



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

November 23, 2020

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

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

Re: District Attorney CIT Decision Letter
Officer Involved Incident on March 20, 2020
Location: 2610 E. 13th Street, Pueblo, CO 81001
Injured: Angel Avila, DOB 9/19/1994
Officers Involved: Brandon Victor and Logan O'Hayre

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on March 20, 2020, to investigate an Officer Involved Incident which resulted in injury to Angel Avila (DOB 9/19/1994). The Pueblo County Sheriff's Office (PCSO) was designated as the lead investigative agency and other CIT participants included the Colorado State Patrol (CSP), Colorado Bureau of Investigation (CBI), Pueblo Police Department (PPD) and the 10th Judicial District Attorney's Office (DA). After the investigation, the CIT prepared and submitted an Executive Summary and its investigative reports and materials to the District Attorney's Office for review. Those materials were reviewed, and this is the District Attorney's Decision letter pursuant to CIT protocol.

Overview of the Incident

On March 20, 2020, Pueblo Police Department Officer Brandon Victor was working the night shift traveling through the area of Eastwood Heights looking for a vehicle which had fled from PPD officers earlier in the shift. Officer Victor came upon a Silver Dodge Ram 2500 at 13th Street and Deane Lane, facing south. Officer Victor ran the plate on the truck, (License plate # KJO835) in NCIC/CCIC which indicated the truck was stolen out of Colorado Springs. Officer Victor confirmed the theft with PPD dispatchers. Officer Victor had radioed for a backup unit due to not knowing how many occupants were in the truck as the truck sat up so high. PPD Officer Logan O'Hayre responded to Officer Victor's location as the cover unit.

Officer O'Hayre arrived on scene and approached the suspect vehicle from the north on Deane Lane. He parked his fully marked patrol unit (Unit #938) in front of the stolen truck at an angle on the driver's side of the truck. Officer O'Hayre turned on his "take-down" lights and aired on the radio that the truck was occupied by two individuals. Officer Victor heard the truck start up and exited his marked patrol vehicle with his duty pistol in hand. He approached the driver's side of the truck shouting commands to the driver to shut the vehicle off. He attempted to open the driver's door with his left hand, but the door handle broke off.

The driver of the Dodge Ram truck, later identified as Angel Avila (DOB 9/19/1994), put the truck into reverse and backed into Officer Victor's marked patrol vehicle. Angel Avila then put the truck in drive and accelerated forward. Officer Victor believed Officer O'Hayre was in the path of the truck as it accelerated forward. Officer Victor knew it was common practice for officers from PPD not to approach suspect vehicles from the opposite side of the vehicle.

Interview: Logan O'Hayre

Officer O'Hayre was interviewed by PCSO Detectives Amy Lile and Shawn Davis, at PPD on March 24, 2020. He was interviewed in the presence of his attorney and advised pursuant to Garrity v. New Jersey, 385 U.S. 493(1967).

Officer O'Hayre stated that he had a previous call on East 14th Street and Norwood Avenue regarding a car that was followed by another vehicle and the occupants of one car shot at the other vehicle. Officer O'Hayre went over to the 2800 block of East 10th Street to check for the vehicle that was reported in the shooting. While at that location, Officer Victor went on his radio and indicated he was at the site of a possible stolen truck at 13th Street and Deane Lane and asked for other officers to assist. Officer O'Hayre said he was "nearby in the area". Officer O'Hayre said that Officer Victor stated he was on the north side of the truck and he asked Officer O'Hayre to come from the south because he (Officer Victor) could not see if there were any occupants in the vehicle. Officer O'Hayre said as he approached the vehicle he turned on his spotlight and "take down" lights. Officer O'Hayre said initially he could not see anyone in the truck but when he got in front of the truck, he saw a male's head pop up on the driver's side. As he was airing that information, he then saw a female's head appear on the passenger side and aired that out. Officer

O'Hayre then said he began to exit his patrol car and the driver put the vehicle in reverse and floored it backward, ramming into Officer Victor's patrol vehicle. At that moment, Officer O'Hayre heard Officer Victor yelling at the driver to "stop and turn off the car". Officer O'Hayre said as he was exiting his car he was yelling at the driver to "stop". At this time, Officer O'Hayre said he could see Officer Victor point his gun at the driver of the truck and started to hit on the window with his fist. Officer O'Hayre observed there was a brick wall and looking at the truck he believed that would have been the easiest route away from the officers for the truck. Officer O'Hayre said he "did not want to be there or try to cross paths that way, in order to assist Officer Victor" because he did not want to place himself in a forced jeopardy situation due to his location.

Officer O'Hayre stated he began to go behind his patrol car. As he was doing that, Officer O'Hayre said "the driver put the truck in drive", and he could see the wheels of the truck turn toward him as he was trying to get around the back of his patrol car. Officer O'Hayre said the driver floored the truck at him. At this time, Officer O'Hayre said he pointed his firearm at the driver as he was trying to move around to the back of his patrol car when Officer Victor fired his gun which caused the vehicle to stop. Officer O'Hayre said he was "prepared to shoot" because he felt he was going to be killed or seriously injured. Officer O'Hayre said once Officer Victor shot and the truck stopped he felt his level of jeopardy dropped and he did not feel the need to fire.

Interview: Brandon Victor

Officer Brandon Victor was interviewed by PCSO Detectives Amy Lile and Shawn Davis, at PPD on March 24, 2020. He was interviewed in the presence of his attorney and advised pursuant to Garrity, *ibid*.

Officer Victor said that he and Officer Lowell Griffiths were dispatched to the area of 5th Street and Norwood Avenue looking for a suspicious vehicle, a red truck. Officer Victor said that Officer Griffiths found the truck on the Lower East Side and attempted to make a traffic stop but the individual fled in the vehicle. When the vehicle fled, it almost struck another vehicle, so the civilian in that vehicle decided to pursue. At which point, Officer Victor called Dispatch and provided live updates where the civilian was and relayed that shots were being fired at him. Dispatch confirmed that "shots were fired" over the radio. Officer Victor looked at the registration and saw that the vehicle was registered to an address in Eastwood Heights. Officer Victor said that to be proactive he would go to the area to see if the vehicle would return there.

Once Officer Victor arrived in Eastwood Heights, there was a Silver Dodge Ram 2500 at 13th Street and Deane Lane. He ran the plate through the computer and it came back stolen out of Colorado Springs. Officer Victor aired that information to Dispatch and Dispatch confirmed it was stolen. At that time, Officer Victor did not know whether the vehicle was occupied because of the height of the vehicle. Additionally, Officer Victor did not have all his lights on as to try to stay hidden. Officer Victor said Officer O'Hayre was in the area and he knew he would come to cover him. Officer Victor said approximately two minutes later, Officer O'Hayre approached from

12th Street, coming north on Deane Lane, and Officer Victor said he “was to the south”. Officer O’Hayre placed his vehicle in front of the truck and aired “it was occupied by two people”.

At this time, Officer Victor said he heard the truck start. Officer Victor said it was a diesel, so it was loud. He got out of his car with his duty pistol in-hand, approached the driver’s window and gave commands to “shut the vehicle off” three or four times. At that point, Officer Victor said he attempted to open the door which didn’t work because the handle broke off. The male driver then put the truck reverse and backed into his patrol car. At that time, Officer Victor knew that Officer O’Hayre was in front somewhere. Officer Victor stated that “common practice is not for officers to approach the driver’s window and/or the passenger window, in order to prevent crossfire”. Officer Victor said the truck then “moved forward with a lot of force” and he heard a crunch or thud and thought it was Officer O’Hayre. Officer Victor thought Officer O’Hayre’s life was in danger which was the reason he fired three or four rounds in the direction of the driver through the door. The vehicle stopped, and Officer Victor gave commands for the parties in the truck to put their hands up. The female complied but the male suspect said he “could not move”. Officer Victor asked, “were you hit?”. The female then asked if she could see if any aid could be rendered prior to an ambulance arriving. Officer Victor gave her permission. Officer Victor said the back window of the truck was broken and the driver appeared to be injured. He said he “knew the driver was alive but couldn’t move and that the vehicle had stopped”. Other officers then arrived to assist with getting the driver out of the vehicle, identifying him, assessing his injuries and putting the truck into park.

Interview Suspect: Angel Avila

On March 25, 2020, at approximately 3:25 p.m., PCSO Detective Amy Lile and PPD Detective Shawn Davis, went to Parkview Hospital, 400 W. 16th Street, to interview Angel Avila (DOB 9/19/1994).

Prior to interviewing Mr. Avila, Detectives Davis and Lile spoke with Dr. Fernando Mier. They asked Dr. Mier if Mr. Avila was under any type of medication that would affect his ability to comprehend questions. Dr. Mier verified Mr. Avila had “no pain medication since approximately 12:00 p.m. on March 25, 2020”. He had spoken with Mr. Avila before the Detectives arrived and confirmed there would be nothing to prohibit his ability to understand and answer questions.

The Detectives introduced themselves to Mr. Avila when they entered the room. Mr. Avila was asked if he remembered the Detective’s names to which he responded “Detective Lile”. Prior to any questioning, Mr. Avila was read his rights per Miranda v. Arizona, 384 U.S. 436 (1966). Mr. Avila stated he wanted an attorney, so neither of the Detectives questioned him.

Interview Witness: Jaelynn Marie Apodaca

Ms. Apodaca was told by PCSO Captain Steve Bryant that he would partner PCSO Detective Ryan Landreth with PPD Detective Ryan Torres for the investigation. Detective Landreth and Detective Torres contacted Jaelynn Maria Apodaca (DOB 2/13/00) in Interview Room #3302 at PPD on March 20, 2020, at approximately 6:25 a.m. The following is a summary of Detectives Landreth and Torres interview with Ms. Apodaca.

When the Detectives entered the room, Ms. Apodaca said “finally”. The Detectives provided Ms. Apodaca water and apologized for her waiting. Ms. Apodaca said she didn’t know why she was there because she didn’t really know anything. Ms. Apodaca said all she did was “go inside of the truck and fell asleep”. Ms. Apodaca was advised by the Detectives that they wanted to hear her side of the story and that they also had some questions. Before they continued they were going to explain to her, and make sure she understood, her Constitutional Rights. Ms. Apodaca asked how “he” is and was told that “the last Detectives knew he was conscious and talking”. Ms. Apodaca said she left her phone in the vehicle.

Ms. Apodaca was read her Constitutional Rights per Miranda, *ibid*, off an Adult Advisement Form. She initialed next to each of her rights as they were read to her, indicating she understood them and signed the form. She said she would speak with Detectives about the incident without an attorney present.

Ms. Apodaca was asked if she was injured and she said “no”. Ms. Apodaca said they shot through the window and she was scared because she was pregnant.

Ms. Apodaca was asked “what happened?”. She said last night she was bugging him (Mr. Avila) to bring her something to eat. He didn’t come over until late and when he did she ate her food in the truck.

Ms. Apodaca said they “didn’t get down or nothing because the cops had come by the house earlier”. She was asked where the cops went by. She said, “to her house, the place they were at when the incident happened”. It should be noted the stolen truck was parked along the curb across the street from 2612 East 13th Street, Ms. Apodaca’s address. She said she “thought maybe someone called in for him”, and she was told the Detectives did not know that information at the time. She said Mr. Avila came over the previous night, but she didn’t know what time he came over. She said, “he honked the horn and she came outside”. She didn’t know why the cops were there with “guns and stuff”. She was guessing the truck was stolen.

She was asked to talk about the truck they were in. She said she didn’t know about the truck, only that he (Mr. Avila) had the keys. She guessed it was stolen because the cops had guns drawn on them and the cops shot him. Ms. Apodaca said she didn’t know why officers would shoot him as he didn’t have charges that bad. She was asked what his charges were, and she said they were “littering and distribution”. She explained that he was already looking at doing

time for the prior charges. She was asked to identify who "him" was and she said "Angel Avila and he is 25 years old". She had been in an intimate relationship with Mr. Avila for one year and he was the father of her baby. She was asked if they live together and she said "no". She stated they used to live together but Mr. Avila ran from the half-way house. She said Mr. Avila was going to start staying at her house again, but she guessed someone called the cops on him. She continued, "the cops came to her house earlier in the night looking for him" though she was only guessing that. She said they were in the truck and weren't planning on staying at her house long.

Ms. Apodaca was asked how long Mr. Avila was at her house and she said, "probably an hour". She was asked what they were doing in the truck, and she said she was eating. She said Mr. Avila brought her chicken tacos from his mom's house. Detectives asked what time Mr. Avila got to her house and she said, "it was late". Asked again, Ms. Apodaca said she "didn't know". She explained that she was contacted by the police inside of the truck around 3:00 a.m., and she said Mr. Avila probably got there around 2:30 a.m. She just laid down on his lap and fell asleep and explained that she didn't know anything about the stolen truck because she doesn't ask questions. She said she was "at her house and that was where the police came and contacted them inside of the truck". She confirmed that she lives in the house where the truck was parked.

Detectives asked to "tell how many times she had been in the truck". She said "once", the previous night was the only time. Ms. Apodaca said she saw the truck before, when Mr. Avila came over to her house earlier in the night, around midnight, and then left. Ms. Apodaca was asked what Mr. Avila told her about the truck and she said she "didn't ask questions because she saw the key". She didn't know if Mr. Avila has a history of stealing cars because they have had many cars of their own. Ms. Apodaca explained that Mr. Avila got shot before getting into someone else's car when he was young.

Detective Landreth asked her to explain why Mr. Avila went by her house at midnight. She said it was because she was asking for food and cigarettes. Detectives asked if he had those items when he came to the house at midnight and she said "no". Detectives asked her what they did when he came over at midnight. She said they didn't do anything, he didn't stay long, and he didn't come inside. She stated that she lived there by herself because her mother, Tina Apodaca, is in prison because she was involved in the Devon Clark homicide.

Ms. Apodaca stated she saw Mr. Avila the day before and "he just picked her up in his car, a Grand Prix". She said the vehicle is in her name and Mr. Avila's mother bought it for them. She said the car is currently at her cousin's house and down the street. Detectives asked, "where they went yesterday?". She said she didn't really see Mr. Avila that much, and she knew he was in his own car which they had bought two days ago. She knew Mr. Avila was out stealing cars. Detectives asked again where they went the day before when Mr. Avila picked her up. She said they "went for a ride" and didn't go anywhere specific. She said they did go to Wendy's (restaurant) and he spent his last \$10.00.

Ms. Apodaca explained that they were in his car, and he came by at midnight, left, and then came back to the house at 2:00 a.m. They were eating chicken tacos and then she went to sleep on his lap while Mr. Avila was eating. She said they “missed each other and just laid there and were not having sex”. She continued that she picked her head off of his lap because Mr. Avila told her “the cops were there”. Mr. Avila then tried to drive off and the cops started shooting. She explained “they shot through the side window and hit Angel”. She said then they shot through the front window. Jaelynn said she thought “he got shot four times”.

Jaelynn said she has been through “drive-by-shootings” numerous times in the past at her house, so she knew what to do, which was to “duck down”. She said she knew Mr. Avila had been hit by the gunfire because he told her he had been, and he couldn’t move, and he thought he got hit in the neck”. She was scared to look because “the cops had their guns on them”.

Ms. Apodaca said that Mr. Avila told her the cops were there and then tried to drive away. She was asked if they got in a wreck, and she said “yes, he had backed up and hit one of the police cars”. She knew it was a police car behind them because no one else lived there and she had seen the police car. She said, “there was another one in front of them, but thought it was a truck, and it had all of its lights on”. She said Mr. Avila’s first response was to drive off. Mr. Avila backed up and hit a car and that was when the police started shooting. She said Mr. Avila didn’t go forward at all or put the truck in park because he couldn’t move.

She explained the police yelled “put your hands up”, but she didn’t see anybody in front of the truck. Obviously, someone was in front because they started shooting from the front of the truck and she had seen police officers. She described the police as “in black and they had their lights on”. She was sure it was the police and nobody else. She said that she and Mr. Avila aren’t murderers and she didn’t know why the cops had their guns on them.

She said the keys were still inside the truck. Jaelynn said the police took everything from her. Detectives asked her what Mr. Avila was wearing that night and she said, “it was a grey Adidas shirt, a black Champion jacket and jeans”. She said that Mr. Avila doesn’t steal cars and she had never been charged with stealing cars. She thought Mr. Avila bought the truck from someone.

Ms. Apodaca admitted that Mr. Avila was using narcotics, “both”, meaning he was using heroin and methamphetamine. She said she was not currently using drugs and was on methadone.

Detectives explained that it was important during the investigation to “process” everyone as the police wanted to make sure they did a thorough investigation. They explained that they had information that the vehicle they were in was stolen. She indicated that she “did not steal the vehicle”. She did not know that the vehicle didn’t belong to a friend and she thought “someone probably let Angel borrow the vehicle”. She did not know who would have let Mr. Avila borrow the vehicle because she didn’t know his friends. Detectives explained to Ms.

Apodaca what “processing” meant and was asked if she would be willing to give consent to “process” her. She asked if she had to because she didn’t really want to, she just wanted to go home. Detectives explained the “processing” forms and she could decide what she wanted to do. She was told by the Detectives that they did not have a warrant to process her, but it was important that it was completed before she showered or changed clothes. She was advised that she did not have to sign the form and was told that it was possible for Detectives to apply for a court order to “process” her. Ms. Apodaca was then asked to read the biological waiver form and Detectives explained the form to her, she then agreed to allow the Detectives to process her after signing the form.

Detective Landreth asked Ms. Apodaca what Mr. Avila had told her when they were woken up, and she said he told her “the cops were here and put the vehicle in reverse”. She said she would have done the same thing if she was in the driver seat. Detectives asked about her conversation with Mr. Avila after he was shot, and she explained that she “just asked the police if she could see him”.

At this time, she was advised that the Detectives had warrants.

Detective Landreth asked her if she felt the accident or if she heard the accident. She stated she was awake during the accident, and then the cops started shooting. She said, “the cops would shoot at her house because they hate her house”. Ms. Apodaca admitted that her house was affiliated with the “Ace” Street Gang. And asked for a cigarette and her phone because her cell phone was in the truck. Detectives asked what cell phone hers was. She indicated hers was the “black one with an orange thing on it”. She said Mr. Avila had a white Stylo 5 and she had a Stylo 4.

The interview with Jaelynn ended at approximately 6:58 a.m.

Officer Processing

Both Officers Brandon Victor and Logan O’Hayre were processed for evidence by PCSO Detective Bethany Solano. The following information was obtained from Detective Solano’s official report:

On Friday, March 20, 2020, at approximately 4:00 a.m., Detective Bethany Solano, received a call from PCSO Sgt. Allen Brooks regarding an officer involved shooting. She was asked to respond to Parkview Medical Center, 400 W. 16th Street, to process a male party who was shot, later identified as Angel Avila (DOB 9/19/1994).

Upon arrival, Detective Solano advised Mr. Avila that she was there to photograph his injuries. Amanda Villaneuva, a Registered Nurse at Parkview Medical Center, explained to Detective Solano that Mr. Avila had three gunshot wounds on his back and they would not be able to turn him over due to concerns with his spine. She did remove gauze from the wound on his

right shoulder, so Detective Solano could photograph it. Photographs were taken with and without scale. The wound measured at approximately one centimeter in width and length. Medical Staff was not sure if surgery was needed at the time, due to waiting on the neurologist to see Mr. Avila. Detective Solano collected Mr. Avila's clothing from PPD Officer Lowell Griffiths to include: underwear, two socks, two white shoes, red and black shirt (cut), red and black jacket (cut), blue jeans (cut) and \$6.00 in cash. All items collected at Parkview Medical Center were taken to the PCSO Annex, 920 N. Main Street, and placed in a secured evidence processing room. Several pieces of clothing were placed in the forensic dryer due to being blood soaked. While placing the shirt and jacket in the dryer, a projectile fell out. Photographs were taken, and the projectile was collected.

Detective Solano then responded to PPD located at 200 S. Main Street, at approximately 6:00 a.m., where she was tasked with the officer processing. The involved officers were called to the ID/CSI section at PPD, individually, and processed, separately. The processing consisted of taking photographs of the officers, checking their persons with an alternate light system for any biological (blood) evidence, and then processing their duty weapons by downloading them on a piece of parchment paper (changed out every time) and taking photographs of the weapon and live cartridges.

The findings for each officer are as follows:

Officer Brandon Victor carried a Glock 17 Gen 5 9mm (serial number BSH211) with tactical light;

- 1-9MM live cartridge in the chamber;
- magazine from handgun contained 11-9MM live cartridges;
- spare magazine #1 contained 17-9MM live cartridges;
- spare magazine #2 contained 16-9MM live cartridges

Officer Victor stated he kept his magazines at full capacity with one round in the chamber. He did not switch out his magazines at any time. He had 45 live cartridges out of a possible 52 cartridges. He also had a small cut to his left index finger on the side, measuring at approximately one centimeter in length, with what appeared to be blood on it as well. Photographs were taken with and without scale.

Officer Logan O'Hayre carried a Glock 17 Gen 4 9MM (serial number BL2G045);

- 1-9MM live cartridge in the chamber;
- magazine from handgun contained 17-9MM live cartridges;
- spare magazine #1 contained 17-9MM live cartridges;
- spare magazine #2 contained 17-9MM live cartridges

Officer O'Hayre stated he kept his magazines at full capacity with one round in the chamber. He had a total of 52 live cartridges out of a possible 52 cartridges.

Officer Victor's items were collected due to discharging his firearm. Officer O'Hayre's items were processed and released back to him due to not discharging his firearm. All

evidence collected was taken to the PCSO Annex and placed in a secured evidence processing room. Several items were sent to CBI for further processing. Latex gloves were used and changed out during processing. All photographs taken have been uploaded to the electronic file section.

Processing Angel Avila's Clothing

On April 6, 2020, at approximately 11:00 a.m., PCSO Detective Bethany Solano, processed Angel Avila's clothing, that was placed in the forensic dryer. Photographs were taken of the clothing on a piece of parchment paper in a secured evidence processing room. The black Champion jacket appeared to have approximately three defects on the back near the hood. The hood contained several linear defects. The jacket was also cut open on the front side and had suspected blood on the back. The black and red shirt was cut, as well, with suspected blood on the back and appeared to have four defects; three defects were in the upper-back area and one on the back-right shoulder. The rest of the clothing contained minimal suspected blood evidence and did not need to be dried.

All clothing was packaged separately. Latex gloves were used and switched out during the process. All photographs taken were uploaded to the electronic file section.

Angel Avila's Medical Records

Angel Avila's medical records were not requested at the time of this report. There wasn't any information available which indicated the medical records to be conclusive to the investigation.

Body Worn Camera: Officer Brandon Victor

Officer Brandon Victor was wearing a body camera. It showed that he had arrived at East 13th Street and Deane Lane, parked behind a Silver Dodge Truck. Officer Victor was heard communicating with Dispatch regarding the truck and informed them that he could not see if anyone was inside of the vehicle. Officer Victor was heard on the radio providing information on which way was best for other officers to arrive at his location. A vehicle with its lights activated was seen approaching the scene and was Officer O'Hayre's patrol vehicle. When Officer O'Hayre's vehicle stopped, Officer Victor was seen getting out of his patrol vehicle and approached the silver truck. The truck was heard with the engine running. Officer Victor was seen with his weapon drawn as he approached the truck. Officer Victor was heard telling the driver to "shut the vehicle off". The truck then moved backward. Officer Victor was seen reaching for the door handle of the driver's door of the truck and attempted to open it. The handle broke off and the vehicle was beginning to move forward. At that time, Officer Victor fired his weapon multiple times. The vehicle then stopped. After the vehicle stopped, Officer Victor was heard asking "where are you hit at?".

Body Worn Camera: Officer Logan O'Hayre

Officer O'Hayre was wearing a body worn camera. It appeared to record after Officer Victor fired at the truck and did not appear to capture the shooting. Officer O'Hayre was heard asking for rescue to respond.

Scene Search and Processing

At approximately 7:00 a.m., PCSO Detective Bethany Solano responded to the scene at the corner of 13th Street and Deane Lane. Photographs and video of the scene were taken.

The scene was predominately outside on Deane Lane. PPD Patrol Unit #632 (Colorado license plate # TXQ-174) was the first vehicle on scene and faced South. The unit was marked with PCSO yellow evidence placard #1. The unit had moderate damage to the front of the vehicle. The license plate was on the ground and the bumper and grill were damaged. Dark colored impressions were visible on the roadway, in front of the unit, that lead to the truck. A silver door handle was laying on the west side of the roadway was located and marked with evidence placard #2. Tire impressions were also visible and appeared to be fresh in the dirt, over the curb, on the west side of the street.

A 9MM FC +P spent shell casing was located behind the truck and marked with evidence placard #3. The stolen vehicle, Silver Dodge Ram (Colorado license plate #KJ0835) was facing North with the engine running and in "Drive" while resting on PPD Patrol Unit #938 (Colorado license plate #767TFG) and faced South. Patrol Unit #938 had heavy front-end damage and was marked with evidence placard #8. The driver's door handle was missing on the truck with light front-end damage and it was marked with evidence placard #4.

Evidence placard #5 was a 9MM+P FC spent shell casing located on the west side of the street near the truck. Evidence placard #6 was a tan Carhart jacket with suspected blood located on the ground located outside of the driver's side of the truck with glass around it. Evidence placard #7 was a 9MM+P FC spent shell casing found on the east side of the street.

At approximately 9:00 a.m., a search warrant was signed and executed on the Dodge Ram. The driver and passenger doors were both open. The driver's seat was laid back and appeared to have suspected blood on it. Glass was scattered throughout the vehicle (predominately on the driver's side) and the driver's side rear window appeared to have been shot out. Several blood stains were located inside the vehicle and marked alphabetically as follows:

- A - suspected blood on street outside driver's door (drip pattern);
- B - suspected blood on exterior of driver's side rear door (possible pattern transfer);
- C - suspected blood on interior panel of driver's side rear door (possible swipe);
- D - suspected blood on interior panel of driver's side door (multi- pattern);
- E - suspected blood on driver's seat (multi-pattern)

All suspected blood stains were swabbed.

Evidence placard #9 was a LG cell phone (IMEI #357932-10-081352-9) with a cracked screen, located on the passenger seat with a black case and cord. Evidence placard #10 was a projectile on the passenger floorboard. Four defects were found in the vehicle and are as follows:

- Placard #11 A – C: (driver's side door frame) trajectory was approximately four degrees from down to up and fort-four degrees from right to left;
- Placard #12: defect in driver's side interior windshield (did not penetrate);
- Placard #13 A – B: defect in passenger side of windshield;
- Placard #14: possible defect on passenger side glove compartment. Trajectory was not able to be accurately accounted for on all defects due to the vehicles being in motion at the time of shooting;
- Evidence placard# 15 was a 9MM+P FC spent shell casing located on the roof of the truck;
- Evidence placard #16 was a white LG cell phone (cracked screen) located from the center console of the truck;
- Evidence placard #17 was a 9MM+P FC spent shell casing located in the bed of the truck in a box of Nitrile gloves. Foils (with black marks) were located in between the side of the driver's seat along with a silver folding Smith and Wesson knife. Various multicolor pipes were found in the center console along with a box of Marlboro cigarettes. A small amount of suspected heroin was found inside the pack of cigarettes. It was later tested with a field test which was presumptively positive for heroin. Detective Solano was unable to get a weight due to it being a small amount.

The Dodge truck was towed by Tom's Towing to the PCSO Annex Evidence Bay to complete a search of the vehicle. The bed of the truck contained very large hoses and tools that needed to be removed to look for any other evidence;

- Evidence placard #19 was a 9MM +PFC spent shell casing located underneath the red hose in the bed of the truck;
- Placard #18 was not used.

The search warrant on the truck was completed at approximately 2:45 p.m.

A copy of the Search Warrant Inventory Form was left inside the vehicle. Latex gloves were used and changed out while processing the scene. All photographs have been uploaded to the electronic file section.

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, and he may use a degree of force which he reasonably believes to be necessary for that purpose; § 18-1-704(1), C.R.S.

Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe and does believe that he or another person is in imminent danger of being killed or of receiving great bodily injury; § 18-1-704(2)(a), C.R.S.

In evaluating whether a person was justified by self-defense, the person is entitled to act on appearances, People v. La Voie, 395 P.2d 1001 (1964). The United States Supreme Court reviewed a situation to determine whether officers use excessive force under the Fourth and Fourteenth Amendments, Plumhoff v. Rickard, 134 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. The Court analyzed the issue of reasonableness from the prospective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Further, the Court said that it allowed for the fact police officers are often forced to make split-second judgements about the amount of force that is necessary in a particular situation-in circumstances that are tense, uncertain and rapidly evolving.

Colorado Senate Bill 20-217 had not passed when this incident took place. The language in Colorado Senate Bill 20-217 concerning the use of deadly physical force is as follows.

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 person.

§ 18-1-707(3), C.R.S.

A peace officer shall identify himself or herself as a peace officer and give 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 peace officers at risk of injury, or would create a risk of death or injury to other persons; § 18-1-707(4) C.R.S.

Conclusion

Based on the facts of the investigation conducted by CIT investigators, it is my opinion that the use of force by Pueblo Police Department Officer Brandon Victor was justified by the laws of the State of Colorado regarding self-defense and the defense of others, § 18-1-704 C.R.S.

Officer Victor employed actions to defend himself and Officer O'Hayre from what he reasonably believed to be the use or imminent use of unlawful physical force and deadly force by Angel Avila; and that he reasonably believed a lesser degree of force would be inadequate.

It is also my opinion that should this case have been reviewed under the current law, Colorado Senate Bill 20-217, passed in June 2020, the shooting would have still been justified. The officer had reasonable grounds to believe, and did believe that he or another person, namely: Officer O'Hayre, was in imminent danger of being killed or receiving great bodily injury. Therefore, the actions of Officer Brandon Victor are justified under the law and are not criminal. Given this situation criminal charges would not be appropriate and therefore no criminal charges will be filed.

Dated this 23rd day of November, 2020.



J.E. Chostner
District Attorney