



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

July 22, 2020

Chief Troy Davenport
Pueblo Police Department
Pueblo Municipal Center
200 S. Main Street
Pueblo, CO 81003

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

Re: District Attorney CIT Decision Letter
Officer Involved Incident on March 1, 2020
Location: 800 Block of West Highway 50, Pueblo, Colorado
Deceased: Joshua Russell
Officers Involved: Officer Reid Herrera with the Pueblo Police Department, Deputy Sara Gonzales with the Pueblo County Sheriff's Office

Dear Chief Davenport and Sheriff Taylor:

The Tenth Judicial District Critical Incident Team (CIT) was activated on March 1, 2020, to investigate an Officer Involved Incident which resulted in the death of Joshua L. Russell (D.O.B. March 15, 1984). The Colorado Bureau of Investigations (CBI) was designated the lead investigative agency in conjunction with the Colorado State Patrol (CSP). The Pueblo County Coroner, Pueblo Police Department (PPD), Pueblo County Sheriff's Office (PCSO), and the Tenth Judicial District Attorney's Office (DA) also participated in the investigation. 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 March 1, 2020, at approximately 2205 hours, officers from the Pueblo Police Department responded to the convenience store "7-11", located at 3522 North Elizabeth Street in the City and County of Pueblo, State of Colorado on a report of a carjacking. Responding officers contacted Jeremy Arguello who stated he was at the "7-11" to use the air hose for the tires on his 2004 Grey Dodge Ram pick-up (Colorado license plate KQZ297). An unknown "Caucasian or light skinned Hispanic male" who was "dressed up" wearing a zip-up jacket with a vest underneath and having short hair and facial hair described as "not shaving for a day or two," approached him and asked to use his cell phone. Arguello handed his cell phone to the man, and the man then demanded the keys to the truck while pulling out a pistol that had been concealed on his person.

Arguello refused to comply with the demand for his keys, at which time the suspect fired a shot into the air. Arguello then asked if he could at least get his backpack from the truck, at which point the man fired another round in the air and then struck Arguello in the head with the butt of the weapon. After striking Arguello with the gun, the suspect lost his grip on it, and it fell to the ground causing the magazine to disengage from the weapon. The suspect picked up the gun and magazine and then fled the "7-11" in Arguello's grey Dodge pick-up. Arguello last saw his truck driving eastbound on Highway 50. Arguello reported his truck was equipped with a "LoJack" theft protection tracking system. Arguello sustained injuries from being "pistol whipped" to the left temple area of his head and required medical attention. Two (2) expended .45 caliber shell casings and six (6) live .45 caliber rounds were recovered at the "7-11" scene. Surveillance video corroborated Arguello's account of the incident, but details of the suspect's face were not visible due to the cameras' locations and quality of the nighttime recording.

At approximately 2252 hours, PPD Officer Donovan Shirley began receiving LoJack pings from Arguello's pick-up near Highway 50 and North Elizabeth Street. Those pings eventually led Officer Shirley to the Zone D'Erotica lingerie store at 3426 North Elizabeth Street, but the pick-up was not visible in the store's parking lot or in any parking lots of the surrounding businesses. With the LoJack pings indicating Arguello's pick-up was in the area of Zone D'Erotica, PPD Officer Nicholas Lile, Officer Sabrina Stetler, Officer Alan Wilson, and Sergeant Randall Ramos attempted to contact a female seen inside the lingerie store. They made contact with Lisa Peden and Joshua Russell. After telling Peden and Russell why officers were there, Russell told officers that the only way into the garage was through the back door and gestured them to come inside the store. Russell then began to act "strangely" once officers were inside and subsequently told officers that the back door is locked and only the owner has the key. He also began clutching his stomach, saying he was going to be sick. Finally, he told officers that they needed to leave and get a warrant. The officers complied and left the business but remained on scene.

Officer Wilson made contact with the store's owner, Bonnie Bellamy, and received voluntary consent from her to search the business. With owner consent, Officers Lile, Stetler, Wilson, and Sergeant R. Ramos returned to the front doors of the business and found the doors locked. They were able to catch Ms. Peden's attention, and she let them inside. Russell was not in sight. The officers learned from Ms. Peden that Russell had barricaded himself in the garage and was "desperate." She also acknowledged that an unfamiliar grey pick-up truck was in the back garage with Russell. Peden confirmed there were weapons inside and was then removed from the store. Additional officers responded to Zone D'Erotica, established a perimeter around the business, and placed stop sticks in front of the garage doors. While Officer Lile and Sergeant Ramos attempted to negotiate with Russell and gain entry into the garage, officers observed the South exterior garage door briefly open about one foot such that they could see a dark-colored SUV bumper and someone wearing red shoes running about inside before the door shut again. Shortly after the door shut, officers heard the sound of an engine revving from inside the garage.

At approximately 2354 hours, a black Cadillac Escalade SUV crashed through the South garage doors, exited the parking lot and traveled toward the K-Mart parking lot located directly West of Zone D'Erotica

across North Elizabeth Street. The Escalade traveled northwest through the K-Mart parking lot toward Highway 50, eventually coming to a stop on a concrete embankment northwest of the AT&T store at 810 West Highway 50. Officers observed and aired over the radio that Russell exited the Escalade, was running, and was armed with a rifle.

With rifle in hand, Russell ran northwest across Highway 50 toward Club Manor Drive and attempted to stop a dark-colored Toyota Camry occupied by Vincent Vasquez (driver) and Cheyenne Ruybal (passenger) that was traveling westbound on Highway 50. Vasquez was slowing and moving right to yield to the police vehicles that he could see in his rearview mirror but heeded Ruybal's urging, sped up, and refused to stop. He avoided Russell, continued on Highway 50, and then turned North on Club Manor Drive.

Unable to stop Vasquez, Russell then ran towards a white Dodge Charger that was in the middle westbound lane of Highway 50. The white Charger was driven by off-duty Pueblo County Deputy Sheriff Sara Gonzales. Unable to avoid or maneuver around Russell and worried that she might hit him with her car, Deputy Gonzales stopped the car in the 800 block of West Highway 50. When her vehicle stopped, Russell turned toward Deputy Gonzales and raised the muzzle of his rifle at her. Russell began moving toward Deputy Gonzales' vehicle with the rifle clutched in both hands. Russell approached the front driver's side door of the Charger, reached for the handle, and began to open the door. At this time, Gonzales fired what would later be determined to be four (4) rounds from her duty weapon.

Officer Reid Herrera was assisting in the pursuit of Russell and traveling westbound on Highway 50 from North Elizabeth Street when he saw a white Charger stopped in the roadway. Officer Herrera was driving a marked Pueblo Police Department patrol vehicle with the emergency equipment active. He stopped behind and slightly to the North of the Charger and observed Russell, armed with a rifle, opening the front driver's side door of the white Charger. Simultaneous to arriving behind Deputy Gonzales' car and beginning to exit his patrol car, Officer Herrera heard gunshots and engaged Russell. Officer Herrera fired what would later be determined eleven (11) rounds from his duty weapon.

After Russell fell to the ground, Officer Herrera observed that the driver of the white Charger had a handgun and was trying to put her hands up outside of the car. He ordered the driver to drop the weapon and get out of the car. Deputy Gonzales complied with Officer Herrera's orders, dropped her weapon, and exited her car. Officer Herrera realized at that point that the driver of the white Charger was law enforcement and proceeded to clear the car. Deputy Gonzales was moved back from her car by other officers and was identified as a PCSO deputy. Russell, who had fallen to the ground inside the open driver's door of Deputy Gonzales' car, was pulled away from the location in which he fell and was handcuffed. Lifesaving measures were considered for Russell and AMR was called. No signs of life were present once Russell was rolled onto his back.

The incident scene was immediately secured to protect the integrity of the scene as well as all potential evidence. Officer Herrera was assigned a gatekeeper (Officer David Sanchez) per CIT protocol and was transported to PPD to be processed. Deputy Gonzales was escorted to the back of a PPD patrol SUV where Officer Michael Wagner stayed with her and ultimately transported her to PPD for processing. Deputy Gonzales was not provided with a documented gatekeeper though she had clearly identified herself and was acknowledged to be a PCSO Deputy.

Autopsy

The autopsy on the body of Joshua Russell was conducted on March 3, 2020, at St. Mary Corwin Medical Center, 1008 Minnequa Avenue, Pueblo, Colorado. The autopsy was performed by Forensic Pathologist Dr. Daniel Lingamfelter. Dr. Lingamfelter concluded that the cause of death was injuries resulting from multiple gunshot wounds. Russell had methamphetamine and ethanol present in his blood.

Russell suffered a total of eleven gunshot wounds: one to his face, one to his neck, four to his chest, one to his lower right back, one to his right arm, one to his left hand, and two to his right leg. Collectively, these wounds perforated Russell's upper cervical spine, spinal cord, heart, lungs, diaphragm, and liver and resulted in immediate death.

Interview: Officer Reid Herrera

Officer Reid Herrera was interviewed by CBI Agents Gregg Slater and Kevin Koback at the Pueblo Police Department on March 9, 2020. He was interviewed in the presence of his attorney and was advised pursuant to *Garrrity*.

Officer Herrera has worked at the Pueblo Police Department for approximately one and a half (1 ½) years. He is a POST (Peace Officer Standards and Training) certified peace officer. Officer Herrera carries a department issued Glock 17 semi-automatic 9mm handgun. In addition to the magazine in the weapon, he carries two (2) additional department issued magazines on his duty belt. Officer Herrera carries 17 9mm rounds in each magazine. His duty weapon is loaded with one 17 round magazine and is topped off with one (1) round in the chamber for a total of eighteen (18) bullets in the firearm. In total, Officer Herrera carries 52 live rounds. Officer Herrera stated he last qualified with his duty weapon in December of 2019. He has been in one (1) prior Officer Involved Shooting. That incident was in November of 2019 and was under review by the Pueblo County District Attorney's Office at the time of the interview. (All officers involved in the November 2019 incident were cleared by the District Attorney's Office.)

Officer Herrera explained his understanding of the use of force policies and procedures. He explained that he can only use the amount of force necessary to subdue the threat. Use of deadly force is only permitted where there is an imminent threat to his or another's life or an imminent threat that he or another person will suffer SBI (serious bodily injury).

Officer Herrera was wearing a full duty uniform on March 1, 2020. He was equipped with a body cam and believes he activated it. March 1, 2020 was the first day of his work week and he was working Watch 4 from 10:00 p.m. to 8:00 a.m. that day. He reported he had a good seven to eight hours of sleep prior to reporting for duty at approximately 9:50 p.m. Upon beginning his shift, Officer Herrera patrolled the Southside of Pueblo per his usual quadrant assignment. It was a slow night.

At some point, he was requested by PPD Dispatch to respond to the "Zone D'Erotica" up on North Elizabeth Street to assist other officers to locate/arrest a suspect in a "carjacking". Upon arrival, Officer Herrera parked his marked Pueblo Police Department patrol car in the parking lot of the Applebee's restaurant and exited his vehicle. As he took a few steps away from his patrol car, Officer Herrera heard fellow officers air "he's running" or "he's taking off". Thinking the suspect was running on foot, he asked other officers "Where? Where? Where?" before realizing the officers were running to their cars. He surmised the suspect had fled the scene in a vehicle and learned from radio traffic that the suspect was traveling toward the K-Mart. Officer Herrera immediately returned to his patrol vehicle, turned on his emergency equipment, and began pursuit.

Although he never saw the suspect's vehicle, Officer Herrera learned through radio traffic that the suspect abandoned his car and was fleeing on foot toward Highway 50 near the AT&T building. Officer Herrera knew where the AT&T store was located, so he traveled northbound on North Elizabeth Street and then turned westbound onto Highway 50. Once on Highway 50, he saw something reflecting—maybe sweatpants or shoes—and running. He believed that the suspect was running northbound across Highway 50. Officer Herrera observed a Dodge Charger or a white Dodge sedan stopped in the center westbound lane of Highway 50.

As Officer Herrera approached the white Charger from the rear, he saw a male suspect running eastbound toward him (Herrera) and toward the front-end of the Charger. Officer Herrera heard radio traffic, "he's got a rifle." Immediately thereafter, he saw the male suspect in possession of a "black semi-automatic AR-15" with "a red dot or scope" on top of the firearm. As the suspect continued running towards the front-end of the Charger, Officer Herrera stated he was "thinking" the suspect was going to assume a position at the front-end of the Charger and begin shooting at "responding officers or myself". Officer Herrera said he had no cover from the suspect at that point.

Officer Herrera said he drew his handgun, pointed it out the windshield, and briefly lost sight of the suspect. Upon regaining sight of the suspect, Officer Herrera realized the suspect was approaching the driver's side door of the Charger. Officer Herrera stated, "it's obvious the sedan is occupied". Officer Herrera saw the AR-15 in the suspect's right hand and observed the suspect using his left hand to open the driver's side door. The rifle is pointing at the driver of the Charger. He then saw the suspect open the front driver's side door of the Charger.

Officer Herrera came to a stop toward the rear end of the Charger and thought, "I'm in fear for whoever's in that vehicle because he's either gonna make them a victim again, shoot or violently assault them." Officer Herrera said he exited his patrol vehicle at that point "to, uh, approach him on foot" to intervene. As soon as Officer Herrera exited his patrol vehicle, he began "running towards" the vehicle. As he was running "to intervene, I heard three to four gunshots and could see the suspect in a crouched position with control of that firearm". He further explained that the man had both hands on the firearm and the muzzle was pointing into the car. "I begin shooting and I believe I shot about ten rounds in his direction towards him to stop the threat." The suspect immediately collapsed let go of the rifle, so Officer Herrera stopped firing as he no longer believed the man to be a threat.

Officer Herrera then directed his attention to the front driver's side of the Charger and the person occupying the driver's seat because he saw a weapon pointing outside the Charger with the muzzle up as if whoever was there was trying to put their hands up. Officer Herrera ordered the occupant of the Charger to, "Drop the gun! Drop the gun! Drop the weapon!" The occupant complied at which time Officer Herrera ordered the occupant out of the car. A female dressed in tan BDUs and a black duty belt with handcuff pouches exited the Charger, and Officer Herrera knew she was law enforcement at that point. Officer Herrera and other officers cleared the white Charger. He heard officers calling for AMR and believes he raised his hand when Officer Sanchez asked who shot. He believes he also told Officer Sanchez "I think she shot, too" as he was being escorted away.

Interview: Deputy Sara Gonzales

Deputy Gonzales was interviewed by CBI Agents Gregg Slater and Kevin Koback at the Pueblo Police Department on March 9, 2020. She did not have an attorney present but was advised pursuant to *Garrrity*.

Deputy Sara Gonzales had been employed by the Pueblo County Sheriff's Office as a deputy for approximately four and a half (4 ½) years on the date of the incident. Deputy Gonzales is a Classification Specialist assigned to the Pueblo County Detention Center. Her normal tour of duty (work shift) is 3:00 p.m. to 11:00 p.m. However, on Sunday, March 1, 2020, she worked scheduled overtime from 11:00 a.m. to 11:00 p.m. Deputy Gonzales denied ever being in a critical incident prior to Sunday, March 1, 2020.

On March 1, 2020, Deputy Gonzales was wearing department issued uniform, which consisted of khaki "BDU" style pants, a shirt with the Sheriff's department logo on the front left chest, and a department issued duty belt. She also wore a dark-colored personal jacket to and from work, which concealed her uniform shirt. On her duty belt, Deputy Gonzales carried her Glock 17 in a holster, a pouch with OC spray, handcuffs, glove pouch, tourniquet, and a pouch containing her two spare magazines. Her badge was attached to the front of her duty belt.

Although not a POST certified peace officer, Deputy Gonzales has completed a 40-hour firearm training course sponsored and provided by the Pueblo County Sheriff's Office and is authorized to carry a weapon while at work and in transit to and from work. Deputy Gonzales carries a department issued Glock 17 semi-automatic 9mm handgun. In addition to the magazine for the weapon, Deputy Gonzales carries two (2) additional department issued magazines on her duty belt. Per department policy and procedure, Deputy Gonzales carries 17 9mm rounds in each magazine. Deputy Gonzales's duty weapon is loaded with one 17 round magazine and one (1) round in the chamber for a total of eighteen (18) bullets. In total, Deputy Gonzales carries 52 live rounds between her handgun and spare magazines. Deputy Gonzales qualifies with her duty weapon every quarter as required by PCSO policy. According to Deputy Gonzales, she has never failed to qualify with her weapon. She is aware of, has reviewed, and is familiar with the department policy and procedure on use of deadly force. She verbalized that she knows she can only use deadly force when her life or another person's life is in imminent danger.

After ending her tour of duty on Sunday, March 1, 2020 at 11:00 p.m. and leaving work at approximately 11:30 p.m., Deputy Gonzales stopped for Taco Bell before traveling to a co-worker's home where she planned to spend the night. While traveling to her co-worker's home, Deputy Gonzales stated she was traveling westbound on Highway 50, just west of North Elizabeth Street, when her attention was drawn initially to a dark colored vehicle parked on the South side of Highway 50 in close proximity between the "Old K-Mart" building and the "Red Wing" shoe store. According to Deputy Gonzales, the dark colored car had no interior or exterior lights on, and she found that somewhat suspicious.

Next, Deputy Gonzales' attention was drawn to an unknown male wearing what she thought was a light-colored t-shirt, running North across Highway 50. The male had stopped in the middle lane of westbound Highway 50. Deputy Gonzales was traveling in the middle lane of westbound Highway 50, so she stopped in order to avoid colliding with the individual. Deputy Gonzales stated that after she stopped, the individual turned toward her and pointed the barrel of a dark colored rifle at her.

Deputy Gonzales stated the armed individual began walking toward the front driver's side door of her car, holding the rifle in his right hand and reaching for the door handle with his left hand. While the man was reaching for the door handle, Deputy Gonzales was drawing her weapon from the holster on her duty belt while also opening the front driver's side door of her car. When asked why she opened the door, she stated she believed she would be shot if he could not get the door open. Once the front driver's side door was open, the armed individual stood in the opening between her and the door. Deputy Gonzales pointed her weapon at the armed individual and fired what she believed to be "three (3) rounds" at the torso of the armed individual. Deputy Gonzales explained she engaged the armed male because she feared for her life. She feared she "was going to be shot."

The armed man fell to the ground as she heard another shot being fired from behind her. Deputy Gonzales was then ordered to drop her weapon and, after complying with the order, she dropped the weapon and subsequently got out of the car after being ordered to do so. Neither Deputy Gonzales nor the armed male, later determined to be Joshua Russell, said anything to each other.

Deputy Gonzales denied knowing Joshua Russell by name, stating she did not recall the name and did not know if he had been a prior inmate in the Pueblo County Detention Center. Deputy Gonzales did not know if she had ever contacted Russell during the course of her employment with the Pueblo County Sheriff's Office.

Witness Interview: Trooper Kevin Betts, Colorado State Patrol (CSP)

Trooper Betts informed that he was working a crash out in the Avondale area later in the evening on March 1, 2020, when he overheard radio traffic looking for a stolen vehicle, which was equipped with LoJack.

Trooper Betts' patrol vehicle is equipped with LoJack and a dashcam. After he cleared the crash, he made his way back toward town. When he approached Highway 50 and Bonforte Boulevard, his LoJack unit sounded. CSP dispatch notified him that his LoJack notification was in response to the stolen vehicle that was aired earlier.

Trooper Betts followed his LoJack and turned onto North Elizabeth Street, where he pulled into the Applebee's parking lot. He was followed by a PPD unit and then several other PPD units. Trooper Rooks arrived shortly after. At that time, radio traffic aired that PPD had a barricaded subject at the lingerie shop (Zone D'Erotica) and that the subject was connected to the stolen pickup. Trooper Betts observed PPD officers deploy spike strips at the garage door to the shop. At that same time, Trooper Betts heard an engine rev and observed a black Cadillac Escalade back out through the garage door over the spike strips. From Trooper Betts' viewpoint, it appeared the vehicle might have hit PPD officers in the area, so he and other officers ran back to their vehicles to pursue the Escalade.

The driver of the Escalade "gases it" toward Elizabeth Street, and officers began pursuit. Trooper Betts was behind police units exiting the Applebee's parking lot. By the time Trooper Betts turned North on North Elizabeth and then West onto Highway 50, he was behind a marked PPD unit. Approximately 0.2 miles from the intersection, the PPD unit in front of him hit the brakes. Trooper Betts also braked and stopped. By the time he stopped, Trooper Betts saw that the PPD officer out of his vehicle. Before Trooper Betts could exit his vehicle, he heard multiple gunshots, maybe eight (8) to ten (10). Trooper Betts could not see who was shooting, but he knew the PPD officer he stopped behind was shooting.

Trooper Betts had observed a white Dodge Charger in the roadway in front of the PPD unit that stopped in front of him. Trooper Betts also observed the black Escalade they were pursuing had been involved in some sort of an accident on the other side of the eastbound lanes of Highway 50, facing into Highway 50. Trooper Betts followed the PPD officer who was advancing on the Dodge Charger. Trooper Betts observed the driver door was open on the Charger and there was a "guy" in the door. Trooper Betts described the "guy" was leaning into the car as the shots were fired. As the shots were fired, the "guy" fell to the ground. While he and the PPD officer continued towards the Charger, a female was getting out of the car with her hands up. Trooper Betts observed a duty belt on the female as she exited, and she stated, "I just got off duty". Trooper Betts then directed her behind him toward other law enforcement officers. Although Trooper Betts drew his handgun, he did not fire it.

Trooper Betts and two PPD officers dragged the male away from the Charger, and he saw the AR-15 right next to the male as well as a handgun. A PPD officer placed handcuffs on the male, and Trooper Betts donned gloves and requested a trauma kit to begin life-saving efforts. When they rolled the male back over, Trooper Betts stated "...there's no helping him". Trooper Betts observed several bullet wounds on the decedent. He was no longer bleeding and there were no signs of life.

Witness Interview: Trooper David Rooks, Colorado State Patrol (CSP)

On March 1, 2020, Trooper Rooks was at the Pueblo Troop office located at 5615 Wills Boulevard, Pueblo working on a report when he heard Trooper Betts airing a LoJack hit. According to Trooper Rooks, Trooper Betts has LoJack in his patrol car and had pinged the pick-up truck stolen earlier that evening to the area of Zone D'Erotica lingerie store. Trooper Rooks traveled to the area of the lingerie store to assist Trooper Betts and PPD Officers searching for a Dodge pick-up truck.

Upon arriving at the lingerie store, Trooper Rooks parked next to Trooper Betts in the Northeast corner of the lingerie store parking lot. The store appeared to be surrounded by PPD units and officers. Within a few minutes of arriving at the lingerie store, Trooper Rooks' attention was drawn to a "stack" of PPD Officers approaching the Southeast corner of the lingerie store. As the officers approached the Southeast corner of the building, Trooper Rooks said he saw a black colored, four (4) door Escalade traveling in reverse from

the southeast corner of the building. The Escalade had been inside the building and had crashed through doors while exiting the building. Trooper Rooks was concerned that one or more of the PPD Officers in the stack approaching the building may have been run over by the Escalade. Trooper Rooks said the Escalade traveled in reverse an unknown distance then immediately began traveling forward in a westbound direction toward North Elizabeth Street. Trooper Rooks could not determine or estimate the speed with which the Escalade was traveling westbound but stated the tires were squealing and the car was moving side to side, leading him to believe the Escalade was fleeing at a high rate of speed.

Trooper Rooks lost sight of the Escalade but began pursuit, following Trooper Betts and marked PPD cars that had begun to pursue the Escalade. From the parking lot, Trooper Rooks traveled northbound on North Elizabeth Street and turned left to go westbound on Highway 50. His emergency equipment was activated.

Once on westbound on Highway 50, Trooper Rooks passed the McDonalds on the North side of Highway 50, at which time the pursuit seemed to end. As he parked his car on Highway 50 next to Trooper Betts, Trooper Rooks heard gunshots and called out on his radio to CSP Dispatch "shots fired." Trooper Rooks got out of his car and headed West towards a white Charger stopped in the middle lane of westbound Highway 50. While moving toward the Charger, Trooper Rooks saw a female in khaki pants, a polo style shirt, and gun belt near the trunk of the Charger. He later learned that female was an off-duty Pueblo County Sheriff's Deputy.

Trooper Rooks did not see the events that led up to the shooting and did not see any officers fire their weapons, but he did hear the report of gunfire. Trooper Rooks could not recall the number of rounds he heard being fired and reported he did not see any muzzle flash. Trooper Rooks did not fire his weapon.

Witness Interview: Officer Ashley Robinson

Pueblo Police Department Officer Ashley Robinson was involved in the initial search for the vehicle related to the carjacking call. She was one of the officers stationed outside the Zone D'Erotica business when Russell barricaded himself inside the garage area. She recalls that the garage door attached to the business opened approximately one foot for a few seconds. Because the garage was elevated and up a ramp, she could see inside the garage. She saw a dark SUV bumper and red shoes moving about as if the person wearing the shoes was running around inside. The door was only open briefly before it closed again. Very shortly after the door closed, Officer Robinson could hear an engine revving. Just after the engine started revving, a black SUV burst through the closed garage door and backed out of the garage. Officer Robinson immediately ran to her patrol vehicle and pursued the black SUV across North Elizabeth Street and through the K-Mart parking lot until it crashed by the AT&T Store.

At that point, Officer Robinson observed the male driver of the SUV running from the black SUV, across Highway 50 heading North. She watched the man try to stop the first dark-colored vehicle and then head toward a white sedan. From her vantage point, she could see the buttstock and barrel of a rifle but could not make out the type of rifle. She watched the man approach the driver's side door of the white sedan while carrying the rifle on his right side. As soon as the driver's door started opening, she heard gunshots. Officer Robinson believes she heard seven to eight gunshots and thought they all came from south of the Charger, not from the driver of the Charger. She estimated that she was positioned about thirty (30) feet to the Southeast of the Charger when she parked and left her vehicle. As she approached the Charger on foot with her weapon drawn, she could see a handgun out of the door pointing up. The driver of the Charger got out of the car and identified herself as an off-duty deputy. She observed the rifle laying on the ground as well as a black handgun on the ground near the suspect.

Officer Robinson's body-worn camera was active and corroborates her statement. It also shows that Officer Robinson was the officer making the radio calls that the SUV had stopped, "he's running," and that he had a rifle.

Witness Interview: Cheyenne Ruybal

Cheyenne Ruybal and her boyfriend Vincent Vasquez were on their way home from picking up sandwiches at the Subway located at 6470 North Elizabeth Street. Vasquez was driving his black Toyota Camry four-door sedan, and Ruybal was in the front passenger seat. They were westbound on Highway 50, heading towards Pueblo Boulevard at about 11:00 p.m. Ruybal recalls light traffic with no cars in front of their Camry and only one other vehicle's headlights behind them.

After just passing the Alta gas station on the Northwest corner of the intersection of Highway 50 and North Elizabeth Street, Ruybal observed a man "jaywalking" and running across Highway 50. She first observed him when he was running North across the eastbound lanes of Highway 50. He paused briefly in the median between the eastbound and westbound lanes, and she recalls looking at him. Then, when their car was in front of the Black-Eyed Pea restaurant, he "started running towards us". Ruybal first believed the man was going to run in front of them so she warned Vasquez to "look out." At that point, a "bunch of cops turned the corner" from the area of Red Lobster and Chipotle (both restaurants are on the East side of North Elizabeth Street, directly South of Zone D'Erotica) and headed in their direction.

Ruybal then looked at the guy running at them again and saw that he has a "big, black gun" that she believed to be an AR-15 based on her experience with videogames. She crouched down in her seat and believes she locked the doors because she was terrified he was going to get in the vehicle and take them hostage. Vasquez was slowing and moving over into the right turn/merge lane because of the cops, and she told him "No, go, go, go, go." When Vasquez did not react immediately, she yelled at him to "Go," and Vasquez sped off and turned up Club Manor Drive. She heard maybe six (6) gunshots in quick succession after they pulled over on Club Manor Drive. Ruybal thought the man was shooting at them when she heard the gunshots. She estimated that the whole thing took maybe four seconds from the time she saw the guy until she heard gunshots.

Vincent Vasquez, the owner and driver of the Camry was also interviewed. He did not see the man at all but otherwise corroborates the details of Ruybal's statement.

Witness Interview: Lisa Peden

Lisa Peden was interviewed by CBI Agent Joseph Cahill, PPD Detective Timothy Torres, and PCSO Detective Melissa Rohrich at approximately 0325 hours on March 2, 2020, at the Pueblo Police Department.

Lisa first asked if "he," was still alive, and she was advised that Agent Cahill did not know. Lisa stated she had been in a relationship with Joshua "Zeke" Russell since July of 2019 when they met online using the website "Plenty of Fish." Lisa considers Joshua to be her husband, though they are not legally married. Lisa described Joshua as a white male, 5'11", green eyes, brown hair, with a mustache and beard. Lisa stated she last saw Joshua wearing grey dress pants, grey vest, maroon shirt, black leather "bomber" jacket, and black sneakers. (Note: this attire is consistent with the carjacking suspect described by Jeremy Arguello.)

Lisa is a manager at Zone D'Erotica lingerie store and has been since May or June of 2019. She works often, and Joshua was always at the store with her. She brought him onto the store payroll as an employee since he was there so much. Lisa believed Joshua was stealing from the store and had started to "cut" his hours. Lisa explained Joshua is possessive and is around her constantly. Lisa and Joshua Russell have been living together inside the back/garage area of the store for several weeks after losing their home at 1723 Comanche Road, Pueblo, Colorado.

Lisa stated that over the past several weeks, their relationship has become tenser. They have argued more often, and she feels Joshua has been using her. Lisa stated she had never observed Joshua be violent with anyone but her and explained that he had “snapped” and “put his hands” on her once a couple of months ago because she was mouthing off. She explained they had recently agreed they “needed to get their shit together” to prepare for the “Coronavirus Pandemic”. She had recently spent several thousand dollars on a generator, gas, food, and other supplies.

Lisa told investigators that she and Joshua smoked a bowl of methamphetamine together on the morning of March 1, 2020. After running errands, Lisa started work at Zone D’Erotica. Lisa stated that Joshua came and went from the store on multiple occasions on March 1, 2020, and she did not know where Joshua went or what he did throughout the day. Lisa explained Joshua left at one point during the evening after telling her that he was going to get a “stolie” (Lisa explained this meant a stolen vehicle) to use to commit a robbery later. Lisa and employee Mackenzie “a.k.a. Banks” Martinez remained in the store. Lisa later heard gunshots and ran outside the back door towards the Applebee’s to see what happened. She did not know where Joshua was. When she ran outside, Lisa observed the “7-11” gas station attendant with someone. Lisa stated she ran back into the store and asked Mackenzie for the phone because she did not know where Joshua was.

About ten to twenty minutes after the shots were fired, Lisa observed something pass by the store and heard the garage door open. Lisa stated he (Joshua) pulled a grey truck in and parked. She did not see anyone else in the garage. Lisa stated Joshua did not say anything but seemed “calm”. At this point in the interview, Lisa commented she felt worried and like she “was snitching” on Joshua. She evaded additional attempts to learn about her conversation with Russell. Lisa did state that Joshua did not say anything about a stolen truck. She did not know the truck was stolen, and she did not for sure know that Joshua had stolen the truck.

Lisa stated Mackenzie worked in the store from 4:00 p.m. to 10:00 p.m. on March 1, 2020. Lisa explained she walked Mackenzie outside around 10:00 p.m. where Mackenzie’s father picked her up. No other employees were in the store. Lisa was going to drive Mackenzie home in her and Joshua’s black Cadillac Escalade that was in the store’s garage area, but Joshua did not want the garage door opened.

Lisa was asked if they had any firearms at the store or any that would have been in Joshua’s possession. Lisa stated she has an antique .410 shotgun. Joshua had a black Hi-Point .45 pistol and a black “M-16” style rifle with a “banana clip.” Lisa stated Joshua usually carried the pistol tucked in his waistband. Lisa did not know where Joshua got these firearms. Lisa stated she did not see him with the pistol at the store, however, he usually concealed it.

Lisa explained after Joshua returned, she later heard an alarm going off. Lisa said it sounded like the K-Mart alarm across the street, but it was coming from the garage. Lisa stated the police came to the store, and Joshua told her to go outside and see what was going on. Lisa explained the officers came into the store. Joshua yelled from the garage that they needed a warrant to search the garage. Lisa said Joshua was “desperate”. Josh was on the garage side of the interior door between the store and the garage. Lisa believes he did this to keep the police from going into the garage. Lisa felt Joshua wanted her to come back and stay with him in the garage. Lisa stated she knew then that something was wrong, especially with an “unfamiliar” vehicle in the back and gunshots from earlier. Lisa stated that interior door to the garage has two locking deadbolts, and Joshua refused to unlock and open the door for the police. Lisa heard Joshua yelling that she (Lisa) did not know anything about what was happening. Lisa stated she directed the officers to contact “Bonnie” to get permission to search the garage, which they did.

Lisa stated at this time, the officers placed her into the rear of a police car. She then heard Joshua start the Cadillac inside the garage and saw the police put “strips” down. Lisa explained she heard Joshua “rev” the

engine up and then suddenly crashed through the garage door. Lisa explained she was not sure if Joshua drove through the K-Mart parking lot or turned but that she then heard gunshots.

Officer Involved Processing

On March 2, 2020, at around 0100 hours, PCSO Detective Bethany Solano, PCSO Detective David Butterfield, PPD Detective Stephen Perez, PPD Detective John Trivett, and CSP Captain Brian Lyons responded to the Pueblo Police Department. All detectives are crime scene investigation specialists. They were charged with processing the officer and deputy involved. Captain Lyons was present in the absence of a crime scene analyst from CBI.

Officer Herrera and Deputy Gonzales were processed separately at just after 0300 hours on March 2, 2020. Detectives Solano and Butterfield processed Officer Herrera. Detectives Perez and Trivett processed Deputy Gonzales. The processing consisted of taking overall photographs of the officers, checking their persons with an alternate light system for any biological evidence, and processing their duty weapons. Officer Herrera's weapon was downloaded on a piece of parchment paper and photographs were taken of the weapon and the rounds. Officer Herrera's duty weapon, a Glock 17 9mm with 3 magazines had 42 live cartridges remaining out of a possible 52 cartridges. Deputy Gonzales' Glock 17 weapon was left at the scene on Highway 50. She carried two spare magazines on her duty belt, each holding 17 live cartridges. It was later determined that Deputy Gonzales' duty weapon had 13 live cartridges remaining in the magazine and one live round in the chamber. In total, Deputy Gonzales' gun and spare magazines had 48 live cartridges remaining out of a possible 52 cartridges.

Crime Scene Processing

Colorado Bureau of Investigations Crime Scene Analysts Dennis Honeycutt, Tanya Atkinson, and Gina Mann responded to the scene on Highway 50 and to Zone D'Erotica lingerie store. They were assisted in processing the scenes by the above-mentioned crime scene detectives from PPD and PCSO. The scenes were consistent with the interviews, body-worn camera footage, and surveillance video that will be discussed below.

The rifle carried by Joshua Russell was found to be a Colt Defense 5.56mm Rifle, which is consistent with the witness descriptions of an AR-15. The magazine of Russell's firearm contained 30 live cartridges. An additional live round was found in the chamber of the rifle. Between the round in the chamber and the magazine, Russell had 31 live rounds of ammunition at his disposal.

Jeremy Arguello's grey Dodge pick-up truck was recovered inside the back room/garage area of Zone D'Erotica lingerie store.

Body-worn Camera

Officer Herrera's statements are consistent with his body-worn camera footage. The pertinent video is two minutes and sixteen seconds (2:16) long. The video begins when Officer Herrera is pulling into the Zone D'Erotica parking lot and ends when Officer David Sanchez escorts him away from the scene. Notably, Officer Herrera's body-worn camera does not provide a clear view of what he personally observed through his vehicle's windshield as the camera's view was blocked by the steering wheel based upon its position on Officer Herrera's body. Please see the dashboard camera for those details. Officer Herrera's participation in the pursuit of the black Escalade begins at 0:45 into the video. It appears he is struggling with his seatbelt as he turns westbound onto Highway 50.

By 1:15 into the video, Officer Herrera is westbound on Highway 50. After a fellow officer aired over the radio that the suspect was running and has "what looks like a rifle," Officer Herrera uses his right hand to

reach down to his duty belt and draw his pistol at approximately 1:20 into the video. He stops behind and slightly north of the white Charger at 1:24 into the video and is exiting his vehicle at 1:26 into the video. Multiple gunshots are audible on the body-worn camera footage from 1:26–1:27 as he exits his vehicle. He clears the door of his vehicle at 1:27 and begins firing his handgun at approximately 1:27–1:28 into the video. All shots are fired by 1:31 into the video, and he yells to “drop the gun.” The suspect is on the ground at approximately 1:31 into the video.

At 1:37 into the video, Deputy Gonzales is seen throwing her handgun out onto the pavement and putting both hands up. She steps out of the car and responds to Officer Herrera that it is just her in the car because she “just got off shift.” Deputy Gonzales is clear of her vehicle by 1:47 into the video, at which point Officer David Sanchez is seen assisting Officer Herrera in clearing the Charger for any other occupants. Officer Sanchez asks who shot at about 2:00 into the video, and while Officer Herrera makes no audible response he somehow indicated he fired shots. By 2:05 into the video, Officer Sanchez is seen escorting Officer Herrera away from the white Charger, and Officer Herrera announces at that point that he is turning off his body-worn camera.

Dashboard Camera – Officer Reid Herrera

Officer Reid Herrera’s patrol vehicle was equipped with a dashboard camera (Dash Cam). The dash cam footage from his vehicle was 1:14:59 long, but the relevant footage is less than two minutes long. The footage starts while Officer Herrera is driving northbound on I-25. No emergency equipment is activated, so the video has no sound. At approximately 4:45 into the video, Officer Herrera pulls into the parking to the North of Zone D’Erotica and the South of Applebee’s. He is following another PPD patrol SUV into the lot, and numerous PPD and CSP marked patrol units are already visible in the lot. He parks at 4:53 into the video.

Officer Herrera is seen outside of his vehicle and taking a few steps away from the front of his vehicle before turning and running back to the vehicle. At 5:09 into the video, Officer Herrera’s patrol vehicle is back in motion, turning around, and heading west towards North Elizabeth Street. Officer Herrera’s emergency lights and sirens are activated, and sound is now audible on the video. A PPD patrol SUV is seen driving northbound through the K-Mart parking lot. No other patrol vehicles are in front of Officer Herrera when he pulls onto North Elizabeth Street at 5:21 into the video. As his vehicle approaches the intersection of North Elizabeth Street and Highway 50, a dark-colored sedan and then a white Dodge Charger are observed going westbound through the intersection at 5:28 – 5:32 into the video. While he is driving through the intersection, reports that the SUV stopped by AT&T and that “he’s running” could be heard over Officer Herrera’s dash cam video. Officer Herrera clears the intersection heading westbound on Highway 50 at approximately 5:38 into the video. No other radio traffic is audible on the video at this point due to the vehicle’s engine noise. Officer Herrera’s car is the first vehicle behind the white Charger.

At 5:40 into the video, the white Charger brakes. Simultaneously, it appears from shoe reflections that someone is running North from the median between the eastbound and westbound lanes of Highway 50 towards the Black-Eyed Pea restaurant. The path this person is running would take them straight toward the dark-colored sedan, passing in front of the white Charger. The runner disappears from video briefly at 5:44 as they are blocked from view by the Charger. At 5:47 into the video, the person is visible again, standing upright and facing the front of the white Charger. The person is now visible, and he is obviously male. The man is facing the white Charger, holding the rifle by both hands with the muzzle pointing towards the Charger. The rifle was also pointing in the direction of Officer Herrera’s vehicle.

At 5:48 into the video, the man charges towards the driver’s door of the White Charger with the rifle muzzle pointed at the car/driver. At 5:50 into the video, the man is at the driver’s door of the Charger with the rifle pointing directly at the driver. The Charger driver’s door opens at 5:51 into the video. Shots are heard at 5:51 into the video. Louder shots are heard at 5:53 into the video. The man falls to the pavement at the

same time. A female, later determined to be Deputy Gonzales, emerges from the driver's seat of the car at 6:06 into the video, and she is immediately moved to the rear passenger side of her car. At 6:18 into the video, a female PPD officer moves Deputy Gonzales back behind Officer Herrera's vehicle and out of view of the dash cam. Officer Sanchez escorts Officer Herrera away from the Charger at 6:32 into the video.

Dashboard Camera – Officer Lowell Griffiths

A second dash cam shows the shooting from a side view, looking straight on at the driver's side of the white Charger from a perpendicular position. While the video file is listed to Officer Lowell Griffith's patrol vehicle, it should be noted that the video is more likely from the patrol vehicles operated by either Officer Ashley Robinson or Officer Sabrina Stetler based upon comparisons involving the officers' body-worn cameras and the dash cam. The video has no sound, but it provides a valuable view. In this video, the patrol vehicle pursues the black Escalade northwest across the K-Mart parking lot. At 0:35 into the video, the disabled Escalade is seen on the South side of Highway 50 on an embankment between the frontage road and Highway 50.

At 0:41 into the dash cam video, the dark-colored sedan and white Charger come into view, and the Charger is slowing by 0:45 into the video. At 0:49 in the video, a person in an orange shirt (Joshua Russell) starts running toward the driver's side of the Charger. By 0:53 into the video, the man's hand is on the Charger's driver door handle. Officer Herrera's patrol vehicle is also seen stopping to the rear of the white Charger. At 0:54 into the video, the driver's door of the white Charger begins to open. Simultaneously, Officer Herrera is opening his door. At 0:55, the driver's door of the Charger is open, and Russell is leaning into the vehicle. At the same time, muzzle flashes are observed coming from Officer Herrera's firearm. Russell is down on the pavement by 0:56 into the video.

Surveillance Video

Top Dollar Pawn located at 902 West Highway 50 is the only business with external security surveillance cameras that captured the shooting. The surveillance video footage provides a view from the South side of Highway 50 looking Northeast across Highway 50. The surveillance video fully corroborates the statements of Officer Herrera, Deputy Gonzales, Officer Robinson, and Cheyenne Ruybal as well as the previously discussed body-worn and dashboard camera. This video provides the best view of Russell's attempt to stop Vincent Vasquez's Toyota Camry before going towards the white Charger.

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. C.R.S. §18-1-704(1).

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. C.R.S. §18-1-704(2)(a).

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, 1003 (Colo. 1964). The United States Supreme Court evaluates 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. *See Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014). In the *Plumhoff* case, officers fired a total of fifteen shots at a suspect in a fleeing car who 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 . . .” *Id.* at 777. 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 under circumstances that are tense, uncertain, and rapidly evolving. *Id.* at 775.

Conclusion

Deputy Gonzales was faced with an imminent threat to her life when Joshua Russell pointed the muzzle of his AR-15 Rifle directly at her. That risk intensified as Russell approached her driver’s side door, attempted to open it, and handled the rifle such that it was pointing into the car at her. Pulling up behind the white Charger and observing Russell’s actions, Officer Herrera was justified in believing the occupant or occupants of the white Charger faced imminent risk of death or serious bodily injury. Officer Herrera was also justified in believing that he and the other officers behind him faced an imminent risk of death or serious bodily injury as there was no cover and the rifle was also pointed in his direction upon arrival.

It is my conclusion based on the circumstances that Officer Herrera and Deputy Gonzales were justified by the Self-Defense and Defense of Others laws of the State of Colorado in using the actions they employed to defend themselves and others from what they reasonably believed to be the imminent use of unlawful physical and deadly force by Joshua Russell, and they reasonably believed that a lesser degree of force would be inadequate. They had reasonable grounds to believe, and did believe, that they were in imminent danger of being killed or receiving great bodily injury. The reactions of Officer Herrera and Deputy Gonzales were based on their own observations and perceptions, and their actions were reasonable under the circumstances.

Given the facts and circumstances of the situation and the governing law, criminal charges against Deputy Gonzales and Officer Herrera would not be appropriate. No criminal charges will be filed.

Dated this 22 day of July 2020



J.E. Chostner
District Attorney