



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

November 10, 2022

Sheriff David Lucero  
Pueblo County Sheriff's Office  
909 Court Street  
Pueblo, CO 81003

Chief Steven Noeller  
Pueblo Police Department  
Pueblo Municipal Center  
200 S. Main Street  
Pueblo, CO 81003

Re: District Attorney Critical Incident Team (CIT) Decision Letter  
Officer Involved Incident on June 28, 2022

Location: I-25 McCulley on-ramp, Pueblo, Colorado  
Injured: Bryce Ming (DOB: 03/24/1998); Elisa Marie Montoya (DOB 06/24/1985)  
Officer Involved: Sgt. Richard Reyes

Dear Sheriff Lucero and Chief Noeller:

The 10<sup>th</sup> Judicial District Critical Incident Team (CIT) was activated on June 28, 2022, to investigate an Officer Involved Incident which resulted in a single gunshot wound to Bryce Ming (DOB: 03/24/1998), and a single gunshot wound to Elisa Marie Montoya (DOB 06/24/1985).

The Pueblo County Sheriff's Department was designated as the lead investigative agency and other CIT participants included the Colorado Bureau of Investigation and the Colorado State Patrol.

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.

## **Summary of the Incident**

On June 28, 2022 at 7:47 a.m., Pueblo Police Officers were called to Sunflower Bank, 1715 S. Pueblo Blvd., on a report of a black truck that was attempting to steal an ATM and was shooting at the reporting party. Citizen witness, Dustin Yochum, told police that he was shot at from the black truck while he was using his phone to video the truck dragging the ATM.

Responding Pueblo Police Officer Bryan Sisnroy arrived at the Regency Shopping Center parking lot to find the black truck stopped, with an ATM attached behind it with tow straps. Officer Sisnroy pulled behind the truck, drew his handgun, and identified himself as police. The truck immediately drove off, and the ATM disconnected when the truck hit a speed bump in the parking lot. Officer Sisnroy, quickly joined by Officer Justin Preedy, pursued the truck with lights and sirens, but after the truck drove at speeds approaching 90 miles per hour in a residential area, the police terminated the pursuit due to community safety concerns. Later, citizen witness Dennis Smith told police that the driver of the black truck pointed what appeared to be an assault rifle at him before police arrived, while the truck was dragging the ATM.

Later that afternoon, Officer Preedy found the black truck parked at a Loaf N' Jug gas pump at 1201 W. Pueblo Blvd. Other officers arrived to help surveil the black truck, with a plan to intercept the truck and its occupant(s) at a safer location once the truck left the gas pump.

Between approximately 3:43 p.m. and 3:48 p.m., police learned that two males had abandoned the black truck at the Loaf N' Jug, and crossed Pueblo Boulevard on foot to an Alta gas station, where they took 79-year-old Marcella Maestas' Subaru CrossTrek vehicle from her by force, and drove off with it.

Within minutes of fleeing from the Alta gas station in the stolen Subaru, while out of sight of the police, the two men picked up a female from a residence near Spruce and Indiana.

At 3:48 p.m., near the 1400 block of E. Routt Ave., police located the stolen Subaru, now occupied by a male driver, a male front seat passenger, and a female back seat passenger. Police now believed, and aired on police radio, that the two males were suspects in the earlier shooting during the attempt to steal the Sunflower Bank ATM.

Police began pursuing the stolen Subaru in marked patrol cars with lights and sirens. During this pursuit, police attempted a "PIT" maneuver, a tactic by which a pursuing police car can force a fleeing car to turn sideways abruptly, causing the driver to lose control and stop. After temporarily spinning out from the "PIT" maneuver, the Subaru immediately resumed eluding at a high rate of speed, continuing to disregard traffic signals and traffic signs.

At 4:02 p.m., while Officer Preedy was pursuing directly behind the Subaru, on Abriendo Avenue near Mesa, he observed the driver of the Subaru point a rifle out the driver's window toward Officer Preedy. Minutes later, while the pursuit was on the I-25 highway, Officer Preedy observed the front seat passenger point a rifle out the passenger window, and fire at Officer Preedy. Officer Preedy aired this information on his police radio as it was happening.

Sgt. Richard Reyes, whose unmarked police vehicle was parked off the right side of the I-25 McCulley on-ramp ahead of the pursuit, heard Officer Preedy radio that he was being shot at from the Subaru. Sgt. Reyes, who was dressed in civilian clothes with a black ballistic vest with "POLICE" in large white letters on the front and back, armed himself with his department issued scoped rifle. The rifle was loaded with 20 rounds of 55-grain .223 caliber Hornady Tap ammunition, which are designed to not over-penetrate.

From a standing position on grass off to the right side of the road way, Sgt. Reyes fired a total of 16 shots at the Subaru: initially, at the driver's side windshield as it approached him at high speed; and then at the rear window, angled toward the driver's seat, as the Subaru continued eluding past him. As a result, the Subaru sustained at least 13 bullet strikes (and likely three others that cannot be confirmed because the rear windshield shattered). Only two (2) of six (6) bullet strikes on the driver's side windshield penetrated through the windshield.

A bullet from the Subaru struck Sgt Reyes' Tahoe at approximately head height, when the parked Tahoe was in between the passing Subaru and where Sgt. Reyes was standing. The Subaru continued to elude, entering I-25 southbound from the McCulley on-ramp.

At 4:11 p.m., the chase ended on southbound I-25 near the Verde Rd exit, when Sgt. Sincerbox executed a PIT maneuver which stopped the Subaru. Front seat passenger Juan Aguilar surrendered immediately. Driver Bryce Ming and backseat passenger Elisa Montoya were captured after they ran on foot for approximately 100 yards.

Inside the Subaru was a .22 caliber assault-style rifle, four spent .22 caliber casings, and a white backpack containing 352 live rounds of .22 caliber ammunition. The 79-year-old car theft victim Marcella Maestas' purse was found on the back seat, and credit cards from Marcella's purse were found inside Elisa Montoya's bra when Montoya was captured.

Driver Bryce Ming suffered a bullet graze wound on the top of his left shoulder. Back seat passenger Elisa Montoya suffered an apparent bullet shrapnel wound to her face. Both were transported to the hospital and successfully treated. Front seat passenger Juan Aguilar was not injured.

### **Surveillance Footage**

Surveillance footage from the Subway restaurant, located across Pueblo Boulevard from the Alta gas station, shows two individuals walking away from the direction of the Loaf N' Jug, and then jaywalking across the Boulevard toward the Alta. One of the individuals, later determined to be Bryce Ming, is wearing a white hat and a white backpack, and carrying in his right hand what appears to be a rifle. An individual later determined to be Juan Aguilar is following Ming approximately 10-yards behind. Ming runs directly to 79-year-old Marcella Maestas, who is parked at an Alta gas pump, standing next to her open driver's door. Ming forcibly pulls Maestas away from her Subaru, and Ming gets in the driver's seat. Surveillance footage from the Alta shows Aguilar arriving at the Subaru seconds after Ming, and Aguilar hops in the front passenger seat as Ming drives away.

### **Juan Aguilar Statements to Law Enforcement**

Juan Aguilar admitted that, because he owed Ming \$200.00 for a drug debt, he helped Ming during both attempts to steal the Sunflower Bank ATM. Aguilar stated that, during the second attempt to steal the ATM, Ming fired the rifle at a person in a large orange truck [Dustin Yochum], and Ming fired a second shot out the driver's window as the black truck was leaving the bank. Aguilar stated that he was a passenger, and Ming was the driver, when Ming eluded police while driving the black truck.

Aguilar confirmed that, later in the day, he was present when Ming grabbed the lady and took her Subaru, so that he and Ming could get away from police they had spotted while they were at Loaf N' Jug.

Aguilar stated the rifle belonged to Ming, and it was Ming who fired the rifle approximately 20 times at pursuing police, including at one point while Aguilar was steering the Subaru from his passenger seat. Aguilar admitted he believed the person in civilian clothes who fired at the Subaru looked like a cop.

### **Elisa Montoya Statements to Law Enforcement**

Elisa Montoya admitted that Ming is her boyfriend, and that Ming had been driving the black truck for about a week. She stated she was not present during the ATM crimes.

On the afternoon in question, Montoya stated she was at a friend's house near Spruce and Indiana. Ming unexpectedly showed up driving a maroon car [the stolen Subaru], with Aguilar in the front passenger seat, and Ming told her to get in the car quick. She got in the back seat, and Ming drove off. Soon afterwards, Ming saw police cars approaching, and intentionally eluded at high speed in the residential area, expecting the police would stop their pursuit. When the police did not stop pursuing, Aguilar grabbed the rifle that was between the front seats, pointed it behind the Subaru out of the front passenger window, and started shooting without aiming.

Montoya states that when the shooting started, she laid down on the back floorboard/ back seat. She believes she was injured by shrapnel when she lifted her head at one point to see if the police were still pursuing. She stated she never saw her boyfriend Ming stick the gun out the driver's side window, or fire the gun, although she may have seen the gun come from the driver's side of the car, as if Ming handed the gun to Aguilar.

Montoya, who admits she is addicted to opiates, stated she did not see the Subaru owner's purse in the back seat, and only had the Subaru owner's credit cards in her bra because Ming handed them to her during the chase, and told her to hang on to them.

### **Bryce Ming Statements to Law Enforcement**

Ming exercised his right to remain silent.

## **Sgt. Richard Reyes Statements to Law Enforcement**

Pueblo Police Sgt. Reyes was interviewed by Det. Burgos of the Pueblo County Sheriff Office and Special Agent Davis with the Colorado Bureau of Investigations.

Sgt. Reyes stated his decision to shoot at the driver of the Subaru was based on a number of factors. He was aware that shots were fired at citizens earlier in the day during the attempted ATM theft. He was aware that the Subaru occupants had taken the car by force from an elderly female. He was aware that the driver kept eluding after the first PIT maneuver. He believed during the current pursuit, the driver of the Subaru had shown a complete disregard for the life and welfare of everyone in the area. He had heard Officer Preedy radio that the driver of the Subaru had pointed a rifle at Officer Preedy out the window of the Subaru, and soon thereafter he heard Officer Preedy scream on the radio "He's cranking rounds at me!", which Sgt. Reyes believed referred to the driver. Sgt. Reyes stated he was in fear of an officer, or an innocent bystander, or an innocent driver being shot by this active shooter. He felt he had to take action in defense of others to stop the threat.

Sgt. Reyes stated he was aware from police radio traffic that there were two males in the Subaru, but he was not aware the female was also present. Sgt. Reyes stated his lower penetration rifle ammunition was safer for any innocent person behind the target, but that also meant his ammunition might not penetrate even the windshield of the Subaru, and that factored into how many shots he fired. He stopped firing because of the approaching police cars in pursuit.

## **Legal Principles**

### **a) Use of Deadly Physical Force in Defense of a Person**

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

"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 legally justified in using deadly physical force, the person is entitled to act on appearances. *People v. La Voie, 395 P.2d 1001 (Colo. 1964).*

### **b) Use of Deadly Physical Force in Making an Arrest:**

"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(3.)*

“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).*

“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.” *C.R.S. 18-1-707(4.5).*

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 vehicle that was determined to constitute a grave public safety risk due to the high-speed pursuit as well as the suspect intentionally striking a police cruiser and forcing an officer to move to avoid being struck by the fleeing vehicle. 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.

**e) Complicity:**

“A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets, advises, or encourages the other person in planning or committing the offense.” *C.R.S. 18-1-603.*

**Conclusion**

Based on the law of complicity, both Mr. Ming and Mr. Aguilar are criminally responsible for shooting the rifle. An eyewitness identified the gun used during the attempted ATM theft as an assault style rifle. The video evidence in this case shows Ming carrying both the rifle, and a backpack later found to contain rifle ammunition, at the time the Subaru is stolen. Officer Preedy observed Ming stick the rifle out the driver’s window toward Officer Preedy. Aguilar admits he helped steer the Subaru while Ming fired the rifle toward pursuing officers. Officer Preedy

observed Aguilar fire the rifle towards him from the passenger window. The evidence shows Ming and Aguilar aided each other in firing the rifle, and their actions on June 28, 2022, were intentional, and posed a threat of serious bodily injury or death to pursuing police officers, including Officer Preedy. Those same actions demonstrated extreme indifference to the lives of innocent persons in the area.

It is my conclusion, based on the circumstances, that Sgt. Reyes was justified by the above self-defense, defense of others, and complicity provisions of Colorado law in taking the actions he did to defend himself and others from what he reasonably believed to be the actual use, and continued imminent use, of unlawful deadly physical force by Ming and Aguilar. Sgt. Reyes had reasonable grounds to believe, and did believe, based on repeated shots fired from a deadly weapon at pursuing officers, that Officer Preedy, as well as other officers and citizens in the area, were in imminent danger of being killed or receiving great bodily injury, and that a lesser degree of force would be inadequate. Sgt. Reyes' response was based on his own knowledge, observation and perception at the time, and his actions were reasonable under the circumstances.

Given the facts and circumstances of the situation and the governing statutes and case-law, criminal charges against Sgt. Richard Reyes would not be supported, and therefore, no criminal charges will be filed against Sgt. Reyes.

Dated this 10<sup>th</sup> day of November 2022



J.E. Chostner  
District Attorney