



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

October 14, 2022

Chief Chris Noeller
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 February 22, 2022
Location: 484 S. Maher Dr., Pueblo West, Colorado
Decedent: Richard Ward (DOB 6/22/1989)
Officers Involved: Charles McWhorter and Cassandra Gonzales

Dear Chief Noeller and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on February 22, 2022, to investigate an Officer Involved Shooting (OIS) Incident which resulted in the fatal injury of Richard Ward (DOB 6/22/1989). 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 February 22, 2022 at approximately 3:23 pm, Pueblo County Sheriff's Deputies Charles McWhorter and Cassandra Gonzales were dispatched to the Liberty Point International Middle School at 484 S. Maher Dr., Pueblo West, Colorado, on reports of a suspicious male party trying to open car doors. They were informed the male party may be "on something", suggesting possible intoxication. The initial reporting party, Eric Valencia, told dispatch that a male had become "aggressive" with one car and he was trying to get into other cars in the parking lot. Mr. Valencia gave the following description for the male: Caucasian, wearing an orange/red shirt with a light jacket, light-colored hair, approximately 6'0" in height, really skinny with a hat on. Initially, Mr. Valencia stated that the male was out of his line of sight on the east side of the parking lot. The male then came back into Mr. Valencia's sight and Mr. Valencia said the male was wearing a jacket with gray sleeves and black in color. Mr. Valencia then tells dispatch that the male was being confronted by someone from the school, then he began walking west. Mr. Valencia then sees the male get into the back seat of a white four-door SUV, possibly a Mazda with tinted windows and approximately eight to nine cars in from the road.

When Deputy McWhorter arrives on scene, dispatch gives him the description and location of the vehicle as described by Mr. Valencia. Deputy McWhorter asks dispatch for more specific information, as there were several white cars in the parking lot. Deputy McWhorter is then told that it is the white car that two children are walking in front of. This information assisted Deputy McWhorter in locating the vehicle.

Deputy McWhorter advises dispatch that the male is in the back seat of a white Lexus SUV with Colorado Plate CIW976. Deputy McWhorter then contacts the male. Deputy McWhorter is then given the registration information for the vehicle, which comes back to Larry Ward. There is no radio traffic for over two minutes while contact is made with the male, then Deputy Gonzales is heard on the radio advising dispatch of shots fired. Several second later, Deputy McWhorter is heard on the radio stating, "D39 we need medical."

At the time of the incident, both deputies were dressed in standard Pueblo County Sheriff's Office patrol uniforms with department patches on both shoulders. Both deputies wore standard police duty belts with standard police equipment. Deputy McWhorter used call sign Delta39 and badge number 100. Deputy Gonzales used call sign Delta48 and badge number 28.

After the shooting, Deputies McWhorter and Gonzales were transported to Parkview Medical Center to be treated for injuries. Deputy Gonzales had an injury to her right knee which would later require her to wear a splint/brace. Deputy McWhorter had an injury to his face at the bridge of his nose, his right forefinger, his lower back, his right knee, and he reaggravated a previous injury to the middle of his neck.

The Critical Incident Team investigation commenced.

Scene and Evidence Processing

Photos were taken of both deputies. Deputy McWhorter had mud and dirt on his uniform and gun belt, mostly on his right side. Identification Detective Roger Schneider did find biological evidence on Deputy McWhorter's uniform. Deputy McWhorter's complete uniform, duty belt, and all of its' contents were tagged into evidence. Nothing was collected from Deputy Gonzales other than the photos.

The following injuries to Deputy McWhorter were documented in the photos: bruising to the bridge of his nose and under both eyes, an abrasion to his right elbow, bruising to his left knee, and a cut/scratch to his right hand and forefinger. These injuries were documented with photographs over several days. Gunshot residue was not collected from Deputy McWhorter.

Deputy McWhorter's duty weapon was a Smith and Wesson 9mm semiautomatic pistol, model M&P9, black in color with a Streamlight TLR-1s tactical light attached to the front of the frame of the gun. The serial number on the weapon is #NBX8538. A 15-round magazine was loaded in the magazine well of the gun and it contained 12 live Winchester 9mm cartridges. One additional live cartridge was found to be loaded in the chamber of the weapon. When collected, the weapon was 3 rounds short of its maximum carrying capacity. Fifteen live cartridges were loaded in each of the two spare magazines, and they were also Winchester 9mm hollow point cartridges.

Detective John Guerrero and Detective Vanessa Simpson secured and processed the scene, which was located to the south of the Liberty International Middle School with the white SUV, Colorado Plate CIW976, facing east parked in the parent pick up loop. The SUV was parked on the pavement with a dirt parking lot to the south and a tree just to the west of the rear of the vehicle. The male party, identified as Richard Ward, was laying on his back on the ground near the back right passenger door. Richard Ward was wearing a black jacket with gray sleeves, red t-shirt, black sweatpants with red underwear showing, and black and white shoes. Laying to the southeast of Richard Ward was a Chicago Bulls hat.

Evidence cones were used to notate items of evidence at the scene. Deputy McWhorter's patrol vehicle, Unit 386, was parked to the west of the parking covering/solar panels that faced north by the trail sidewalk. Deputy Gonzales' patrol vehicle, Unit 378, was parked facing north towards the passenger side of the white Lexus SUV. Neither vehicle had dash camera video available of the incident.

Due to inclement weather, a plastic tarp was placed over Richard Ward's body and the surrounding area to preserve evidence. Photographs were taken of the scene and a FARO scan was completed of the entire scene. Nothing unusual or irregular was found concerning the patrol vehicles, and they were turned over to the Pueblo County Sheriff's Office after the scene was processed.

Once the evidence at the scene was photographed, Coroner Investigator Troy Puga removed Richard Ward's body from the scene. Due to inclement weather, Richard Ward's body was taken to the coroner's office where photos were taken. Richard Ward's body remained at the coroner's office awaiting autopsy.

Interview: Tommy Brown

On February 22, 2022, Tommy Brown was interviewed at the Pueblo County Sheriff's Office Annex by Pueblo Police Department Detective Jose Medina and Pueblo County Sheriff's Detective Victor Herrera. Tommy told the detectives he was at the Liberty Point International Middle School with his girlfriend, Kristy Ward, to pick up her son, Chase. Tommy said he was driving the vehicle and arrived at the school at approximately 3:10pm.

Tommy said Kristy's other son, Richard Ward, was also with them. Tommy said Richard was having an off day. Richard went for a walk to smoke a cigarette, then he was going to pick up his brother, Chase, and bring him back to the car. Tommy said he saw Richard talking to someone from the school, and he assumed they were asking Richard why he was at the school. Tommy then saw Richard point to their car. Tommy said he yelled at Richard to come to the car, which he did.

Tommy said the police showed up and contacted Richard. The police asked Richard if he opened someone's car door. Tommy said Richard went up to another white car, which was not their car. Tommy said Richard explained to the police that he went to the wrong car and Richard said he apologized to that lady.

Tommy said the police started grabbing Richard's arm for no reason before they found out if there was a pocketknife in his pocket. Tommy said he didn't know if the deputy was doing this because he was in fear

for himself. Tommy said in less than a minute "the dude" (Deputy McWhorter) fired approximately five rounds. Tommy said he thinks the officer should have used a taser instead.

Detective Herrera asked Tommy to explain why Richard was having an off day. Tommy said Richard had just been put on his medications. Tommy said Richard was just at a doctor's appointment and he believes the doctor's name was Dr. Jodik (unknown spelling) by Dave's Deli, Pueblo West. Tommy said Richard is on medications for bipolar, ADHD, and severe anxiety. Detective Herrera asked Tommy if Richard is on any other type of drug or if he self-medicates. Tommy said he doesn't think so, but said Richard goes to the methadone clinic. Detective Herrera asked Tommy if he knows what drug(s) Richard took, Tommy said Richard used to use Methamphetamine. Tommy did say Richard has taken Zanax and Adderall, but Tommy didn't know how much Richard took. Tommy said it possibly could have been a combination of drugs, which could have affected him. Later in the interview, Tommy did state that Richard did have an opiate problem, but he has been clean for 4 months.

Detective Herrera asked Tommy to clarify what the deputy said to Richard. Tommy said the deputy asked Richard who he was to be picking up. Tommy said Richard told the deputy that he apologized to the female for going to the wrong car. Tommy said he knows Richard resisted. Tommy said Richard's body became restless when he was stopped. Richard was seated in the right rear passenger seat of the SUV when he was contacted by the deputy.

Tommy stated that when Richard was asked if he had weapons, Richard told the deputies he thought he had a knife in his pocket. Tommy said before any of this happened, Deputy McWhorter was moving to grab Richard's arm. Later in the interview, Tommy stated that Richard did ask Deputy McWhorter why he was grabbing him. Tommy stated that Richard asked why he was being pulled out of the vehicle. Richard stated he wasn't doing anything wrong. Several times, Tommy stated that Richard was resisting the officers as they were pulling him out of the car. Tommy said he heard Deputy McWhorter ask Richard what he put in his mouth. Tommy didn't know if Richard put anything in his mouth as he didn't see it.

Tommy stated Richard was in handcuffs and questioned why a taser wasn't used. Tommy said he heard the deputies telling Richard to calm down during the struggle. Tommy said even Kristy and himself were telling Richard to stop. Tommy was asked why Richard didn't stop when they asked him to. Tommy believed it was possibly due to his condition. Tommy said Richard was saying that he wasn't resisting when the deputies were telling him to stop resisting.

Tommy was asked if he ever saw Richard reach for the deputy's gun and he said no. Tommy said they had him on the ground, which he demonstrated on the floor of the interview room. Tommy laid on the floor on his stomach with his hands behind his back. Tommy said the deputies were telling Richard to stop resisting along with him and Kristy telling Richard to stop. Tommy said the deputy went to grab Richard's hands, but he doesn't know what happened. Tommy said when the deputy went to grab Richard's arms, Richard turned, and he doesn't know if they had one handcuff on him or not. Tommy laid on his left side demonstrating how Richard was laying and Tommy assumed Richard was dead. Tommy did not see the shooting happen, but he heard the shots fired. Tommy saw Deputy McWhorter standing with his weapon drawn, at which time Tommy asked Deputy McWhorter if he shot Richard. Tommy never saw Deputy McWhorter draw his weapon.

Interview: Kristy Ward

Kristy Ward was interviewed at the Pueblo County Sheriff's Office Annex by Pueblo Police Department Detective Carly Verdugo (Gustin) and Pueblo County Sheriff Detective Amy Lile. Kristy Ward is the mother to the decedent, Richard Ward.

Kristy told detectives they were at the school to pick up her son, Chase. Kristy said she was in the front passenger seat and her boyfriend, Tommy, was driving with Richard in the back right passenger seat. She said while waiting for Chase, Richard became antsy and got out of the car to get Chase. Kristy said Richard has anxiety and he had to use the bathroom. When Richard got out of the car, he walked to the front of the school thinking Chase was going to come out there. Kristy said when Richard came back out, she thinks he went to the wrong car. She said she doesn't know the whole story as she was sitting in the passenger seat of the car. Kristy said Richard got back in the car in the back right passenger seat and he told her he spoke with one of the school officials.

Kristy said a deputy walked up to the car. Kristy said she thinks Richard was fighting as the deputies were trying to subdue him on the ground. Kristy thought the deputies either had the handcuffs on Richard or they were getting them on him when the shots happened.

Kristy said the deputies pulled Richard out of the car and they said something about a pill. Kristy didn't know what that was about. Kristy was asked if Richard takes pills, and she said he has a prescription. When asked what the prescription was for, she said that is Richard's personal information and she doesn't know. Kristy was asked about other narcotics or prescriptions he may be on, and she was not willing to answer the question. Kristy said when the deputies had Richard on the ground, she heard them telling him not to resist. Kristy said she did hear shots, but she didn't know if it was three or five shots. Kristy was informed at the end of the interview that Richard had passed from his injuries.

Interview: Stacy Hoff

On February 23, 2022, Pueblo Police Department Detective Jose Medina and Pueblo County Sheriff's Detective Victor Herrera met with witness, Stacy Hoff, at her residence in Pueblo West. Stacy said when she pulled up to park at the school, she saw Richard speaking with the officers at the car. She said Richard was popping off at the deputies. Stacy said Richard was being combative with the deputies. She saw the struggle, and she said she thinks he was reaching for the deputy's gun. She also said she could not really see. She said Richard was having fun with it and he was making statements like "Ya come on, get it". She said Richard did not try to disengage with the deputies. Stacy said Richard was going for the deputy's gun and she said the deputies were going to be shot. Stacy said it appeared that when Richard realized he could not get away, he started going after their weapons. Stacy again said she could not really see, but when asked if Richard was trying to grab at their duty belts, she said yes. Stacy said Richard was grabbing at the deputy's duty belt, and it didn't appear he was trying to hit them. Stacy said as she was backing up, she heard three gunshots and she then saw the deputies jump up. Stacy said she thought Richard was on the ground screaming, but she said it was odd. Stacy agreed the struggle was violent. She said Richard was not letting go without a struggle. Stacy said Richard was wearing a gray hoody, a hat, and sweatpants.

Autopsy Viewing Summary

On February 25, 2022, Detective Lee Medved, Detective Vanessa Simpson, and Detective Jose Medina attended the autopsy of Richard Ward. Dr. Dan Lingamfelter performed the autopsy. Richard's body was

photographed before the start of the autopsy, and during the autopsy. All clothing was removed off Richard's body. Upon inspecting the contents of his pockets, two pills were found - one in his jacket pocket, which was weathered and unable to be identified, the other was found in his pants pocket, and it was identified as an anxiety pill. Richard had the following injuries on his body: gunshot wound to the throat; gunshot wound mid-chest; gunshot wound near his upper mid clavicle collar bone area; injuries to the bridge of his nose, left arm, left wrist, left knee, and lower left leg; and abrasions to his left hip buttock area, right buttock, right shin area, and right side of face. His middle right back area had a gunshot exit wound. There was also a bullet still under his skin near his lower right back. Two fired bullets were recovered from the body, and one fired bullet was recovered at the scene when the scene was being processed. Dr. Lingamfelter determined the cause of death to be multiple gunshot wounds. The manner of death was determined to be homicide.

The autopsy report was received on March 31, 2022, with the toxicology report showing the following drugs in Richard's system: Lorazepam, Methadone, Gabapentin, THC, Hydroxyzine, and Methamphetamine.

Based on body worn footage and the examination of Deputy McWhorters duty weapon, we know that Deputy McWhorter fired 3 shots total. This corroborates the injuries, the fired bullets found during scene processing, and the autopsy findings.

Interview: Deputy Cassandra Gonzales

On February 25, 2022, Deputy Cassandra Gonzales was interviewed at the Pueblo Police Department by Pueblo Police Department Detective Jose Medina and Colorado Bureau of Investigations Agent Kevin Kobach. Deputy Gonzales' law enforcement experience starts at Pueblo County Sheriff's Office. She worked in the Pueblo County Jail from 2005-2008. She then moved to Oklahoma and worked as a Federal Police Officer from 2008-2013. In 2014, she moved back to Pueblo and resumed working at the Pueblo County Jail. Deputy Gonzales has been working as a patrol officer since 2018. Deputy Gonzales' radio call number was D48.

Gonzales said she and Deputy McWhorter were dispatched to Liberty Point International Middle School on a suspicious male who was checking car doors and he possibly got into a car. All of which happened prior to her arriving at the school. Deputy Gonzales states someone from the school told Richard to leave the premises. Deputy Gonzales states that Deputy McWhorter arrived on scene first. He found the male in the back passenger seat of a white SUV. Deputy Gonzales said Deputy McWhorter was asking the male what is going on. She stated that the first thing she noticed about Richard was his skin color. She described it as pink/reddish tint. Deputy Gonzales compares this to someone who huffs paint. Deputy Gonzales said Richard was wearing a red shirt, black hat, black shoes, and a dark colored hoodie. She states his speech was fast, and he appeared to be under the influence of something.

Deputy Gonzales said Deputy McWhorter asked Richard if he is under the influence, and Richard said no. Then Richard is asked for his ID. Richard then checks his person. Richard is then asked by Deputy McWhorter if he has any weapons. Richard states that he doesn't think so as he is patting himself down. Deputy Gonzales states Richard then opens his coat and he reaches inside the coat with his right hand. Deputy McWhorter takes Richard out of the car, and she starts telling Richard "Down, down, down." Richard refused the verbal order. Deputy Gonzales stated Richard was told to put his hands behind his back. Richard was putting up a fight, and he was not complying with verbal orders.

Deputy Gonzales stated Richard was grabbing at Deputy McWhorter's duty belt and he was not letting go. She says verbal orders are given for Richard to stop resisting. She states she grabs hold of one of Richard's legs and she applies a tibial pressure point using her knee. She then grabs the other leg, applying the same technique with her thumb. She did this in an attempt to gain control. Deputy Gonzales states at one point, Deputy McWhorter's voice changes. It became shaky, as if his airway was muffled. Deputy Gonzales stated that she doesn't recall if he was saying let go or stop, but she knew it was Deputy McWhorter's voice. Deputy Gonzales said she was scared for Deputy McWhorter. She said she heard two to three shots, which were muffled. She then sees Deputy McWhorter take a step back, at which point she called out shots fired on the radio.

Deputy Gonzales stated she was still holding Richard by the legs on the ground. Richard was laying on his back. She said she didn't know if Richard was armed or if he was going to continue to fight. She stated the door to the car was still open and she wanted to keep a clear shot/view of the people in the car. Deputy Gonzales said she didn't know who closed the door. She said she stepped back to keep an eye on the area as it was now a crime scene.

Deputy Gonzales stated she and Deputy McWhorter checked to make sure they weren't bleeding anywhere. Deputy McWhorter then lifts Richard's shirt to check on him. Deputy Gonzales states more people were now showing up. There were parents coming and picking up their children from school. Deputy Gonzales stayed with Richard until fire rescue arrives to check on him. She went to look for crime scene tape, after which she was transported to Parkview Medical Center.

Deputy Gonzales said she cannot remember if Richard was saying anything during the struggle. Deputy Gonzales described Richard grabbing Deputy McWhorter's gun belt. She reenacted this with Agent Kovak. She depicts Richard bent over with his head about chest high, leaning into Deputy McWhorter. Richard's had his hands on Deputy McWhorter's waist, one hand on the left hip and one on the right hip. She showed Agent Kovak how Richard was grabbing Deputy McWhorter by grabbing Agent Kovak around the waist with her hands on either hip, one of which is where Agent Kovak's duty weapon is.

Deputy Gonzales stated Deputy McWhorter was on his side trying to protect his gun. She demonstrates this by locking her elbow to her side. Deputy Gonzales said she did not know what was going on with Deputy McWhorter's other side as she was concerned with the hand placement on the side she could see. Deputy Gonzales said both Richard and Deputy McWhorter are on their sides as they are on the ground. She says Richard turns and the fight is on. Deputy Gonzales stated that Deputy McWhorter's gun side was down, and she could not see the gun. Deputy Gonzales was not sure if Richard had ahold of Deputy McWhorter's weapon as she could not see that side of his duty belt. Deputy Gonzales stated Deputy McWhorter's voice changed when this was going on.

Deputy Gonzales was unable to tell detectives how Deputy McWhorter's face was injured. She said the injury wasn't there before the incident. She thought he was hit with Richard's head as she didn't see fists flying or punches being thrown. Deputy Gonzales stated she was trying to apply the tibial pressure point on the leg to control Richard.

Deputy Gonzales described Richard as being under the influence of something, possibly paint, as he had red on his hands and face. She said he was fidgety, talking fast, and he was not making any sense when he spoke. She said she did not see Richard with any kind of a weapon. Deputy Gonzales said she didn't recall anyone saying "gun" when asked. Deputy Gonzales stated that Richard was actively resisting by grabbing onto Deputy McWhorter's duty belt and fighting with him.

Deputy Gonzales said she kept an eye on the occupants of the car while the doors were closed. She said she could tell Richard was deceased as he wasn't breathing. She didn't see his chest rising and falling. There was no movement when he "flopped over" to his back.

Deputy Gonzales was asked why they didn't render aid. She said she was worried about their safety and the people in the car. Deputy Gonzales said if one of them was on the ground, then the other would need to keep an eye on the car. Deputy Gonzales was asked what the plan was with the two in the car. She said she was going to wait for other officers to arrive, as they did not want to be the officers who pulled them out of the car.

Deputy Gonzales was asked if Richard appeared to try and disengage in the fight. She said he was in it. Richard was told to stop resisting, but he kept actively fighting. Deputy Gonzales was unable to say what she could have done different to stop Richard. She is a Pressure Point Control Instructor and she utilized her training during this incident. Deputy Gonzales said she thought Richard was going to hurt her or her partner. She said Richard was not stopping. She believed he could have killed her, Deputy McWhorter, or someone else.

Deputy Gonzales was asked why she felt the people in the car were an officer safety issue. She said it was due to people being inside the car, and it didn't seem safe to remove them at the time. Deputy Gonzales said the windows to the car were tinted - she could still see them, but it wasn't clear. Deputy Gonzales said the doors to the car were closed, because the occupants in the car were screaming. She doesn't remember who closed the door. She then made the statement that it didn't feel safer with the door closed either, as she didn't have a full view of what was in the car.

Interview: Deputy Charles McWhorter

On March 3, 2022, Deputy Charles McWhorter was interviewed at the Pueblo Police Department by Pueblo Police Department Detective Jose Medina and Colorado Bureau of Investigations Agent Kevin Kobach. Deputy McWhorter has been with the Pueblo County Sheriff's Office for eight years. He worked in the Pueblo County Jail for one year and he has been a patrol officer for the last seven years. He is a member of the SWAT team. Deputy McWhorter had only been back on patrol for approximately one week at the time of this incident, as he sustained a neck injury in September of 2021 which required surgery to fix.

Deputy McWhorter was dispatched to Liberty Point International Middle School on February 22, 2022, on a report of a male acting crazy and trying to get into vehicles. He responded from the Pueblo West substation and he arrived on scene first. He entered the school parking lot through a dirt parking lot. As he was pulling up on scene, he was advised that the male, later identified as Richard Ward, had just entered a white SUV. He asked for further clarification, as there were several white SUV's in the parking lot. He was told it was the white SUV that two children just walked in front of.

Deputy McWhorter was advised by a male in the parking lot that Richard had gotten into a white Lexus. Deputy McWhorter could see a male driver and a female passenger. As he walked to the vehicle, the back passenger door opened and he contacted Richard. McWhorter said he contacted Ward to see if he was in the correct vehicle to ensure it wasn't a hostage situation, he said Tommy and Kristy did not appear to have any issues with Ward in the vehicle.

Upon asking, Ward said he was at the school to pick up his brother, which he gave two different names for, Kristy spoke up and said Ward has two brothers. Richard stated that he doesn't like law enforcement as he has been hit before while being told to stop resisting. Richard was asked for his identification, and he was

asked if he had any weapons. He stated that he had a knife. Richard then put his hand in his pocket and pulled out two lighters. He then turned away from Deputy McWhorter and put something in his mouth. Deputy McWhorter asked Richard what he put in his mouth. Richard replied that it was a pill. Richard then opens his jacket and reaches inside the jacket, as if he was carrying a weapon.

Deputy McWhorter grabbed ahold of Richard's right arm and pulled him out of the car to handcuff him and to check for weapons. Richard started to fight with Deputy McWhorter. Deputy McWhorter stated that Richard was wrestling with him, and Richard was able to get his legs out from under him causing him to hit the ground hard, causing him to feel pain in his neck.

Deputy McWhorter stated he was trying to get control of Richard to get him into custody. During the altercation, he didn't remember seeing or hearing his partner, Deputy Cassandra Gonzales. Deputy McWhorter said he felt like he was wrestling Richard by himself as he didn't know where his partner was. Deputy McWhorter stated that Richard got on top of him. Deputy McWhorter said that when he was trying to control of Richard's head, he felt Richard messing with his gun side.

Deputy McWhorter let go of Richard and grabbed his gun to make sure it didn't come out of its' holster. Deputy McWhorter said Richard then headbutted him in the nose. His eyes watered and he saw stars. Deputy McWhorter stated he was worried that if he got headbutted again then he could have been knocked unconscious. He rolled to his side to protect his gun. Deputy McWhorter was in fear that Richard was going to get his gun or knock him out. Deputy McWhorter said he was in fear his neck was going to give out on him. He said the doctors told him he was close to being paralyzed if he takes a serious blow to his neck. Deputy McWhorter said he felt like he needed to stop the threat that was in front of him. He was able to get back and draw his weapon. From what he remembers, he fired two rounds. Deputy McWhorter stated after watching his bodyworn camera, he was able to count that he had fired three rounds. Deputy McWhorter said Richard was very excited during the fight. Richard was yelling something to the effect of "yah boy" or "f that". Deputy McWhorter said it felt as if Richard wanted to hurt him, and he was happy about doing it. Deputy McWhorter said Richard was very strong. He described it as drug strong and he said he felt weak while wrestling with Richard. Deputy McWhorter said he didn't deliver any strikes, and he was trying to hold onto Richard. He said it felt as if Richard was not trying to get away from him, but trying to keep ahold of him.

Deputy McWhorter said he was able to stand up after the shooting. He backed away, holding Richard at gun point. He accessed the situation to see if Richard was still a threat. He then holstered his weapon and put on gloves to render aid. He said he called for medical, then he checked on Richard by lifting his shirt. He saw two wounds on Richard's chest. He said Kristy Ward then opened the passenger door and started yelling. He was able to get her to close her door.

He then walked to the back of the car to ensure no one was injured behind the vehicle, as there were a lot of children around. Deputy McWhorter then contacted a female in a blue SUV behind the Lexus who was a witness advising her to wait for other officers. Deputy McWhorter said the driver door of the Lexus then opened and he told the male to stay in the vehicle. Deputy Mahan arrived. Deputy McWhorter instructed Deputy Mahan to deal with the occupants of the car.

Deputy McWhorter said they waited for fire rescue. While waiting, a male walked into the scene asking what he could do. Deputy McWhorter said he told the male to keep children from walking this way. Deputy McWhorter believed this male worked for the school. At this point, other deputies started to arrive on scene. Deputy McWhorter was transported from the scene to Parkview Hospital.

Deputy McWhorter was asked about his initial contact at the car. He appeared to unlock his weapon from the holster. Deputy McWhorter said this is something he does on traffic stops, as well as when people tell him they have weapons. He said he releases the tension, so it is easier to get out if needed. If his weapon is not needed, then he lets the gun lock back in. Deputy McWhorter said this is something he learned from a former sergeant he used to work for.

Deputy McWhorter stated he has been through trainings where it is trained to protect your gun. If someone is on top of you trying to get to your tools or your gun, then they are trying to kill you or hurt you. Deputy McWhorter was asked if his weapon locked back in. He said he knows it locks back in when he lets go of it. When watching the body worn camera video, it does not appear the weapon locks back in when he lets go. You will hear an audible click with some holsters as the weapon locks back in. Throughout the video footage, a click cannot be heard, and it is unknown if the weapon locked back in. During the altercation, Deputy McWhorter said he was afraid he was going to die. He was afraid Richard could have seriously injured others, along with himself, and he felt like he was in this fight alone.

Body Worn Camera Review: Deputy McWhorter

Deputy McWhorter's body worn camera shows him arriving at the school and advising dispatch the vehicle is a Ford. Once he exits his patrol car, a male voice can be heard yelling "it's the white Lexus right there." There is a white Ford Explorer in front of the white Lexus. Deputy McWhorter then airs the plate for the Lexus as CO CIW976. As he approaches the Lexus, the back passenger door opens and Richard Ward is sitting there. Deputy McWhorter asks him "what's going on?" and Richard makes the statement that someone called the cops on him for waiting for his little brother. When asked who little brother is, Richard gives two names, Eddie and Chase. Kristy Ward, who is in the front passenger seat, makes the comment that Richard has two brothers. Richard tells Deputy McWhorter that he is just messing with him. Richard has his right hand in his right jacket pocket and Deputy McWhorter grabs ahold of his right arm. Richard asks why Deputy McWhorter is touching his arm. Deputy McWhorter asks Richard why he is acting like this. Richard tells him he is nervous, he doesn't like cops, and he has anxiety. When asked why, Richard states that police have done things to him. When asked what they have done to him, he states they tell him stop resisting, then makes a punching motion, and says "when you're not resisting."

During this contact, Richard is speaking quickly. He appears to have an unfocused train of thought as he bounces back and forth in the conversation. Richard asks who he is disrupting, and he is told he was trying to mess with car doors. When asked for his side of the story, he said he thought it was his car he was getting into. He said he didn't know the lady in the car, and he told her he was sorry. Deputy McWhorter asks Richard if he is under the influence of anything and Richard says no. He is asked if he has an ID on him or any weapons. Richard then starts patting himself, then puts his hands into his pants pockets. Richard is asked a second time if he has weapons, and he states he thinks he has a pocketknife. He then pulled two lighters out of his right pants pocket. At this point the camera is pointed more towards the open door of the car and you can only see Richard's legs. You can hear Deputy McWhorter ask Richard what he just put into this mouth. Deputy McWhorter then steps back as he pulls on Richard's right arm. Deputy McWhorter has Richard by the back of his jacket as he pulls him from the car. Richard's right hand appears to be inside his coat on the left side. Richard states, "it's a pill, it's a pill, let me go" as he is being pulled out of the car. Richard comes out of the car, lands on his buttocks, then rotates away from Deputy McWhorter. Deputy McWhorter grabs Richard by the back of the jacket and on the right shoulder. While this is going on, Deputy Gonzales can be heard telling Richard to get down. Richard is told to put his hands behind his back, and he utters something that cannot be understood. Deputy McWhorter's body worn camera then falls off his

person. You can hear Richard saying, "Come on boy, come on." Richard appears to be excited. He is being told to stop multiple times, but he does not. At about the 2:42 mark, someone can be heard saying the word "gun" then 3 shots can be heard. Deputy Gonzales then aims shots fired. In the background, Kristy Ward can be heard screaming and asking what happened. Tommy Brown and Kristy Ward both ask if Richard has been shot. Deputy McWhorter can be heard asking for medical. He then tells Kristy to stay in the car and keep the doors shut. Deputy McWhorter then picked up his body worn camera and places it back on his chest. You can see the back passenger door is still open. Kristy can still be heard screaming. Richard is laying on his back with his fists clenched and his arms folded up near his head. Deputy Gonzales can be seen standing at Richard's feet.

As the video continues, Richard's arms and hands relax above his head with his hands opening up. Deputy McWhorter then puts on latex gloves while Deputy Gonzales is answering questions from Tommy. Kristy can be heard asking the deputies if they can do CPR. Deputy McWhorter shuts the back passenger door and then lifts Richard's shirt. He moves Richard's left arm down to his side. Kristy then opened her door again and she can be heard screaming. Deputy McWhorter tells her to hang on and closed the door again. Deputy McWhorter states that Richard headbutted his nose and he was trying to grab at this stuff. Deputy McWhorter does tell Deputy Gonzales to stay where she is. He then goes to check at the back of the car to confirm that no one else was injured. Deputy McWhorter then instructs Deputy Mahan to deal with the people in the Lexus. At 6:55 mark, Pueblo West fire arrives on scene. Deputy Gonzales can be seen standing stationary at Richard's feet and she doesn't move until fire rescue arrives. She begins to take photos. Sergeant Regan arrives on scene and Deputy McWhorter tells him what happened. Deputy McWhorter is then transported to Parkview Hospital.

Body Worn Camera Review: Deputy Gonzales

Deputy Gonzales' body worn camera begins with Deputy McWhorter standing near the back passenger door of the Lexus. He is speaking with Richard, who is seated inside the vehicle. The entire encounter between Deputy McWhorter and Richard can be seen from Deputy Gonzales' body worn camera. When Deputy McWhorter asks Richard if he has an ID and any weapons on him, Deputy McWhorter can be seen releasing the tension on his duty weapon from the holster raising the weapon slightly while Richard is digging through his pockets. Richard then reaches his right hand into the inside of his jacket. Deputy McWhorter then lets go of his duty weapon. Deputy McWhorter grabs Richard's right arm when asking him what he put into his mouth. Richard responded it was just a pill.

Richard is taken out of the car. He is told to get down and place his hands behind his back. At the 0:50 mark into the video, Richard gets up from his buttocks, wraps Deputy McWhorter's legs up and takes him to the ground. Deputy McWhorter lands on his buttocks. Deputy McWhorter is on his back with Richard on top of him saying "Ya boy, come on boy". Richard is actively engaged in resisting and fighting. At the 0:59 mark, Richard is seen with his right arm around Deputy McWhorter's waist with his left side towards the ground. Deputy McWhorter appears to have his left arm around Richard's right arm, and his gun side is down towards the ground. Both men go to the ground with Deputy McWhorter laying on his right side, gun side. At the 1:00 minute mark, someone says "gun". At 1:02 minutes, the first shot can be heard with 2 subsequent shots. Richard can be seen on his left side. Deputy McWhorter was able to get off his right side and fire his duty weapon. Deputy McWhorter's left arm is entangled with Richard's right arm and groin area.

Deputy McWhorter then stands up and backs away from Richard, with his duty weapon pointed at Richard. Richard can be seen laying on his left side with Deputy Gonzales at his feet. Richard then flops over to his

back and both of his arms come up, bent at the elbows by his head with his fists clenched. At the 1:48 mark, Richard appears to be breathing with difficulty while on the ground.

Kristy can be heard screaming, along with Tommy telling the deputies to call 911. Tommy is asking for a sergeant. At the 2:18 mark, Deputy McWhorter can be seen checking his right index finger which appears to have an injury on it. An injury can be seen to the bridge of his nose. Deputy McWhorter puts on gloves and Kristy asks if they can do CPR. Deputy McWhorter tells her they are checking on him and closed the back passenger door. Deputy McWhorter lifts Richard's shirt and an entry wound can be seen in the middle of the chest. Richard is not breathing or moving. Deputy McWhorter asks Deputy Gonzales if she is okay and she tells him yes. She then asks Deputy McWhorter if he is okay. Deputy McWhorter says he is okay. He tells Deputy Gonzales that Richard headbutted his nose and he was grabbing at his stuff. Fire Rescue arrives and check on Richard.

Render Aid Summary

Both Deputy McWhorter and Deputy Gonzales stated they were going to render aid but did not do so because of the occupants that were still in the car. Deputy McWhorter said he closed the doors to the car so he was concealed and the occupants inside the car could not see him. He said he would have felt vulnerable if he was down on the ground assisting Richard as the door would only offer concealment, not cover. They felt it would be better if another deputy asked the occupants to exit the car. When Deputy Mahan arrived on scene, he went to the driver door, but he never had the occupants exit the car. Deputy Gonzales stated she was keeping an eye on Richard, whom she believed to be deceased. She also watched the occupants in the car while the doors were closed. Deputy Gonzales stated she also felt uncomfortable with the doors closed as she cannot see the occupants clearly.

Further Body Worn Camera Analysis

The body worn camera videos were sent out to Rocky Mountain Information Network (RMIN) to see if the audio could be enhanced around the word "gun." On March 30, 2022, enhanced videos and a report was sent back from RMIN. The word "gun" can be heard, but nothing intelligible can be heard just prior to the word "gun" being said.

Legal Guidelines

A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person. Furthermore, he may use a degree of force which he reasonably believes to be necessary for that purpose. §18-1-704(1), C.R.S.

A person is justified in using deadly physical force upon another person in order to defend himself or a third person if he reasonably believes a lesser degree of force is inadequate and he has reasonable grounds to believe, and does so believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. §18-1-704(2)(a), C.R.S.

In evaluating whether a person is justified by self-defense, the person is entitled to act on appearances. People v. La Voie, 395 P.2d 1001 (Colo. 1964). The United States Supreme Court evaluated whether

officers used excessive force under the Fourth and Fourteenth Amendments by approaching the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Plumhoff v. Rickard, 143 S. Ct. 2012 (2014). In that case officers fired a total of 15 shots at a suspect in a fleeing car that was determined to constitute a grave public safety risk. In its ruling the Court said, "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." Further, the Court took into account that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation – in circumstances that are tense, uncertain, and rapidly evolving.

Conclusion

Based on the facts of the investigation conducted by CIT investigators, the use of force by Pueblo County Sheriff's Deputy Charles McWhorter and Deputy Cassandra Gonzales are justified. This conclusion is based on interviews of the involved officers, civilian witnesses to the incident, body worn camera video, and crime scene and evidence processing.

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

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

Given the facts and circumstances of the situation and the governing law, criminal charges against Deputy Charles McWhorter and Deputy Cassandra Gonzales would not be appropriate, and therefore no criminal charges will be filed.

Dated this 14TH day of October, 2022



J.E. Chostner
District Attorney