



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

March 27, 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 May 30, 2018  
Location: Pedestrian walk bridge from the 2600 block of East 11th Street, crossing over the Highway 50 Bypass, to the area of East 10th Street and Amarillo Avenue  
Injured: Michael Joseph Valdez  
Officer Involved: Stephen Biggs

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on May 30, 2018, to investigate an Officer Involved Incident which resulted in Officer Stephen Biggs discharging his firearm in response to a perceived threat by Michael Joseph Valdez (DOB 10/29/1972). The Pueblo County Sheriff's Office (PCSO) was designated as the lead investigative agency and other CIT participants included the Colorado Bureau of Investigation (CBI), 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.

## **Overview of the Incident**

On May 30, 2018, at 8:58 A.M., PPD Officer Jonathan Post responded to 1525 Neilson Avenue regarding a family disturbance. It was aired the suspect, Michael Valdez, had a handgun and was breaking windows. A short time later, it was aired that a suspect (later identified as Michael Valdez) had menaced a separate person in the area of the 1200 block of Amarillo Avenue (Amarillo).

Officer Post contacted Hubert Valdez who stated he has been having problems with his son, Michael Valdez, for a while now. Hubert reported that today Michael came by the residence and demanded food from him. When Hubert told him no, Michael stated "fuck you" and, using a handgun, broke three windows out of Hubert's house. Hubert indicated Michael had the handgun in a white grocery type bag and was swinging it at the windows. The handgun was described as being a black semi-automatic handgun with the serial number removed. After breaking the windows, Michael started walking away and stated, "I am going to come back tonight and finish you and burn your house down." He left the area wearing a white shirt and a red hat with the words "force recon" on it. Michael also had a dog with him which was described as a Pitbull type breed.

While Officer Post was speaking with Hubert, PPD Officer Michael Mares went to contact a second reporting party, Ernest Gonzales. Ernest stated that he was by the dumpster near the apartment complex in the 1200 Block of Amarillo, when a male he knows as "Mike" (later identified as Michael Valdez) approached him. Michael stated "you owe me money." When Ernest told him he did not owe him money Michael pulled out a chrome and silver pistol, which was wrapped in something white, and pointed the weapon at him and said "yes you do."

It was then discovered that PPD Officer Glenn Bustos contacted an unidentified male party in the 1400 or 1500 block of Juan Madrid Avenue. The unidentified party told Officer Bustos that there was a male matching the description of Michael Valdez, who he knew as "Mike," walking in the area. The two men argued, after which "Mike" pulled up his shirt, exposing a pistol, and said "what now?"

At approximately 10:11 A.M., Officer Biggs located Michael and his dog at the pedestrian footbridge crossing from the 2600 Block of East 11th Street, over the Highway 50 Bypass, to the area of East 10th Street (10th) and Amarillo. As Officer Biggs approached Michael he began to run away despite commands by Officer Biggs for him to stop running.

Michael proceeded to run up the ramp of the footbridge while turning his dog loose and telling the dog to attack Officer Biggs. As Michael reached the top of the ramp he turned towards Officer Biggs, who was about half way up the ramp, and took a firing stance and pointed a handgun at Officer Biggs.

Upon seeing the threatening action by Michael, Officer Biggs drew his duty firearm from the holster and fired six rounds at Michael. After Officer Biggs fired the six rounds, Michael continued to run across the top of the bridge and down the ramp into the neighborhood at 10th and Amarillo.

Officer Biggs continued to pursue Michael on foot and lost sight of him near 10th and Amarillo. As he was searching for Michael individuals at the residence of 2601 East 10th Street, later identified as Silvestre Mena-Ramos and Silvino Moreno-Brito, directed him to a residence at the corner of 10th and Amarillo. Officer Biggs checked the residence, to include the back fenced area, and was unable to locate Michael. As Officer Biggs walked towards the corner of 10th and Amarillo the same individuals at 2601 East 10th Street pointed to a group of bushes on the corner. As Officer Biggs approached he immediately observed Michael laying in the middle of the bushes trying to conceal himself.

Officer Biggs ordered Michael out of the bushes and to keep his hands in the air. Michael came out of the bushes and was taken into custody. After Michael was taken into custody, the same individuals from 2601 East 10th Street directed officers to the area of 2519 East 10th Street, where they had observed Michael throw a bag over the fence onto the property. The area was searched and a white Walmart bag with a black and silver Airsoft pistol was found.

The scene was secured, and Michael was transported to Parkview Medical Center to be checked for injuries. At the time of the shooting incident, Officer Biggs 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.

### **Medical Examination of Michael Valdez**

The medical examination of Michael Valdez was conducted on May 30, 2018, at Parkview Medical Center in Pueblo, Colorado. The examination was performed by Attending Physician Kristian Jon Narveson. Dr. Narveson concluded that Mr. Valdez had injury to his right forearm and lower back; however, the injuries did not constitute serious bodily injury.

Specifically, Dr. Narveson noted that there was a cutaneous lesion on the right forearm that could be a gunshot wound. No metallic bullet fragments or other foreign bodies were located, nor was any bone fracturing present. Also noted was a gunshot wound near the right pelvis, with metallic bullet fragments located in the subcutaneous fat of the right lower back. No bone fracturing was present, nor was there any damage to the internal organs. It was decided that the bullet fragments would not be removed surgically.

The toxicology performed on the blood of Michael Valdez did not reveal any signs of intoxication due to alcohol or drug use.

### **Interview: Officer Stephen Biggs**

Officer Biggs was interviewed by CIT detectives at the Pueblo Police Department on June 5, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Officer Biggs recounted that on May 30, 2018, he was dispatched to the north side of Pueblo on a call of a family disturbance in which the suspect had a gun on him. He was told the suspect was wearing a red hat, white shirt, and black shorts, and that he had a dog with him. As Officer Biggs was canvassing the area, dispatch received another call from an individual who indicated he had been menaced by the same individual with a gun.

While driving around the area, Officer Biggs located the suspect (later identified as Michael Valdez) walking through a field in the 2700 block of East 11th Street. As Officer Biggs pulled his patrol vehicle up behind Michael he noticed that he kept looking over his shoulder and walking westbound toward a footbridge that goes up over the bypass. Michael then took off running towards the entrance of the footbridge. Officer Biggs began chasing him on foot, giving commands to stop running.

Instead of stopping, Michael let go of the Pitbull accompanying him and gave commands to the dog to “bite him.” To avoid being bitten, Officer Biggs kept looking down at the dog and tried to stay behind him. Once halfway up the footbridge, he looked up and noticed that Michael was already at the top. Michael was turned around, standing in a shooter stance, pointing what appeared to be a pistol sticking out of a white plastic bag, at Officer Biggs.

Officer Biggs unholstered his weapon and fired what he estimated to be five rounds. Michael fell to the ground, and then stood back up and took off running. Due to the dog blocking his path, Officer Biggs was unable to immediately give chase. Once the dog stepped aside, Officer Biggs continued the pursuit towards the intersection of 10th and Amarillo. As he approached the area he saw a group of individuals who pointed towards a house on the southwest corner of the intersection. After failing to locate Michael in the back of the house, the same group of individuals pointed Officer Biggs towards a group of bushes in front of the house. Officer Biggs then located Michael crouching down in the bushes, at which point Officer Mares placed him into handcuffs.

### **Summary of Officer Stephen Biggs' Body Worn and Dash Cameras**

The body worn camera footage for Officer Biggs begins recording as he is pursuing the suspect, Michael Valdez, on foot towards and onto the footbridge which stretches over Highway 50. The foot pursuit and shooting are observed on the body worn camera video. Officer Biggs pursues Michael up the footbridge incline ramp. It appears as though Michael has approximately a twenty to thirty-yard head start and reaches the top of the ramp as his dog is running towards Michael just in front of Officer Biggs. Loud verbal commands to stop running are heard coming from Officer Biggs, while Michael is heard yelling to his dog to attack Biggs.

As Michael reaches the top of the ramp, he suddenly stops and turns to face Biggs. Michael's feet are slightly spread and his arms and hands are raised to his chest, appearing as if he is acquiring a shooting stance. Biggs draws his service pistol and fires at Michael. Six shots are heard. Officer Biggs airs that shots have been fired and that Michael pointed something at him. After the shots are fired Michael is seen running across the bridge. Shortly thereafter, Michael is taken into custody by Officers Biggs and Mares. Officer Biggs is then escorted back to the station by another officer and his body worn camera is turned off.

The dash camera footage from Officer Biggs' patrol vehicle shows him turn onto E 11th Street where Valdez and his Pitbull are seen. As Biggs approaches, Valdez begins to run. Valdez is seen running up the incline ramp of the footbridge with Officer Biggs in pursuit. Only the entry portion of the footbridge is visible, so no further portion of the incident is captured.

### **Defendant Interview: Michael Joseph Valdez**

Michael Valdez was interviewed by PCSO Detective Gregory Drake at the Parkview Medical Center on May 30, 2018. Later that same day, Michael Valdez was again interviewed by PPD Detective Cody Wager and Detective Drake at the Pueblo Police Department. He was mirandized on both occasions.

While at Parkview Medical Center, Michael indicated to Detective Drake that he had been walking his Pitbull in the area of the pedestrian footbridge in Eastwood Heights when a PPD officer in a marked patrol car advanced aggressively towards him, striking his dog with the vehicle. He then ran across the footbridge and was shot by Officer Biggs. After being shot, he released his dog and fled the area. Michael indicated that after being shot he only remembers waking up in the ambulance. When asked about disposing of a handgun over the fence, Michael became defensive and refused to answer any further questions.

Once medically cleared, Michael indicated he wanted to speak with officers again about the incident. He admitted to breaking the windows of his father, Hubert Valdez's, house, and to having a confrontation with another individual following that encounter. Further, he confessed to having a black and silver Airsoft

pistol in a white plastic bag, which was made to resemble a semi-automatic handgun, and indicated that Officer Biggs did not hit his dog as he had previously told detectives.

Regarding the shooting, Michael admitted and informed detectives that the handgun was visible during the altercation with Officer Biggs, and that he did in fact tell his dog to attack and bite him. He further recounted that he abruptly stopped at the top of the ramp, turned to face Officer Biggs, and, with the handgun still visible in the bag, raised his hands to chest level. Officer Biggs fired at Michael, who then fled the area. Michael admitted to throwing the bag and handgun over the fence before hiding in the bushes at 10th and Amarillo.

### **Officer Involved Processing**

Officer Biggs was processed by PCSO Detective David Butterfield. Officer Biggs was brought to the CSI/ID office in the Pueblo Police Department. Full body photos were taken of Officer Biggs, including his back, arms, and duty belt. No items with evidentiary value were located.

Officer Biggs 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 an individual's clothing and hands. The ALS is used in an attempt to search for any biological (blood) evidence. Officer Biggs was searched using the ALS, but did not appear to have any biological evidence on him.

Detective Butterfield then examined Officer Biggs' 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 Biggs: Glock 17 9mm handgun (SN BGLY755), 11 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: East 11th and Beaumont Street; 10th Street and Amarillo Avenue**

PPD Detective Stephen Jesik, along with PCSO Detective Bethany Solano, responded to the entrance of the footbridge, near the area of East 11th Street and Beaumont Street, where Officer Biggs' marked patrol vehicle was parked. Crime scene tape was placed not only in this area, but also in the area of 10th and Amarillo where Michael Valdez was pursued and taken into custody. Digital photographs and video were taken of both scenes. Orange evidence cones were placed on or near the physical evidence found. PCSO and PPD officers were set up at various locations in order to ensure the scene was secure.

With respect to the scene at East 11th and Beaumont Street, to include the pedestrian footbridge, two spent 9mm shell casings were located about two-thirds of the way up the north incline. The casings were consistent with the Federal brand duty ammo issued to PPD officers. Near the top of the incline, bullet fragments were located, as well as a defect on one of the metal poles which appeared to be from the projectile. No blood was observed on the footbridge.

Regarding the other four spent shell casings, officers searched the drainage area under the footbridge incline where the first two shell casings were located. Two additional 9mm casings were located, consistent with the two shell casings previously located on the footbridge. In searching for the remaining two shell casings, officers unsuccessfully employed various search methods, to include the use of metal detectors and raking and removing grass and weeds by hand for nearly three hours. Ultimately, officers were able to locate only four of the six spent casings.

While searching the area of 10th and Amarillo, a Walmart bag was located in the rocks near the fence at 2519 East 10th Street. Inside was a black and silver handgun, which was determined to be an Airsoft pistol. There was no magazine inside the weapon. Both items were submitted to CBI, however, Forensic Scientist Tanya Atkinson was unable to locate any latent prints suitable for comparison on either the Airsoft pistol or the Walmart bag. No biological evidence was found at either scene.

### **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 Biggs was canvassing the area for a suspect who had caused property damage and was alleged to have a handgun. Prior to encountering the suspect, Michael Valdez, Officer Biggs had been informed that Michael had left his father’s home carrying a semi-automatic handgun in a white grocery bag. He was also made aware that Michael had allegedly threatened two other individuals with the same weapon. As Officer Biggs pursued the suspect on foot, Michael gave commands to his Pitbull to attack and bite Officer Biggs. Michael then stopped abruptly at the top of the footbridge, turned towards Officer Biggs, and, with the alleged semi-automatic handgun visible, raised his hands to his chest and assumed a shooting stance. Officer Biggs then discharged his firearm six times in the direction of the threat.

Based on the facts of the investigation conduct by CIT investigators the use of force by PPD Officer Stephen Biggs appears to be justified based on the fear and threat of serious bodily injury or death posed to him by Michael Valdez when he assumed a shooting posture while having in his possession what appeared to be a semi-automatic handgun. This conclusion is based off interviews of the involved officer, statements made by civilian witnesses, to include Michael Valdez, body worn camera video, crime scene and evidence processing, and the execution of search warrants.

There is no evidence or facts collected to support any criminal wrong doing by Officer Biggs during the Officer Involved Shooting (OIS) incident. The actions taken by Officer Biggs during the OIS incident were conducted with the justified belief that his life was in jeopardy. The body worn camera video, along with the statements made both by civilian and law enforcement witnesses, make clear that Michael Valdez was in possession of an Airsoft pistol, which appeared to be, and was represented as being, a semi-automatic handgun.

It is my conclusion based on the circumstances that Officer Biggs was justified by the Self-Defense provision of the laws of the State of Colorado in using the actions he employed to defend himself from what he reasonably believed to be the imminent use of unlawful physical and deadly force by Michael Valdez, and he reasonably believed that a lesser degree of force would be inadequate. He had reasonable grounds to believe, and did believe, that he was in imminent danger of being killed or receiving great bodily injury. The actions of Officer Biggs 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 Stephen Biggs would not be appropriate, and therefore no criminal charges will be filed.

Dated this 27<sup>th</sup> day of MARCH 2019



J.E. Chostner  
District Attorney