



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

August 25, 2020

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

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

**Re: District Attorney CIT Decision Letter
Officer involved Incident on March 14, 2020
Location: The area between 312 Quincy Ave. and 316 Quincy Ave.
Deceased: Jesse Cedillo (D.O.B. 2/28/2000)
Officer Involved: Jeffrey Alfonso**

Dear Sheriff Taylor and Chief Davenport:

The 10th Judicial District Critical Incident Team (CIT) was activated on March 14, 2020, to investigate an Officer Involved Incident which resulted in the death of Jesse Cedillo (D.O.B. 02/28/2000). The Pueblo Police Department (PPD) was designated as the lead investigative agency and other CIT participants included the Colorado Bureau of Investigations (CBI), Pueblo County Coroner, Pueblo County Sheriff's Office (PCSO), Colorado State Patrol (CSP), 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, along with a report from an expert in the field of use of force by law enforcement to form the District Attorney's Decision Letter pursuant to CIT protocol.

SYNOPSIS OF INCIDENT:

At approximately 7:00 a.m., on March 14, 2020, at the request of Pueblo County Sheriff Kirk Taylor, the members of the 10th Judicial District Critical Incident Team (CIT) were activated to conduct the investigation on an officer involved shooting involving a Pueblo County Sheriff's Deputy Jeffrey Alfonso.

The CIT investigation was triggered based on the report of the following facts from the officer involved shooting incident as well as the initial call that placed Pueblo County Sheriff Deputies in contact with Jesse Cedillo.

On March 14, 2020, at about 6:30 a.m. Pueblo County Sheriff Deputies were dispatched to a car-jacking at the Pueblo Youth Services Center (PYC), 1406 W. 17th Street. There, Deputy Trae Borrer spoke to the victim, Lacey Goodrich. Ms. Goodrich told Deputy Borrer she had just finished her shift at 6:00 a.m. Lacey stated she had retrieved some items out of her locker and walked out of the facility at about 6:10 a.m. Ms. Goodrich said she had parked her car on the northwest side of the facility, close to the main doors. Ms. Goodrich told Deputy Borrer that after scraping the ice from her windshield, she was sitting in her car checking her email, when a man approached her vehicle with a gun in his hand. Ms. Goodrich described the man as being a young Hispanic, about 5'8", tall wearing khaki pants, and a black hoodie.

Ms. Goodrich said, the man, later identified as Jesse Cedillo, pounded on her window with the gun and ordered her out of her car. She stated Cedillo told her to give him everything she had. Ms. Goodrich told Cedillo she didn't have any money and she wasn't going to give up her cell phone.

Ms. Goodrich said Cedillo got into the driver's side of her vehicle and she slowly backed away. Ms. Goodrich said Cedillo told her to get in the car with him. She refused and ran back to the facility for help. Ms. Goodrich appeared visibly shaken by the ordeal.

Goodrich told Deputy Borrer her duty-belt with handcuffs and a Pueblo Youth Services Center identification card were in her vehicle when it was taken. Ms. Goodrich told Deputy Borrer she was in fear for her life as she thought Cedillo was going to shoot her. She described the gun as being a small black semi-auto pistol.

Deputy Borrer reviewed the facility's security video footage and confirmed Ms. Goodrich's account of the incident. Deputy Borrer noted that he could see on the video, Cedillo pointing a gun directly at Ms. Goodrich as she sat in her car.

Several Pueblo Police Department Officers and Pueblo County Sheriff Deputies responded to the area and began looking for Ms. Goodrich's red 2016 Nissan Versa.

Deputy Ed Herrera spotted the Nissan at 16th Street and Craig Street and radioed that it was headed back in the direction of PYC. Deputy Borrer joined the pursuit as it passed PYC. Deputies pursued Cedillo through the west side of town and eventually lost him near Midtown Shopping Center.

Deputy Borrer spotted Cedillo driving westbound crossing the West 4th Street bridge at a high rate of speed. Deputy Mike Herrera was behind Cedillo and Deputy Borrer fell in behind Deputy Herrera. Cedillo continued westbound toward Orman Avenue still at a high rate of speed. About this time, off-duty Pueblo County Sheriff Deputy Kayla Ruiz spotted Cedillo near the Colorado State Fairgrounds. Deputy Ruiz radioed that Cedillo waved a gun at her as he sped past.

Deputy Ruiz radioed that Cedillo was on Small Avenue near the Fairgrounds. A short time later, a Pueblo Police Officer radioed that he had the Nissan near Orman Avenue and Pitkin Avenue. Cedillo crashed the Nissan in the alley at Pitkin Avenue and Grant Street a short time later and fled on foot. Deputy Alfonso radioed that Cedillo was running through the alley toward Quincy Street. Deputy Alfonso radioed that he could see Cedillo jumping fences.

Deputy Alfonso lost sight of Cedillo. He began a slow, deliberate search of the area where he last saw Cedillo. Deputy Alfonso radioed that he spotted Cedillo hiding under a truck in the driveway between 312 and 316 Quincy Street.

Deputy Alfonso said he radioed that he found Cedillo and needed help. Deputy Alfonso said as soon as Cedillo realized he spotted him and was radioing for help, he got up from under the pickup truck and began running at him. Deputy Alfonso said as Cedillo was running in his direction, he began telling Cedillo to show him his hands. Deputy Alfonso said it appeared Cedillo began to raise a gun, so he fired at him.

Deputy Alfonso told detectives that he was afraid for his safety and the safety of the community. Deputy Alfonso said he knew Cedillo car-jacked one person at gun point, and he had a gun in his right hand. Deputy Alfonso stated Cedillo was ignoring his commands. Deputy Alfonso stated Cedillo started to raise the gun, so he fired.

Deputy Alfonso stated he kept firing until Cedillo's movement stopped. Deputy Alfonso said he never saw Cedillo drop his gun. He said he didn't know if Cedillo still had the gun in his hand or what he was going to do with it. Deputy Alfonso said he didn't have cover when Cedillo began moving in his direction. Deputy Alfonso said he was scared that he would be shot by Cedillo.

Deputy Alfonso said there was little movement from Cedillo as he approached him, still covering him with his weapon. Deputy Alfonso said, by this time, he could hear other officers coming up behind him, but he did not know who the officers were. Deputy Alfonso said Deputy Borrer took him away from the scene and down to Pueblo County Sheriff's Office (PCSO) Annex.

Deputy Alfonso told detectives he didn't know how many rounds he fired until he checked his magazine. He noted there were two live rounds in his magazine that had been fully loaded with 17 rounds. Detectives recovered 15 spent .9mm Winchester shell casing fired from Deputy Alfonso's pistol. Deputy Alfonso told detectives he carries all his magazines fully loaded with 17 rounds.

Multiple Sheriff's deputies and Pueblo police officers were involved in the pursuit of Cedillo and have completed reports that are part of this investigation. All gave the same accounts regarding

the information on the car-jacking, vehicle description as well as the description of Cedillo. All reported that they heard police radio transmissions that Cedillo was armed with a black pistol.

AUTOPSY OF CEDILLO

The autopsy on the body of Cedillo was conducted on March 16, 2020, at approximately 1300 hrs (1:00 p.m.) at St. Mary-Corwin Hospital in Pueblo, Colorado. The autopsy was performed by Forensic Pathologist Dr. Daniel Lingamfelter, who was assisted by Melanie Rosener. Dr. Lingamfelter concluded that the cause of death was multiple gunshot wound. The bullets collectively perforated the aorta, lungs, spleen, left diaphragm, and small bowel resulting in massive blood loss and his subsequent death.

There were two gunshot wounds to the chest. The first wound entered on the upper left chest. There was a 3/8-inch entrance wound on the upper left chest centered 11-5/8 inches below the top of the head, 3-inches left of the anterior midline, and 4-inches superomedial to the left nipple at the 11 o'clock position. The wound bears a 1/16 to 1/8-inch circumferential margin abrasion, widest at the 1 o'clock position. There was no muzzle injury, soot or gunpowder stippling present. After perforating the skin, subcutaneous tissues, and musculature, the bullet sequentially perforates the sternum, at the level of the 2nd ribs (1.2 cm defect), anterior pericardium, ascending aorta (transected), right upper lung (2.1 cm defect), right lower lung (2.0 cm defect and 1.8 cm defect), the lateral right 8th rib (2.0 cm defect), and penetrates the subcutaneous tissues and musculature of the lateral right chest. Injuries associated with the gunshot wound include hemopericardium (125 ml), right hemothorax (1200 ml), and bilateral renal pallor. Recovered from the subcutaneous tissues and musculature of the lateral right chest was a deformed, apparent medium-caliber, yellow metal-jacketed bullet subsequently labeled "Right torso". There was no exit wound present. The direction of the bullet was left to right, downward, and slightly front to back.

The second wound entered on the lateral left chest. A 3/8-inch oval gunshot entrance wound was on the lateral left chest, centered 14 inches below the top of the head and 1/2-inch posterior to the lateral midline of the body. The wound bears a 1/16-inch to 1/8-inch circumferential marginal abrasion. No muzzle injury, soot or gunpowder stippling is present. After perforating the skin, subcutaneous tissues, and musculature, the bullet sequentially perforates the lateral left 7th rib (2.0 cm defect), left upper lung (multiple defects ranging from 0.5 cm to 2.2 cm), and the posterolateral left 6th rib (4.3 cm defect) before exiting. Injuries associated with the gunshot wound include left hemothorax (trace). A 5/8-inch irregular gunshot wound was on the lateral left thoracic back centered 16 1/4-inches below the top of the head and 3 1/2-inches left of the posterior midline. No projectile fragments were recovered. The direction of the bullet was left to right, front to back, and slightly downward.

The third gunshot entered the entered on the lateral left torso. A 3/8-inch oval gunshot entrance wound was on the lateral left torso, centered 21-inches below the top of the head and 3/4 of an inch anterior to the lateral midline of the body. The wound bears a 1/16-inch to 1/8-inch circumferential marginal abrasion. No muzzle injury, soot, or gunpowder stippling is present. After perforating the skin, subcutaneous tissues, and musculature, the bullet sequentially perforates the lateral left 9th rib (2.1 cm defect), left diaphragm (2.2 cm defect), spleen (3.3 cm graze defect), small bowel (0.4 cm defect), and the posterior left 12th rib (1.7 cm) before exiting. Injuries

associated with the gunshot wound include left hemothorax (trace) and hemoperitoneum (trace). A 3/4-inch irregular gunshot exit wound was on the lower left back, centered 21 1/2-inches below the top of the head and left of the posterior midline. No projectile fragments were recovered. The direction of the bullet was left to right, front to back, and slightly downward.

The fourth gunshot entered the right knee. A 3/8-inch round gunshot entrance wound was on the anteromedial right knee, centered 18 1/2-inches above the bottom of the right heel and 2-inches medial to the anterior midline of the right leg. The wound bears a less than 1/16-inch circumferential marginal abrasion. No muzzle injury, soot, or gunpowder stippling was present. The bullet perforates the skin, subcutaneous tissues, musculature, and penetrates the distal right femur. Injuries associated with the gunshot wound include comminution of the distal right femur. Recovered from the posterior distal right femur was a deformed, apparent medium-caliber, yellow metal jacketed bullet subsequently labeled "Right knee". No exit wound was present. The direction of the bullet was left to right and front to back.

The fifth gunshot wound was to the right foot. A 5/8-inch ovoid-irregular gunshot wound entrance wound was on the dorsal right foot, centered approximately 2-inches above the bottom of the right heel and lateral to the anterior midline of the right foot. The wound bears a 1/16-inch to 1/8-inch circumferential marginal abrasion. No muzzle injury, soot, or gunpowder stippling is present. The bullet sequentially perforated the skin, subcutaneous tissues, musculature, and the underlying bony structure before exiting. Injuries associated with the gunshot wound include comminution of the talus and calcaneus of the right foot. A 3/8-inch irregular gunshot exit wound was on the bottom of the right heel, centered generally within the midline of the bottom of the right foot. No projectile fragments were recovered. The direction of the bullet was downward and slightly front to back.

The toxicology performed of Jesse Cedillo revealed the presence of the following substances postmortem blood: Cocaine <50 ng/mL, Ethanol 125 mg/dL and Benzoylecgonine 85 ng/mL.

Present at the autopsy from PPD were Detective Jose Medina, Detective Stephen Perez, and Detective Roger Schneider. Also present were Pueblo County Deputy Coroner Kenneth Espinoza, Pueblo County Coroner Brian Cotter and PCSO Detective Bethany Solano. PPD Detective Stephen Perez collected the clothing that Cedillo was wearing at the time of death and placed the clothing into evidence. Additionally, photographs of the procedure were taken, and the bullets recovered were collected.

DEPUTY INVOLVED INTERVIEW

DEPUTY: JEFFREY ALFONSO

On March 17, 2020, at 10:30 a.m., PPD Detective Jose Medina, PCSO Detective Victor Herrera, and CBI Agent Kevin Kobach interviewed PCSO Deputy Jeffrey Alfonso at the Pueblo Police Department. Deputy Alfonso's attorney Karl Tamerler was present.

Deputy Alfonso told investigators that he has been employed as a Deputy for the Pueblo County Sheriff's Office for 22 1/2 years and is currently assigned to Patrol dayshift. He stated that he reports for duty at 6:00 a.m. and goes off-duty at 2:00 p.m.

Deputy Alfonso told investigators that on the morning of March 14, 2020, he was wearing a Pueblo County Sheriff's Office Class-A uniform with a breast badge, name plate, and Sheriff's patches on both shoulders.

His duty-belt was equipped with oleoresin capsicum (OC) spray, handcuffs, taser, tourniquet, Armament Systems and Procedures (ASP) expandable baton, flashlight, and his department issued Smith & Wesson M&P .9mm pistol with two fully loaded 17-round magazines. His pistol was loaded with a 17-round magazine with one round in the chamber, making 18 total rounds.

Deputy Alfonso said he began his shift at 6:00 a.m. at the Sheriff's Office Investigations Annex where he was given his Pueblo West sector assignment.

Deputy Alfonso stated that he, Recruit-Deputy Dominic Montoya, and Deputy Trae Borrer were dispatched to PYC on a car-jacking. The deputies were told a woman was warming-up her vehicle when she was approached by a Hispanic male with a goatee, wearing black hoodie and robbed at gunpoint of her red 2016 Nissan Versa.

Deputy Alfonso said he and Recruit-Deputy Montoya arrived in the area and began looking for the victim's vehicle. Deputy Alfonso stated that Deputy Borrer radioed he watched the surveillance video and it was consistent to what was initially dispatched. Deputy Borrer radioed Cedillo was wearing a dark hoodie with white on the shoulders, blue jeans, and white shoes. Deputy Borrer radioed that he saw Cedillo with a handgun when he car-jacked the victim.

Deputy Alfonso stated he heard police radio traffic that the suspect vehicle was near Midtown Shopping Center. He said Deputy Mike Herrera tried to stop the vehicle, but it took off at a high rate of speed. Deputy Alfonso stated that the vehicle Deputy Herrera tried to stop was confirmed as being the car-jacked vehicle by make, model, and license plate number. Deputy Herrera radioed the driver matched the description of Cedillo.

Detectives asked Alfonso if there was an off-duty relaying information. Deputy Alfonso recalled a female deputy radioed that she was run off the road by Cedillo. The off-duty deputy gave location and direction of travel and stopped following Cedillo after being directed to do so. She was in her private vehicle. Deputy Alfonso said he didn't remember any other information relayed by the off-duty deputy. Deputy Alfonso said they lost sight of Cedillo vehicle at that point.

Deputy Alfonso said they never actually saw the vehicle because they were too far away from the pursuit. He told detectives he heard Cedillo was near the State Fairgrounds, so they headed that direction. Deputy Alfonso said they then heard radio traffic that Cedillo was in the area of Quincy Street and Pitkin Avenue and had a flat tire. Deputy Alfonso said they headed to the area.

Deputy Alfonso told detectives that he and Recruit-Deputy Montoya spotted Cedillo and the vehicle in the alley off Pitkin Avenue. He said Cedillo had crashed into a telephone pole. Deputy Alfonso stated that Recruit-Deputy Montoya initially missed seeing the vehicle in the alley. Deputy Alfonso told Deputy Montoya to back-up to the alley. Deputy Alfonso stated that Recruit-Deputy Montoya activated emergency lights as they proceeded toward Cedillo. He said Recruit-Deputy Montoya did this to make it "fully known" to Cedillo that they were trying to contact him.

Deputy Alfonso said Cedillo took off running as soon he saw them. Deputy Alfonso said they exited their vehicle and began chasing Cedillo on foot. Deputy Alfonso said the man he was chasing matched the description of the car-jacking suspect (Cedillo). Deputy Alfonso said he was giving Cedillo verbal commands to get down on the ground. Deputy Alfonso said Cedillo continued to run. Deputy Alfonso said he could see Cedillo dropping items as he jumped over fences.

After losing sight of Cedillo, Deputy Alfonso said he began clearing houses on Quincy Street and spotted Cedillo under a white pickup truck that was tucked back between two houses.

Deputy Alfonso said he radioed he found Cedillo and needed help. Deputy Alfonso said as soon as Cedillo realized he spotted him and was radioing for help, he got up from under the truck and began running at him. Deputy Alfonso said as Cedillo was running in his direction, he began telling Cedillo to show him his hands. Deputy Alfonso said it appeared Cedillo began to raise the gun, so he fired at him.

Deputy Alfonso told detectives that he was afraid for his safety and the community's. Deputy Alfonso said he knew Cedillo car-jacked one person at gun point, and he had a gun in his right hand. Deputy Alfonso stated Cedillo was ignoring his commands. Deputy Alfonso stated Cedillo started to raise the gun, so he fired.

Deputy Alfonso stated he kept firing until Cedillo's movement stopped. Deputy Alfonso said he never saw Cedillo drop his gun. He said he didn't know if Cedillo still had the gun in his hand or what he was going to do with it. Deputy Alfonso said he didn't have cover when Cedillo began moving in his direction. Deputy Alfonso said he was scared that he would be shot by Cedillo.

Deputy Alfonso said there was little movement from Cedillo as he approached him, still covering him with his weapon. Deputy Alfonso said, by this time, he could hear other officers coming up behind him, but he didn't who they were. Deputy Alfonso said Deputy Borrer took him away from the scene and down to Pueblo County Sheriff's Office (PCSO) Annex.

Detectives Alfonso told detectives he didn't know how many rounds he fired until he checked his magazine. He noted there were two live rounds in his magazine that he fully loaded with 17 rounds.

DEPUTY TRAE BORROR

Deputy Borrer reported that on Saturday, March 14, 2020, at approximately 6:28 a.m., he was dispatched to PYC, 1406 W. 17th Street, Pueblo, County of Pueblo, State of Colorado, 81003 on a reported car-jacking which had just occurred.

Several Pueblo Police Officers were already on scene when he arrived. Deputy Borrer reported that he learned from a Pueblo Police Officer that Lacey Goodrich told officers that she was car-jacked at gunpoint in the PYC parking lot as she left work.

Deputy Borrer reported that Goodrich described Cedillo as being young, thin Hispanic male wearing khaki pants and a black hoodie. Goodrich said Cedillo approached pointing a black

handgun at her. Goodrich told Deputy Borrer that Cedillo demanded she give him all her belongings. Goodrich told Cedillo she didn't have any money and she was not giving up her cell phone. Goodrich said Cedillo ordered her out of her car.

Goodrich told Deputy Borrer that once she got out of her vehicle, Cedillo got in. Goodrich stated she began walking away when Cedillo told her to get in the car. Goodrich had started to walk off when Cedillo told her to get in the car with him. Goodrich stated she refused and ran back inside the facility. Goodrich told Deputy Borrer she feared for her life and thought she was going to be shot. Goodrich told Deputy Borrer her duty-belt with handcuffs and PYC identification card were in her vehicle when it was taken.

Deputy Borrer reported he watched the surveillance video from the parking lot where the car-jacking took place. Deputy Borrer reported that the account of the incident was consistent with what he observed on video.

A copy of the PYC surveillance video has been attached to this Decision Letter.

Deputy Borrer reported he heard over the police radio that Deputy Ed Herrera spotted Cedillo and the vehicle was headed back towards PYC. After receiving permission from PCSO Sergeant Hanratty, he joined the pursuit. Deputy Borrer reported that the pursuit reached high speeds throughout the west side of Pueblo and that he eventually lost sight of Cedillo near the Midtown Shopping Center. Deputy Borrer reported that he spotted the vehicle speeding through the parking lot and headed west on the West 4th Street bridge.

Deputy Borrer reported that he fell in behind Deputy Mike Herrera as the pursuit passed the Loaf-n-Jug at Lincoln Avenue and Abriendo Avenue. They continued to pursue Cedillo toward Orman Avenue at a high rate of speed. Deputy Borrer reported that he heard Deputy Ruiz air that she observed Cedillo's vehicle by the Colorado State Fairgrounds. Deputy Ruiz aired that Cedillo waved a gun at her as he drove past her.

Deputy Borrer reported that he lost Cedillo's vehicle and later heard radio traffic that Cedillo's vehicle was near Quincy Street and Pitkin Avenue. Deputy Borrer went to the area and heard Deputy Alfonso air that he had Cedillo's vehicle in the alley and Cedillo was running from the vehicle.

Deputy Borrer reported that he heard Deputy Alfonso air that he had Cedillo hiding under a truck. Deputy Borrer reported that he ran around the house where Deputy Alfonso was and saw Deputy Alfonso pointing his handgun at Cedillo. Deputy Borrer reported he heard Deputy Alfonso say, "Drop the gun," followed by the sound of multiple gunshots.

Deputy Borrer reported that after Deputy Alfonso fired, he immediately approached Cedillo who was already down. Deputy Borrer noted that the man down matched the exact description of the person he had seen in the surveillance video point a gun at Goodrich during the car-jacking. Deputy Borrer reported that after more officers arrived, he took Deputy Alfonso from the scene and transported him to the PCSO Annex.

As part of the investigation, a subsequent interview was conducted with Deputy Borrer to follow-up and clarify some aspects. Specifically, he was asked to describe his perceptions as he came around the corner and witnessed Deputy Alfonso pointing his gun at Cedillo. Deputy Borrer indicated if he had come at him with a gun, he would have made the same decision. He indicated that "given the circumstances of the felony that had already been committed; him already pointing the gun and somebody threaten somebody's life (unintelligible); and leading us on a pursuit across town at early morning hours. Obviously, at some point we know he's a danger to the general public. And, you know, I felt our-my life woulda been in jeopardy if he had pointed the gun at me."

DEPUTY KAYLA RUIZ

Deputy Kayla Ruiz reported that she was finished her shift around 7:05 a.m. and left the Detention Facility located inside the Dennis Maes Judicial Building. Deputy Ruiz reported that she heard the radio traffic involving the car-jacking. She noted the vehicle description and that Cedillo used a handgun to car-jack the victim. Deputy Ruiz said she got in her vehicle and turned on her Sheriff radio.

Deputy Ruiz said she was driving westbound on the West 4th Street bridge when she heard radio traffic that deputies lost Cedillo on 4th Street and terminated the pursuit. Deputy Ruiz said when she turned onto Thatcher Avenue, she noticed a red Nissan Versa coming up behind her a high rate of speed. Deputy Ruiz said she served left to avoid being hit by the Nissan Versa. Deputy Ruiz reported Cedillo's vehicle swerved right to avoid her and then swerved back into the left lane into oncoming traffic. Deputy Ruiz reported she had to slam on her brakes to avoid hitting Cedillo's vehicle. Deputy Ruiz said she immediately radioed that to other deputies.

Deputy Ruiz reported that she followed Cedillo's vehicle to the area of the State Fairgrounds. Deputy Ruiz stopped following the vehicle because Cedillo was driving at a high rate of speed. Deputy Ruiz reported that as she was leaving the area, Cedillo pulled in front of her vehicle. Deputy Ruiz reported that she noticed a Pueblo Police vehicle in the immediate area.

Deputy Ruiz positioned her vehicle to block Cedillo from going straight past her. Deputy Ruiz reported that Cedillo's vehicle took a right turn and when the driver passed her, he held up a black handgun and made eye contact with her. Deputy Ruiz reported that Cedillo didn't point his gun at her, but she felt menaced and feared for her safety.

Deputy Ruiz reported that she watched the police vehicles pursuing Cedillo until they went out of sight. She heard deputies air that there were shots fired about five minutes after she lost sight of Cedillo's vehicle.

WITNESS INTERVIEWS: **FRANK LYNDALL, 327 QUINCY STREET**

CBI Agent Kevin Koback and PCSO Detective Josh Ragan interviewed Frank Lyndell the morning of the shooting. Frank told investigators he was in his upstairs bedroom around 7:00 a.m., when he noticed several police cars driving around his street. Frank told detectives he thought

“something interesting” was going on. Frank said he went outside and began stretching for his morning run. Frank stated he saw (Cedillo) crossing Pitkin Avenue, with three officers chasing him. He described Cedillo as wearing black.

Frank stated it looked like the officers were jogging and trying to surround Cedillo. Frank said a Sheriff’s vehicle pulled up and told him to go back inside his house. Frank stated he went inside and started recording with his cell phone after seeing an officer draw his weapon. Frank said he was recording when Cedillo started getting shot. Frank believed Cedillo was hit because he was still down after the shooting stopped.

Frank told detectives that he thought the person running was a “drunk kid trying to avoid a DUI”. He didn’t think they were chasing him for a violent crime.

Frank stated the officer fired about a dozen times in succession, which he described as a steady trigger pull. Frank said the officer seemed “calm and intended” and not someone who was panicked and shooting.

Frank stated the officer was standing when he fired the first shot and was advancing when he fired the last four shots. Frank said he heard two shots before he saw Cedillo. Frank told detectives that it appeared that Cedillo was running towards the officer and then looked like Cedillo was trying to run around the house when he was shot.

Frank stated he didn’t see a gun in Cedillo’s hand and said it was “the heat of the moment”. Frank said he didn’t hear the officer say anything because he wasn’t paying attention to that. Frank stated Cedillo moved after each shot the officer fired.

Frank stated that two more officers arrived and the three approached Cedillo. He believed the officers were checking to see if Cedillo was “unarmed”. Frank told detectives that when the ambulance arrived the officers wouldn’t let the ambulance personnel near the body.

Frank told detectives he turned over his recording to Dan Beedie from KRDO News. Beedie is Frank’s neighbor. Frank stated he didn’t want to turn over the video to the police, but subsequently did.

MEGHAN LYNDALL, 327 QUINCY STREET

Meghan told detectives she was upstairs in her house when she heard the police cars driving up and down the street. Meghan said the police cars didn’t have their lights or sirens on, but she “could hear tires as they rounded the corner”.

Meghan said she could hear yelling, but she couldn’t understand what was being said. Meghan stated she assumed the police were chasing someone.

Meghan said she remembered an officer standing by the house when he shot the suspect (Cedillo). Meghan stated when Cedillo came out between the two houses, he looked startled and reacted to seeing the officer. She stated she heard someone yell something and then the officer just started

firing. Meghan said she could tell Cedillo was hit, but the officer kept shooting until Cedillo went down.

Meghan said she didn't think Cedillo was running at the officer but was running around the house. She stated Cedillo didn't have time to choose which way to run. She stated it happened so fast she didn't think the officer said anything.

Meghan said she heard one shot followed by a short pause, and then about ten more shots. Meghan stated Cedillo fell to the ground while the officer was shooting. Meghan said her view was blocked by the officers and she couldn't see the suspect's body after the officers walked up. Meghan stated the officers didn't touch the suspect or move anything after the shooting.

Meghan stated after Cedillo was shot, the officers just stood around him and waved off EMT's when they arrived.

Meghan told investigators she heard Cedillo car-jacked someone, but felt it wasn't an offense that is punishable by death. She was concerned by the number of shots fired and believed Cedillo wasn't brandishing a weapon when he was shot.

OFFICER INVOLVED PROCESSING

On March 14, 2020, Deputy Alfonso was processed by Detective Stephen Perez of the Pueblo Police Department. Detective Perez started by first taking overall photographs of Deputy Alfonso as he appeared that morning. Detective Perez then had an alternate light source (ALS) run over Deputy Alfonso's clothing to look for any trace biological evidence. None could be found. Next, Deputy Alfonso's duty weapon, a Smith and Wesson M&P .9mm Serial Number NCA6729, was downloaded. The following was the round count for the weapon Deputy Alfonso had during the incident. The weapon had one live cartridge from the chamber, two live cartridges from the duty magazine (there was a tactical reload during the shooting), 17 live cartridges from spare magazine #1, 15 live cartridges from spare magazine #2, the duty magazine carried in the gun had a 17 round magazine capacity, spare magazine #1 had a 17 round magazine capacity, spare magazine #2 had a 15 round magazine capacity. This was photographed as inventoried. Deputy Trae Borrer and Recruit-Deputy Dominic Montoya were the first to arrive after the shooting. Although Deputy Borrer and Recruit-Deputy Montoya did not shoot, as part of the investigation, they were also processed in the same fashion by Detective Perez. No trace biological evidence was found on either Deputy and the round count was consistent with neither deputy having fired their respective weapon.

SCENE PROCESSING:

312 QUINCY STREET, 316 QUINCY STREET, 2016 NISSAN VERSA, 119 PITKIN AVENUE AND SURROUNDING ALLEY

Pueblo Police Department Detective Stephen Perez and PCSO Detective Bethany Solano responded to the scene of the incident to photograph the crime scene. There, the Officers observed there had been three different locations of crime scenes as the situation unfolded following the crash in the alley, the foot pursuit and the shooting scene. All areas were taped off with yellow

crime scene tape and the streets were blocked using patrol vehicles to keep traffic from traveling through the scene. Detective Perez began by taking photographs of the location to the north from where the 2016 Nissan Versa had crashed starting at Quincy Street and Grant Street toward the alley. Detective Perez photographed the path through the alley. Detective Perez observed broken pieces of automobile parts through the alley. He was able to observe tire ruts from the path of travel the stolen Nissan went, riding very close to the telephone poles as the vehicle traveled in the 400-block alley of Quincy Street and Colorado Avenue. A tree stump in the alley was struck and tore a plastic skid plate from the Nissan after the vehicle had run over it. Approximately 50 feet beyond the tree stump the Nissan crashed head on into a large wooden telephone pole and came to rest. The telephone pole had been struck with such force that the pole was torn free from the base and was now approximately two feet further away from the sheared base. The Nissan had extensive front-end damage and spun nearly 180 degrees from the pole. The driver's side airbag had been deployed on the Nissan. PCSO Patrol Unit #367, bearing Colorado license plate HOU055, was stopped to the south of this vehicle. Unit #367 was occupied by Recruit-Deputy Montoya and Deputy Alfonso.

Once warrants were obtained to search the addresses of 312 Quincy Street, 316 Quincy Street and the 2016 Nissan Versa, PCSO Sgt. Alan Brooks and PCSO Detective Bethany Solano along with PPD Sgt. Stephen Jesik, Detectives Roger Schneider, John Trivett and Stephen Perez all assisted with processing the various crime scenes. The addresses of 316 Quincy Street and 312 Quincy Street were photographed. Officers observed 15 spent shell casings in the sidewalk to the grass lawn of 316 Quincy Street. In the driveway of 316 Quincy Street, Officers could observe dirt and landscaping under a pickup truck parked in the driveway had been disturbed. The body of Jesse Cedillo was lying on his stomach with his hands cuffed behind his back. The clothing he was wearing was documented. On the ground, just to the right of Jesse Cedillo, was a green-over-black Kel-Tec .9mm handgun. Officers also observed several defects from possible bullets on the front and side of the 312 Quincy address. All of these were documented and photographed. The shell casings, the body of Jesse Cedillo, the Kel-Tec .9mm, and a black glove located in the roadway at the corner of Quincy Street and Pitkin Avenue were placarded in place, photographed, and ultimately collected.

Pueblo County Deputy Coroner Felicia McQueen along with Coroner Brian Cotter arrived. They began to examine Jesse Cedillo while PPD Detective Perez documented with photographs. During the examination, McQueen found two bullet projectiles inside of Mr. Cedillo's clothing, a wallet in Mr. Cedillo's pocket confirming his identity with a Colorado Driver's license. He had two visible defects on the upper left chest and two more visible on his lower back. His face had cuts and scratches by the fall into the decorative brick in the front yard of 312 Quincy Street. In Mr. Cedillo's front pocket was a loaded Glock .9mm magazine, loaded with 10 live cartridges and a black cell phone. The magazine and cell phone were placed in envelopes and given to PPD Detective Jose Medina. Coroner Brian Cotter then took possession of Mr. Cedillo's body pending the autopsy.

A further search continued of the yards of 312 and 316 Quincy Street for missing projectiles. Defects were noted in the address of 312 Quincy Street along with possible defects in the address of 316 Quincy Street. A projectile and fragment were located at 312 Quincy Street. All these items were documented, photographed, and placarded and a black glove were collected from the scene.

The resident at 119 Pitkin Avenue had located several items in her yard which she believed to be suspicious. The owner Mary Morales found a duty-belt hanging on the inside of her fence that separates the backyard from the front yard on the west side of the home. She also located a hatchet in a black sheath in the driveway near the back fence. Ms. Morales removed these items and gave them to PCSO Deputies and provided a written search waiver giving permission to search her yard for further evidence.

Officers then photographed, placarded and ultimately collected from 100 block of Grant Avenue, plastic/rubber vehicle parts, a Nissan hubcap from the southeast corner of Quincy Street and Adams Street, a black glove, a fixed blade hunting knife, three lottery tickets all from the backyard of 119 W. Pitkin Avenue. In addition, Officers also collected the hatchet and black sheath and the black duty-belt with HWC handcuffs, handcuff punch trauma kit with contents and radio holster. The handcuffs from the holster were stamped PYC S#023457. The pouch containing PYC paperwork, radio earpiece, scissors, lip balm, rubber gloves, bobby pins, multi-colored sticky notes, ID badge holder and Division of Youth Services ID badge with a female photo on the front of Lacey Goodrich, Safety Plan badge. All these items were photographed, packaged and submitted as evidence related to this incident.

On March 18, 2020, Detective Roger Schneider of the Pueblo Police Department along with Detective Jose Medina, Detective John McCluskey, Detective John Trivett, Pueblo County Sheriff Detective Bethany Solano, Colorado State Patrol Captain Brian Lyons, and Trooper Tim Ortiz assisted with the search of the 2016 Nissan Versa. The SDM/EDR Control Module/Black box was downloaded from the vehicle and three Winchester 20-gauge gun rounds were also recovered and placed into evidence.

ENHANCEMENT OF VIDEOS TAKEN AT THE TIME OF THE INCIDENT

In an effort to assist in our Office's decision-making process, and to address concerns expressed by Mr. Cedillo's family as to whether or not Mr. Cedillo had a gun in his hand as he ran toward Deputy Alfonso, our Office reached out to the Colorado Bureau of Investigation for assistance. There were three videos taken that day that captured all or some of the incident. These include Deputy Alfonso's body worn camera, a video taken by Mr. Frank Lyndall on his cellular phone, and "ring doorbell" video from the residence at 317 Quincy Street. All three videos were sent to CBI for forensic analysis and a request was made to enhance Deputy Alfonso's body worn camera video. Two of the videos, Deputy Alfonso's body worn camera and the cell phone video of Mr. Lyndall, were each broken down frame-by-frame. Deputy Alfonso's body worn camera video and the video taken by Mr. Lyndall's cell phone were also placed side-by-side to capture the event from both perspectives simultaneously. The enhanced photos of Deputy Alfonso's body worn camera show that there was a gun in Mr. Cedillo's right hand as he runs toward Deputy Alfonso.

A copy of the CBI enhancements and analysis of Deputy Alfonso's body worn camera video has been attached to this Decision Letter.

BLAKE CONSULTING AND TRAINING

In addition, our Office sought supplemental reviews from experts in the field of Use of Force by Law Enforcement Personnel to assist in our Office's decision-making process. I reached out to Blake Consulting and Training of Brentwood, California. Dr. David Blake has over 20 years of experience in both federal and state law enforcement. He has received over 2,000 hours of law enforcement training and has provided over that number in training in the area firearms, arrest control, officer safety and tactics, and patrol procedures of human factors. Dr. Blake has earned a PhD after completing extensive research projects on application of human factors to police shootings and has a Bachelor of Science in Criminal Justice Management. He also authored several peer review journals periodic and professional journals. In addition, he has been consulted on administrative, criminal, and civil right cases while working for both the prosecution/plaintiff (14) cases and defense (15) cases. Dr. Blake has testified as an expert on the Use of Force and Human Factors in Texas, Colorado and California courts.

All the information collected in this investigation to include videos, reports, photographs and witness interviews were provided for Dr. Blake to complete his investigation.

Upon review, Dr. Blake prepared a 76-page report and opined that:

1. Deputy Alfonso complied with law enforcement standards and training as set forth by the State of Colorado when he attempted to detain and or arrest Jesse Cedillo;
2. Deputy Alfonso complied with law enforcement standards and training as set forth by the state of Colorado when making a decision to use deadly force and;
3. Deputy Alfonso fired 15 rounds in just under five seconds. The last six rounds were fired in about 2.5 seconds after Mr. Cedillo had fallen into the prone position. Based upon a review of the materials provided to him, coupled with his knowledge, training and experience, Dr. Blake opined that Deputy Alfonso's "stop shooting" response was more likely than not bound within human capabilities and limitations associated with physiological arousal perception, attention, vision and the time to stop a repetitive motor response.

A copy of Dr. Blake's report and Curriculum Vitae are attached to this letter.

COLORADO SENATE BILL 20-217

On June 19, 2020, the Governor signed into Colorado law Senate Bill 20-217. In it, certain Colorado Revised Statutes (C.R.S.) were repealed and reenacted with amendments. Specifically, C.R.S. 18-1-707(3), (4), (4.5) which deals with use of deadly physical force in making an arrest. The statute reads as follows:

C.R.S. 18-1-707(3): "A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and,

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.”

C.R.S. 18-1-707(4): “A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place the peace officers at risk of injury, would create a risk of death or injury to other persons.”

C.R.S. 18-1-707(4.5): “Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officer has an objective reasonable belief that a lesser degree of force is inadequate, and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving serious bodily injury.”

Although this legislation was not in effect on the date of the incident, March 14, 2020, the circumstances and actions of Deputy Alfonso were also reviewed under the provisions of the Colorado Senate Bill 20-217.

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*.

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 (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 prospective 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 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

On the morning of March 14, 2020, Deputy Alfonso and others were dispatched to the PYC in regard to a car-jacking. He and the other deputies were told that a woman was warming-up her vehicle when she was approached by a Hispanic male with a goatee, wearing a black hoodie and was robbed at gun point of her red 2016 Nissan Versa. Deputy Alfonso and Recruit-Deputy Montoya arrived in the area and began looking for the red 2016 Nissan Versa. Deputy Alfonso was informed via radio that Deputy Borrer watched the surveillance video from PYC. Deputy Borrer radioed that the suspect was wearing a dark hoodie with white on the shoulders, blue jeans and white shoes. Deputy Borrer also radioed that he was able to observe on the video that that he saw the suspect with a handgun when he car-jacked the vehicle.

Deputy Alfonso heard police radio traffic that the suspect vehicle was near Midtown Shopping Center. He was informed that the Deputy Mike Herrera tried to stop the vehicle but it took off at a high rate of speed. Deputy Alfonso was also notified that the vehicle was confirmed as being the vehicle that was car-jacked based on the make, model and license plate number. Deputy Herrera also radioed that the driver of the vehicle matched the description given by Deputy Borrer.

Deputy Alfonso indicated he stopped the vehicle and the suspect in the alley off Pitkin Avenue. He indicated that the vehicle crashed into a telephone pole near that site. Deputy Alfonso was able to observe that the suspect was still in the driver's seat of the vehicle. Recruit-Deputy Montoya activated the emergency light on their marked patrol vehicle as they approached the suspect.

The suspect then began to run away with Deputy Alfonso in pursuit. The suspect matched the description of the car-jacking suspect. Deputy Alfonso gave verbal commands to get on the ground as he chased the suspect. Deputy Alfonso subsequently lost sight of the suspect. Deputy Alfonso began clearing houses on Quincy Street and ultimately located the suspect, later identified as Jesse Cedillo, under a white truck parked in the driveway of 316 W. Quincy Street. Deputy Alfonso radioed that he located the suspect and needed help. Deputy Alfonso then gave several verbal commands for the suspect to show his hands. The suspect emerged out from underneath the vehicle and began to run toward Deputy Alfonso who was positioned on the sidewalk in front of the white pickup truck. Cedillo began to run toward Deputy Alfonso who continued to tell the suspect to show him his hands. The suspect continued to ignore his commands. Deputy Alfonso noticed that the suspect had what appeared to be a handgun in his right hand and that the suspect began to raise the gun as he was running toward Deputy Alfonso.

Deputy Alfonso then fired his weapon and continued to fire his weapon until the suspect's movement stopped. The Deputy fired a total of 15 rounds.

Based on the facts of the investigation conducted by CIT Investigators, the use of deadly force by PCSO Deputy Alfonso appears to be justified based on the fears and threat of great bodily injury posed to him. The suspect posed a serious threat of imminent bodily harm or death to the Deputy because the suspect was armed, running toward Deputy Alfonso and continued to ignore the repeated commands to show his hand. This conclusion is based on, and confirmed by interviews of other officers involved, witnesses, body worn camera, video taken from a neighbor, evidence collected, and information developed from the execution of warrants.

Additionally, I sought supplemental reviews from other agencies and experts in the field of Use of Force by Law Enforcement personnel. One of the concerns expressed to me by the family was whether Cedillo had a gun in his hand as he ran towards Deputy Alfonso. I asked that video footage of that particular part of the incident be enhanced to determine whether there was indeed a gun in Cedillo's hand. The CBI enhanced that portion of the video. In my view, as supported by the video enhancement, there is no reasonable doubt that he had a gun in his right hand as he ran towards Deputy Alfonso. It appears to be the same weapon that was found under Cedillo in the immediate aftermath of the shooting. I have included that enhancement to show what was reviewed by CBI and forwarded to me.

In addition to the CBI analysis, I had Blake Consulting and Training of Brentwood, California, review the incident as well. They also concluded, with enhanced viewing, that there was a weapon in Cedillo's right hand as he ran towards Deputy Alfonso.

Blake Consulting and Training has reviewed many officer-involved shootings over the years. They have reviewed such matters for prosecutors, plaintiffs and defendants throughout the United States and international cases. They have testified, in approximately equal portions, for and against law enforcement personnel. I have great confidence that their analysis of the use of force in any particular case is not tainted by any personal perspective or bias on the propriety, or lack thereof, of force by uniformed peace officers.

As previously noted, I reviewed United States Supreme Court decisions that directly bear on my decision in this case. The first is *Plumhoff v. Rickard*, 143 S. Ct. 2012 (2014) in which the Court stated that when an officer encounters a lethal threat, they "need not stop shooting till the threat has ended". That case markedly changed the standard by which peace officers in the United States may use deadly force and the intensity or volume with which it may be used. *Tennessee v. Garner*, 471 U.S. 1 (1985) supports the proposition that when a peace officer is under the threat of physical harm, it is "not constitutionally unreasonable to prevent the escape of one using deadly force". In my view, those are the facts we have in this case. These cases supplement the law that was in effect at the time of the shooting.

However, it is also my opinion that should this case have been reviewed under the current law, Colorado Senate Bill 20-217, passed in May 2020, the shooting would still have been justified. In this case, an armed car-jacking suspect, who physically threatened a female from whom he stole the car, and who, with gun in hand, was quickly closing the distance between himself and a Sheriff's Deputy, constituted a significant deadly threat, with which the Deputy could use lethal force to justifiably repel. Failure to act by Deputy Alfonso put himself and possibly others in jeopardy. Deputy Alfonso used force after the suspect raised his gun in a manner that represented an imminent use of force.

It is also my findings that Deputy Alfonso complied with law enforcement standards as set forth by the State of Colorado when he attempted to detain and/or arrest Jesse Cedillo. I find that by firing 15 rounds in five seconds, Deputy Alfonso's "stop-shooting" response is more likely than not bounded within human capabilities and limitations associated with psychological arousal, perception, attention and vision and the time to stop a repetitive motor response.

It is my conclusion therefore, based on the totality of the circumstances, that Deputy Alfonso was justified by the self-defense provisions of the laws of the State of Colorado, and the defense of others, in using the actions he employed to defend himself from what he reasonably believed to be the imminent use of unlawful physical and deadly force by Jesse Cedillo; and he reasonably believed that a lesser degree of force would be inadequate. He had reasonable grounds to believe, and did believe, that he or other members of the community were in imminent danger of being killed or receiving great bodily injury. The actions of Deputy Alfonso were legally appropriate and, therefore, no criminal charges will be filed.

Dated this 25th day of August 2020.

A handwritten signature in dark ink, appearing to read "J. E. Chostner", with a long horizontal flourish extending to the right.

J. E. Chostner
District Attorney

ATTACHMENTS



NORTHERN COLORADO REGIONAL FORENSIC LABORATORY

Daren Ford
Laboratory Director

Laboratory Report

Lab Case #:	N20-726	Agency Case #:	20005037
Reporting Section:	Digital Evidence Analysis	Investigating Agency:	DA 10th Judicial District - Pueblo 701 Court Street Pueblo, CO 81003
Date of Submission:	July 2, 2020 July 29, 2020	Investigated by:	Ron Ivan
Date of Report:	July 30, 2020	Submitted to CBI by:	Jeff Chostner
Date of Offense:	March 14, 2020	Delivery Method:	Federal Express (Tracking #: 8120 8495 2066) E-mail

Involved Subjects

Victim:	Jesse Patrick Cedillo	DOB:	02/28/2000	SID:	
Suspect:	Jeff Alfonso	DOB:	06/08/1974	SID:	

CBI Item #:	Agency Item #:	Description of Evidence:
Item 1		BWC OF DEPUTY ALFONSO
Item 2		cell phone video
Item 3		Ring doorbell video
Item CD2		USB flash drive with items 2, 3, processed video and still images

Request:

On 7/20/20, I received a request for additional work to be completed on item 1, Body Worn Camera footage of Alonso, as well as new items 2, cell phone video and item 3, doorbell video. I was requested to evaluate item 3 and determine if the content could be clarified. For item 1, I was requested to annotate the video with frame type, frame count, shot markers, and timestamp with millisecond capabilities. I was also requested to provide still images of I-frames for item 1. For items 1 and 2, I was requested to trim the footage to include all shots fired and provide each frame of video as a still image and provide a side-by-side synchronized video clip of items 1 and 2.

Results/Opinions and Interpretations:

Synopsis:

Items 1 and 2 were trimmed, processed, and annotated as requested. A side-by-side, synchronized view of items 1 and 2 was produced. The processed videos were saved in the "Processed Videos" folder on Item CD2. For each of the processed videos, still images were created of each frame. The still images were saved in the "Still Images" folder of item CD2. A PowerPoint presentation was created for the processed cell phone video, processed body worn camera video, and the side-by-side video. PowerPoint presentations enable each frame of video to be its own slide so that the video can be navigated frame by frame by advancing slide. The presentations were saved in the "PowerPoint" folder on Item CD2.

Due to the resolution of the footage on Item 3, it could not be clarified further and was not used in this examination.

Findings:

The following folders are located on Item CD2, a USB flash drive:

Item 2: cell phone video, original file download via Dropbox

Item 3: doorbell video, original file download via Dropbox

Processed Videos: processed videos from item 1 and item 2 and the side-by-side video

Still Images: contains still images of each video frame from the processed videos

Audio files: contains waveform and shots fired frame timing

Hash Values-Results: hash values of all work product files (still images and processed videos)

Processing Report: Amped FIVE processing report with filter settings

PowerPoint: PowerPoint presentations of each processed video

Item 1

Footage from item 1 was trimmed to the time of interest between 2:42 and 2:53. The footage was cropped and resized and a filters were applied to adjust the contrast and brightness of the video. Because the video was from a body worn camera, there was a lot of camera movement. A stabilization filter was applied to reduce the overall movement of the video. Two video clips were created, one with and one without the stabilization filter.

Using the video timestamp as a reference, a timestamp was added that included milliseconds. The timestamp was placed in the upper right corner of the footage. The video was also annotated with frame type (I, B, P frame) followed by frame count. The frame count began at 0 for the trimmed video clip. I, B, and P frames refer to the way a video is compressed for storage. I-frames, or intra-frames, are reference frames and contain the least amount of compression.

To determine when the shots were fired, I opened the audio stream of the original video in audio processing software, Izotope RX7. In Izotope RX7, the audio waveform could be examined visually. Where the gunshots were heard, a significant increase in the amplitude of the audio was observed on the waveform. This was visible by spikes in the waveform (see figure 1). At the beginning of each spike, a marker was placed and the time reference of where that marker was placed was noted. Using the time references obtained from the audio waveform, a "shot" marker was placed in the video at the correlating time reference. Each marker was labeled with the order of the shot heard (Shot 1, 2, 3, etc.).

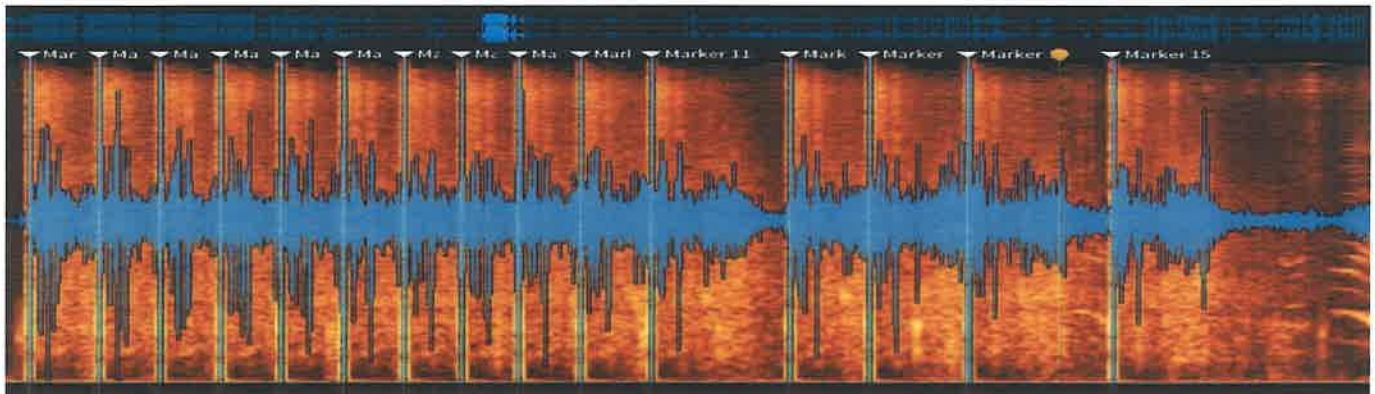


figure 1

Please note that due to many variables such as the position of the microphone, sound reflection and reverberation from surrounding structures, and the frame rate of the audio, an exact pinpoint of the fired shot was difficult to deduce. However, for some video frames, visual information such as gases from the muzzle were observed. The visual information on the video closely correlated with the audio time references obtained from the waveform.

Shots fired were labeled on the processed video at the following frames: 91, 100, 108, 117, 125, 133, 142, 150, 158, 166, 176, 194, 205, 219, 239.

For item 1, the following was produced:

Two processed videos, one with and one without the stabilization filter. The processed videos were annotated with

frame type, frame count, timestamp with milliseconds, and shots fired. The processed videos were saved to the "Processed Videos" folder on Item CD2.

Each frame of the non-stabilized processed video was exported as a still image and saved to the "Still Images" folder on Item CD2.

For the processed video, all I-frames were saved to the "Still Images" folder on Item CD2.

End of item 1.

Item 2: Cell Phone video

The cell phone video was approximately 56 seconds long. It contained audio and video information. There was no timestamp visible on the video. The first 12 seconds of the video contained the event of interest. The video was trimmed to include only the time of interest (frames 10-299) and cropped to focus on the area of the shooting. The video was annotated with the frame type and number.

The processed video was saved to "Processed Videos" folder on Item CD2.

Each frame of the processed cell phone video was exported as a still image and saved to the "Still Images" folder on item CD2.

An additional video was created that contained a side-by-side view of the cell phone video and the body worn camera footage. The videos were synchronized with the multi-view filter in Amped FIVE. The side-by-side view was saved to the "Processed Images" folder on Item CD2.

Each frame of the side-by-side video was exported as a still image and saved to the "Still Images" folder on item CD2.

End of Item 2.

Item 3

Item 3 was footage from a doorbell camera. I reviewed item 3 but it was not suitable for further clarification due to the poor resolution. It was not used in the exam further.

End of item 3.

For each of the processed videos, a PowerPoint presentation was created. Each frame of video was placed on its own slide. The viewer can navigate the video frame by frame by going forward or backward on the slides. The presentations were saved to the "PowerPoint" folder on Item CD2.

Disposition of Evidence:

The original evidence and item CD2 was returned to the evidence vault pending release back to the submitting agency. Data associated with this case will be maintained for 180 days after the date the report was issued.

**Shelli Friesen****Criminalist**

CBI - NCRFL

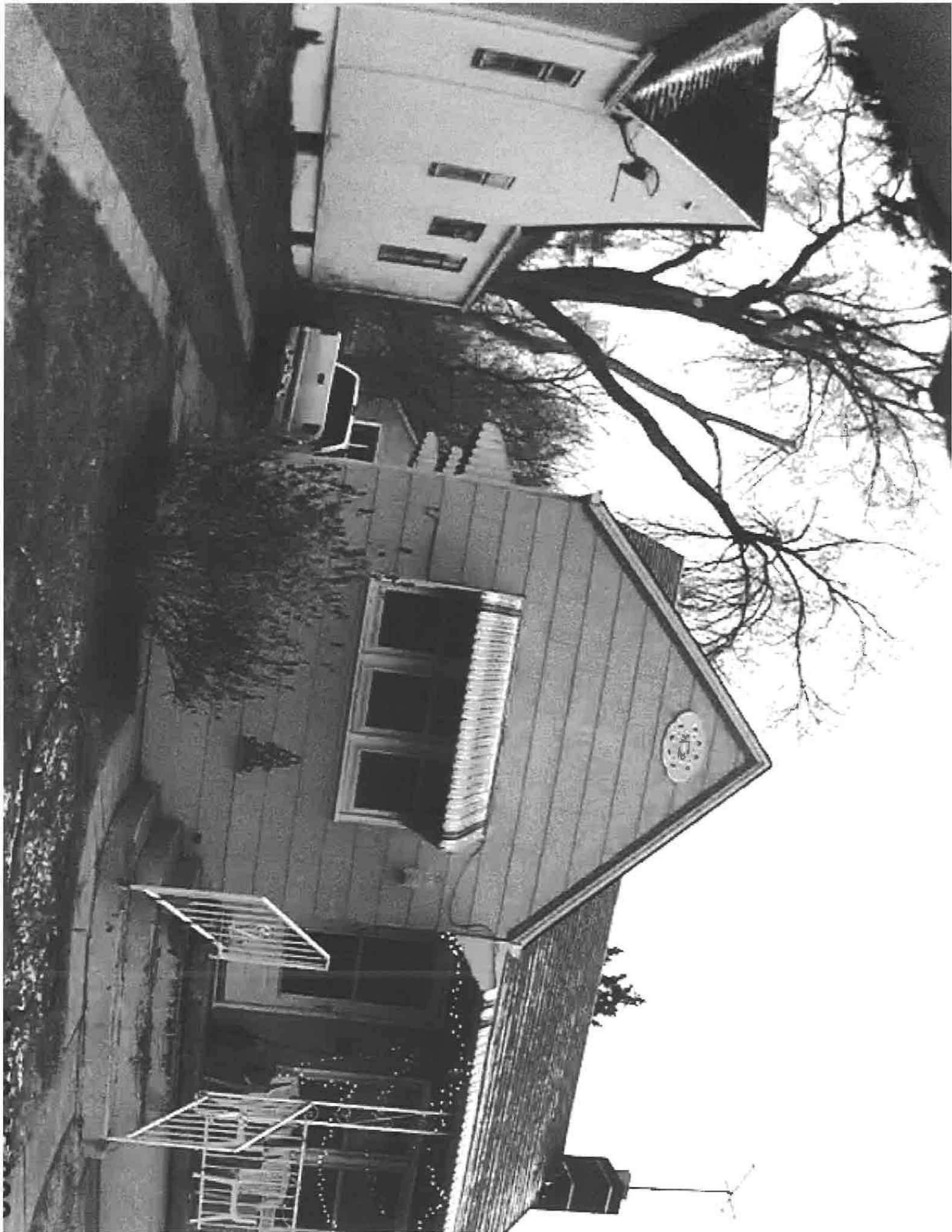
2329 115th Avenue

Greeley, CO 80634

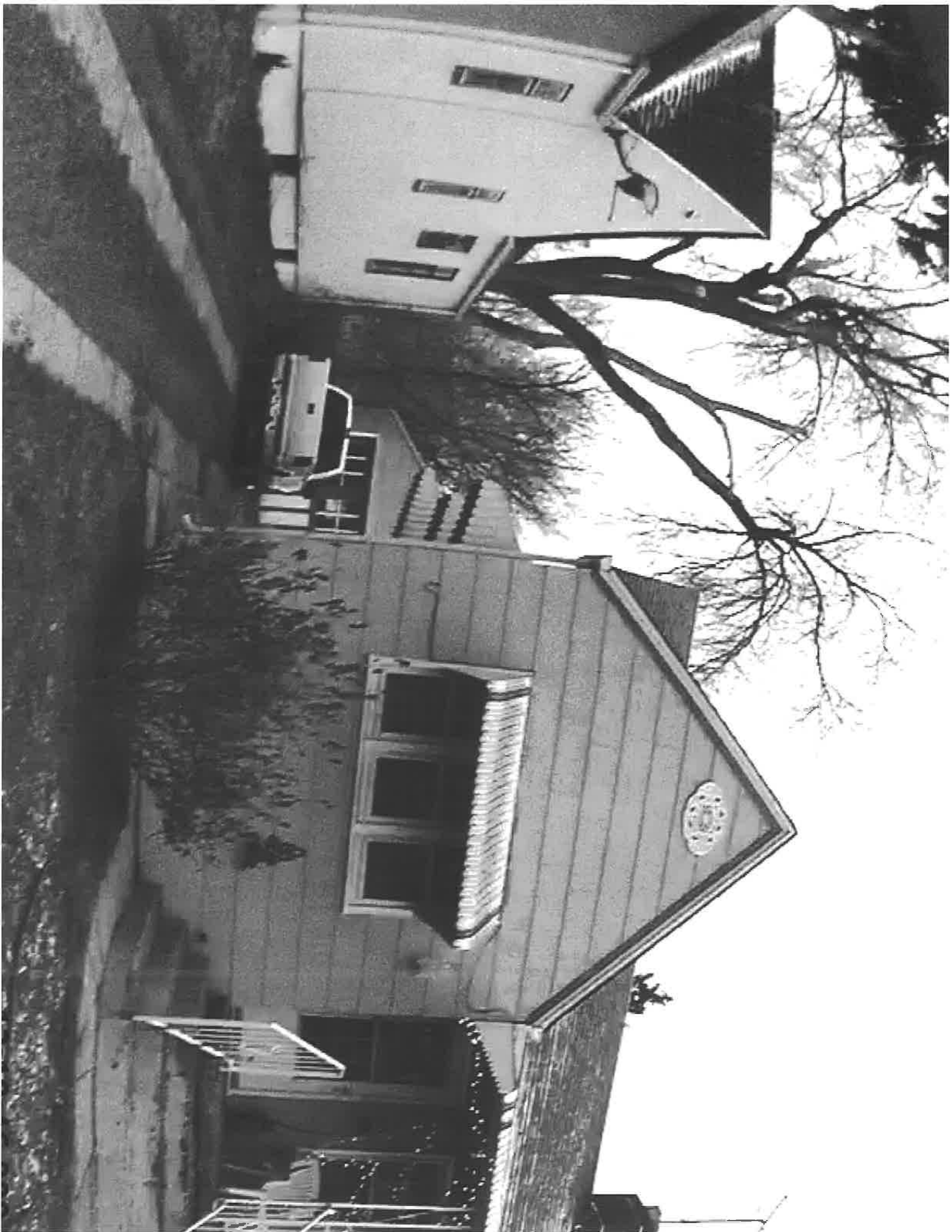
Phone: (970)400-3625

Fax: (970)304-6447

















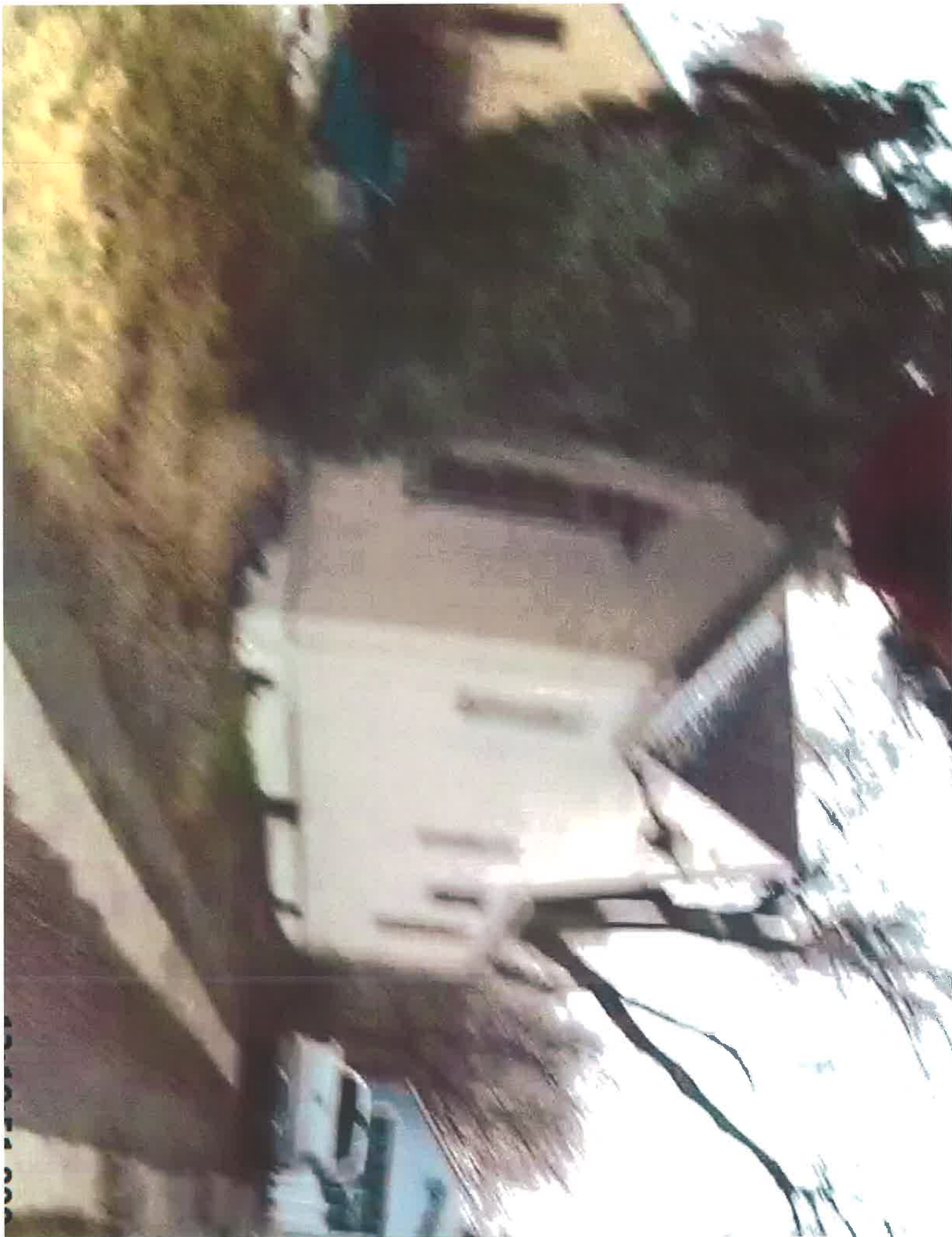


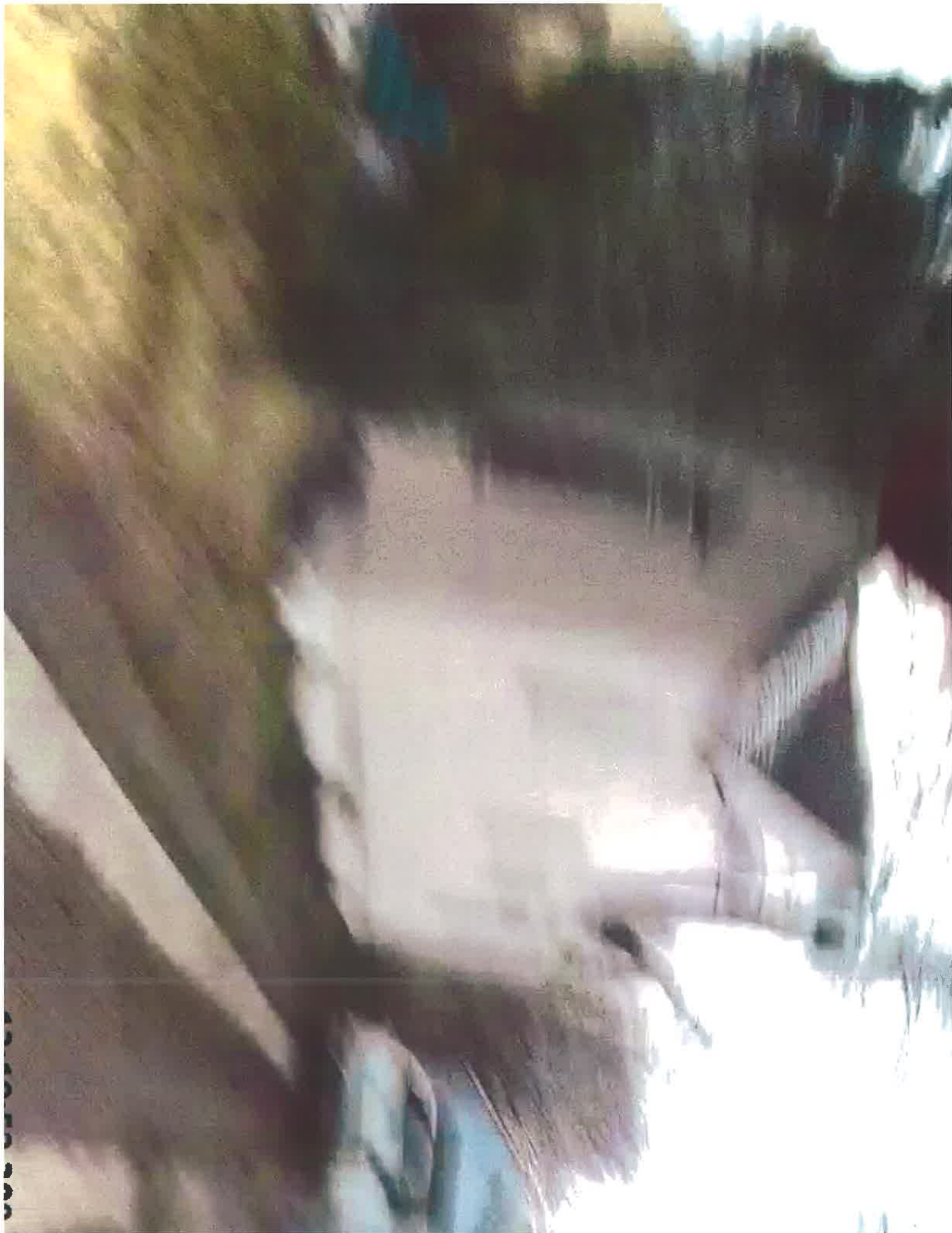






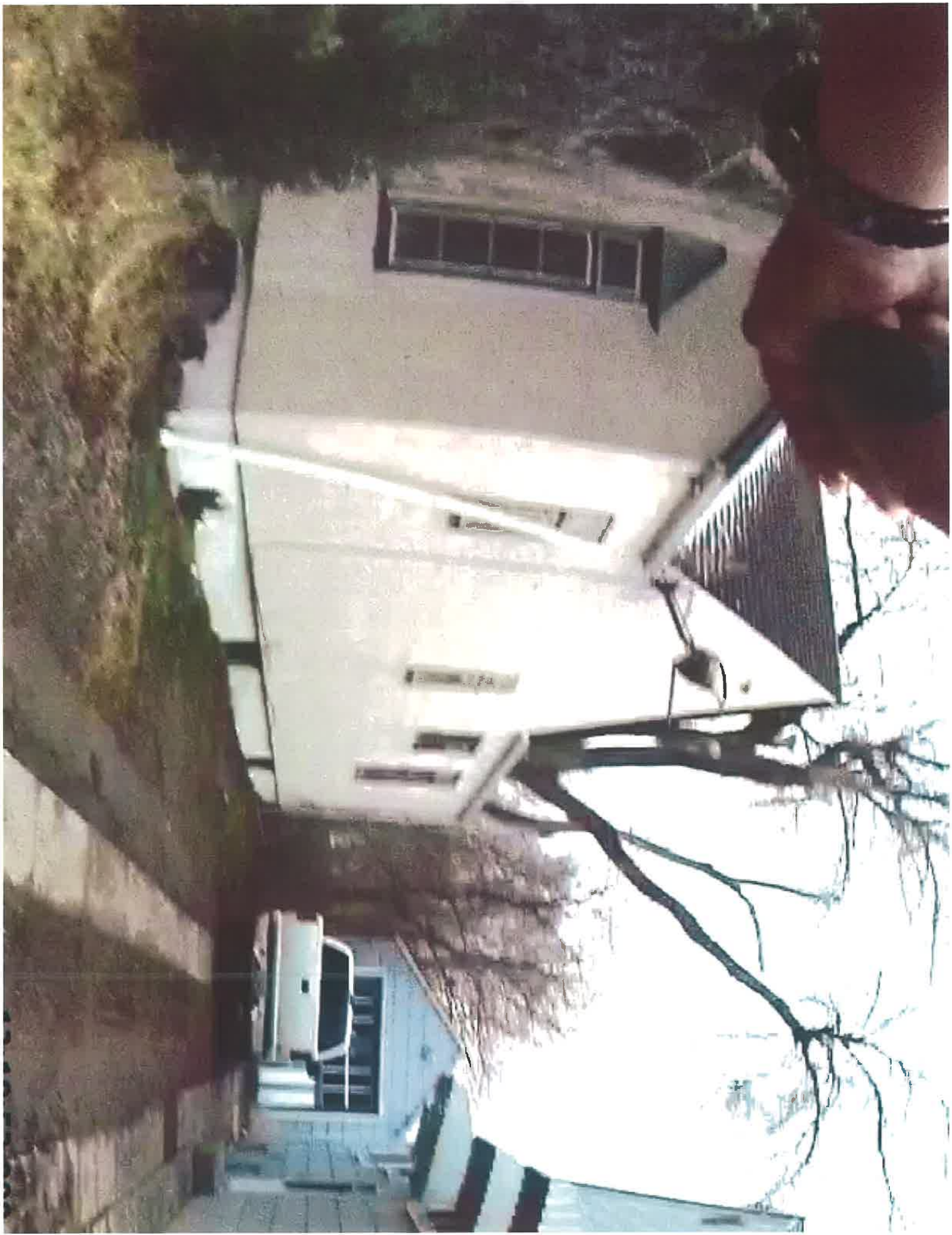
















Blake Consulting & Training

P.O. Box 784, Brentwood Ca. 94513
Phone: 213.298.3517 Email: Dave@Blake-Consulting.com

1

2

3

4

5

6

7

Officer-Involved-Shooting & Human Factors Psychology

8

Expert Report

9

10 **Pueblo County Sheriff's Office Critical Incident Team # 20S006083**

11

Authored by:

12

David M. Blake, Ph.D.

13

Date: August 7, 2020

14

15

16

17

18

19

20

21

22

23

24

August 7, 2020

Michelle A. Chostner
Senior Deputy District Attorney
10th Judicial District
Phone: 719-583-6672

Per your request, I have reviewed the materials provided to me concerning the Pueblo County Sheriff's office officer-involved shooting of Mr. Jesse Cedillo. I am providing the following opinions based upon the review:

1. Deputy Alphonso complied with law enforcement standards and training as set forth by the State of Colorado when he attempted to detain/arrest the decedent.
2. Deputy Alphonso complied with law enforcement standards and training as set forth by the State of Colorado when making the decision to utilize deadly force.
3. Deputy Alphonso fired 15 rounds in just under five seconds. The last six rounds were fired in about 2.5 seconds after the decedent had fallen into the prone position. Based upon a review of the materials provided to me coupled with my knowledge, training, and experience, I opine that Deputy Alphonso's stop shooting response is more-likely-than-not bounded within human capabilities and limitations associated with physiological arousal, perception, attention, vision, and the time to stop a repetitive motor response.

I expand and support my opinions in the attached report. I reserve the right to add, change, and delete any of my opinions based on any provision of additional information not reviewed at the time this report was completed.

Respectfully,

David M. Blake
David M. Blake, Ph.D.

Contents

1		
2	General Information	5
3	Expert Summary for David Blake	5
4	Previous Consultations	7
5	Authorship	7
6	Fee Schedule	8
7	Materials Reviewed	8
8	Exhibits	11
9	Police Training & Legal Standards	12
10	Human Factors Psychology Overview	15
11	Fight or Flight Response.....	15
12	Stress, Arousal, and Performance.....	16
13	Perception and Attention	17
14	Total Response Time	18
15	CASE REVIEW	23
16	Incident Summary	23
17	Scene	23
18	Suspect Photographs	24
19	Weapon Info	25
20	Autopsy Summary	26
21	Deputy Alphonso Interview and Fact Patterns	26
22	Shot Analysis	41
23	Expert Opinions.....	45
24	5. Opinion 1:.....	45
25	6. Opinion 2:.....	50
26	7. Opinion 3:.....	57
27	ANNEX	67
28		
29		
30		
31		

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

This Page Intentionally Left Blank

General Information

Expert Summary for David Blake

Police Practices. David Blake Ph.D. has over 20 years of experience in both federal and state law enforcement. He was employed with the following agencies and held the associated titles as listed: (a) Department of Energy Security Police Officer III (3 years), (b) San Francisco Bay Area Rapid Transit Police Officer (2 years), (c) Livermore Police Officer (11.5 years), and (d) an Alameda County Sheriffs Officer Regional Training Center Instructor (5 years).

Dr. Blake held the following positions during his employment: patrol officer, field training officer, acting sergeant, narcotics officer, gang unit detective, special weapons and tactics team (SWAT) member, force options training unit instructor, assistant range master, public information officer (PIO), and RTC Instructor. Mr. Blake was also assigned to the commission on accreditation for law enforcement agencies (CALEA) unit for a time.

Dr. Blake has obtained the following law enforcement credentials (not all-inclusive): California peace officer standards and training (CA-POST) advanced certificate, Department of Energy SPO III certification, firearms instructor, arrest, and control instructor, force options simulator instructor, field training officer, police academy instructor, SWAT certification, explosive breaching certification, reality-based training instructor, and Taser © Instructor certification.

Dr. Blake previously held positions as an adjunct criminal justice professor at Delta College and Las Positas College, where he also instructed in the entities respective police academies. The POST courses Mr. Blake taught to police recruits include the following learning domains: (a) LD20; Use of force, (b) LD21; Patrol techniques, LD24; Disputes/Crowd control, LD35; Firearms/Chemical agents, and LD36; Information systems.

Dr. Blake has received over 2400 hours of law enforcement training and has provided over that number of hours of training to law enforcement personnel on topics such as; firearms, arrest & control, officer safety & tactics, patrol procedures, human factors, and federal/state law.

Human Factors Psychology. Dr. Blake earned a Ph.D. at Grand Canyon University and an M.Sc. from Kaplan University (Purdue Global) after completing extensive research projects on the application of human factors psychology to police shootings. Dr. Blake also received a Bachelor of Science in Criminal Justice Management from Union Institute & University. All academic credentials are from accredited institutions of higher learning.

Outside of formal academic institutions, Dr. Blake has received ~84 hours of formal training on human factors psychology and its application to critical incidents/use of force. This training includes the CA-POST Officer-Involved Shooting Course, The Human Performance Training Institute's (HPTI) Force Encounters and Human Factors courses, the Force Science Analyst certification through the Force Science Training Institute ® as well as attendance at the FSI annual conference in 2019 (24hrs).

Dr. Blake has provided over 1000 hours of human factors psychology instruction to police officers, law enforcement executives, risk managers, and attorneys. The topics of instruction included the science of response time, attention, perception, vision, physiology, neuroscience, decision-making, and memory.

Dr. Blake has also provided subject matter expertise for CA-POST, government contractors, academic researchers, police agencies, district attorney's offices, and private law firms. He has published over 30 articles in both academic peer-reviewed journals and professional periodicals on police use of force and human factors psychology. Dr. Blake is a member of the Human Factors and Ergonomics Society (HFES), the International Association of Chiefs of Police (IACP), and the Academy of Criminal Justice Sciences (ACJS). He is currently a member of the HFES Government Relations Subcommittee on Law Enforcement.

See CV for a full list of work history, experience, and accomplishments

Previous Consultations

Dr. Blake has consulted on over 30 police practices/use of force incidents of which 17 have been officer involved shootings. Consultations have been for administrative, criminal, and civil rights cases while working for both the prosecution/plaintiff (14) and defense (15). Two cases were internal law enforcement consultations. Dr. Blake has testified as an expert on use of force and human factors in Texas, Colorado, and California courts.

See CV for a full list of consultations

Authorship

Peer-Reviewed Journals:

- *A Systems-Based Exploration of Police Mistake-of-Fact Shootings in the United States* – Proquest (2020).
- *Holster & Handgun: Does Equipment Effect Response Time* – Law Enforcement Executive Forum (June 2018)
- *Cognitive Bias and Use of Force Investigations* – Investigative Sciences Journal (9(3) 2017)
- *De-Policing in America: The Effects of Media and Leadership on Officer's Discretionary Enforcement* – Law Enforcement Executive Forum (17(1) 2017)
- *Factoring Fatigue into Deadly Force Encounters: Decision Making and Reaction Times* – Law Enforcement Executive Forum (15(1) 2015)
- *LE Body Worn Cameras; Comparing Human & Device to Ensure Unbiased Investigations* – Law Enforcement Executive Forum (15(4) 2015)

Periodicals & Professional Journals:

- *Use of force: Time to "geek it up"* – Calibre Press
- *Why we cannot leave our safety to luck* – Police One.
- *Training day: Setting up use of force training for the community* – Police One
- *California battle over use of force legislation rages on* – Police One
- *Got Graham? How AB931 could impact California use of force law* – Police One
- *How human factors impact police safety during emergency driving* – Police One
- *8 -Ways to Prevent Blue-on-Blue Shootings* – Police One
- *External Vest Carriers – An Officer Safety Issue?* – International Law Enforcement Educators and Trainers Association Journal.
- *Does De-escalation Endanger Police Officers or Save Lives?* – Police One
- *2 Under-Discussed Issues with Body-Worn Cameras* – Police One (Special Editorial).

- 1 • *Force Options Simulators: An Underutilized Training Tool* – International Law
- 2 Enforcement Educators and Trainers Association Journal (7(2) 2017).
- 3 • *Police Warning Shots: A consensus lacking agreement* – Police One
- 4 • *What we Don't Know CAN Hurt US: Training for Low-Light Encounters* – The Police Chief
- 5 • *Tactical Flashlights: What We Don't Know Will Hurt Us* – International Law
- 6 Enforcement Educators and Trainers Association Journal (6(3) 2016)
- 7 • *Unpacking Implicit Bias in Policing* – Police One
- 8 • *Guardian v. Warrior: The many roles of a police officer* – Police One
- 9 • *Survey: Is proactive policing slowing down?* – Police One
- 10 • *How UOF evaluation is changing (how to improve UOF decision making)* – Police One
- 11 • *The "21-foot kill zone" myth: What officers really need to know* – Police One
- 12 • *How to improve officer training for high-risk traffic stops* – Police One
- 13 • *Officers Facing Criminal Charges: Faulty Decision Making?* - Internal Law Enforcement
- 14 Educators and Trainers Association Journal (5(4) 2015)
- 15 • *Efficacy of Police Body Cameras for Evidentiary Purposes: Fact of Fallacy* – International
- 16 Association of Chiefs of Police (May 2015)
- 17 • *Officer Fatigue and OIS – A Deadly Combination for Error* – International Law
- 18 Enforcement Educators and Trainers Association Journal (5(1) 2015)
- 19 • *What agencies need to know about the limitations of body cam technology* – Police On
- 20 • *Officer Fatigue and Officer-Involved Shootings – A Deadly Combination for Error* –
- 21 International Association of Chiefs of Police (Oct 2014)
- 22 • *2 Pedestrian Stop safety tips that could save your life* – Police One
- 23 • *Truly Test your officers with reality-based training* – Police One
- 24 • *Dispatchers don't need stress training – right?* – 911 Magazine
- 25 • *How to apply Force Science findings to policy and training* – Police One
- 26 • *Distance and Shielding equals' time: A safer approach to pedestrian contacts* – Academy
- 27 of Criminal Justice Sciences

28 **Fee Schedule**

Fee Schedule:	
Consulting, Research, Report Preparation, and Expert Services.....	\$250 per hour
Court Appearances, Depositions.....	\$350 per hour
Travel (Drive).....	\$0.60 per mile
Travel (Air) & Accommodations.....	Full Cost (business class)
Travel Time.....	\$100 per hour (8 hours daily)

30 **Materials Reviewed**

31 The following is a list of files, documents, digital recordings, photographs, video
32 and other items I reviewed to assist in forming my opinions.

Data Reviewed	File Name
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Rohrich	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Burgos-Juanes	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Simpson	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Solano.	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Herrera.	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Roldan	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Supplemental Narrative – Detective Landreth	PCSO Quincy CIT Reports.pdf
Pueblo County Sheriff's Office LAW Narrative – Deputy Borrer	PCSO Reports (Car-jacking_CIT).pdf
Pueblo County Sheriff's Office LAW Narrative – Deputy Borrer	PCSO Reports (Car-jacking_CIT).pdf
Deputy Alphonso Video Interview	zoom_0.mp4
Coroner Report	coroner report.pdf
Autopsy Photographs	File: Autopsy Photographs and Documents
Evidence Photographs	File: Collected Evidence from Crime Scene Photographs
Deputy Alphonso In-Car Camera	1103@20200314070653 Deputy Alphonso Dash Cam.mp4
Deputy Borrer In-Car Camera	Deputy Borrer Dash Cam.mp4
Deputy Alphonso Body Worn Camera	Deputy Alphonso BWC.mp4
Deputy Borrer Body Worn Camera	Deputy Borrer BWC.mp4
Deputy Montoya Body Worn Camera	Deputy Montoya BWC.mp4
Deputy Alphonso Executive Summary	Deputy Alphonso Executive Summary DA.pdf
Deputy Borrer Interview	Deputy T. Borrer.mp3
Deputy Montoya Interview	Deputy D. Montoya.mp3
Meghan Lyndall Interview Transcript	3-2KK Meghan Lyndall transcript pdf.pdf
Frank Lyndall Interview Transcript	2-2KK Frank Lyndall Transcript pdf.pdf
Telephone communications between PPD and PCSO dispatch.	Calls from PD and CMHIP.wma 20S006083 phone traffic.wma
PCSO dispatch radio communications.	20S006083 Channel 1 Radio Traffic.wma
Pueblo Police dispatch radio communications	PPD Radio Traffic.wma
Pueblo Police Department Investigation Report 20-005037	
C. Marroquin In-Car Camera	File: c. marroquin unit #625 disc #1 & 2
PPD Incident Report 20-005037	Incident_20005037.pdf
Drone Photographs	Drone Photographs folder
Evidence Photographs	Collected Evidence From Crime Scene Photograph folder
Evidence Photographs	Crime Scene Photographs & Documents folder

Evidence Photographs	Deputy Trae Borrer Photographs
Evidence Photographs	Deputy Dominic Montoya Photographs
Evidence Photographs	Deputy Jeffrey Alphonso Photographs
Deputy Borrer Interview	20-5037_1193010-0729-tborrer-20-5037_20200730.docx
Deputy Montoya	20-5037_1193011-0729-dmontoya-20-537_20200730.docx
Vehicle photographs	File: Search Warrant Photographs & Documents Nissan Versa
Stills of PYC video	File: PYC STILL PHOTOGRAPHS FROM SURVEILLANCE
NEST video	20-005037.mp4
Photographs of collected evidence	File: Evidence Collected at Autopsy Photographs
Still images for witness cell phone	File: Cell phone still images
Forensic comparison of witness cell phone and Alphonso BWC	File: Multiview stills
Various video enhancement files	File: New_Video
Academic Source Material	
Green, M. (2018). <i>Roadway human factors: from science to application</i> . Tucson, AZ: Lawyers & Judges Publishing Company, Inc.	
Schmidt, R. A., & Lee, T. D. (2014). <i>Motor learning and performance: from principles to application</i> (5th ed.). Champaign, IL: Human Kinetics.	
Campbell, A., Roelofs, A., Davey, P., Straker, L. (2013). Response time, pistol fire position variability, and pistol draw success rates for hip and thigh holsters. <i>The Journal of the Human Factors and Ergonomics Society</i> , 55(2), 425-434. Doi: :10.1177/0018720812453466	
Nieuwenhuys, A., & Oudejans, R. R. (2011). Training with anxiety: short- and long-term effects on police officers' shooting behavior under pressure. <i>Cognitive processing</i> , 12(3), 277–288. https://doi.org/10.1007/s10339-011-0396-x	
Lewinski, W.J., Dysterheft, J.L. Bushey, J.M., Dicks, N.D. (2015). Ambushes leading cause of officer fatalities – when every second counts: analysis of officer movement from trained ready tactical positions. <i>Law Enforcement Executive Forum</i> , 15(1), 1 -15.	
Hough, R.M. (2017). Mental chronometry in officer involved shootings. <i>Forensic Research & Criminology International Journal</i> , 4(3):95-98. DOI: 10.15406/frcij.2017.04.00116	
Weinberg, R. S., & Gould, D. (2011). <i>Foundations of sport and exercise psychology</i> . Champaign, IL: Human Kinetics.	
Novy, M. (2012). Cognitive Distortions During Law Enforcement Shooting. <i>Activitas Nervosa Superior</i> , 54(1-2), 60–66. doi: 10.1007/bf03379584	
Hope, L., Blocksidge, D., Gabbert, F., Sauer, J. D., Lewinski, W., Mirashi, A., & Atuk, E. (2016). Memory and the operational witness: Police officer recall of firearms encounters as a function of active response role. <i>Law and Human Behavior</i> , 40(1), 23–35. doi: 10.1037/lhb0000159	
Vickers, J. N., & Lewinski, W. (2012). Performing under pressure: Gaze control, decision making and shooting performance of elite and rookie police officers. <i>Human Movement Science</i> , 31(1), 101–117. doi: 10.1016/j.humov.2011.04.004	
Campbell, A., Roelofs, A., Davey, P., Straker, L. (2013). Response time, pistol fire position variability, and pistol draw success rates for hip and thigh holsters. <i>The Journal of the Human Factors and Ergonomics Society</i> , 55(2), 425-434. Doi: :10.1177/0018720812453466	
Bumgarner, J.B., Lewinski, W.J., Hudson, W., Sapp, C. (2007). An Examination of Police Officer Mental Chronometry. <i>Journal of The Association for Crime Scene Reconstruction</i> . 12(3), 11-26	

Hontz, T.A. (1999). Justifying the Deadly Force Response. <i>Police Quarterly</i> . 2(4): p462-476.
Tobin, E.J. & Fackler, M.L. (2001a). Officer Reaction-Response Time Delay at the End of a Shot Series. <i>Journal of the International Wound Ballistic Association</i> . 5(1): p. 9-12
Lewinski, W.J., Hudson, W.B., Dysterheft, J.L. (2014). Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition. <i>Law Enforcement Executive Forum</i> , 13(2), 1-16. Retrieved from http://www.forcescience.org/articles/reactionshooting.pdf
APA Dictionary of Psychology

Exhibits

1. TG4 "The more you watch, the more you see" downloaded from YouTube
(<https://www.youtube.com/watch?v=x9EdlhxZAYE&t=2s>).
2. Test your awareness: Whodunnit? Downloaded from YouTube
(<https://www.youtube.com/watch?v=ubNF9QNEQLA&list=PLoW4Hk3u8fgxObdg3DcVZhUGN4JLLkdXF&index=7&t=0s>).
3. Visual aids to demonstrative applicable aspects of human factors psychology (To be coordinated with Pueblo County District Attorney).
4. Visual aids to demonstrate the difference between video recordings and human experience (To be coordinated with Pueblo County District Attorney).

Police Training & Legal Standards

Preliminary basis and foundational information for opinions

Graham v. Connor 490 U.S. 386, 394 (1989) defines objectively reasonable force in situations that are often tense, uncertain, and rapidly evolving. Factors for consideration include (1) The severity of the crime, (2) The level of resistance, and (3) The threat (to officers/citizens) posed by the suspect's resistance. (also see; "Reasonable Force" and "totality of circumstances").

Reasonable Force is a standard term defining how much and what kind of force a peace officer may use in each circumstance. Judgment criteria must include: (1) the perspective of a reasonable officer, (2) applying only information known to the officer at the time force was applied, (3) based on the totality of facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation, and (4) based on knowledge the officer acted properly under established law at the time.

Totality of Circumstances are the facts and circumstances known to the officer at the time force was used and may include: (1) number of officers vs. suspects, (2) prior contacts, (3) age, size, and relative strength, (4) special knowledge/skills, (5) injury/exhaustion, (6) mental illness/intoxication, (7) environmental factors, and (8) proximity to potential weapons.

Scott v. Harris 433 F. 3d 807 (2007) provides further guidance toward judging reasonable force which focuses upon weighing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion (e.g., public safety). The court "rejected respondent's argument that safety could have been assured if the police simply ceased their pursuit."

Plumhoff v. Rickard, 571 U.S. ____ (2014) Provides guidance on judging the number of rounds an officer fires: "It makes sense that, if officers are justified in firing at a suspect in order to end a severe threat to public safety, they need not stop shooting until the threat has ended".

Tennessee v. Garner, 471 U.S. 1 (1985) provides guidance on judging the reasonableness of using deadly force to seize a fleeing subject. In summary, the "fleeing felon rule", as it is often called, states where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent

1 escape by using deadly force. Thus, if the suspect threatens the officer with a
2 weapon or there is probable cause to believe that he has committed a crime
3 involving the infliction or threatened infliction of serious physical harm, deadly
4 force may be used if necessary to prevent escape, and if, where [471 U.S. 1, 12]
5 feasible, some warning has been given.

6 **Colorado Specific Law Enforcement Training & Legal Standards¹**

7 CRS 18-1-704 Use of physical force in defense of a person

8 CRS 18-1-707 Use of physical force in making an arrest or in preventing escape

9 CRS 18-3-103 Murder

10 CRS 18-3-104 Manslaughter

11 CRS 18-3-105 Criminally Negligent Homicide

12 **Colorado POST Manual (2020)**

13 Officer may use reasonable force to protect himself or detain offender. An
14 officer who is making a lawful arrest, or has made an arrest, is justified in using
15 such force as is reasonably necessary to secure and detain the offender,
16 overcome his resistance, prevent his escape, recapture him if he escapes, and
17 to protect himself from bodily harm; but he is never justified in using unnecessary
18 force or treating his prisoner with wanton violence, or in resorting to dangerous
19 means when the arrest could be effected otherwise. *People ex rel. Little v.*
20 *Hutchinson*, 9 F.2d 275 (8th Cir. 1925).

21 Officer cannot use excessive force in making an arrest or bringing one into
22 submission. *McDaniel v. People*, 179 Colo. 153, 499 P.2d 613, cert. denied, 409
23 U.S. 1060, 93 S. Ct. 558, 34 L. Ed. 2d 512 (1972).

24
25 Officer is not required to retreat. A police officer who is assaulted by one whom
26 he is lawfully attempting to arrest is not required to retreat to the wall before
27 resorting to such defensive measures as may reasonably seem necessary to
28 protect himself against loss of life or great bodily injury. *Boykin v. People*, 22 Colo.
29 496, 45 P. 419 (1896).

30

31 Authority to take life based on apparent necessity. This section does not

¹ It should be noted that the training and legal standards considered are pre-Senate Bill 217.

1 clothe an officer with authority to judge arbitrarily that it is necessary to take life
2 in order to prevent the rescue of his prisoner. He is not warranted in taking life
3 unless there is an apparent necessity for it and if he does so he is not permitted
4 to take shelter behind his official character. *Campbell v. People*, 55 Colo. 302,
5 133 P. 1043 (1913).

6
7 Use of force is ordinarily a question for jury. An officer who intentionally uses
8 more force than is reasonably necessary in making an arrest is oppressively
9 discharging the duties of his office. What amounts to reasonable force depends
10 upon the facts of each particular case and is ordinarily a question of fact for the
11 jury. *People ex rel. Little v. Hutchinson*, 9 F.2d 275 (8th Cir. 1925); *People v. Fuller*,
12 756 P.2d 390 (Colo. App. 1987), *aff'd in part and rev'd in part on other grounds*,
13 781 P.2d 647 (Colo. 1989).

Human Factors Psychology Overview

Preliminary basis and foundational information for opinions

Human Factors (HF) Psychology focuses on human behavior within a "system" and the influences each has upon the other on performance outcomes. HF science is employed to enhance performance and build safer systems through an understanding of human capabilities and limitations.

The following is a summary of the HF Psychology topics that may influence all human performance, including an officer's performance during critical high-stress incidents.

Fight or Flight Response

Anxiety. An emotion characterized by apprehension and somatic symptoms of tension in which an individual anticipates impending danger, catastrophe, or misfortune. The body often mobilizes itself to meet the perceived threat: Muscles become tense, breathing is faster, and the heart beats more rapidly. Anxiety may be distinguished from fear both conceptually and physiologically, although the two terms are often used interchangeably. Anxiety is considered a future-oriented, long-acting response broadly focused on a diffuse threat, whereas fear is an appropriate, present-oriented, and short-lived response to a clearly identifiable and specific threat.¹

Fear. A basic, intense emotion aroused by the detection of an imminent threat, involving an immediate alarm reaction that mobilizes the organism by triggering a set of physiological changes. These include rapid heartbeat, redirection of blood flow away from the periphery toward the gut, tensing of the muscles, and a general mobilization of the organism to take action (see fear response; fight-or-flight response). Fear differs from anxiety in that the former is considered an appropriate short-term response to a present, clearly identifiable threat, whereas the latter is a future-oriented, long-term response focused on a diffuse threat. Some theorists characterize this distinction more particularly, proposing that fear is experienced when avoiding or escaping an aversive stimuli and that anxiety is experienced when entering a potentially dangerous situation (e.g., an animal foraging in a field where there might be a predator).

¹ APA Dictionary of Psychology.

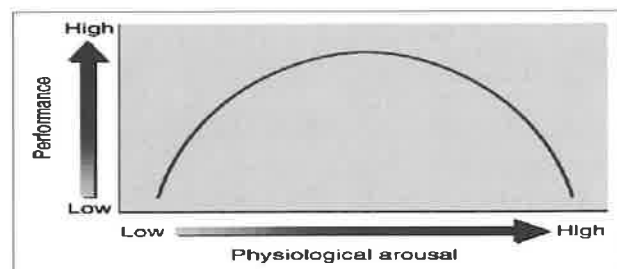
Whatever their precise differences in meaning, however, the terms are often used interchangeably in common parlance.¹

HPA Axis. A major mammalian system maintaining body homeostasis by regulating the neuroendocrine and sympathetic nervous systems as well as modulating immune function. Consisting of the hypothalamus in the center of the brain, the pituitary gland directly underneath, and the adrenal glands on top of the kidneys, the HPA axis helps regulate such widely varied processes as food consumption, digestion, energy usage (in the form of glucose metabolism), reproduction and sexual behavior, cardiovascular functioning, memory acquisition and retrieval, and emotion, and it also forms the core of the physiological response to stress.²

Physiological Response Stress (Fight or Flight). A pattern of physiological changes elicited by activity of the sympathetic nervous system in response to threatening or otherwise stressful situations that leads to mobilization of energy for physical activity (e.g., attacking or avoiding the offending stimulus), either directly or by inhibiting physiological activity that does not contribute to energy mobilization. Specific sympathetic responses involved in the response include increased heart rate, respiratory rate, and sweat gland activity; elevated blood pressure; decreased digestive activity; pupil dilation; and a routing of blood flow to skeletal muscles.³

Stress, Arousal, and Performance

Academia has not agreed upon a singular definition of stress. However, stress is often described as individually realized based upon perceived demand, perceived capability, and perceived ability to cope with the demand⁴ Stress in threatening and even challenging situations causes physiological arousal (fight or flight). Physiological arousal is based upon a process involving the nervous system and the endocrine system. An acute stress response results in



¹ APA Dictionary of Psychology.

² APA Dictionary of Psychology.

³ APA Dictionary of Psychology.

⁴ Weinberg, R. S., & Gould, D. (2011). *Foundations of sport and exercise psychology* (5th ed.). Champaign, IL: Human Kinetics.

performance and behavioral consequences that science most often presents based upon an inverted-U.¹

Perception and Attention

Perception.² The process or result of becoming aware of objects, relationships, and events by means of the senses, which includes such activities as recognizing, observing, and discriminating.

These activities enable organisms to organize and interpret the stimuli received into meaningful knowledge and to act in a coordinated manner.

Attention.³ A state in which cognitive resources are focused on certain aspects of the environment rather than on others, and the central nervous system is in a state of readiness to respond to stimuli. Because it has been presumed that human beings do not have an infinite capacity to attend to everything—focusing on certain items at the expense of others.⁴

Conscious awareness of environmental stimuli can only occur as a result of attention. Attention is a finite resource. This means that it is impossible to perceive all available stimuli within one's environment. Attention must be focused for moments in time for the processing of information. Increased arousal is synonymous with a focus of attention to salient stimuli in the environment. For instance, a loud noise will often subconsciously orient a human's attention toward the direction of the noise. There are several types of attention that require a short introduction.

Selective Attention. Describes the concentration on certain stimuli in the environment and not on others, enabling important stimuli to be distinguished from peripheral or incidental ones.⁵ A method of understanding selective visual attention is to compare it to a flashlight beam. The flashlight beam provides a clear central focal point in which items may be viewed very clearly, but its effects are limited. As the flashlight beam dims towards the periphery, the ability



¹ Schmidt, R. A., & Lee, T. D. (2014). *Motor learning and performance: from principles to application* (5th ed.). Champaign, IL: Human Kinetics.

² APA Dictionary of Psychology

³ APA Dictionary of Psychology.

⁴ Ibid.

⁵ Ibid.

1 to perceive peripheral information diminishes. Information outside the lit area of
2 the flashlight beam is not available for perception (not seen). Selective attention
3 aims the "flashlight beam" toward what is essential in the visual field. Extreme
4 cases of selective attention are "tunnel vision."

5 **Visual fixation.**¹ The orientation of the eyes so that the image of a viewed
6 object falls on each fovea.

7 **Visual Saccade.**² A rapid eye movement that allows visual fixation to jump from
8 one location to another in the visual field.

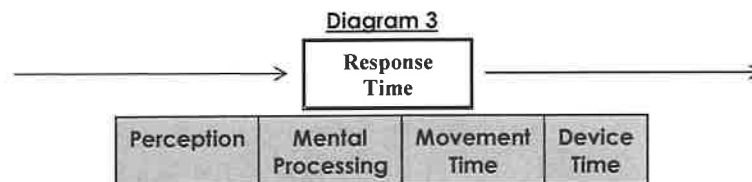
9 **Inattention Blindness.**³ It defines a failure to notice unexpected but perceptible
10 stimuli in a visual scene while one's attention is focused on something else in the
11 scene. The concept is demonstrated in this [video](#)⁴.

12 **Change Blindness.**⁵ It defines a failure to notice changes in the visual array
13 appearing in two successive scenes. This is surprisingly common whenever the
14 brief movement (the transient) that usually accompanies a change is somehow
15 masked or interrupted. The concept is demonstrated in this [video](#).⁶

16 **Tunnel Vision.**⁷ Defines a visual field defect producing the effect of perceiving
17 the world through a long tunnel or tube. Peripheral vision may be entirely lost.

18 Total Response Time

19 Response time is generally considered to comprise both reaction and
20 movement time parameters. Reaction time is usually considered as a cognitive
21 process, while movement time consists typically of observable behaviors.



22

¹ Ibid.

² Ibid.

³ APA Dictionary of Psychology

⁴ <https://www.youtube.com/watch?v=x9EdlhxZAvE>

⁵ APA Dictionary of Psychology.

⁶ <https://www.youtube.com/watch?v=ubNF9QNEQLA>

⁷ APA Dictionary of Psychology.

1 Reaction time is influenced by factors including the familiarity and level of
2 expectancy of the stimulus, the complexity of the relationship between the
3 stimulus and response, whether the response is difficult to perform, and the
4 sensory modality of the stimulus used. More-complex decisions therefore result in
5 longer reaction times. Reaction times for visual stimuli are longer than for those
6 for auditory stimuli. Movement time is a physical process involving the execution
7 of motor patterns devised during the reaction time phase. Movement time is
8 generally dependent on the complexity of the movements required.¹

9 Firearms related RT science is useful for a baseline understanding that in under
10 the absolute best conditions: (a) there will always be a delay between the
11 presentation of a threat stimulus and the pull of a weapon trigger, (b) what may
12 be considered an excessive number of rounds can be fired over the course of 1
13 or 2 seconds, (c) there will always be a delay between the removal of a threat
14 stimulus and the cessation of repeated rapid trigger press.

15 **Relevant Handgun PRT Research.**

16 Several studies explore PRT relevant to an officer firing their handgun. However,
17 these laboratory studies are guidelines and many variables must be considered
18 before applying the numbers as a one-size-fits-all model in the real world. For
19 instance, these studies are conducted in a controlled environment, have little
20 stress due to threat, require no or little decision making, and participants are
21 typically anticipating their response. For an accurate understanding of the
22 application of PRT in real world conditions see Green (2018).

23 Controlled studies examine: 1) The time it takes to start and stop firing, 2) The split
24 times between rounds during rapid fire, and 3) The time it takes the human body
25 to turn or fall to the ground.

26 Start Shooting:

- 27 • Bumgarner et al., (2007) found the average time for an officer to pull
28 the trigger on a drawn weapon (finger on trigger) to be .31s from the
29 presentation of a start shooting stimulus. The officer participants were
30 aware of the threat cue, how to react, and attentive to the stimulus
31 prior to the measurement. A secondary experiment using the same

¹ Campbell, A., Roelofs, A., Davey, P., Straker, L. (2013). Response time, pistol fire position variability, and pistol draw success rates for hip and thigh holsters. The Journal of the Human Factors and Ergonomics Society, 55(2). 425-434. Doi: :10.1177/0018720812453466

methods explored the influence of simple decision making on response time. The average time for an officer to make a simple decision to fire (finger on trigger) based upon a start shooting stimulus was .56s.¹

- Hontz (1999) conducted a similar experiment with the added requirement of accuracy. Depending on target size, average RTs ranged between 1.15s and 1.58s from a low ready position.²
- Lewinski et al., (2015) found the average time to fire from the "high-ready" position is .83s (sound stimulus). The minimum time was .44s and the maximum time was 1.46s.³

Stop Shooting:

Stop shooting research typically asks officer participants to pull the trigger as rapidly as possible and to stop once a visual stimulus (light) ceases to illuminate. In these studies, officers already know they are to stop firing and are attending to the stop shooting stimulus. Therefore, the stop shooting response in the real world is much more complex due to a myriad of factors that are not present in the laboratory.

- Bumgarner et al., (2007) found average stop firing times to be .35s with a range of .10s to .60s.
- Tobin & Fackler (2001) found average stop firing times to be .26s with 85% of officers firing one or two shots after the stop firing signal.⁴
- Jason (2010) found 69% of officers fired one to three rounds after the stop firing signal.
- Lewinski (2014) found average stop firing times to be .29s with officers firing one to four rounds after the stop firing signal (some took over 1.5s to stop firing).⁵

¹ Bumgarner, J.B., Lewinski, W.J., Hudson, W., Sapp, C. (2007). An Examination of Police Officer Mental Chronometry. *Journal of The Association for Crime Scene Reconstruction*. 12(3), 11-26

² Hontz, T.A. (1999). Justifying the Deadly Force Response. *Police Quarterly*. 2(4): p462-476.

³ Lewinski, W.J., Dysterheft, J.L., Bushey, J.M., Dicks, N.D. (2015). Ambushes leading cause of officer fatalities – when every second counts: analysis of officer movement from training ready tactical positions. *Law Enforcement Executive Forum*, 15(1).

⁴ Tobin, E.J. & Fackler, M.L. (2001a). Officer Reaction-Response Time Delay at the End of a Shot Series. *Journal of the International Wound Ballistic Association*. 5(1): p. 9-12

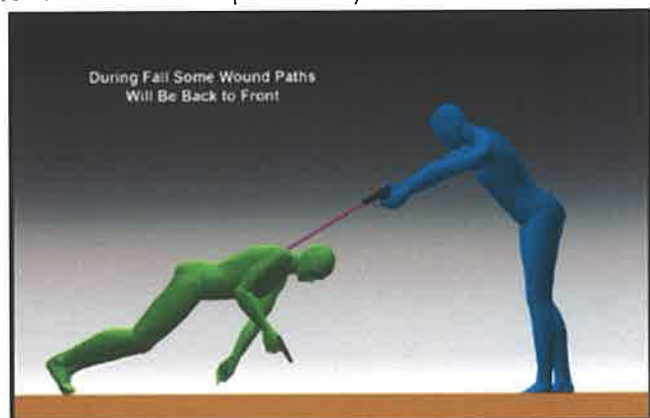
⁵ Lewinski, W.J., Hudson, W.B., Dysterheft, J.L. (2014). Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition. *Law Enforcement Executive Forum*, 13(2), 1-16. Retrieved from <http://www.forcescience.org/articles/reactionshooting.pdf>

Split Times/Rounds per second:

- Jason (2010) found officers fired an average of 4.44 rounds per second with an average shot interval of .23s.¹
- Lewinski et al., (2014) found average shot intervals of .28s.

Turning/falling movements:

- Tobin & Fackler (1997) found the mean time to turn (human torso) 90 degrees and 180 degrees is .31s and .68s respectively.²
- Dysterheft et al., (2013) found individuals (college athletes) could turn 90 degrees from the left and right in .31s and .29s respectively.³
- Jason (2010) found the human body collapses/crumples in 1.1s. Jason intimates that a threat may be fired upon 1 or more times before they begin to fall, 4 times during the fall, and 1 or more times after the body contacts the floor. He also states, "shots fired from a position in front of the target person during a fall to the ground may expose posterior areas of the person's body to bullet strikes. These gunshot wounds will be described in an autopsy report as "back to front" or "entry in posterior".



It should be noted that laboratory experiments are conducted in a highly controlled environment lacking the dynamics (i.e., stress, complex decision-making, and low light) of a real-world incident. These are but a few aspects which would likely influence TRT. Human Factors expert Marc Green summarizes the forensic application of response time as follows:

"Unfortunately, no single study can reproduce the full complexity of human behavior and its sensitivity to environmental variables. Moreover, studies cannot be quantitatively combined because no mathematical formalism

¹ Jason, A. (2010). Shooting dynamics: Elements of time and movement in shooting incidents. *Investigative Sciences Journal*, 2(1), 1-19.

² Tobin, E.J. & Fackler, M.L. (1997). Officer Reaction – Response Times in Firing a Handgun. *Journal of the International Wound Ballistic Association*. 3(1): p. 6-9

³ Dysterheft, J. L., Lewinski, W. J., Seefeldt, D. A., & Pettitt, R. W. (2013). The influence of start position, initial step type, and usage of a focal point on sprinting performance. *International Journal of Exercise Science*, 6(4), 320–327.

1 can capture the subtle effects of methodology and variable interaction or
2 incorporate general knowledge from the basic science literature on RT,
3 perception, and cognition. For the time being, RT estimation remains part
4 science and part intuition, that is, part application of a general knowledge
5 about human factors." (Green, 2000).

6 **Video Evidence**

- 7 • Care must be taken in interpreting video evidence. Human limitations
8 associated with vision, perception, attention, and memory will almost ensure
9 differences between the officer's experience and some part of the
10 impression provided by the video.¹ What appears on the video may not be
11 perceived by the officer or perceived in the same way by an observer.
- 12 • Video can be recorded in various frame rates but commonly provide 30
13 individual photographs per second (30FPS). Significant human movement
14 (e.g. punches, trigger pulls) can occur in approximately a quarter of a
15 second (7.5 frames) indicating visual aspects can be missed when viewing
16 the video at full speed and slow motion. Due to an observer's selective visual
17 attention and limited working memory, even video reviewed frame by frame
18 could allow for misinterpretation (e.g., change blindness, inattention
19 blindness).
- 20 • It is always valuable to review video via frame by frame to gather as much
21 information as possible and make reasonable interpretations of all the
22 available evidence. However, even frame by frame analysis can provide an
23 incorrect perspective regarding the speed at which events occurred.
- 24 • Video compression uses information from previous frames, later frames, or
25 both to predict content and save storage space. Therefore, it is possible
26 certain frames may not be an accurate reflection of environmental
27 information present at the time of the digital recording.

¹ Blake, D. (2015). Body Worn Cameras: Comparing Human and Device to Ensure Unbiased Investigations. *Law Enforcement Executive Forum*, 15(4). doi:10.19151/leef.2015.1504c

CASE REVIEW

Incident Summary

Pueblo County Sheriff's Department deputies investigated a carjacking that occurred at Pueblo Youth Correctional Facility (PYC). The decedent was located driving the stolen vehicle and was pursued by officers. A short time after the final pursuit terminated, Deputy Alphonso located the vehicle in an alleyway with the decedent inside the vehicle. The decedent fled from officers and was ultimately found hiding under a vehicle at 316 Quincy Street. The decedent armed himself and rapidly moved in the direction of Deputy Alphonso while raising his weapon. The descendant was subsequently shot and died from his wounds.

Scene

File: Crime Scene Photographs & Documents sjp_8676.jpg



1

File: Drone photographs dji_0148.jpg



2

3 **Suspect Photographs**

4 The following photographs were taken from the PYC surveillance system and
5 show the decedent at the time of the carjacking. The clothing is distinct and
6 matches that of the decedent fleeing from the crashed vehicle and at the
7 scene of the shooting (Folder: Still Photos of Carjacking).



8

1 **Weapon Info**

2 Deputy Alphonso said he had a 17-round magazine in his weapon and one
3 round in the chamber prior to this incident (Alphonso Interview). He had two
4 rounds remaining in the magazine inserted into his handgun (S&W M&P 2.0
5 9mm) at the conclusion of the shooting. Evidence photographs (File: Deputy
6 Jeffrey Alfonso Photographs) show a duty magazine with two rounds and a
7 round in the chamber of the weapon. See PPD report (Stephen Perez) for official
8 round count.

9

10 **File: Deputy Alphonso Photographs sjp_8391.jpg**



11

12 The decedent's weapon was discovered at the scene underneath his torso
13 immediately after the shooting (Deputy Montoya Interview). The weapon is a
14 Keltec PF-9 (9mm) handgun that had been reported "missing" from an FFL
15 inventory (ATF Firearms Trace Summary). Evidence photographs indicate the
16 weapon was loaded with a round in the chamber and a magazine containing
17 three additional rounds (File: Kel-Tec Handgun photographs and documents).

18 **File: Crime Scene Photographs sjp_8844.jpg** **File: Collected Evidence sjp_9296.jpg**



19

Autopsy Summary

Detective Bethany Solano attended the decedent's autopsy and provided the following description:

"Mr. Cedillo was brought out in a white coroner's body bag. X-rays were taken. Mr. Cedillo had a total of five defects on his person. Two projectiles were collected at autopsy. The three other defects were through and through. Defects were located in the right and left lung, the heart (aorta), spleen, small bowel, left kidney, and the sternum to include multiple ribs. Twelve hundred milliliters of blood was located in his right chest cavity" (PCSO Quincy CIT Reports.pdf).

The Autopsy Report identifies the gunshot wounds as follows (coroner report.pdf):

1. Gunshot wound to upper left chest with a described bullet trajectory of left to right, downward, and slightly front to back.
2. Gunshot wound to lateral left chest with a described bullet trajectory of left to right, front to back, and slightly downward.
3. Gunshot wound to lateral left torso with a described bullet trajectory of left to right, front to back, and slightly downward.
4. Gunshot wound to right knee with a described bullet trajectory of left to right and front to back.
5. Gunshot wound to right foot with a described bullet trajectory of downward and front to back.

Deputy Alphonso Interview and Fact Patterns

The following chart provides information obtained from Deputy Alphonso during his formal interview. The gray boxes are filled with narrative from other officers that support or diverge from Deputy Alphonso's statements. As a whole, this chart provides a forensic fact pattern of the events that led up to and including the officer-involved shooting of the decedent.

Time stamp	Fact Patterns
0700-07:50	Deputy Alphonso describes the information provided to him regarding the carjacking. This includes the description of the suspect (Hispanic male, goatee, dark colored hoodie), the stolen vehicle (Red 2016 Nissan Versa) and the fact the suspect was armed with a handgun.

<p>09:40-10:00</p>	<p>Deputy Alphonso said he received updated information from Deputy Borrer who had watched the surveillance video of the carjacking. The information Borrer saw in the surveillance video matched the events described by the victim of the carjacking.</p> <div data-bbox="375 428 1393 1134"> <p>PCSO dispatch radio traffic is directed to D32 (Deputy Borrer) and D84 (Deputy Alphonso) stating that a female was carjacked at gunpoint of her 2016 red Nissan Versa. D32 puts out information to "all units" consisting of: "20-ish year old Hispanic male, thin, black hoodie, khaki pants, mustache, goatee, 6'8, probably about a buck fifty a buck sixty with a gruff voice" (20S006083 Channel 1 Radio Traffic.wma; Timestamp 03:40-03:58). A later description from D26 (Deputy Herrera) states: "This party looks like he's wearing white shoes, possibly blue jeans, bluish grey...looks like it's a dark bottom of the hoodie with the top of the hoodie at the shoulders is gonna be white, dark hood and sleeves" (20S006083 Channel 1 Radio Traffic.wma; Timestamp 04:30-4:52). The hoodie color is later corrected to, "black on bottom white on top, greyish pants, white shoes, black hood over his head, and it looks like a black handgun" (20S006083 Channel 1 Radio Traffic.wma; Timestamp 5:40-6:05). Car to car traffic discussed PPD dispatch information concerning a red sedan traveling at 80mph (20S006083 Channel 1 Radio Traffic.wma; Timestamp 5:20-5:30).</p> </div> <div data-bbox="375 1167 1393 1503"> <p>Deputy Borrer wrote a report stating he watched the PYC surveillance video of the carjacking and saw the suspect (male, silver/black hoodie/silver-ish pants) point a gun at the female victim (PCSO Quincy CIT reports.pdf). Deputy Borrer's interview statement reflected what was written in his report and added the description of the decedent he saw after the shooting is the same as the (100% sure) description of the person he saw in the PYC surveillance video who had committed the carjacking while armed with a handgun (Borrer Interview p.2 - 5).</p> </div> <div data-bbox="375 1537 1393 1801"> <p>Deputy Montoya wrote in his report that he responded to an armed carjacking at the PYC. Deputy Montoya's report only describes the vehicle (2016 Red Nissan Versa Lic. CIX-767). Montoya wrote that he began searching the area for the suspect vehicle (PCSO Reports (Car-Jacking_CIT).pdf). Deputy Montoya's interview statement agrees with these facts (Montoya Interview p.2).</p> </div>
--------------------	---

	<p>Post-shooting ICC recording: Deputy Alphonso discusses his knowledge of the carjacking with Deputy Borrer by stating, "he robbed that girl at gunpoint and stole her car" (Deputy Borrer BWC Timestamp: 13:29:45 – 13:29:48 / Deputy Borrer ICC Timestamp: 13:29:45-13:29:48).</p>
10:40-11:20	<p>Deputy Alphonso describes the radio traffic from Deputy Herrera. Deputy Herrera was the first deputy to locate the decedent driving the described vehicle. The decedent fled from Herrera at a high rate of speed. Deputy Herrera reported seeing the driver and reported he matched the description of the original suspect.</p> <p>In his report, Deputy Herrera wrote that he saw the decedent driving the stolen Nissan. He describes making eye contact with the decedent as the decedent drove past him. Herrera wrote that he notified dispatch of engaging in a pursuit (PCSO Reports (Car-jacking_CIT.pdf Herrera Supplemental Report))</p> <p>In his report, Deputy Borrer wrote that he joined Deputy Herrera in pursuit of the decedent. He described the pursuit as being at a "high rate of speed" (PCSO Quincy CIT reports.pdf). Deputy Borrer's interview statement reflects what was written in his report and adds that he saw Herrera in pursuit as he ran out to his police vehicle in the PYC parking lot (Borrer Interview p.2).</p> <p>Deputy Montoya's report states he heard radio traffic about a red sedan on W. 4th Street traveling at a high rate of speed. He then describes a series of updates he heard over the radio regarding the vehicle (PCSO Reports (Car-Jacking_CIT).pdf). Deputy Montoya's interview statement reflects what is written in his report.</p> <p>Radio traffic: Deputy Herrera requests the license plate of the victim's vehicle (CIX767) and then states he may have the vehicle (16th & Craig?) (20S006083 Channel 1 Radio Traffic.wma; Timestamp 6:50-7:05). A short time later, D26 (Herrera) states he is trying to catch up to a possible match traveling at a high rate of speed. It becomes clear D26 is in pursuit as he announces the suspect ran a red light. He provides a description: "Hispanic male, goatee, black hoodie" and then states the suspect ran a red light and a stop sign. He then describes the vehicle heading "back towards PYC" (20S006083 Channel 1 Radio Traffic.wma; Timestamp: 7:30-8:00). The</p>

	pursuit is called out with speeds up to 95 mph on 4 th street (20S006083 Channel 1 Radio Traffic.wma; Timestamp: 08:00-10:10).
11:30-12:30	<p>Deputy Alphonso described radio updates he heard from off-duty Deputy Kayla Ruiz. He states he believes the decedent attempted to run Ruiz off the road and that he was driving recklessly (high rate of speed). (He later states he does not remember info about a gun put out by Deputy Ruiz.)</p> <p>Deputy Ruiz told investigators that the decedent almost struck her personal vehicle while passing her. She saw the decedent holding what appeared to be a small black handgun in his hand (PCSO Quincy CIT Reports.pdf). Deputy Ruiz can be heard on the radio reporting she saw the decedent with a handgun as he drove past her. Deputy Borrer acknowledged receipt of the information (Deputy Borrer ICC Timestamp: 13:15:25-13:15:3). Deputy Ruiz can be heard stating she last saw the suspect vehicle at Small avenue near the fairground gates (20S006083 Channel 1 Radio Traffic.wma; Timestamp 10:10-11:00). Deputy Ruiz is heard putting out weapon (handgun) information (20S006083 Channel 1 Radio Traffic.wma; Timestamp 12:50-13:00).</p> <p>Deputy Borrer wrote in his report that Deputy Ruiz spotted the suspect vehicle and that she saw the decedent waive a gun at her as he drove past her. Deputy Borrer wrote that he lost the suspect vehicle but later heard Pueblo PD radio traffic placing it at Quincy and Pitkin (PCSO Quincy CIT reports.pdf). Deputy Borrer's interview statement reflects what is written in his report regarding this information (Borrer interview p.3 & 6).</p> <p>The radio traffic prior to Deputy Alphonso locating the vehicle is inclusive of a PPD pursuit of the vehicle and deputies in the area of Pitkin & Quincy (20S006083 Channel 1 Radio Traffic.wma; Timestamp 13:05-13:50).</p>
13:40-14:40	Deputy Alphonso describes first locating the suspect vehicle and the decedent after it had crashed. He describes the decedent at the driver's side front door as he and Deputy Montoya approach in their police vehicle. He describes the police vehicles' emergency lights as operational and the decedent fleeing on foot as soon as he saw the deputy's approach. Deputy Alphonso and Deputy Montoya both exited their vehicle and chased the decedent on foot.

<p>24:00-26:30</p>	<p>Deputy Alphonso describes his ability to hear both PCSO and PPD radio traffic regarding this incident. He described knowing that the suspect vehicle had a flat tire and was in the area of Pitkin and Quincy. He then goes on to confirm that he saw the suspect vehicle crashed, and the decedent then fled on foot. Deputy Alphonso goes on to described putting this information out via radio. He also provides more details about his original sighting of the decedent in the alley. Deputy Alphonso states the driver's door was open, and the decedent was pulling items out of the vehicle (He later states he perceived this could be related to the suspect arming himself, but he didn't know for sure). At that point, his trainee turned on the lights and sirens, and it is Deputy Alphonso's belief the decedent knew he was law enforcement. Deputy Alphonso confirms the suspect fled upon seeing the marked police vehicle with lights and sirens approaching down the alley.</p> <div data-bbox="375 835 1393 1352"> <p>Deputy Alphonso's BWC shows the moment he sees the suspect vehicle and asks Deputy Montoya to back up. He puts the location out (Pitkin in the alley) on the radio and describes a "male party in the driver's seat." His weapon can be seen deployed, and the sirens on the vehicle can be heard. The emergency lights can be seen reflecting off nearby homes. Deputy Alphonso exits the vehicle and can be heard saying "run" or "running." He then engages in a foot pursuit during which he can be heard yelling, "get on the ground" one time. Alphonso states he lost the decedent near Quincy and Pipkin. He then announces the need for a perimeter (Deputy Alphonso BWC Timestamp 13:17:06-13:19:20). Deputy Alphonso's in-car camera also provides more visual detail on the initial contact when the decedent flees from officers (Alphonso ICC Timestamp: 07:17:02-07:17:31).</p> </div> <div data-bbox="375 1388 1393 1724"> <p>Deputy Alphonso's radio traffic provides his initial observations upon locating the decedent. He is heard stating: "we've got it, right here, 114 Pitkin, in the alley. Male party in the vehicle, driver's seat. He's running" (20S006083 Channel 1 Radio Traffic.wma; Timestamp 13:40-14:00). The foot pursuit radio traffic from Deputy Alphonso remains in the area of Quincy and Pitkin, which is also where he reports he no longer had a visual of the decedent. Alphonso requests a perimeter be established (20S006083 Channel 1 Radio Traffic.wma; Timestamp 14:00-14:40).</p> </div> <div data-bbox="375 1759 1393 1837"> <p>Deputy Borrer wrote in his report that he heard Deputy Alphonso on the radio state he had the vehicle in an alley near Quincy and</p> </div>
--------------------	---

Pitkin. He also heard Deputy Alphonso state the decedent had fled on foot from the scene (PCSO Quincy CIT reports.pdf). **Deputy Borror's interview statement** indicated Borror heard Deputy Alphonso on the radio, stating he (Alphonso) had located the suspect vehicle. This occurred "minutes" after hearing PPD radio traffic that they had lost the vehicle near Quincy and Pitkin (Borror Interview p.3).

Deputy Montoya wrote in his report that he heard radio traffic stating the suspect vehicle had been lost in the area of W. Pitkin ave. and Quincy St. As he traveled through the area, he wrote that Deputy Alphonso spotted the vehicle. He followed Deputy Alphonso's direction and located the vehicle in an alleyway. He described the scene as follows: "The red sedan had been wrecked and the whole front end was smashed in. The vehicle was perpendicular to the alleyway. There was a young male who matched the description of the suspect (wearing a white and black hoodie) going through the back seat of the vehicle. I activated my emergency lights to stop him and jumped out of the vehicle. I drew my office issued handgun and began yelling "STOP," and I heard Deputy Alfonso yelling as well. The male began running through yards behind houses, Deputy Alfonso chased after him" (Car-Jacking_CIT).pdf). **Deputy Montoya's interview statement** is consistent with much of the listed information (Montoya interview p.2).

Post-shooting, Deputy Alphonso says to Deputy Borror, "Well, that was him, that was the vehicle, that was the vehicle description" (Deputy Borror BWC Timestamp: 13:26:40- 13:26:44 / Deputy Borror ICC: 13:26:40- 13:26:44). He later describes seeing the suspect vehicle crashed and telling Deputy Montoya, "he's right there." Alphonso then describes; Montoya backing up, seeing the decedent at the driver's side door; the decedent seeing them; and then the decedent fleeing (Deputy Borror BWC Timestamp: 13:31:05 - 13:31:20 / Deputy Borror ICC Timestamp: 13:31:05-13:31:20).

Deputy Montoya wrote in his report that Deputy Alphonso pointed out the vehicle in an alley near Pitkin Ave. and Quincy St. He wrote, "There was a young male who matched the description of the suspect (wearing white and black hoodie) going through the back seat of the vehicle. I activated my emergency lights to stop him and jumped out of the vehicle. I drew my office issued handgun and began yelling stop, and I heard Deputy Alphonso yelling as

	well. The male began running...." (PCSO Reports (Car-Jacking_CIT.pdf)
15:40-15:50	Deputy Alphonso describes recognizing the decedent's description as the same as that described by Deputy Borrer.
15:50-16:05	Deputy Alphonso said he gave the decedent verbal commands to get down and to get on the ground as he (the decedent) continued to flee over fences. Deputy Alphonso's BWC audio provides audio of one command to "get on the ground" during the foot pursuit and before finding the decedent under the white truck (Deputy Alphonso BWC Timestamp: 13:18:10 – 13:18:13).
16:05-16:40	Deputy Alphonso described finding the decedent underneath a truck. Deputy Alphonso said he made a radio call to other officers about finding the suspect. Deputy Alphonso describes his perception that the decedent heard him put out his (decedent's) location, and that caused him (decedent) to come out from hiding under the truck. Deputy Alphonso's BWC shows the white truck in the driveway, and he can be heard putting out radio traffic concerning locating the decedent in the 300 block of Pipkin underneath a vehicle (Deputy Alphonso BWC Timestamp: 13:19:30-13:19:40 / 20S006083 Channel 1 Radio Traffic.wma; Timestamp 14:40-14:50). Deputy Borrer's report describes what he heard over the radio when Deputy Alphonso located the decedent under the truck and began moving to Alphonso's location (PCSO Quincy CIT reports.pdf). Deputy Borrer's interview statement reflects what is written in his report (Borrer Interview p.3). Deputy Montoya wrote in his report that he was attempting to locate the decedent when he heard Alphonso's radio traffic about locating the decedent under a truck (Car-Jacking_CIT).pdf). Deputy Montoya's interview statement is consistent with his report (Montoya interview p.3)
16:40-17:00	Deputy Alphonso describes the decedent running in his direction after having come out from under the truck. Alphonso states, "As he is running in my direction, I'm telling him to show me your hands, show

	me your hands. At that time, I saw a black handgun in his right hand, and it looked to me like that gun was coming up. So that's when I started shooting."
27:00-28:30	Deputy Alphonso said he did not see the gun in hand (R)until the decedent was running toward him. Deputy Alphonso describes seeing the gun when the decedent was about 15 yards away. Deputy Alphonso states he was in the open with no cover as the decedent ran toward him with the firearm.
18:40-19:15	Deputy Alphonso said the decedent "started going down, I never saw the handgun leave his hand, I never saw him drop it, he went down to the ground, he was still moving, I didn't know if he still had that handgun in his hand, I didn't know what he was gonna do with it, I kept firing until the movement stopped." Deputy Alphonso said he continued to perceive the decedent as a threat.
17:10-17:45	Deputy Alphonso said he was afraid for his safety, the safety of other officers, and the safety of the public based on the information he had and the currently unfolding situation. This included the decedent having already committed a carjacking and the fact that he had a gun in his hand while failing to comply with lawful directives.
	<p>Deputy Alphonso's BWC shows him pointing his weapon towards the white truck while shouting, "let me see your hands." The decedent immediately gets up, turns toward, and then runs offset, but in the general direction of Deputy Alphonso, who yells, "give me your hands." (Deputy Alphonso BWC Timestamp: 13:19:41)</p> <p>Shot are fired (See Shot Analysis Section for further information). After the shots, Deputy Alphonso's BWC shows several officers holding the decedent at gunpoint. Someone asks where the gun is located. Deputy Alphonso replies, "it's underneath him" (two times). (Deputy Alphonso BWC Timestamp 13:20:31).</p>
	<p>Deputy Borrer wrote in his report: "I ran around the front of the house with my gun out and observed Deputy Alfonso pointing his gun towards a male rounding the corner of the blue house. I heard Deputy Alfonso say drop the gun and then heard him fire multiple shots" (PCSO Quincy CIT reports.pdf).</p> <p>Deputy Borrer's interview statement expanded on his report. He said, "As I'm comin' (sic) around the front, I see (Jeff) engaging and as - as soon as I rounded the corner that's when I hear the - (Jeff)</p>

go, "Drop the gun," then I hear the shots fired. And then as I'm around the corner, I can see the suspect fall to the ground. And I'm approachin' (sic), and as I'm approachin' (sic), I can still see him movin' (sic) on the ground. So I didn't know if he was goin' (sic) for a gun, I didn't know what he was doin' (sic)." (Borror Interview p.3). Borror expanded further by stating, "As I was comin' (sic) up it - it is - at that point, it was - as I was comin' (sic) around the corner more and more I thought about it was either gonna (sic) be (Jeff) or it was gonna (sic) be me. He just happened to turn the way that (Jeff) was instead of comin' (sic) at me. If - you know, if he woulda (sic) came at me with the gun I woulda - I woulda (sic) made the same decision. I mean, given the circumstances of the - the felony that had already been committed. Him already pointing the gun and somebody threatening somebody's life (unintelligible) and leading us on a pursuit across town at early morning hours. Obviously, at that point, we know he's a danger to the general public. And, you know, I felt our - my life woulda (sic) been in jeopardy if he had pointed the gun at me (Borror Interview p.7). However, it should be noted that Borror never saw a gun in the hands of the decedent pre or post-shooting outside of the PYC video surveillance. He only saw the decedent drop to the ground as Alphonso was firing his weapon (Borror Interview p.7).

Deputy Borror's BWC shows that he is in front of 318 Quincy Street (west side) when the first shot is fired. His body-worn camera's field of view is obstructed, and therefore, it does not show the decedent at this moment or prior to this moment. As Deputy Alphonso continues to fire and Borror closes the distance, the decedent is never visible on Borror's BWC until he passes a large brown shrub at the corner of 316 Quincy St. The last shot fired by Alphonso occurs as the BWC's field of view just begins to clear the bush (Deputy Borror BWC Timestamp: 13:19:45-13:19:53). It should be noted that this is not an objective indication of what Borror saw, only what the fixed BWC FOV was able to record.

Deputy Montoya wrote in his report: "As I turned on Quincy from the alleyway, I saw Deputy Alphonso with his handgun drawn yelling (sic). I was about half a house away when I saw Deputy Alphonso begin shooting his handgun at the suspect. AT this time, I could not see the suspect. Once I cleared the house, I saw the suspect fall to the ground. I held the male suspect at gunpoint and continued to give loud verbal commands...I rolled the male over to his side to secure both hands and found a green handgun under him" (PCSO

Reports...During the pat-down, I found a fully loaded extra magazine in one of his pockets" (Car-Jacking_CIT.pdf).

Deputy Montoya's interview statement expands upon what he saw of the shooting. He said, "I saw Deputy (Alphonso) with his, uh, issued handgun out and he was - it - I couldn't hear anything, but I saw him mouthing words. It looked like he was screaming, uh, so I kind of turned a little bit more and I saw a male running toward him and just because I saw (Jeff) h- what appeared to be yelling I started yelling, "Stop," and then I saw (Jeff) start firing his - his handgun. At that time, I - I continued running, uh, Deputy Borrer was in front of me. So, I couldn't really see anything else past Borrer but I w- ran around Borrer and as I ran around Borrer I saw the suspect fall to the ground. So, at that point, me, Borrer and, uh, Deputy (Alphonso), uh, went up. We all had our hand - handguns drawn and we ran up and gave the suspect very loud direct verbal commands not to move, not to reach for any weapon and to stay down (Montoya Interview p.3).

Montoya further describes only seeing the lower half of the decedent as he ran toward Alphonso. He did not see a gun at that time. He states that he is 100 percent sure the description of the carjacking suspect (Hispanic male, black and gray hoodie) was the same person he saw at the wrecked car and the same person Alphonso shot (Montoya Interview p.6 & 10).

Deputy Montoya said he rolled the decedent over after the shooting and saw a green and black handgun on the ground. Montoya describes the handgun as under the decedent's torso¹ (Montoya Interview p.11-12).

PPD Officer Bradley Padilla wrote in his report: "I entered the back yard of 316 Quincy and walked towards the residence. I could hear the Sheriff's Deputy in front of the residence, stating he was underneath a vehicle. I witnessed the male underneath a white truck parked in the driveway of the residence. I began yelling commands at the suspect to show us his hands in which he exited from underneath the vehicle and began running towards the front of the residence. I could hear the Sheriff's Deputies in the front of the residence commanding the male to show his hands. Several gunshots were heard after the commands were given. PPD Padilla said he approached the decedent just after the shots are fired and saw a handgun underneath his legs. He "secured the

¹ Montoya seems to have visually demonstrated for detectives where the gun was in relation to the decedent's person, but I do not have a video of the interview.

firearm by stepping on it" (Incident_20005037.pdf / Padilla Supplemental Report).

PPD Officer Michael Cira wrote in his report: "I heard other officers and deputies begin to yell at the suspect, who was hiding underneath a truck in the driveway that runs between 312 Quincy and 316 Quincy. I heard the deputies give the suspect loud verbal commands to stop. As we approached the driveway, I heard several gunshots. We then came out onto the driveway, and I observed a male party, laying in the yard at the corner of 312 Quincy Street" (Incident_20005037.pdf / Cira Supplemental Report).

PPD Officer Andrew Griffiths wrote in his report: "I observed several Sheriff's deputies and Officers Bradley Padilla and Michael Cira running northbound towards the alleyway of the 300 block of Quincy St. I joined in on the foot pursuit and was informed by deputies that the male party was last seen in the area of the residence of 316 Quincy St; which was described to me as a blue-trimmed house. Officers Cira, Padilla and myself went through the backyard where officers and deputies stated the suspect that took off on foot from the vehicle was hiding under a truck parked in the driveway of 316 Quincy St. I, along with other officers began to give loud verbal commands to the suspect to "show us his hands" it was at that point the suspect got out from under the truck and began running northbound towards 312 Quincy St. Where Sheriff's Deputies shot the suspect. Once the suspect was down, I remained with the deputies until they had placed the suspect in handcuff restraints. While deputies were applying those restraints, I heard one of the deputy's state that the suspect had a firearm under his person (Incident_20005037.pdf / Griffith Supplemental Report).

PPD Officer Vincent Nash wrote in his report: "I exited my patrol vehicle about three houses (sic) down from the Deputy and began to approach when I heard the Deputy start to yell, "Show me your hands." The Deputy then opened fire, and I observed a male party laying on the ground of 316 Quincy St." (Incident_20005037.pdf / Nash Supplemental Report).

PPD Officer Thomas Decesaro wrote in his report: "I was with Officers Padilla, Claussen, and Cira. As we approached from the backyard of 316 Quincy Officer Padilla yelled for the male suspect, later identified as Jesse Cedillo (2/28/00) to show us his hands. As we

approached, I heard approximately ten shots. We rounded the corner of 316 and observed Deputy Alfonso & Montoya with their firearms drawn at the suspect at the corner of 312 Quincy. Cedillo was down on the ground and appeared to have been injured from gunfire. I put on medical gloves and conducted a search for more weapons after Officer Padilla placed Cedillo in handcuffs. I could observe a handgun on the ground, and I located a magazine to a handgun in Cedillo's right pants pocket" (Incident_20005037.pdf / Decesaro Supplemental Report).

PPD Officer Cristina Marroquin wrote in her report: "I heard multiple gunshots and Officer Claussen air shots had been fired. I approached the area and observed the male, Jesse Cedillo (DOB: 2/28/2000) with his hands under his body. Officers did give Jesse verbal commands to show his hands. As I approached Jesse, I noticed he was bleeding from multiple area; he was placed in handcuffs and searched for any more weapons. Fire rescue (33) arrived along with AMR and checked his vitals" (Incident_20005037.pdf / Decesaro Supplemental Report).

Post-shooting, Deputy Alphonso says to Deputy Borrer, "I saw a gun in his hand" (Deputy Borrer BWC Timestamp: 13:26:44-13:26:45 / Deputy Borrer ICC Timestamp: 13:26:44-13:26:45). Deputy Borrer discusses seeing the decedent run from under the truck and states: "I didn't see the gun at that point, but I saw him running and then I saw you shooting. I was right there." He then says, "Dude, if it hadn't been you brother, it would have been me." (Deputy Borrer BWC Timestamp: 13:32:50-13:32:59 / Deputy Borrer ICC Timestamp: 13:32:50-13:32:59). Deputy Alphonso states in reply, "I didn't see the gun at first, because he was underneath that truck, and then he saw me, he heard me call it out - I got him underneath the truck. He's running towards me, and he started coming around the side of that house, and that's when I saw the gun. (Deputy Borrer BWC Timestamp: 13:33:19-13:33:39 / Deputy Borrer ICC Timestamp: 13:33:19-13:33:39).

Deputy Borrer's ICC captures the following audio. Deputy Alphonso is faintly heard talking to someone (via telephone) as he waits with Deputy Borrer. I heard the following: "I just thought I'd give you a call and let you know. Pause. He carjacked a guy over on...and he had a gun. Pause. Everything's good - I love you too". This conversation occurred after both Deputy Borrer and Deputy Alphonso's BWC recordings ended (Deputy Borrer ICC Timestamp

13:37:40-13:28:16). Deputy Borrer is also heard on a telephone conversation after the BWC recording ends. In reference to the shooting, he said, "I didn't shoot, but I was right there, my buddy shot, and I was in the process of pulling the trigger"¹ (Deputy Borrer ICC Timestamp 13:37:20-13:38:33). This last statement was clarified in **Deputy Borrer's interview**, where he stated he had his finger on the trigger as he approached the down but moving decedent. He explained that as he approached, the decedent was moving, and he "didn't know if he (decedent) was gonna (sic) try to pull the gun back out on us" (Borrer Interview p. 13).

Witness Meghan Lyndall said she was drawn to look outside her house (327 Quincy Street) due to the police vehicles in the area. She viewed the shooting from her second-story bedroom window that is ~160 feet from the shooting scene (see annex). She indicates there is a tree across the street but that it did not obstruct her view of this incident. She said she saw one man standing alone (Deputy Alphonso) before she saw a second man come out from between the houses. She heard somebody yell and saw the male react as if startled. She heard yelling again, and then the officer started firing. Meghan said she saw a shot hit the decedent (M. Lyndall Transcript p. 10). She described the decedent as appearing from between the houses and running/jogging toward the street, but she did not feel as if he was running directly at the officer (p. 16). Meghan said she did not see anything in the decedent's hands (p.16). Meghan described the shot cadence as one shot and then a couple of second pause before the rest of the shots were fired (p.16-17). She describes the decedent going to the ground and Alphonso continuing to approach while shooting. She could not see what the decedent was doing as Alphonso blocked her view (p.17). She also indicated she looked away at some point proximal to the shooting and is unsure "how much of it I was staring at" (p.18). Meghan said the EMTs came, and "they" (police) waved them off and to not bother looking at the decedent (p.10). Meghan further described the EMT's as being "shooed" away by police and that "they didn't even stop. They just turned around and walked away" (p. 21). ²

² Deputy Montoya's BWC shows two officers bent over the decedent as EMT's arrive and roll a gurney up to their location. Fire department personnel arrive on scene a short time later. It is not possible to differentiate between police and medical personnel, nor can I see what is being done medically to the decedent. However, the ambulance gurney remains on location for at least 4 minutes and I see no indications of medical personnel being told to leave the scene (Montoya BWC Timestamp 13:24:04 -13:28:14). The object facts indicate there was no "couple of second pause" during the shot cadence.

	<p>Meghan indicated she did not feel the number of rounds that were fired was appropriate (p.24). She then went on to say she knew the decedent had committed a carjacking and that, "that's not an offense punishable by death, though. So, I don't think anything that you guys can tell me to update me on it is gonna make me feel better. 'Cause he wasn't brandishing a weapon. He didn't have time to stop and point anything at that man." (p.25)</p>
	<p>Witness Frank Lyndall said he also noticed the police vehicles near his home (327 Quincy Street). Frank said he recorded the shooting from his downstairs front window. He began recording when he saw an officer (Alphonso) draw his weapon (F. Lyndall Interview Transcript p. 12-14). Frank heard Deputy Alphonso yell something at the decedent. He states no other law enforcement officers around at this moment (p.15). He then heard shots fired in what he described as a calm, intended, steady trigger-pull (p.16). Frank heard two shots before he saw the decedent who was ultimately seen running towards Alphonso or in his direction (p. 17). When asked if he saw a firearm, Frank said, "I mean I didn't see...in the heat of the moment, I'm not looking for that" (p.18). He describes the decedent as falling to the ground and then get shot a few more times. Frank describes seeing the decedent move while on the ground. He states, "I see him get shot on the ground, cause I could see his body moving as he was getting shot. Whenever he'd get trigger pull, boom, the body moved, trigger-pull, boom, the body moved" (p.19). Frank said he saw officers' approach and "investigate the body, see if, the suspect was doing anything or alive or I don't know..." (p.20-21). He said he saw the ambulance show up and states that the police would not let the EMT's near the body. Frank adds that he "didn't stay out there watchin' the entire time" (p.22).¹</p>
18:00-18:40	<p>Deputy Alphonso described himself as a firearms instructor. There is an indication he is being asked about his knowledge of use of force. He states, "absolutely...he had a deadly weapon in his hands, he had just committed a felony with one, and I was afraid he was gonna commit another felony or hurt me or someone else."</p> <p>Deputy Borrer's interview provides some support for Alphonso's decision to use deadly force. He states, "you know if he woulda came at me with the gun I woulda - I woulda made the same</p>

¹ See previous footnote regarding Meghan Lyndall's statement.


	<p>decision. I mean, given the circumstances of the - the felony that had already been committed. Him already pointing the gun and somebody threatens somebody's life (unintelligible) and leading us on a pursuit across town at early morning hours. Obviously, at that point, we know he's a danger to the general public. And, you know, I felt our - my life woulda been in jeopardy if he had pointed the gun at me (Borror Interview p.7).</p>
19:20-19:42	<p>Deputy Alphonso said he was not aware there were other officers in the area until he heard them as he moved toward the decedent (post-firing).</p> <p>Deputy Borror's interview statement provides support for this perspective. Borror said that he came around the corner of a residence as Alphonso fired the first shot and that Deputy Montoya arrived after him. The various videos are supportive of Alphonso being alone before, and at the moment the first shot is fired.</p>
20:00-20:50	<p>Deputy Alphonso is asked how many times he fired; he responds by saying, "At the time, I had no idea." Only later during a round count did he discover he had fired 15 rounds.</p>
29:25-29:40	<p>Deputy Alphonso confirms he was afraid of being shot and killed by the decedent.</p>
29:50-30:55	<p>Deputy Alphonso said he believes he was stationary when he began firing and then slowly closed the distance after the decedent went down. Deputy Alphonso is asked to explain why he closed the distance and answers that he could not see the gun, and the decedent was still moving. Deputy Alphonso said he is trained to close the distance with a suspect if it is safe to do so. Deputy Alphonso agreed that he was minimizing the distance to get a better visual of the decedent, what he was doing, and where the gun was located.</p>
35:25-36:00	<p>Deputy Alphonso said he was aiming for center mass when he fired. He stopped shooting when the decedent went down and stopped moving. Deputy Alphonso said he didn't know where the gun was, so he felt the decedent was still a threat based on continued movement and his belief that the decedent was still armed.</p> <p>Deputy Borror's interview statement provides some additional perspective on this portion of the incident. He indicated the decedent remained a threat while he was approaching with his finger on the trigger. Borror said, "At that point, with him still moving, I didn't know if (Jeff) had hit him or he had not hit him or - or if he</p>

	had just duck (sic) down to had (sic) hit – I don't know. So I was ready to engage as need be (Borror Interview p.15).
--	--

Shot Analysis

The following description is founded upon the video forensic work completed by Shellie Friesen. See her report for further details. The main information in the white boxes indicates the approximate moment a shot was fired by Deputy Alphonso, as determined by Friesen. The shaded boxes provide context by describing the actions of the decedent proximal to the shot. The context is my interpretation of the side-by-side video frames (side-by-side video.pptx).

Intentionally left blank

Video Timecode	Frame	Description
13:19:45:233-13:19:48:233		<p>There is movement on the driver's side of the truck in the driveway, but it is not until frame #57 that it is clear the decedent has exited and beginning to stand. The decedent then appears to turn toward the direction of Alphonso and run in that same direction. While it is not conclusive due to the low quality of the video – as the decedent runs, I would expect to see opposing bilateral movement of the arms/legs¹ on the light background provided by the side of the house. There is a lack of upper body appendages visible in the video until after the first shot is fired. Subsequent frames (i.e., F107) that show the right arm/hand with an object consistent with a gun allow for an inference that the decedent had the object in front of him while running toward Alphonso (I-Frames 92 & 107 enlarged 50% and cropped via snipping tool; See annex for full-frame capture). Approximately 300 milliseconds exist between the top and bottom frame.</p> 
13:19:48:266	91	<p>Shot #1 (BWC Alfonso.pptx) 0ms</p> <p>The decedent is running along the white house and is decreasing the distance between himself and Deputy Alphonso. He may be reacting to the shot being fired as subsequent frames show him raising the weapon up and ducking his head down.</p>
13:19:48:566	100	<p>Shot #2 (BWC Alfonso.pptx) 300ms</p> <p>The decedent continues to run along the side of the white house and continues to decrease the distance between himself and Deputy Alphonso. It</p>

¹ Example video of opposing bilateral appendage movement while running:
<https://www.youtube.com/watch?v=Jd8Jib7iZY>

		appears he may be veering away in an avoidance posture.
13:19:48.833	108	Shot #3 (BWC Alfonso.pptx) 267ms The decedent continues to close the distance but also appears to be attempting to avoid the shots as he comes closer to the white house in a semi-crouched fashion. The right arm/hand (gun) appears up above his head.
13:19:49.133	117	Shot #4 (BWC Alfonso.pptx) 300ms The decedent just reaches the corner of the white house. His right arm/hand (gun) is still extended up and away from his body.
13:19:49.400	125	Shot #5 (BWC Alfonso.pptx) 267ms The decedent turns the corner of the house with the right arm/hand (gun) still extended up and away from his body.
13:19:49.666	133	Shot #6 (BWC Alfonso.pptx) 266ms The decedent is just past the corner of the house. The right arm/hand (gun) continues to be extended upward. The decedent begins to fall at the end of this series.
13:19:49.966	142	Shot #7 (BWC Alfonso.pptx) 300ms The decedent's hands appear to move out in front of him as he continues to fall. His right arm/hand (gun) appear to lower to the same general area where the gun was located at the corner of the house.
13:19:50.233	150	Shot #8 (BWC Alfonso.pptx) 267ms The decedent continues to crumple to the ground. A bullet appears to strike the ground causing a large amount of debris to fly up from the ground in front of the decedent. The decedent is fully prone on his right side at the end of this series of frames.
13:19:50.500	158	Shot #9 (BWC Alfonso.pptx) 267ms The decedent is prone on his right side and there appears to be significant movement across his whole body. Alfonso's BWC shows the decedent is partially obscured while the neighbors cell phone video is much more clear.
13:19:50.766	166	Shot #10 (BWC Alfonso.pptx) 266ms The decedent is prone and most movement if not all movement appears to have ceased at the end of this series.

13:19:51:100	176	Shot #11 (BWC Alfonso.pptx) 334ms There is a shot at the beginning of this series that strikes the ground in front of the decedent. A large amount of dirt is displaced. The decedent does not appear to move within this series.
13:19:51:700	194	Shot #12 (BWC Alfonso.pptx) 600ms The decedent's upper body begins to move at the end of this series.
13:19:52:066	205	Shot #13 (BWC Alfonso.pptx) 366ms The decedent's upper and lower body move significantly in this series. Possibly due to a gunshot wound.
13:19:52:533	219	Shot #14 (BWC Alfonso.pptx) 467ms The decedent continues to move significantly and then slows/stops towards the end of this series.
13:19:53:200	239	Shot #15 (BWC Alfonso.pptx) 667ms The decedent continues to move significantly and then slows/stops towards the end of this series. There continues to be some movement even after the last shot is fired.

1
2
3
4
5
6
7
8
9
10
11
12
13

Intentionally left blank

Expert Opinions

5. **Opinion 1: Colorado Peace officers are taught the federal and state standards for search and seizure that includes operationalizing the legal concepts of reasonable suspicion and probable cause (Colorado POST Manual 2020 E-3 – E-4; PCSO G.O. Section 3 Part 5). Based upon a thorough review of the materials provided to me, coupled with my knowledge, training, and experience, I opine Deputy Alphonso complied with law enforcement standards and training as set forth by the State of Colorado when he attempted to detain/arrest the decedent.**

5.1. Colorado Revised Statute 16-3-103 (Stopping of suspect) states that a peace officer may stop any person who he reasonably suspects is committing, has committed, or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions.¹

5.1.1. I have taught or professionally discussed the concept of reasonable suspicion to law enforcement professionals and attorneys in several states. I have found the concepts to be universally trained and understood amongst peace officers across the nation. My experience in defining reasonable suspicion is aligned with the legal guidance from Colorado law such as:

- **Limited, temporary detention permissible though no probable cause exists.** A police officer may, in appropriate circumstances and in an appropriate manner, approach a person for purposes of investigation of possible criminal behavior even though there is no probable cause for arrest.²
- **In order to lawfully detain an individual for questioning:** (1) A police officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; (2) the purpose of the detention must be

¹ Colorado Legal Resources provided by LexisNexis®

² Ibid

reasonable; and (3) the character of the detention must be reasonable when considered in light of the purpose.¹

- **The reasonableness of an officer's suspicion** is determined from the totality of the circumstances in which the suspicion arose.²

5.2. Colorado Revised Statute 16-3-102 (Arrest by a Peace Officer) states that a peace officer may arrest a person when: (a) he has a warrant commanding that such person be arrested, or (b) any crime has been or is being committed by such person in his presence, or (c) he has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person to be arrested.³

5.2.1. I have taught or professionally discussed the concept of probable cause to law enforcement professionals and attorneys in several states. I have found the concepts to be universally trained and understood amongst peace officers across the nation. My experience in defining probable cause is aligned with the legal guidance from Colorado law such as:

- **Probable cause deals with the probability that a crime has been or is being committed.**⁴
- **Consequently, probable cause exists where** the facts and circumstances within the officers' knowledge, and of which they had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.⁵
- **This level of probability must exist at the actual moment of arrest and must be based on known facts,** not on mere rumor or conjecture.⁶
- **The information relied upon to satisfy a warrantless arrest is sufficient if it** warrants a reasonably cautious and prudent police officer in believing, in light of his training and experience, that an offense has been committed and that the person arrested probably committed it.

¹ Colorado Legal Resources provided by LexisNexis

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

1 However, it need not be of that quality and quantity necessary to satisfy
2 beyond a reasonable doubt.¹

- 3 • **All evidence within the knowledge of arresting officer may be**
4 **considered.** In assessing probable cause to arrest without a warrant, all
5 evidence within the knowledge of the arresting officer may be
6 considered even though it may not be competent evidence at trial.²
- 7 • **As well as an officer's training and experience.** Whether or not the
8 arresting officer reasonably believed a crime had been or was being
9 committed such as to make a warrantless arrest is to be considered in
10 light of the officer's training and experience.³

11
12 **5.3.** The trier of fact is the only authority able to formally determine whether
13 Deputy Alphonso had a legal basis (reasonable suspicion/probable
14 cause) to detain or arrest the decedent. However, as a police practices
15 expert, I offer the following objective facts that Deputy Alphonso knew or
16 should have known when he first contacted and attempted to arrest the
17 decedent. These facts should be viewed through the lens of a reasonable
18 peace officer with similar training and experience to Deputy Alphonso:
19

20 **5.4.** In his interview, deputy Alphonso describes the information provided to
21 him regarding the carjacking. This includes the description of the suspect
22 (Hispanic male, goatee, dark-colored hoodie), the stolen vehicle (Red
23 2016 Nissan Versa), and the fact the suspect was armed with a handgun.⁴
24

25 **5.4.1.** It should be noted that a reasonably trained peace officer in Colorado
26 would know that an armed carjacking is a violent felony crime. CRS 18-
27 1.3-406(2)(a)(I) defines a crime of violence as one in which the suspect
28 "used, or possessed and threatened the use of, a deadly weapon"
29 during the commission of a series of crimes that include aggravated
30 robbery (carjacking: CRS 18-4-302).
31

32 **5.5.** Deputy Alphonso said he received updated information from Deputy
33 Borrer, who had watched the surveillance video of the carjacking. The

¹ People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

² People v. Gonzales, 186 Colo. 48, 525 P.2d 1139 (1974)

³ People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975)

⁴ Deputy Alphonso is never asked probing questions regarding the crime (carjacking), his related knowledge and experience, or how a violent felony informs him of the appropriate procedures/tactics to be used in apprehending the suspect and why.

information Borrer saw in the surveillance video matched the events described by the victim of the carjacking. This information would enhance a reasonable officer's perception of having reasonable suspicion or probable cause.

5.6. The Pueblo County Sheriff's office engaged in a pursuit with the decedent. During his interview, Deputy Alphonso said he heard the radio traffic regarding the pursuit of the carjacking suspect. This information included Deputy Herrera's statements of the suspect's description and his being in pursuit at high speeds. Deputy Alphonso also said he heard Deputy Ruiz's statement regarding the decedent attempting to run her off the road and that the decedent was driving recklessly.¹

5.6.1. It should be noted that the decedent's driving behaviors, reported over the Pueblo County Sheriff's Department radio are indicative of reckless driving and other potential criminal offenses to include assault with a deadly weapon. A trained and experienced peace officer would have reasonable concerns regarding the decedent's driving behaviors that should be considered under the totality of the circumstances.²

5.7. Deputy Alphonso/Montoya's dashcam shows them responding to the pursuit with lights and sirens until the pursuit is terminated (Alphonso ICC 7:07:55- 07:13:12). A short time after Pueblo County Sheriff's Deputy's ceased their pursuit, Pueblo Police department officer Marroquin located the suspected vehicle and started a second short pursuit with the decedent that ended near Pitkin & Quincy. PCSO Dispatch is heard informing units of the PPD pursuit (Alphonso ICC 07:14:00 – 07:14:05). Pueblo County Sheriff Deputies were also involved (Marroquin ICC: 07:13:40 – 07:14:04). PCSO Dispatch provides radio traffic that PPD is no longer in pursuit (Alphonso ICC 07:14:48). Deputy Alphonso and Montoya locate the stolen Nissan in a nearby alley about 2 seconds later (Alphonso ICC 07:17:00). Per their in-car camera, the Nissan was clearly involved in a collision, and a person matching the decedent's description is at the

¹ Deputy Ruiz also stated over the radio the decedent displayed a handgun to her. Deputy Alphonso said he did not remember hearing this information.

² Deputy Alphonso is not asked what crimes he believed might have been committed during the pursuit or how the decedent's behaviors might inform him of the appropriate procedures/tactics to be used in apprehending the suspect and why.

1 driver's door. As the police vehicle, with overhead emergency lights
2 activated, drove toward the decedent, he fled on foot (Alphonso ICC
3 07:17:12-07:17:19).



4



5

6 **5.8.** The objective facts, (as seen in Alphonso's ICC video) that a reasonably
7 trained officer should consider in establishing probable cause to arrest the
8 decedent includes: (a) the vehicle seen matches the one from the
9 original call (Red Nissan Versa), (b) the vehicle seen matches the
10 description of the one involved in the pursuit, (c) the pursuit ended in the

proximity of this location and in time (Quincy/Pitkin), (d) there is a sole male subject seen that is associated with the suspect vehicle, (e) there are no other person's in the general vicinity, (f) the male's clothing as seen in the ICC video is consistent with the suspect clothing description (white/black hoodie), and (g) the person in the video, who knew or should have known the police were attempting to stop him (approaching police vehicle w/lights and sirens) fled from the scene of a traffic collision.

6. Opinion 2: Colorado Peace officers are taught the federal and state standards governing the use of physical force when making an arrest. (Colorado POST Manual 2020 A-33 – A37; PCSO G.O. Section 3 Part 1, 3, 4, 5, & 7). Based upon a review of the materials provided to me, coupled with my knowledge, training, and experience, I opine Deputy Alphonso complied with law enforcement standards and training as set forth by the State of Colorado when making the decision to utilize deadly force.

6.1. Per the Colorado POST Manual (2020)¹, students are trained to understand the role of arrest and control techniques and tactics in the use of force, including, but not limited to, CRS 18-1-707 and 18-8-801 through 18-8-303. Students are also trained on constitutional case law, including but not limited to *Graham v. Connor*, 490 U.S. 386 (1989). In fact, the training materials on "decisional shooting" appear to be oriented toward training the constitutional standard based on the following narrative (H-15):

- "Decisions to shoot must be based on the lawful use of deadly force; considerations (factors are):
 - *Graham v. Connor* (SCOTUS, 1989):
 - It will be dependent on the facts and circumstances confronting officers in each particular case at the time of the use of force,
 - The severity of the crime at issue
 - Does the suspect pose an immediate threat to the safety of officers or others,
 - Is the suspect actively resisting arrest or attempting to evade arrest by flight.
 - *Tennessee v. Garner* (SCOTUS 1985):

¹ Colorado POST training is not the equivalent of law and may provide training that exceeds the constitutional or state legal standard. However, the Colorado POST manual provides a foundation for the legal standards officers are trained and held accountable to.

- 1 ▪ Officers must give warning where feasible
- 2 ▪ Application of deadly force based on probable cause
- 3 ○ Plumhoff v. Rickard (SCOTUS 2014):
- 4 ▪ If officers are justified in firing at a suspect in order to end a severe
- 5 threat to public safety, the officers need not stop shooting until the
- 6 threat has stopped."
- 7
- 8 • Additionally, the manual provides that the Graham standard "must be
- 9 applied based upon the totality of the circumstances."
- 10

11 **6.2.** Per the Colorado POST Manual (2020), Colorado Revised Statute 18-1-707
12 (Use of Physical Force) states that a peace officer is justified in using
13 reasonable and appropriate physical force upon another person when
14 and to the extent that he reasonably believes¹ necessary to (a) affect the
15 arrest, (b) prevent the escape, (c) to defend himself or a third party from
16 what he reasonably believes to the use or imminent use of physical force.

17 A peace officer is justified in using deadly physical force upon another
18 person for the above-listed purposes when he reasonably believes it is
19 necessary to: (a) defend himself or a third party from what he reasonably
20 believes to the use or imminent use of deadly physical force, or (b) to
21 affect an arrest, or prevent the escape from custody of a person whom
22 he reasonably believes (1) has committed or attempted to commit a
23 felony involving the use or threatened use of a deadly weapon, (2) is
24 attempting to escape by the use of a deadly weapon, or (3) otherwise
25 indicates that he is likely to endanger human life or to inflict serious bodily
26 injury to another unless apprehended without delay.

27 Several bullet points of case law are also listed in the manual for guiding
28 Colorado officers in the use of physical force.

29 **1. Officers cannot use excessive force in making an arrest or bringing one**
30 **into submission.**

31 **2. The officer is not required to retreat.** A police officer who is assaulted by
32 one whom he is lawfully attempting to arrest is not required to retreat

¹A reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances that if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody.

1 to the wall before resorting to such defensive measures as may
2 reasonably seem necessary to protect himself against loss of life or
3 great bodily injury

4 **3. Authority to take life based on apparent necessity.** This section does
5 not clothe an officer with the authority to judge arbitrarily that it is
6 necessary to take life in order to prevent the rescue of his prisoner. He is
7 not warranted in taking life unless there is an apparent necessity for it,
8 and if he does so, he is not permitted to take shelter behind his official
9 character.

10
11 **6.2.1.** It should be noted that by policy (GOPP Section 3 Part 7), the Pueblo
12 County Sheriff's Department trains their officers on their response to
13 resistance policies and requires them to demonstrate proficiency with
14 all approved weapons at least annually. The Pueblo County Sheriff's
15 Department Policy states, "the guidelines for the use of physical and/or
16 deadly force by deputies will be based upon Colorado Revised
17 Statutes" (GOPP Section 3 Part 1). Therefore, Deputy Alphonso should
18 have a background of training in the state and federal standards
19 presented thus far and would reasonably be judged as accountable to
20 those standards in this application of deadly force¹.

21
22 **6.2.2.** I have taught or professionally discussed the legal narratives associated
23 with police use of force with both law enforcement professionals and
24 attorneys in several states. I have found most of the concepts to be
25 universally trained and understood amongst peace officers across the
26 nation. My experience has shown the Colorado legal standards to be
27 like those trained to other peace officers around the nation with some
28 minor language differences.

29
30 **6.3.** The trier of fact is the only authority able to formally determine whether
31 Deputy Alphonso had a legal foundation to utilize deadly force. However,
32 as a police practices expert, I am providing the following points for
33 consideration. These points represent the information known or
34 information that should have been known to Deputy Alphonso that are

¹ PCSO Policy is not the equivalent of the law and may provide established requirements that exceeds the state or constitutional standards. However, these policy points reflect the legal training PCSO deputies rely upon to use force.

important to consider when compared against the Constitutional and Colorado legal standard(s). These are also the main points I considered in reaching my conclusion.

6.3.1. The severity of the crime involved in this case is a significant factor and should be considered as a violent felony with the decedent representing an ongoing threat to the community. The foundation for this statement is the decedent's behaviors consisting of: (a) threatening a citizen with a handgun before stealing her vehicle, (b) continuing to commit additional crimes as he drove at speeds more than 90 mph and endangering others, (c) attempting to run off the road and displaying his handgun to an off-duty law enforcement officer during the pursuit, and (d) then arming himself while in flight (by foot) from law enforcement. This occurred while within the boundary of a residential neighborhood, and includes (e), the act of displaying/pointing that weapon in the direction of a peace officer lawfully engaged in the performance of his duties (i.e. assault with a deadly weapon). These objective facts are representative of an ongoing and significant threat to the community and to the involved law enforcement officers. These facts are discussed in detail within the case review section of this report and should be considered as part of the totality of circumstances.

- Based on their statements to investigators, Deputy Borrer and Deputy Alphonso appear to have recognized the decedent as a violent fleeing felon.

6.3.2. An important aspect regarding Deputy Alphonso's use of deadly force involves the direction that the armed felony decedent ran after getting out from under the truck. The direction he ran is pertinent to evaluating the immediacy of the known threat as well as the necessity for deadly force. It is also pertinent for consideration of the level of resistance from the decedent.

6.3.2.1. Alphonso's BWC shows the suspect running toward him but offset to the left by ten to fifteen feet¹. The decedent appears to have had a more advantageous escape route in the opposite direction.

¹ Based on google maps measurement from the side of the house to the thin concrete strip Alphonso is closest to standing on when the first shot is fired.

1 Based on scene pictures and a review of google maps, it appears
2 the rear of the adjacent house was an open escape route.
3 According to Google map estimates, the decedent closed the
4 angled distance with Deputy Alphonso by approximately 30 feet.
5 (See Annex #3,4,5,6)¹
6

7 **6.3.2.2.** Deputy Alphonso states he saw a gun in the hand of the decedent
8 as the decedent ran in his direction. He added that he saw the
9 gun coming up, and he was afraid for his safety to include being
10 shot and killed by the decedent. Deputy Alphonso states he had
11 no cover as the decedent closed the distance. (Alphonso
12 Interview). Deputy Borrer said that if he had been in a similar
13 situation with the decedent running towards him with a gun, he
14 would have used deadly force (Borrer Interview).
15

- 16 • The video evidence shows there was no immediate
17 cover/concealment available to Deputy Alphonso.
18

19 **6.3.2.3.** In my opinion, Deputy Alphonso's perceptions are confirmed by
20 the video evidence. In my experience as a peace officer,
21 displaying a weapon in this context is a criminal offense that any
22 reasonable human being would consider a threat to life. I believe
23 a reasonable peace officer is trained to recognize and make a
24 custodial arrest for these types of violent crimes. This includes when
25 they are the victim. In this context, a reasonable officer's training
26 would indicate crimes of assault with a deadly weapon (CRS 18-3-
27 206) or possibly attempted homicide.
28

29 **6.3.2.4.** In my opinion, an armed carjacking suspect who displays a firearm
30 while quickly closing the distance with a peace officer in this
31 context is a significant deadly threat that would cause a
32 reasonable peace officer to fear for their lives. A failure to adhere
33 to standard police training by defensively using deadly force may
34 have resulted in serious bodily injury or death to Deputy Alphonso
35 and other officers/citizens.

¹ No scene diagram with measurements for locations of the decedent or officer were conducted. There were some measurements to the ejected shell casings. Google maps measurements should be confirmed through scene recreation if necessary.

1 **6.4.** My opinion is also formed based upon my understanding of total response
2 time, as discussed in the human factors psychology section of this report.
3 While peace officers are not required to wait and see if a suspect will pull
4 the trigger, it is important to consider the effects of failing to act
5 immediately when a deadly threat is imminent. The following bullet points
6 summarize key aspects of response time that should be part of the totality
7 of circumstances.

8
9 **6.4.1.** As shown in Alphonso's BWC, the decedent was able to move his arm
10 from somewhere in front of his torso to over his head in about 300ms. It is
11 reasonable to infer that he could have pointed his weapon at Deputy
12 Alphonso and possibly pulled the trigger within that time. Peer-reviewed
13 and published research literature I have reviewed demonstrates the
14 reactionary gap in police shooting engagements. A determined
15 suspect can pull a gun from the waistband, point toward a target, and
16 pull the trigger in about 250ms. The time it takes an eye to close and
17 reopen during a typical blink is about 400ms. Officers across the country
18 receive training or are otherwise aware of the reactionary gap
19 concept.

20
21 **6.4.2.** My own personal experiences in simulated engagements have shown
22 that even when an officer is pointing a weapon at a subject (with her
23 finger on the trigger), They will not be able to stop a simulated suspect,
24 with the finger off the trigger and weapon pointed downward, from
25 shooting them. This type of engagement has been demonstrated and
26 published in a peer-reviewed journal.¹

- 27
28 • It is important to note that gunshot wounds, even to vital organs, do
29 not ensure that a threat is stopped.² The Colorado POST manual
30 (2020) discusses this issue in regard to chest wounds, not causing
31 immediate incapacitation (H-19).

32
33 **6.4.3.** It should be noted that I do not feel a warning of "stop, or I'll shoot" was
34 reasonable or necessary in this situation. The decedent was aware or
35 should have been aware that he had committed a crime, and police

¹ Blair, J. P., Pollock, J., Montague, D., Nichols, T., Curnutt, J., & Burns, D. (2011). *Reasonableness and Reaction Time*. *Police Quarterly*, 14(4), 323–343. doi:10.1177/1098611111423737

² <https://www.nytimes.com/2008/04/03/nyregion/03shot.html>

1 were attempting to arrest him. He was aware or should have been
2 aware that Deputy Alphonso was a law enforcement officer, had
3 placed him at gunpoint, and it was his legal responsibility to comply.
4 Hesitation on the part of Deputy Alphonso could have resulted in his
5 death.

6
7 **6.4.4.** While Colorado peace officers are not required to cease or desist their
8 attempts to make an arrest, de-escalation, and attempts to mitigate
9 the level of force are often included in national policing practices.¹ In
10 my opinion, de-escalation was not an option in this case. De-escalation
11 requires some cooperation from a suspect to be effective. When he
12 was located, the decedent did not provide Deputy Alphonso an
13 opportunity to communicate, create distance, or utilize shielding. My
14 impression is that Deputy Alphonso located the decedent, and the
15 decedent unexpectedly and immediately armed himself while running
16 in Deputy Alphonso's direction. From the time Deputy Alphonso
17 verbalizes seeing the decedent under the truck until the first round is
18 fired is about 12 seconds (Alphonso BWC Timestamp 13:19:36 –
19 13:19:48).

- 20
21 • Hindsight being 20 – 20, there appeared to be sufficient officers in
22 the area to establish a perimeter. Doing so may have reduced the
23 risk for all involved as a perimeter provides a moment to slow the
24 action and conduct a controlled yard by yard search with a k-9 or
25 air assistance (if available).
- 26
27 • The IACP provides a model policy for foot pursuits that may have
28 reduced the risk in this situation.²
- 29
30 • However, this critique should consider the community threshold for
31 an armed and dangerous felon fleeing from law enforcement in a
32 residential neighborhood. A hindsight analysis makes this an easy
33 recommendation, but it does not ensure a better outcome.
- 34

¹ IACP (2020). *National consensus policy and discussion paper on use of force*.
[https://www.theiacp.org/sites/default/files/2020-07/National Consensus Policy On Use Of Force%2007102020%20v3.pdf](https://www.theiacp.org/sites/default/files/2020-07/National%20Consensus%20Policy%20On%20Use%20Of%20Force%2007102020%20v3.pdf)

² IACP (2019). *Foot Pursuits*.

1 **7. Opinion 3: Deputy Alphonso fired 15 rounds in just under five seconds. The**
2 **last six rounds were fired in about 2.5 seconds after the decedent had fallen**
3 **into the prone position. Based upon a review of the materials provided to me**
4 **coupled with my knowledge, training, and experience, I opine that Deputy**
5 **Alphonso's stop shooting response is more-likely-than-not bounded within**
6 **human capabilities and limitations associated with physiological arousal,**
7 **perception, attention, vision, and the time to stop a repetitive motor**
8 **response.**

9
10 **7.1.** The trier of fact is the only authority able to formally determine whether
11 the duration of Deputy Alphonso's use of deadly force was unlawful.
12 However, as a police practices expert, I am providing the following points
13 for consideration.

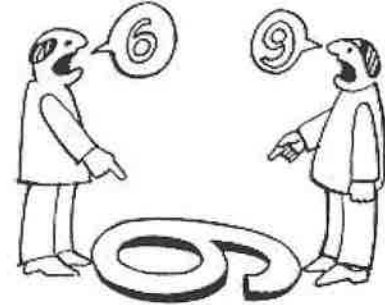
14
15 **7.2.** Every use of force by a peace officer provides a unique set of facts. The
16 United States Supreme Court has reaffirmed that the evaluative criteria for
17 a peace officer's use of force "must be judged from the perspective of a
18 reasonable officer on the scene, and its calculus must embody an
19 allowance for the fact that police officers are often forced to make a
20 split-second decision about the amount of force necessary in a particular
21 situation."¹

22
23 **7.2.1.** To determine reasonableness, the subjective perspective of an officer
24 must be evaluated based upon the objective information available to
25 him when force was used. This is often referred to as the totality of
26 circumstances.

27

¹ Graham v. Connor, 490 U.S. 386 (1989)

7.2.1.1. Therefore, use of force decisions should not be subjected to a 20/20 hindsight analysis. Those judging force used by peace officers can review video from several angles repeatedly while also intently studying individual video frames to analyze the decision made by the officer. This type of analysis is far removed from the experience of the peace officer on the scene. The officer's perspective of the available environmental information is based on a limited capacity to receive and process information. In this case, Deputy Alphonso's decisions were based upon a complex and dynamic situation that unfolded in a matter of seconds. This situation embodies the concept of split-second decision making that applies to both starting and stopping the shooting action.



7.2.2. Perspective is created through the receipt and understanding of environmental information combined with individual knowledge, training, and experience. Perspective can be influenced by the human ability to attend to and process environmental information. It is widely accepted that human beings have limited cognitive processing capability, and they will not see or hear every aspect of the environment in the best of circumstances (see HF psychology section of this report).

7.2.2.1. A simple football exemplar includes referee disagreement and a video review. Two or more referees on the ground may disagree on what occurred right in front of them. Their perceptions are created by things like their distance from the play, their visual angle, and what they were focusing on at the time. Often there are several versions of the video replay providing multiple angles and distances. The recorded video angles/distances may provide information that confirms or disagrees with the referee's various subjective perceptions. Often, only one of several angles may conclusively demonstrate the correct outcome.

7.2.3. The Colorado POST manual (2020) dictates training be provided to officers on the effects of stress on judgment, perception, and overall performance (p. N-3; C-58; D-29). The recommended reading associated with this topic includes information on physiological arousal, mental distraction, perceptual distortions, and memory deficits¹

7.2.3.1. Stress is a normal factor in everyday life. Too little or too much stress are two factors widely accepted in the scientific community as negatively influencing performance. It is widely accepted within the police community that high-stress incidents such as vehicle pursuits and use of force (i.e., use of force) can be acutely stressful events.

7.2.3.2. It is widely accepted within the scientific community that people under acute stress may experience perceptual distortions such as visual narrowing and auditory exclusion. The research extends to the experiences of peace officers involved in OIS.²

7.2.4. Acute stress and subsequent physiological arousal have an influence on information processing, judgment, and decision-making. Therefore, split-second decisions in the context of tense, uncertain, and rapidly evolving situations like the one experienced in this case are not perfect. Hence, officers are taught their decisions in this context need only be reasonable.

7.2.4.1. Deputy Alphonso was performing under the extreme stress of a life-threatening incident. Although there are no objective measures of stress hormones, Alphonso's verbal tone and cadence just prior to and after the shooting present as indicators of being under significant stress. Contributing factors include the totality of the circumstances, the unexpected behavior of the decedent, and the time-compressed nature behind the decision to act.

¹ Remsberg, C. (1986). *The tactical edge, surviving high-risk patrol*. Calibre Press.

² Novy, M. (2012). Cognitive Distortions During Law Enforcement Shooting. *Activitas Nervosa Superior*, 54(1-2), 60–66. doi: 10.1007/bf03379584

1 **7.2.5.** For a stop shooting response to occur, the shooter must perceive a
2 change in the environment that indicates the threat has ended.
3 Deputy Alphonso's statement indicates when he perceived the threat
4 had ended. He said, "the suspect went down, and there was not a
5 whole lot of movement left." He went on to clarify this statement by
6 saying that the decedents continued movement made him believe he
7 was a continuing threat.¹
8

9 **7.2.5.1.** The shot analysis portion of this report shows the decedent was shot
10 at for ~2.5 seconds after falling into a prone position (on his side).
11 However, the decedent exhibited significant movement during this
12 time. At one point, the decedent was more-likely-than-not struck
13 by a bullet as he was in the prone, which may have caused some
14 of the movement. However, it is highly unlikely that Deputy
15 Alphonso, while cognitively focused on aiming/firing his weapon,
16 was able to process the information and recognize it as causing
17 the movement.
18

19 **7.2.5.2.** Research has demonstrated that even in very controlled laboratory
20 environments where participant officers are free from stress and
21 distraction, they may fire up to four rounds after the stop signal. In
22 my experience, various aspects of the environment and significant
23 stress has resulted in additional rounds fired after the suspect has
24 entered a prone position. A real-world shooting event is also
25 different than the laboratory as no pre-identified easily identifiable
26 stop signal is provided.
27

- 28 • In combat-related sports where opponents are attempting to
29 disable their opponent through rapid motor response (i.e., UFC),
30 referees are present to stop the action due to the fighter's
31 myopic focus on a single task.

32
33 **7.2.5.3.** The first ten rounds fired by Deputy Alphonso are consistent with
34 rapid point shooting (cadence 250-300ms), while the last five
35 rounds have a slower cadence and could be associated with

¹ He is not asked to expand on why movement from the decedent constituted a continued threat.

1 aiming. Alphonso indicates he was aiming center mass, but he was
2 not asked if he used his sights.

3
4 **7.2.5.4.** Based on the various video recordings, Deputy Alphonso is in a
5 two-handed isosceles shooting stance with the weapon elevated
6 out in front of his field of view. Therefore, the obstruction caused by
7 his arms, hands, and weapon provides that his field of view
8 downrange was partially obstructed as he fired. Additionally, an
9 attempt to align his sights on the decedent would result in blurred
10 visual acuity downrange.

- 11
12 • As a firearms instructor, I know that focusing upon sight
13 alignment and sight picture while aiming will cause the
14 background to blur substantially. Even a momentary glance at
15 the top of the slide (front sight) to align the weapon reduces the
16 ability to gather information downrange.

17
18 **7.2.5.5.** Research reviewing police shootings has shown accuracy to be
19 extremely low (< 50 percent). This is likely due to shooting a firearm
20 being a complex motor skill that suffers from the effect of the
21 extreme physiological arousal associated with a threat to life. In this
22 case, Deputy Alphonso (a certified range instructor) missed 10 of
23 15 shots. It is highly unlikely Alphonso could have known if he struck
24 the decedent or whether the impact location was significant
25 enough to stop the decedent from aiming and firing at him.

26
27 **7.2.5.6.** A peer-review and journal published study on the dangers of
28 armed prone subjects demonstrated that a subject could point
29 and fire a firearm from concealed under their body in an average
30 of .61 seconds.¹ Therefore, a prone armed suspect is a significant
31 danger to a law enforcement officer in this context.

¹ Lewinski et al., (2008). The speed of a prone subject. *Law Enforcement Executive Forum*, 16(1). Doi: 10.19151/LEEF.2016.1601f



7.2.5.7. The annex of this report provides pictures of the location of the decedent from various points of view (annex #7). While none may provide an accurate replication of Deputy Alphonso's field of view, they all show a mound of tall grass around a tree that partially obstructs the decedent's body. The photos show the decedent at or near the location he was when Deputy Alphonso fired his last rounds (see annex)

7.2.6. Peace officers are generally trained to continue shooting until the threat has ended. However, training that specifically defines the stop shooting response is uncommon.¹ I have significant experience training peace officers in simulated environments, as well as my experience reviewing real-world officer-involved shootings. Based on my experience, most officers fire rounds after a subject has entered a prone position due in part to situational ambiguity and in part due to the human ability to stop a rapid repetitive motor response immediately upon sensing a stop signal.

7.2.6.1. Consistent with most law enforcement firearms training, I do not see any references to a "stop-shooting" training or any references to cease fire within the POST training manual (2020). However, the POST manual does state that officers are responsible for "every round fired" (p. H-16). It is also assumed that perceived excessive shots would be critiqued on a case by case basis within the "reality-based training decisional scenarios" (p. H-17).

¹ The San Francisco Police Department is one of a very few of which I am aware that has instituted training for firing only 2 rounds in training. This is not likely to

1 **7.2.6.2.** The Colorado POST manual (2020) provides guidance on deadly
2 force decision making that includes narrative from the United
3 States Supreme Court case decisions such as: "If officers are
4 justified in firing at a suspect in order to end a severe threat to
5 public safety, the officers need not stop shooting until the threat
6 has stopped"(H-15).

7
8 **7.3.** Colorado POST basic academy training provides several other points that
9 might provide the trier of fact assistance in reviewing this case.

- 10
11 • Colorado POST manual contains information regarding where an
12 officer should aim when using deadly force. This consists of but is not
13 limited to the upper chest. The upper chest is discussed in detail with
14 hits to this area described as not causing immediate incapacitation.
15 Rather, it is the rapid blood loss which takes a certain amount of time-
16 dependent upon the quality of the hits (p. H-19).
- 17
18 ○ Shooting for center mass is consistently trained to police officers
19 across the country. As demonstrated, shooting under stress results
20 in low accuracy. Therefore, shooting center of mass provides the
21 best opportunity to stop a threat. Attempted shots to
22 appendages with both the officer and suspect in motion are
23 unlikely to hit the target or be effective in stopping a threat.
- 24
25 ○ As stated in the POST manual, shots to center mass do not
26 immediately incapacitate a human being. Most officers across
27 the country are aware of the human capacity to fight even after
28 receiving critical wounds. An example is the publicly available
29 BWC footage of an officer in Athens-Clarke County Georgia. The
30 officer is seen firing about eight rounds at close range into a
31 subject charging him with a knife. Clearly hit and bleeding
32 significantly, the suspect falls to the ground only to get up and
33 take the shooting officer hostage. Another officer must shoot the
34 suspect several more times before he releases the hostage
35 officer.¹
- 36

¹ Graphic Video: officer-involved-shooting in Athens (2019). <https://www.youtube.com/watch?v=ltEeONm3VY4>

- The POST manual provides a live-fire course in which students are asked to advance on a threat from 25 to 3 yards, shooting when they feel they can make hits. The training includes tactical considerations regarding awareness and avoidance as well as using cover, preparing to "fight to the finish" and to withdraw if the situation warrants it (p. H-21).
- The POST manual provides training information on the concepts of cover and concealment, reaction time, de-escalation/escalation of force, and various alternatives to deadly force.

8. SUMMARY

Based upon my education, training, and experience, it is my opinion that Deputy Alphonso, who was lawfully engaged in his duties as a sworn peace officer, recognized the decedent as matching the description of an armed violent felony suspect. Deputy Alphonso knew the decedent was an ongoing threat to responding PPD/PCSO officers/deputies and utilized necessary defensive deadly force to stop an objective threat. Deputy Alphonso used deadly force only after the decedent elevated a firearm in a manner that represented an imminent use of force likely to cause serious bodily injury or death.

The fact patterns derived from investigative materials demonstrate Deputy Alphonso knew or should have known the following objective facts: (a) the decedent threatened a citizen with a handgun before stealing her vehicle, (b) the decedent committed additional crimes and was a threat to the community as he drove at speeds more than 90 mph while running stop signs/signals during a police pursuit, (c) the decedent attempted to run an off-duty law enforcement officer off the road during his flight from pursuing officers, (d) the decedent was located at the scene of a single vehicle collision proximal in time and to the geographic region where the pursuit terminated, (e) the decedent was inside the stolen vehicle gathering items (potentially arming himself) when located, and (f) the decedent had a similar description to the original carjacking suspect.

The decedent knew or should have known he was being pursued by law enforcement and chose to flee while arming himself with a handgun. Upon being located by Deputy Alphonso, the decedent chose closed the distance

1 with Deputy Alphonso while holding a handgun. This choice was made while a
2 secondary escape route existed in the opposing direction. The decedent then
3 raised the handgun in a manner that caused Deputy Alphonso to fear for his life.
4 Deputy Alphonso utilized defensive deadly force consistent with his training.
5 Deputy Alphonso's fired 15 of 18 available rounds in about five seconds. The last
6 six rounds were fired in 2.5s after the decedent had fallen behind a tree and
7 grass. Deputy Alphonso said he did not see the decedent drop his gun and
8 considered him an ongoing threat due to his continued movement that is
9 confirmed by video. The movement may have been caused by being struck by
10 gunfire, but it is more-likely-than-not that Deputy Alphonso would not recognize
11 this fact in the 2.5s that bounds those final shots.

12
13
14
15
16
17
18
19
20
21 The findings and opinions contained in this report are based on my review of the
22 discovery items provided to me at this time. I will alter, amend, enhance, or
23 delete my findings and opinions as necessary following my review of any
24 additional discovery in this case.

25
26
27 Signed David M. Blake Date: August 7, 2020
28 David M. Blake, Ph.D.
29
30
31
32

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

ANNEX

1. Frames of decedent running toward Deputy Alphonso (I Frame #92 & 107 from Stills-BWC folder).



- 1 2. Distance from the side of the residence to the inside of the
2 concrete driveway is about 13 feet.

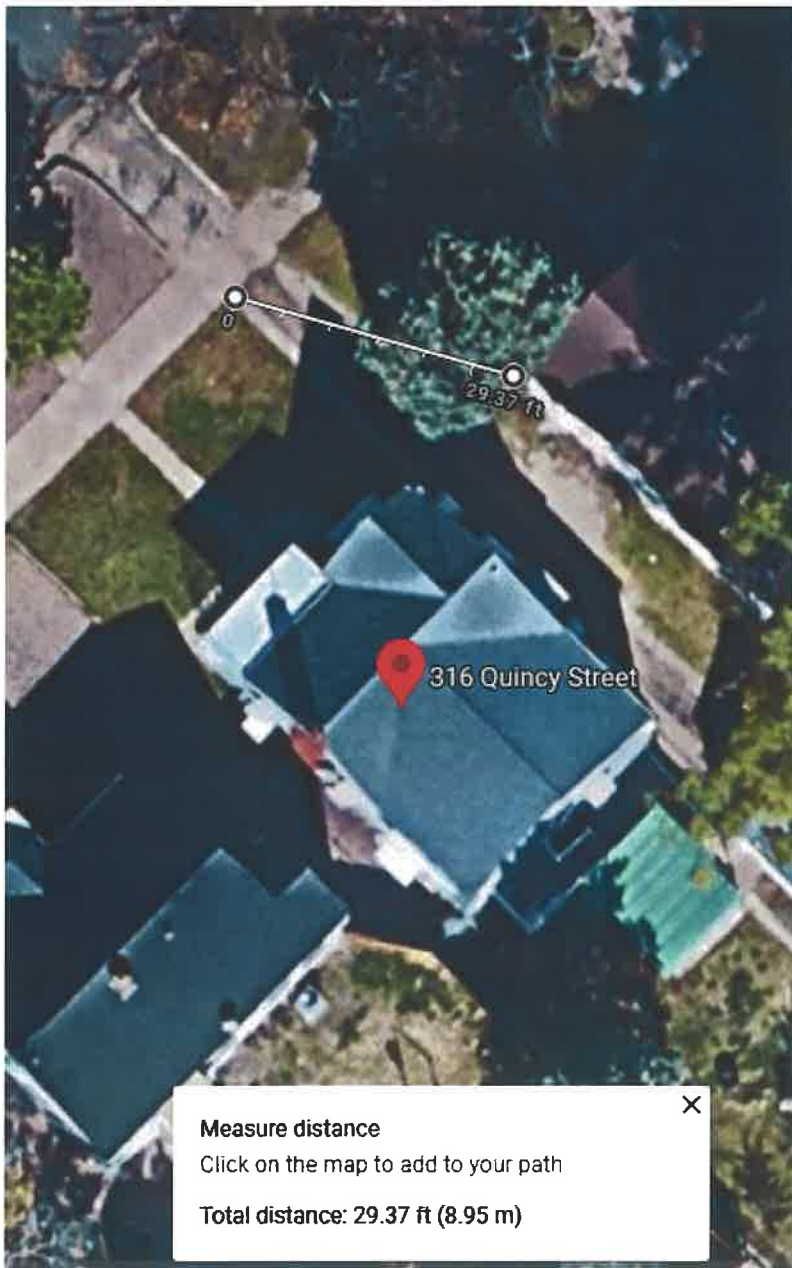


3
4
5

1 3. Measurements provided by CSP. Based upon video comparisons, Deputy
2 Alphonso was standing slightly further back from the blue dot when he
3 began firing.



- 1 4. Google Measurements provide estimates that the corner of the residence
2 (white house) is about 28 feet from where Deputy Alphonso was standing
3 when he fired.



4
5
6

- 1 5. A direct line from Alphonso's firing position to an area proximal to the front
2 of the garage is about 70 feet.



3
4
5
6
7

- 1 6. A diagonal line to the proximal area where the decedent began moving
2 toward Deputy Alphonso is about 60 feet.



3
4
5
6
7
8
9

1 **7. Visual angles to where the decedent fell.**

2 **File sjp_8715 (Crime Scene Photographs & Documents)**



3

4 **File sjp_8677 (Crime Scene Photographs & Documents)**



5

- 1 File sjp_8678(Crime Scene Photographs & Documents)



- 2
3 File sjp_8683 (Crime Scene Photographs & Documents)



- 4
5 File sjp_8785 (Crime Scene Photographs & Documents)



1

2 File sjp_8786 (Crime Scene Photographs & Documents)



3

4

5

- 1 **8. Distance between Frank Lyndall's home (327 Quincy) and the shooting scene (316**
2 **Quincy) is 160 feet/53 yards in a straight line per Google Maps.**

