



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

July 15, 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 October 23, 2018
Location: 109 Lamar Avenue
Injured: Michael Shane Cory Francisco
Officers Involved: Jeremy Brown; Mario Diaz; Brian Gowin; Seth Jensen

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on October 23, 2018, to investigate an Officer Involved Shooting (OIS) Incident which resulted in injury to Michael Shane Cory Francisco (DOB 10/5/1984). 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 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 Tuesday October 23, 2018 at approximately 4:35 am Pueblo Police Officers Seth Jensen, Mario Diaz, Brian Gowin, and Jeremy Brown were dispatched to the area of Lamar Avenue and Midway Avenue. Reporting party John Emory, who resides at 113 Midway Avenue, called the Pueblo Police Department (PPD) Dispatch and reported hearing a gunshot in the area. Mr. Emory reported a disturbance in the area that had been going on for approximately thirty minutes, and he believed people were physically fighting as he heard people yelling prior to the shot being fired.

Upon arrival to the area PPD Officers Jensen, Diaz, Brown, and Gowin began searching for signs of a disturbance. While they were checking residences in the area, they heard a male party yelling from the front porch of 109 Lamar Avenue.

The Officers contacted the male, later identified as Michael Francisco, as he was pacing back and forth on the front porch of the residence. The Officers announced themselves as the Police as they approached the residence and took cover behind a vehicle parked in the street along the curb in front of 109 Lamar Avenue. The Officers gave verbal commands to Francisco to show his hands and to keep his hands out of his pockets. Francisco told the Officers he had cigarettes in his hand and to get their lights out of his face as he has post-traumatic stress disorder (PTSD) and is a combat veteran. Francisco then said, "You're going to make me ... make you ... shoot me."

The Officers continued to give verbal commands to Francisco to keep his hands visible as they wanted to talk with him. Officer Diaz told Francisco he was a police officer in uniform, as Francisco claimed he didn't know who they were. As the Officers were talking to Francisco, a female who was later identified as Francisco's cousin, Ricky Smith, exited the front door of 109 Lamar Avenue and told Officers that Francisco is schizophrenic and was currently off his medication. Ms. Smith was directed to come out of the yard and talk with the Officers. While Ms. Smith was talking with them, Francisco pointed to the bottom of the porch steps and said, "There's a bullet right there, you guys want it." Francisco then began to walk off the porch and was heard saying "I'm going to fucking come out there and pistol whip your fucking ass." Francisco then pulled a black handgun from the right side of his waist area.

Francisco then walked toward the front gate of the yard and brandished the handgun he pulled from the right side of his waist area. Francisco held the handgun in his right hand, and Officers immediately began to give Francisco loud verbal commands to put the gun down. Francisco turned around and began to walk back towards the front door of the residence while still holding the handgun in his right hand with his arms raised to the side. Francisco refused to comply with Officers' orders to drop the gun and continued to walk up the porch steps. Francisco stopped at the top step facing away from Officers and turned his head to look over his right shoulder in the direction of where Officer Jensen and Officer Brown were standing. Francisco then raised his right hand while holding the gun and started to turn around toward Officers. Officer Jensen and Officer Diaz fired several rounds each at Francisco. They struck Francisco and he fell onto the porch. Officer Brown and Officer Gowin did not discharge their weapons during this incident.

Additional PPD Officers arrived on scene and approached Francisco on the porch with a tactical ballistic blanket as cover. Officers pulled Francisco off the porch and out of the yard and started medical treatment until American Medical Response (AMR) arrived. Once AMR staff arrived, Francisco was carried to where they were located. Francisco was transported to Parkview Medical Center to be treated for the gunshot wounds he sustained during the incident.

The scene was immediately secured, and Officers Diaz, Jensen, Gowin, and Brown were transported to the Pueblo Police Department and kept separated. The 10th Judicial Critical Incident Team was activated and the Officer Involved Shooting investigation commenced.

Interview: Officer Mario Diaz

Officer Diaz was interviewed by CIT detectives at the Pueblo Police Department on October 25, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garritty*.

Officer Diaz said he was with Recruit Officer Jeremy Brown and they were dispatched to 113 Midway Avenue on a disturbance involving shots fired. Officer Diaz said Officer Gowin and Officer Jensen arrived on scene also. Diaz and Jensen went around the house to check it. Diaz stated someone on scene said they had heard a shot fired. Diaz said Jensen whistled to him to get his attention while they were across the street from 109 Lamar Avenue. Diaz said he and Jensen listened to a male who was outside yelling and heard him yell that if he had to shoot someone he will. Diaz and Jensen then walked across the street toward the male to make contact.

Diaz said the male wasn't making much sense and was saying something about the kitchen being on fire, and people dressed as cops. Diaz said he did have his firearm out and gave the male commands not to put his hands in his pockets. Diaz began to talk with the male and the male was saying other officers' names who used to work at PPD.

Diaz said a female with a white shirt came out. Diaz knew there was someone next to him, and after watching his body worn camera he knew it was Jensen. Diaz stated at this point he thought Officers Brown and Gowin were still at the house on Midway Avenue. Diaz said the male was on the porch saying something like "These guys are lying, shoot them in the back of the head." Diaz said he specifically remembered lowering his gun and shining his flashlight on his badge to show the male they were in fact police officers.

Diaz said he was in full uniform, which consisted of patches, his badge, and his gear. Diaz said the male said, "fuck you," and Diaz said, "this isn't working." Diaz said he saw another female at the front door, and the male on the porch was pacing. The male then hit the steps on the porch and Diaz saw the male had a gun. Diaz said he began to give the male loud verbal commands to put down the gun. Diaz said the male then turned around and Diaz remembered the girl in the front door, so he gave loud verbal commands to not go back in the house because he didn't want to have a hostage situation. Diaz said he lost sight of the female.

Diaz said Jensen was to his right and the female in the white shirt was there too. Diaz stated the guy with the gun looked back and started to turn back, and the gun was in the male's right hand. Diaz said he could see the male perfectly and had a good sight of him. Diaz said the moment the male started to turn, he fired his service weapon. Diaz said after that he heard a couple more shots and the male fell.

Diaz further clarified that as they were approaching the male on the front porch he was identifying himself as a police officer. Diaz stated the male wasn't acting right, as it wasn't normal what he was saying, and he was moving back and forth on the porch. Diaz said he remembers the male saying something about pistol whipping them, and that as soon as he said that he started walking fast toward the front steps. Diaz stated it appeared the male was walking aggressively.

Diaz said at first the male didn't have the gun, but then the male reached the steps and suddenly there was a gun. Diaz stated that when he saw the male with the gun he demanded that the male drop the gun. Diaz stated the male refused to drop the gun and started to turn around toward officers. Diaz said the male turned toward Jensen and the female, and that since he had made statements about shooting someone and pistol whipping them his concern was for the female and Jensen. Diaz said when the male began to turn toward them with the gun he felt the male was going to shoot. Diaz stated that although his fellow officers were standing behind a vehicle, he knew that wouldn't stop a bullet and protect them. Diaz stated he was the only one in a position of cover as he was standing behind the engine block. Diaz said he honestly felt the male was going to shoot them, so he shot the male. Diaz said he felt fear for his life, the female's life, and Jensen's life.

Interview: Officer Jeremy Brown

Officer Brown was interviewed by CIT detectives at the Pueblo Police Department on October 25, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Brown stated he was dispatched to a fight with weapons call for service, and while en route the call was changed to a "shots fired" call. Brown stated that once he arrived he contacted a female and asked her if she saw people fighting. The female said she didn't see people fighting, but she heard a gunshot. Brown stated he heard yelling and noticed the three other officers walking across the street to an address on Lamar. He and his fellow officers contacted the male who was yelling, later identified as Michael Francisco, who didn't believe them to be real police officers.

Brown stated the male was standing on the porch being belligerent and yelling at the officers to turn their flashlights off as he had PTSD. Brown also heard the male yell something about heroin. Brown stated all officers were in full uniform and announced themselves as police officers. Brown stated Officer Diaz announced and shined his light on his badge to show the male they were police officers, and that they identified themselves as Police Officers multiple times.

Brown stated a female named Ricky (Smith) came out of the residence and attempted to defuse the situation. Brown stated while speaking to Ricky, the male was agitated. Brown asked Ricky if the male had a weapon and she said no, and a couple seconds later the male pulled a gun out and pointed it in the air. Brown said the male had the gun in his right hand and he thought he pulled it from one of his pockets. Brown stated the male was given verbal commands to drop the gun, but he refused and appeared to be scouting or looking for someone as he paused for a moment at the top of the stairs.

Brown stated his adrenaline went up and he immediately came up on target and was ready to shoot but didn't have a clear shot as Ricky was directly in front of him and waving her hands. Brown stated he felt the male was going to shoot someone or take the female inside the residence hostage prior to shots being fired.

Interview: Officer Brian Gowin

Officer Gowin was interviewed by CIT detectives at the Pueblo Police Department on October 25, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Gowin said he was dispatched to the area of 113 Midway Avenue on a disturbance with shots fired. Gowin said he, along with Officers Jensen, Brown, and Diaz, all responded to the call. When they

arrived, Brown spoke with a woman who said she heard something outside. Gowin said Jensen then got their attention and the officers began walking toward the house on Lamar. Gowin stated he could hear a male saying something about his kitchen being on fire, and the male was also yelling profanities. Gowin stated as they were all walking toward where the male was yelling, Diaz identified them as police officers and asked the male to raise his hands.

Gowin stated the male was being very erratic and kept claiming that they were fake police officers. As they got closer the officers took cover behind an SUV that was parked in front of the house. Gowin stated they had their guns out due to the nature of the call being a fight with weapons, and they weren't sure what they were walking into. Gowin stated they tried to talk with the male and get information to see what was going on. The male on the porch kept saying they weren't real police officers and that he knew certain individuals at the police department. Gowin stated they were all dressed in full uniform and that Diaz also kept saying they were officers with the Pueblo Police Department.

Gowin stated a female came out and told them the male is just having an episode and he does this all the time. Gowin could hear the male say he has PTSD, he said something about a bullet being right here, and he said he was going to pistol whip somebody. Gowin said he heard another officer ask the woman if the male had any weapons and she said no. At that time the male put his hands in his pocket and pulled out a black handgun and began to walk toward officers. Gowin said they gave the male several commands to drop the gun. Gowin stated he also saw a female at the front door who was poking her head out.

Gowin stated the male walked up the front porch and turned around, and he still had the gun in his hands. Gowin stated the female who was outside talking with them was kind of behind the SUV with them, and he could still see the female in the back drop. Gowin stated his attention was divided between the male and the two females, and then he heard gunfire from his left side, which would have been Officer Diaz. Gowin said Officer Brown and Jensen were on his right side and he heard gunshots from the right side also.

Gowin said the male went down on the porch, and they didn't know if he still had the gun, so they didn't approach him right away. Gowin said they put a team together and approached the house with a ballistic blanket and got the male off the porch to be treated. Gowin stated they found a needle on the male and identified him by a credit card they found on him.

Gowin further stated that the male was very erratic, and that he felt the male was going to shoot them. Gowin stated he ducked down behind the SUV to dodge bullets. Gowin said based on his behavior and the statements he made, such as he was going to pistol whip them, that he thought the male was going to shoot at the officers.

Gowin stated that he did not fire his weapon because of the female who was in the back drop. He did not feel that he had a very good shot and did not want to endanger that female. Gowin stated he believed Officer Diaz had a better shot on the male. Gowin stated he believed the male wanted to make the police shoot him, and that the male possibly wanted to shoot the police also. Gowin was asked how he felt after Francisco pulled out the gun and he stated, "I honestly thought he was going to shoot us."

Interview: Officer Seth Jensen

Officer Jensen was interviewed by CIT detectives at the Pueblo Police Department on October 26, 2018. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Jensen stated he was dispatched to a fight with shots being fired. Jensen said he and fellow Officer Diaz heard a male yelling from a residence as they were in the area checking for signs of a disturbance. Jensen stated the male appeared to be incoherent and sounded like he was fighting with someone. Jensen stated he and his fellow officers walked up to 109 Lamar Avenue and took cover behind an SUV which was parked in front of the residence. He and his fellow officers had their guns drawn due to the nature of the call and the male's behavior.

Jensen said Officer Diaz announced that they were the police and was giving verbal commands to the male to put his hands up and not reach in his pockets. The male continued to pace back and forth on the porch, screaming and turning his body away from them.

Jensen stated a female exited the residence. As he and Officer Brown were speaking with the female, the male came off the front porch and reached in his pocket and produced a handgun. Jensen stated all the officers were screaming at the male to drop the gun and to put it down. Jensen said the male refused to comply and turned away from them and put his hands in the air while still holding the gun.

Jensen said the male looked back at him like the male was targeting him. Jensen stated this scared him and made him feel terrified. Jensen stated he was concerned for the females on scene as well as for his fellow officers. Jensen said when the male got to the top of the steps he lowered his arms and started to turn toward Jensen. Jensen stated he believed the male was going to kill them. Jensen said he discharged his firearm as the male started to turn towards him with the gun because he thought the male was going to start shooting.

Summary of Officers' Body Worn Camera

CIT Detectives reviewed the body worn camera (BWC) video from all four officers who were involved in this incident. On the BWC all four officers are observed to arrive in the area and begin searching for signs of a disturbance. While officers were checking residences in the area they heard a male party yelling from the front porch of 109 Lamar Avenue.

Officers contacted the male later identified as Francisco as he was pacing back and forth on the front porch of the residence. Officers announced themselves as the Police as they walked up to the home from across the street. Officers demanded Francisco to show his hands and to keep them out of his pockets while contacting him from the roadway.

Francisco is heard telling officers he has cigarettes in his hand and to get their lights out of his face as he has PTSD and is a combat veteran. Francisco can then be heard saying, "You're going to make me ... make you ... shoot me" on the video.

Officers continued to tell Francisco to keep his hands visible as they wanted to talk with him. Officer Diaz can be heard telling Francisco he is a police officer in uniform as Francisco claims he doesn't know who they are. Francisco can be heard saying, "If they're lying someone shoot them in the back of the head."

As officers were attempting to speak with Francisco a female, who was later identified as Francisco's cousin, Ricky Smith, is seen coming out of the residence. She contacts officers and informs them Francisco is schizophrenic and currently off his medication. As Ms. Smith came out of the residence Francisco pointed to the bottom of the steps and can be heard saying, "There's a bullet right there, you guys want it." Ms. Smith can be heard telling officers that Francisco had been up for a couple of days.

As Ms. Smith was speaking with officers Francisco can be seen pulling a black handgun from the right side of his pants pocket.

Francisco is then heard saying, "I'm going to fucking come out there and pistol whip your fucking ass." Francisco then walks to the front gate of the yard and brandishes the handgun. Francisco is seen holding a handgun in his right hand, and officers immediately began to give him loud verbal commands to put the gun down. Francisco then turns around and walks toward the front door of the residence with his arms raised to the side while still holding the handgun. Francisco refuses to comply with the officers' orders to drop the gun and continues to walk up the steps.

Francisco is then seen turning around and looking in the area where Officer Jensen and Officer Brown were standing. Francisco then raises his right hand while holding the gun and starts to turn around toward the officers. Officer Jensen and Officer Diaz then shot several rounds each at Francisco, which injured him and caused him to fall to the porch.

Additional officers are then seen arriving on scene and they approach Francisco with a tactical ballistic blanket as cover. Officers pulled Francisco out of the yard and carried him away from the residence to where medical personnel were staging.

Suspect Interview

On November 1, 2018, CIT detectives responded to Parkview Medical Center to interview Michael Francisco regarding his account of the incident.

Detectives informed Francisco they were detectives with the Pueblo County Sheriff's Office and the Pueblo Police Department. Francisco was asked if he would be willing to speak with them, and he stated he was in a clear state of mind and would be willing to speak with the detectives. Francisco was advised of his rights to remain silent and to have a lawyer present during questioning pursuant to *Miranda*, and Francisco acknowledged that he understood his rights and agreed to speak with detectives.

Francisco stated he didn't remember much from the time he was placed in handcuffs until a few days later, but that he remembered everything else very well. Francisco stated he found out his wife was pregnant, and he stopped using drugs, which caused him a lot of stress. He indicated that he is schizophrenic and felt like people were talking to him. He stated a few days prior he and another male had gotten into an argument at work in which the male threatened his life.

Francisco stated, "I know that I fucked up by having a weapon." He stated he didn't like the way he was approached with flashlights and didn't know if the officers were the people who had been threatening him. He stated that he didn't want to drop his weapon even though he was being told to. Francisco stated he called the police because he thought there was an intruder and didn't know they were the police even though they verbally announced that they were. Francisco said he saw a guy take a step back and light up everyone's badges, but he wouldn't surrender his weapon for anyone.

Francisco said his wife came downstairs and was standing in the "fatal funnel." Francisco used the term "fatal funnel" to describe that he thought she was going to get hit because of where she was standing, so he screamed at her to go back to the top of the stairs. Francisco said, "I put my hands up, I ejected the magazine, I let it hang on one finger and the safety went on." Francisco said he looked back and the shots rang out, and that he got hit four times in the back. Francisco stated he made himself a big target because his wife was standing on the other side.

Francisco clarified that he yelled at his neighbor to call police because as he was clearing his house he saw people jumping over the fence and had intruders. He knew someone called the police because right after that they were on scene.

Francisco stated he did not fire his weapon at all, unless as he was getting hit he managed to squeeze a round off. He stated he never pointed at or drew down on anyone. He stated that all he saw when officers arrived was them dressed in black pointing guns and flashlights at him, though he did hear them saying "Police." He stated he had his gun holstered several times but had the gun at the "ready" position when the police arrived. Francisco stated it was a semi-automatic 9mm pistol that he obtained from a friend to protect his home after he was threatened. He said he doesn't go around "pistol whipping people" acting bad and showing the gun around.

Francisco did admit to being off his schizophrenia medication and using heroin earlier that morning.

Witness Interview: Ricky Smith

Ricky Smith, Francisco's cousin, was interviewed by CIT detectives on October 23, 2018. Ms. Smith resided with Francisco at 109 Lamar Avenue and was present at the time of the shooting.

Ms. Smith said she would have to go back a couple of days to explain what happened leading up to the incident. She stated Francisco had been "on one." She stated Francisco had driven to Denver a couple of days prior. Francisco's wife, Jarah Francisco, had to go pick Francisco up and they spent the day in Denver, not returning until 12:30 am or 1:00 am on October 23.

Ms. Smith stated Francisco is schizophrenic and hears voices. She stated the family has become accustomed to Francisco's behavior and psychiatric problems.

Ms. Smith stated she had not known Francisco had a weapon at the house, and she did not know about the handgun until he pulled it out on the porch during the confrontation with police officers. Ms. Smith stated when Francisco pulled out the gun, he probably was not even seeing the officers. She stated Francisco will be having a conversation with her but talk to imaginary people at the same time.

Ms. Smith stated Francisco was not being treated or medicated for the psychiatric problems but self-medicates with heroin and methamphetamines. She stated he was diagnosed with schizophrenia a few years prior but did not know by what medical professional or facility.

Ms. Smith stated she was asleep in bed when Francisco and his wife returned to the residence that morning. She estimated she was up about thirty minutes later, because Francisco was being very loud, and she took one of her dogs for a walk. Ms. Smith estimated she was gone for forty-five minutes and that she took her walk at approximately 3:00 am. When she returned she started to cook herself some food.

Ms. Smith stated that Francisco kept going out the front door and she put on her jacket and ushered him back inside. Francisco then went upstairs to stand in the window. Ms. Smith stated approximately two hours later, Francisco's wife came in and announced that law enforcement had arrived. Ms. Smith said Francisco was being very loud, but he was not fighting with others in the house. She explained he was fighting with the imaginary people/voices and talking about getting drugs, specifically heroin. She stated she knew he last used a couple of days prior, but he had been in Denver just prior to the incident and she could not account for his activities during that time. She stated he routinely uses heroin every day to avoid getting sick.

Ms. Smith stated only Francisco, his wife, and she were at the residence at the time of the incident. She stated Francisco's mother, Darla Medina, would have more information about Francisco's psychiatric issues and diagnoses. She stated the last time Francisco was taking his medications and happy was during his time in prison. She stated she believed he had been to rehab a couple of times.

Ms. Smith stated she did not realize Francisco was already on the porch in contact with law enforcement. When Francisco's wife told her that, she went outside to intervene and explain his issues. Ms. Smith stated she saw the weapon in Francisco's hand. She said the officers were telling Francisco to put the gun down, but he was raising his arms out to the side. She did not observe what Francisco did to cause the officers to fire at him, because she was facing the officers. Ms. Smith said she did not know where Francisco got the gun, because she has never seen him with a gun.

Witness Interview: Darla Medina

Darla Medina, Francisco's mother, was interviewed by CIT detectives on October 23, 2018.

Ms. Medina stated that at approximately 4:00 am she woke up as if something was wrong but didn't know what. A little bit later she received a phone call from her daughter Andrea Francisco who lives in Denver. Ms. Medina was told Francisco's wife or girlfriend Jarah Sanchez (Jarah Francisco) had called Andrea stating Francisco was outside of their house acting hysterical and that there were shots fired. Ms. Medina said she takes care of her mother who is 88 years of age and usually can't leave her house, but decided she would go and see if her son was okay. Ms. Medina said she went to Parkview hospital to see if she could get any information about Francisco but wasn't able to.

Ms. Medina stated Francisco has severe PTSD from his time in the US Navy. Ms. Medina said Francisco was diagnosed while he was in the Colorado Department of Corrections (DOC) and was diagnosed as having PTSD, schizophrenia, and other mental issues. Ms. Medina said Francisco had tried to utilize Veteran's Affairs (VA) benefits a couple of times and hadn't received any help. She stated she didn't think Francisco was taking any medications and that she only remembered him taking them when he was in DOC. She said she knew Francisco to utilize heroin and methamphetamine to self-medicate and had been doing so for some time. She believed Francisco's issues started about seven years ago.

Ms. Medina stated she didn't speak much with Francisco since he has been out of prison, which she thought was sometime in April of 2018. She did speak with him the day prior on the telephone and could hear in his voice he wasn't doing well and didn't sound like himself. Ms. Medina said she didn't know Francisco and Jarah were expecting a baby until that morning. She said Jarah was fired from her job at community corrections the day prior, possibly because of Francisco and his behaviors. She stated Francisco has had a lot of life "stressors" lately.

Witness Interview: Jarah Sanchez

Jarah Sanchez (Jarah Francisco) was interviewed by CIT detectives on October 23, 2018.

Jarah said she needed to go back to the previous week to explain what happened that resulted in the police being called. She said Francisco was doing construction work with a male by the name of Travis. The working relationship dissolved, and Travis began to talk badly about Francisco to fellow co-workers. Jarah said Travis had made threats through messages to Francisco and her. She said they went home and both called the police for a report. Jarah said the day Francisco received the threats from Travis he

(Francisco) went to his mother and explained if she received any threats to call the police. While at his mother's residence, Francisco went to the neighbor's house and borrowed a gun.

Jarah described a second incident recently where Francisco came early to pick her up from work at community corrections, which was against policy. She was fired for that incident on October 21, 2018. She said she found out the previous day, October 22, that she was pregnant with their child.

Jarah said it was a lot for Francisco to take as he had been diagnosed with PTSD and schizophrenia with some bipolar tendencies. She said she thought maybe he was diagnosed while he was in prison. She stated Francisco reacts to stress and traumatic situations differently. She said he doesn't accept his diagnosis and does not take his medication like he is supposed to. She said he loses touch with reality. Jarah said she did research on his diagnosis, which causes him to hear voices and see things. She said he has an element of bipolar disorder, which causes him to "go up and down," and since it is coupled with the PTSD she thinks that makes it worse.

Jarah explained that Francisco has been layered with stressors from the loss of her job, the incident at work, and the recent findings of her pregnancy. She stated Francisco had gone to Denver over the weekend and she picked him up the day prior from his sister's house there. When she arrived at his sister's house she could tell immediately Francisco was in one of his "protective" states. Jarah stated Francisco was under the impression someone had broken into his sister's house.

Jarah stated when she arrived she wanted to take a nap and asked Francisco to lay down with her. She could tell he was full of anxiety and didn't believe he had slept. She stated Francisco took a shower and when he got out he again believed someone had broken into the residence and was hiding in the house. Jarah stated Francisco was fixated on the closet due to something being missing or moved, which confirmed to Francisco that someone had broken in. She said Francisco's sister was upset, but his sister had been dealing with Francisco's behavior for a lot longer than she had. Jarah said she did some research on Francisco's mental illness and learned not to deny his delusions, but not to buy into them either.

Jarah said they left Francisco's sister's house, got something to eat, and drove back to Pueblo. She slept the entire way home and they arrived back in Pueblo between the hours of 10:00 pm to 11:00 pm. Once at home, Francisco would not allow her into their residence until he checked to make sure it was safe. Jarah said they have had someone try to break into their house at least twice, as well as attempting to break into his truck. Jarah said their cousin Ricky Smith had been staying at the house and said everything was fine, but Francisco wouldn't allow her inside until it was checked. She then went upstairs to go to bed as she was tired. Jarah said she was concerned because she was unclear as to when the last time Francisco slept was, but she believed it had been three days.

Jarah said before she laid down she told Francisco to take some medication to sleep, but he refused. She said he was pacing and sitting on the stairs next to their bedroom. She said Francisco told her he wanted help and wanted to get back on his medication, so she said they needed to go to the doctor. She didn't know if he had the gun he had borrowed on him at this time but said that he probably did some of the time. Jarah described the gun as a smaller handgun similar to what officers would carry.

Jarah said Francisco gets really loud, especially when he is talking to the voices. She said he consistently talks to the voices and he says they never tell him anything positive, only negative. She said Francisco told the voices to leave her alone because it would make her lose the baby, and that he told the voices they were putting him under a bunch of stress and to let him be. Jarah said she told Francisco to come and lay

down with her, but he went to the bathroom and opened the window and yelled at whoever he was talking to. He told the voices to come and show themselves and face him man to man.

Jarah said Francisco would not stop talking to the voices even though she and Ms. Smith told him repeatedly to just lay down and stop. Jarah said at one point she told Francisco if he didn't stop she was going to lose the baby. She said that was when she noticed the gun for the first time as he had it in his hand. Jarah said Francisco turned on her and told her there were people who were coming to hurt her and their family. He also threatened to shoot himself.

Jarah said Francisco then fired what she thought was two gunshots from the second floor of the residence. Francisco said he was trying to scare the intruders from coming into the house. Jarah said she told Francisco someone was going to call the police, but he wouldn't listen. Jarah said she saw a police car circling the neighborhood out the window and that she told Francisco he needed to stop, or he was going to be arrested because someone had called the police.

Jarah said she went into the kitchen and noticed Ms. Smith was cooking or cleaning. Jarah told her the police were called and they were going to take Francisco. Ms. Smith walked to the front of the house. Jarah said she noticed Francisco had opened the front door. Jarah said Francisco told her he wanted to tell the police about the people who wanted to hurt them.

Jarah said Francisco was yelling, and by then he was out on the front porch and she was behind him. Jarah said she turned around and told Ms. Smith she didn't know what else to do. Ms. Smith told her she was going to talk to the police. Jarah confirmed that the police were already there talking to Francisco, but she couldn't hear what they were saying.

Jarah said Francisco had the gun in his hand but he wasn't pointing it at anyone. She said there were four to five police officers behind a police car with their guns pointed at Francisco. Jarah said Ms. Smith went outside with her hands up and was telling the police Francisco was schizophrenic and having a hard time and not to shoot him. Ms. Smith was telling Francisco to get back in the house.

Jarah said she was unsure when the police realized Francisco had a gun in his hand. She said he was walking up the stairs with his back to the police with his hands in the air. She said at this time he had the gun in one of his hands and he was yelling. Jarah said she was in the doorway while this was happening. Jarah said she was telling Francisco to put the gun down and the police were yelling at him to put the gun down. Jarah said she was saying Francisco was not going to hurt "you guys," meaning the police officers.

Jarah said she thought Francisco turned or shifted and they all started to shoot. Jarah remembered seeing all the gunfire at Francisco, and Francisco screaming. She fell to the side of the couch and was there until the shots stopped. Jarah said she was sure Francisco was gone, and she started yelling for him and she could hear him screaming. She said she was asking if she could go to him and the police told her she could not.

Jarah said she crawled to her phone and called Francisco's sister. She told Francisco's sister that he was screaming, and she hadn't heard an ambulance. After hanging up she heard officers over the speaker telling her to come out with her hands in the air. Jarah said she put her jacket and shoes on and walked out slowly, doing what the officers told her to do.

Jarah said there were several medicines inside their residence that Francisco was supposed to take for his mental issues. She didn't know what they were because Francisco wouldn't let her see them and he would hide them. She said it had been a while since he was well regulated on his medicines. Jarah said she knew Francisco would self-medicate with methamphetamine and heroin. She said as far as she knew

recently Francisco had been doing his best not to self-medicate. Jarah said Francisco felt like he couldn't find a doctor that could help him, and the medications didn't seem to work. She said Francisco would use drugs to numb him and help him with what he was dealing with.

Jarah clarified that when Francisco went to Denver he took her car and she was trying to get in touch with him. She said on Sunday she told him he needed to bring the car back. Francisco told her he couldn't as he had not slept for a couple of days and the voices were really talking to him. Jarah said she was able to get Francisco's mom to take her to Denver to pick up Francisco and her vehicle and bring them back to Pueblo. Once she got to Francisco's sister's house in Denver, Francisco didn't want to come home with her and she could tell he was full of anxiety. Jarah came back to Pueblo because Francisco's sister told her she could bring Francisco back to Pueblo at a later date. Jarah said the next day was the day she found out she was fired, and Francisco knew she was pregnant, so she drove to Denver to pick him up.

Jarah said this episode Francisco had for several days prior to the incident was the longest one he had ever had. She said normally his episodes only last for a day or two and she had never seen one this bad before. Jarah believed it was because of the increased level of stress.

Jarah said Francisco is not a bad person and she had never seen him hurt anyone. She said he is tough and protective of the people he loves.

Jarah said there were no other guns in their residence. She confirmed he got the gun recently from his mother's neighbor because of the threats from Travis. Jarah said she didn't have any reason to be concerned when Francisco got the gun but she knew he wasn't supposed to have a gun because of a prior felony charge.

Summary of Suspect's Medical Records

Francisco was admitted to Parkview Medical Center on October 23, 2018, where he was treated for gunshot wounds he sustained during the altercation with Police. Upon admittance to Parkview Francisco was noted to have a gunshot wound to the posterior right upper shoulder, right axilla, and left buttock. The wounds to the shoulder and axilla appeared to be one entrance wound and one exit wound. A toxicology screen was performed and was positive for methamphetamine. Francisco was discharged from Parkview Medical Center on November 6, 2018.

Officer Involved Processing

All of the involved officers were processed in the ID/CSI section at PPD by a CIT detective on the morning of October 23, 2018. All officers were processed separately.

Full body photographs were taken of each officer to show any type of wounds, biological evidence, physical evidence, and placement of their duty gear. After the photographs were taken the officers were placed in a dark room and a bright white light was illuminated over their person while in uniform. The light is used to identify any biological evidence associated with blood. No uniforms appeared to have any biological evidence on them, therefore no uniforms were collected. Officer Jensen and Officer Diaz's gloves were collected and placed into evidence due to them being involved in the shooting and possibly wearing them at the time.

Finally, the officers' duty gear was collected. Officer Diaz and Officer Jensen's duty weapons were collected. Officer Brown and Officer Gowin's duty weapons were released back to them due to them not firing their weapons. A piece of parchment paper was laid out and each officer placed their duty weapon on a separate piece of paper. Photographs were taken of each weapon as they were. The magazines of each weapon were then removed along with the round in chamber and the slide was locked back. This makes the weapon "safe." Any additional magazines that the officers were carrying were then removed and placed on the parchment paper. All live cartridges were then removed from the magazines and placed near the magazine they were removed from. All live cartridges were counted and photographed.

All officers advised the CIT detective that they keep all of their magazines topped off, carrying the maximum amount of live cartridges the magazine will allow them to carry. The following results are from processing the officers:

Officer Seth Jensen:

Glock 22 Gen 4 .40 caliber serial number UCD351
37 live cartridges collected out of a possible 46

Officer Mario Diaz:

Glock 17 Gen 4 9mm serial number XMV371
44 live cartridges collected out of a possible 52 (Note: Diaz's spare magazine #2 had only 16 live cartridges in it. Each magazine holds 17 live cartridges)

Officer Jeremy Brown:

Glock 17 Gen 4 9mm serial number BFEG199
52 live cartridges collected out of a possible 52

Officer Brian Gowin:

Smith & Wesson M&P 20 .40 caliber serial number HWT4591
46 live cartridges collected out of a possible 46

Evidence Processing

Evidence collected at the scene of 109 Lamar Avenue was processed by a CIT detective on October 23, 2018.

Francisco's handgun was located at the scene and was collected by PPD officers. The handgun was brought to the ID/CSI section of PPD in a gun box. Francisco's handgun was a black 9mm Smith & Wesson serial number TZV1973 model 915. The slide was forward and a magazine was placed separate in the box. The magazine had suspected blood on it and there were two FC 9mm live cartridges loaded in the magazine. Two FC live cartridges were also located inside the gun box. It is unknown where the two live cartridges came from. A yellow collapsible knife was also brought in with the handgun. The knife was Francisco's knife. The handgun and the knife were placed into evidence at the Pueblo County Sheriff's Office Annex secured processing room.

Photographs were taken of Francisco's clothing after it was dried in the forensic dryer. PPD inventoried \$173.00 located with Francisco's clothing and wallet. A tan jacket was photographed and appeared to have been cut. A defect was located on the back of the jacket towards the lower right side. The defect was approximately .5 centimeters in width and approximately .7 centimeters in length. A second defect

was located on the right side of the jacket near a zipper pocket. The second defect measured approximately .6 centimeters in width and .7 centimeters in length.

A pair of blue jeans were also photographed and appeared to have suspected blood on them. A black belt was attached to the jeans with a chain and wallet. The wallet contained a Netspend debit card with Michael Francisco's name on it. The blue jeans were also cut. A defect was located in the top back of the jeans where there was suspected blood. The defect measured approximately .5 centimeters in width and .5 centimeters in length.

A gray tank top was also photographed and had suspected blood on it. The tank top was cut. On the left side of the upper tank top a defect was located where there was suspected blood. The defect measured approximately one centimeter in width and one centimeter in length.

All clothing was placed in the secured evidence processing room at the PCSO annex.

Scene Processing

CIT Detectives responded to the scene of 109 Lamar Avenue on the morning of October 23, 2018 to process the scene and collect any evidence. The residence and the street in front of it were secured by officers and deputies from PPD and PCSO. An initial walk through of the scene was conducted and overall photographs were taken.

Once the initial walkthrough was completed yellow PCSO evidence placards were placed near the evidence located in the street and photographs were taken of their locations. A small amount of blood was located near Midway and Abriendo Avenue. This was labelled as placard "A" and collected using a clean, sterile cotton swab.

Sixteen spent shell casings were located during the search of the street in front of 109 Lamar Avenue. Yellow placards 1-7 marked FC 9mm spent shell casings and placards 8-16 marked FC 40 caliber spent shell casings. Once these items were photographed they were placed into separate evidence bags and collected.

Once a search warrant for the residence at 109 Lamar Avenue was completed CIT detectives took overall exterior and interior photos of the residence. There were several orange traffic cones in several locations on the steps and front porch of the residence that had already been placed in order to preserve possible evidence. Pictures were taken and evidence placards were placed in several locations. The items on the front porch were labelled as items 17-24. The items collected on the front porch and steps included three 9mm FC live cartridges, three projectile fragments, one 9mm FC spent shell casing, and one syringe.

The residence was then checked for bullet defects, and several were located. These bullet defects located in the residence were labelled with placards A1 through M1. All bullet defects which passed through into the residence were used to show possible trajectory. There was a bullet defect located on the door step leading into the residence. It appeared as though this projectile was discharged from a high degree. It is believed this projectile might have been fired from the firearm controlled by Francisco due to where it was located. The projectile was collected and sent to CBI for testing. The PCSO is still waiting for the results of the testing from CBI.

A search of the interior of the residence was conducted. A live 9mm FC cartridge was located in the upstairs master bedroom. Also in the master bedroom an empty 9mm magazine was collected from a black plastic container.

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

Based on the facts of the investigation conducted by CIT investigators, the use of force by PPD Officers Mario Diaz and Seth Jensen is justified based on the fear and threat of serious bodily injury or death posed as a result of Francisco lowering his gun and turning his body toward Officers. Officers Mario Diaz and Seth Jensen reasonably believed when Francisco turned toward officers and lowered the gun in his hand toward them that he was going to shoot them, their fellow officers, and Ms. Smith. This conclusion is based on interviews of the involved officers, civilian witnesses to the incident, body worn camera video, and crime scene and evidence processing.

There is no evidence or facts collected to support any criminal wrong doing by Diaz or Jensen during the OIS incident. The actions taken by both officers during the OIS incident were conducted with the justified belief that either their lives, or the lives of their fellow officers, were in jeopardy.

It is my conclusion based on the circumstances that Officers Mario Diaz and Seth Jensen were justified by the Defense of Self and Defense of Others provisions of the laws of the State of Colorado in using the actions they employed to defend both themselves and fellow officers from what they reasonably believed to be the imminent use of unlawful physical and deadly force by Michael Francisco, and they reasonably believed that a lesser degree of force would be inadequate. They had reasonable grounds to believe, and did believe, that they and their fellow officers were in imminent danger of being killed or receiving great bodily injury. The actions of Diaz and Jensen were based on their own observations and perceptions, and their actions were reasonable.

Given the facts and circumstances of the situation and the governing law, criminal charges against Officers Mario Diaz and Seth Jensen would not be appropriate, and therefore no criminal charges will be filed.

Dated this 15th day of July 2019.



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