the victim, who they also reported was bleeding heavily from his head and neck.

Upon arrival in the area, PPD Officer Jordan Roberts parked his fully marked patrol car near the intersection of Elm and Northern Ave. Officer Roberts exited his patrol vehicle and began running west through the alley in the 200 block of Northern Ave. Officer Roberts was being directed by citizens that had witnessed the actions of the two men involved in the stabbing incident. These citizens continued to point in the direction the two men had traveled, which was north through the alley in the 1200 block of E. Abriendo Ave. Officer Roberts continued to run in the direction he was provided by witnesses. As Officer Roberts approached the backyard of 1232 E. Abriendo Ave. a citizen in the alley stated, "he is stabbing the fuck out of him!" while the citizen was pointing into the backyard.

Upon approaching the backyard, Officer Roberts observed a male party wearing black clothing (Emmanuel Bitsuie) holding another man down on the ground (David Bitsuie). Officer Roberts observed the male party (Emmanuel) thrusting his right hand down toward the man lying on his back (David) underneath him. Officer Roberts observed something "shiny" in the suspect's (Emmanuel) hand while he was making the thrusting motions. Officer Roberts gained access into the backyard area by forcing his way through a portion of the fence that had miscellaneous items stacked in front of a gate in the fence off the alley.

Officer Roberts immediately began giving loud verbal commands for Emmanuel to "get on the ground!" Emmanuel did not acknowledge the commands Roberts was giving him and continued to thrust his right hand in a manner consistent with stabbing the victim. The entire time Officer Roberts was giving verbal commands, he was closing the distance between himself and the two male parties actively involved in the physical assault taking place. Officer Roberts fired four (4) shots from his service pistol (Smith & Wesson M&P .9mm handgun (HKF5179), striking Emmanuel four times. Emmanuel stopped his attack, and slumped to the ground on his left side, and slightly away from the victim (David).

Officer Roberts immediately grabbed the stabbing victim (David) by the back of his shirt and dragged him away from Emmanuel. Officer Roberts instructed citizens in the area to assist David by getting him closer to the alley away from the area where Emmanuel was located.

Officer Roberts called out via his radio shots had been fired and requested immediate medical attention for the victims.

Other PPD Officers begin to arrive in the area to assist Officer Roberts. PPD Officer Pedraza arrived and instructed Officer Roberts to holster his weapon. PPD Officer Wyberg assisted in escorting Officer Roberts to a patrol vehicle that had arrived and parked in the alley behind 1232 E. Abriendo Ave.

Medical personnel arrived and began to tend to David's injuries. David was transported via ambulance to Parkview Medical Center where he succumbed to his injuries (multiple stab wounds), and died.

Emmanuel was pronounced deceased on scene and the Pueblo County Coroner's Office was contacted and Coroner Investigator Jim Cody responded to the scene.

The scene was immediately secured, and Officer Roberts was transported to Parkview Medical Center to receive treatment for minor injuries he had received while forcing his way into the backyard of 1232 E. Abriendo Ave.

At the time of the shooting incident, Officer Roberts was wearing a PPD uniform which was clearly marked to indicate he was a police officer. His police vehicle was also clearly marked as a PPD vehicle.

Autopsy of Emmanuel Bitsuie

The autopsy on the body of Emmanuel Bitsuie was conducted on July 7, 2018, at Saint Mary-Corwin Hospital in Pueblo, Colorado. The autopsy was performed by Forensic Pathologist Daniel Lingamfelter. Dr. Lingamfelter concluded that the cause of death was multiple gunshot wounds to both the head and chest.

The forensic pathologist noted that there were several lacerations on the outside of Emmanuel's left hand. One was above the middle finger and on his index finger. He also noted the evidence of injury related to gunshot wounds in each area of the body of Emmanuel Bitsuie.

In the head there was a single gunshot wound defect located on the back of the skull at the top of the brain stem. There was no exit wound present. The projectile, which traveled from back to front, slightly left to right, and slightly downward, caused hemorrhaging within the area, as well as comminution of the occipital skull and upper cervical spine.

In the chest and back area, three defects were located: one in the right shoulder, one in the upper left back, and one in the upper left chest. The projectile that entered through the right shoulder travelled straight down and punctured the liver, right lung, and right kidney, and was located under the 12th rib. The projectile that went through the upper back had a downward angle and was located in his left lung. The projectile that went through his chest, which travelled left to right, perforated his left lung, heart, T6 vertebra, diaphragm, and liver, and was found above the 10th rib.

The toxicology performed on the blood of Emmanuel Bitsuie revealed an elevated blood ethanol level and acute methamphetamine intoxication at the time of death. There were 148 mg/dL of ethanol, as well as 79 ng/mL of amphetamine, and 620 ng/mL of methamphetamine.

Autopsy of David Bitsuie

The autopsy on the body of David Bitsuie was conducted on July 7, 2018, at Saint Mary-Corwin Hospital in Pueblo, Colorado. The autopsy was performed by Forensic Pathologist Daniel Lingamfelter. Dr. Lingamfelter concluded that the cause of death was multiple sharp force injuries, most notably a stab wound to the right chest which penetrated the right lung and resulted in heavy blood loss and collapsing of the lung. There was no evidence that David Bitsuie was hit by any projectiles fired by Officer Roberts.

The forensic pathologist noted that there were fourteen (14) lacerations on David's body, ranging in length from one centimeter to four centimeters. Dr. Lingamfelter believed a laceration on his right chest, which went down and punctured the right lung, was the fatal wound. He also noted two skull fractures on the top of the head that appeared to be from a blunt object. In total, three lacerations were found on the head, one on the neck, one on the chin, one on the right shoulder, two to the chest, one on the back, two on the left arm, one on the right hand, one on the right wrist, and one on the right arm.

The toxicology performed on the blood of David Bitsuie revealed an elevated blood ethanol level and acute methamphetamine intoxication at the time of death. There were 19 mg/dL of ethanol, as well as <20 ng/mL of amphetamine, and 581 ng/mL of methamphetamine. Heroin metabolites were also present.

Interview: Officer Jordan Roberts

Officer Roberts was interviewed by CIT detectives at the Pueblo Police Department on July 9, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Officer Roberts said that on July 4, 2018, he was finishing up responding to another incident when he heard dispatch over the radio asking officers to respond to an ongoing knifing. Dispatch was unable to give him an exact address, so he put himself in the area of Northern and Elm, which was the last known area of travel for the involved parties. Once in the area, he saw people in the street, to include a female party who was gesturing west towards the alley.

Officer Roberts recounted that he exited his patrol vehicle and ran west down the alley in the direction the female had pointed. He then encountered more people who were pointing north, saying “he’s stabbing him – he’s stabbing him.” As he runs north he sees two individuals in the backyard of a home. It appears one of the individuals is on top of the other making a motion with his arm. As Officer Roberts attempts to push his way through the gate into the backyard, he can see a reflective object in the hand of the individual on top, and his arm is moving in a downward motion.

Officer Roberts began issuing commands to the man to “get on the ground,” but the man does not acknowledge the commands, and instead continues to move his arm in a downward motion. He recounted that he was afraid for the man on the ground, as Officer Roberts had no doubt the man was being stabbed. He then began to move closer so that if he had to shoot he would avoid hitting the victim. The suspect was still not acknowledging his commands and continued to stab the victim, placing Officer Roberts in fear for the victim’s life. Officer Roberts then discharged his firearm, shooting the suspect three to four times.

Following the shooting, Officer Roberts noticed blood all over the victim, so he grabbed him by the shirt and drug him towards the alley away from the suspect. Other officers arrive on scene and begin taking care of the victim. Officer Roberts then went up to the suspect and kicked the knife away from his hands. At that point, Officer Pedraza arrived, told him to holster his weapon, and he was placed in a patrol car.

Witness Interview: Samuel Burnett

Samuel Burnett was one of the reporting parties. He was interviewed by PPD Detective Shawn Davis and PCSO Detective Victor Herrera at the Pueblo Police Department on July 4, 2018.

Mr. Burnett indicated that he was on his way to work when he realized he forgot his shoes, so he got off of I-25 and turned onto Northern. He noticed two older men wrestling around in the street. Once he realized what was going on, the two were about 100 feet away from the alley. He saw one male stab the other male in the gut, at which point he called 911 and stayed on the phone with dispatch while waiting for officers to arrive.

He indicated that he told the male that he was calling the police and that he was on the phone with the cops. The two parties continued down the alley at a fast pace. When Mr. Burnett caught up to them, he noticed that other people had tried to block the male (Emmanuel) from pursuing the other male (David) by blocking

his path with their cars. The male (Emmanuel) continued to pursue the other male (David) despite the attempted intervention.

He noted that the other male (David) was staggering and kept getting stabbed as the two males continued till they reached the backyard where Officer Roberts encountered them. Mr. Burnett, along with a couple other people, followed the two males down the alley and to the backyard. One of the citizens took a pole and hit the male doing the stabbing (Emmanuel) three or four times. The man with the knife (Emmanuel) then took the pole and began hitting the other male (David) with the pole, after which he resumed stabbing him.

At that point Officer Roberts arrived on scene, and Mr. Burnett told him "He's right over there." He saw Officer Roberts hop the fence and draw his gun, making it very known that he was there. When Officer Roberts announced that he was a police officer, the male (Emmanuel) looked up at him, and then started stabbing the other male (David) again. Officer Roberts then shot him four to five times.

Witness Interview: Nathaniel Gonzales

Nathaniel Gonzales was one of the reporting parties. He was interviewed by PPD Detective Cody Wager and PCSO Detective JC Williams at the Pueblo Police Department on July 7, 2018.

Mr. Gonzales was driving down Northern with his wife when she told him to watch out for a man in the street that appeared drunk. Mr. Gonzales then noticed that there was a second male (Emmanuel), maybe 20 to 30 feet behind the other male (David). He noticed the second male (Emmanuel) had a knife in his hand and the other male (David) had blood on the back of his neck. Mr. Gonzales told the male (Emmanuel) to "stop," to which the male (Emmanuel) responded by telling him to "just stay away."

While Mr. Gonzales' wife called 911, he followed the two males down the alley and to the backyard where the male (David) stopped. The other male (Emmanuel) then jumped over the fence and said "Fuck you," at which point he began stabbing the other male (David) again.

Mr. Gonzales then jumped over the fence and threw a rock at the male with the knife (Emmanuel), hitting him in the back of the head. The male (Emmanuel) still wouldn't stop, so he picked up a metal bar and kept hitting him (Emmanuel) with it, but he still wouldn't stop stabbing the other male (David). Officer Roberts then arrived on scene and announced himself as a police officer and commanded the male (Emmanuel) to stop. When the male (Emmanuel) didn't stop, the officer shot him four times.

Officer Involved Processing

Officer Roberts was processed by PCSO Detective Butterfield. Officer Roberts was brought to the CSI/ID office in the Pueblo Police Department. Full body photos were taken of Officer Roberts, including his back, arms, and duty belt. A small stain was located on his right pant leg, so a blood test kit was obtained and the stain was tested for the presence of blood. The test returned a negative result for blood.

Officer Roberts was then brought into a dark room where an Alternative Light Source (ALS) could be used to examine his clothing. With this process a bright white light is passed over their clothing and hands. The ALS is used in an attempt to search for any biological (blood) evidence. Officer Roberts was searched using the ALS, but did not appear to have any biological evidence on him.

Detective Butterfield then examined Officer Roberts' duty weapon, which was still armed with one live cartridge in the chamber. The weapon was made "safe." This was done by removing the magazine in the weapon and the live cartridge in the chamber of the weapon. The live cartridges and magazine were placed with the weapon. The two extra magazines he had on his person were removed and placed with the other items. All live cartridges were then removed out of the magazines separately in order to count how many live cartridges were left. The results of this processing were:

Officer Roberts: Smith & Wesson MP 9mm (SN HKF5179), 13 live cartridges out of a possible 17 from the magazine which was in his handgun. The other two magazines which were on his person had 17 live cartridges out of a possible 17.

Scene Processing: Backyard of 1232 E. Abriendo Avenue

PPD Detectives Jesik and Thomas, along with PCSO Detectives Butterfield and Solano responded to the scene at 1232 E. Abriendo Avenue. They took digital photographs and video of both scenes. Upon arrival at the scene, Detective Butterfield placed several yellow alphabetical placards on suspected blood stains, as well as several yellow numerical placards on physical evidence located in the back yard.

Upon arriving on Scene, Detective Solano noted the scene was secure with crime scene tape, with both PCSO and PPD officers set up at various locations in order to ensure the scene was secure. She also noted and photographed the suspect's body, which was lying in the dirt next to the south side of the fence. She also followed and photographed a drip trail of suspected blood starting in the alley behind 319 Northern Avenue, which continued south on Evans to Northern and then East on Northern to Elm where it stopped. This trail was consistent with the witness reports. Buccal swabs were taken of the suspected blood.

Once the video recording was completed and the photos had been taken, the decedent's body was removed by the Pueblo County Coroner's Officer Transport Service.

PCSO deputies remained at the scene to hold scene security until the scene processing was complete and until a search warrant was signed and executed at approximately 8:34 PM.

While executing the search warrant, an open knife with what appeared to be blood on the handle was found near where the victim's body was. There was also a pool of blood in the same location. Located near the deceased male suspect were four spent shell casings, consistent with a 9mm firearm, a knife with what appeared to be blood on the blade and handle, and a metal pipe which appeared to have blood on the ends. There was also what appeared to be blood spatter in a downward direction on a stand-alone cinder block that was located next to the metal pipe.

Detectives Jesik and Thomas collected several blood stain samples. Detective Jesik also searched a green Ford Explorer that was located on the property. There did not appear to be any blood inside the vehicle, but there were two knives inside: a kitchen knife and a butcher knife.

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

Officer Roberts responded to the scene on a report of a knifing in progress. Upon his arrival, he was guided by citizens on scene to the location of two male parties, later identified as Emmanuel Bitsuie and David Bitsuie. As he approached the males in the backyard of 1232 E. Abriendo Avenue, he noticed that one male (Emmanuel) was on top of the other (David), and had a shiny object in this hand. The male on top (Emmanuel) was moving his arm in a downward motion. Officer Roberts, having no doubt that the male on the ground (David) was being stabbed, and believing that the male’s life was in jeopardy, discharged his firearm a total of four times after the suspect refused to acknowledge Officer Roberts’ commands to get on the ground. The suspect male (Emmanuel) was pronounced deceased on scene, while the victim (David) was taken to Parkview Medical Center where he later succumbed to his wounds.

Based on the facts of the investigation conduct by CIT investigators the use of deadly force by PPD Officer Jordan Roberts appears to be justified based on the fear and threat of serious bodily injury or death posed to David Bitsuie by Emmanuel Bitsuie as he repeatedly stabbed David with a knife. This conclusion is based off interviews of the involved officer, civilian witnesses to the incident, BWC video, crime scene and evidence processing, and execution of search warrants.

There is no evidence or facts collected to support any criminal wrong doing by PPD Officer Roberts during the Officer Involved Shooting (OIS) incident. The actions taken by Officer Roberts during the OIS incident were conducted with the justified belief the life of David Bitsuie was in jeopardy. The autopsy report for the homicide victim (David Bitsuie) confirm David died as a result of multiple stab wounds inflicted by the individual Officer Roberts shot (Emmanuel Bitsuie) as he repeatedly stabbed David. David was not struck with any bullets fired by Officer Roberts.

It is my conclusion based on the circumstances that Officer Roberts was justified by the Defense of Others provision of the laws of the State of Colorado in using the actions he employed to defend a third party, namely David Bitsuie, from what he reasonably believed to be the imminent use of unlawful physical and deadly force by Emmanuel Bitsuie, and he reasonably believed that a lesser degree of force would be inadequate. He had reasonable grounds to believe, and did believe, that David Bitsuie was in imminent danger of being killed or receiving great bodily injury. The actions of Officer Roberts were based on his own observations and perceptions, and his actions were reasonable.

Given the facts and circumstances of the situation and the governing law, criminal charges against Officer Jordan Roberts would not be appropriate, and therefore no criminal charges will be filed.

Dated this 29 day of January 2019



J.E. Chostner
District Attorney