



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

February 17, 2023

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

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

Re: District Attorney CIT Decision Letter  
Officer Involved Incident on June 29, 2022  
Location: 4200 Dillon Dr, Pueblo, Colorado  
Decedent: Mark Steven Sales (DOB 11/18/1955)  
Officers Involved: Jonathan Vicars and Shawn Davis

Dear Chief Noeller and Sheriff Lucero:

The 10th Judicial District Critical Incident Team (CIT) was activated on June 29<sup>th</sup>, 2022, to investigate an Officer Involved Shooting (OIS) Incident which resulted in the fatal injury of Mark Steven Sales (DOB 11/18/1955). The Colorado Bureau of Investigation was designated as the lead investigative agency and other CIT participants included the Colorado State Patrol (CSP), Pueblo County Sheriff Office (PCSO), 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 June 29<sup>th</sup>, 2022, at approximately 3:19 p.m., multiple Pueblo Police Department Officers including Officer Jonathan Vicars and Corporal Robert Shawn Davis were dispatched to 4200 Dillion Drive in Pueblo, Colorado, regarding a possible shooting. While in route, the Officers were advised via dispatch notes that a female had been shot. The initial reporting party, Jennifer Spangler, informed dispatch they were behind the Northside Walmart by 4200 Dillon Drive and they were homeless. Ms. Spangler told dispatch that a “41-year-old female had been shot twice, one time with a gun but it went straight through” the right hip. Dispatch then requested to speak to the victim of the shooting, later identified as Roberta Gussler. Ms. Gussler gave the following description for the shooter: the victim knows the shooter as Mark, male, wearing a black long-sleeved flannel, blue jeans, long gray hair with a cowboy hat. Initially, dispatch informed Ms. Gussler and Ms. Spangler that Officers could not find them. Ms. Spangler informed dispatch that they were down by the dirt road and her husband was on the way to escort the officers.

Officer Vicars and Corporal Davis initially responded to the call with “Code 3” (lights and sirens activated). When the two Officers arrived, they drove down the dirt road access near 40<sup>th</sup> and Dillon next to 4200 Dillon Drive. Both Officers were familiar with the area and knew there was a dirt road next to the Dillon Drive. Walmart and both Officers also knew there were several homeless camps in the area and believed the victim to be within that vicinity. Corporal Davis was the driver and Officer Vicars was the passenger. As the Officers turned onto the dirt road, Corporal Davis switched off the Patrol vehicle’s lights and sirens, not wanting to alert the suspect. Corporal Davis recalled looking for a suspect with a white cowboy hat and was expecting someone to flag them down. As the two Officers drove down the dirt road Officer Vicars observed a male walking on the right side of the road. Officer Vicars said he remembered getting a suspect description but did not remember it. Corporal Davis stated he did not think it matched the description but “I don’t know who is going to be flagging us down. I don’t know if this guy has anything to do with it, we don’t know much of anything at this point”.

As the Officers approached the individual, both Officers saw that the individual had a long gun and was holding it down in front of him. As soon as Corporal Davis stated to Officer Vicars that the individual had a gun, said individual turned around and fired shots toward the two Officers, shattering the patrol vehicle’s window. Corporal Davis stated he knew Officer Vicars had been shot, possibly dead and he had to get out of the moving vehicle. Once out of the vehicle, Corporal Davis sought cover and returned fire at the suspect.

Officer Vicars stated when they pulled up to the individual, he believed the individual was the suspect they were looking for. Officer Vicars said he saw a gun, unholstered his own sidearm and told the individual to “drop it”. The individual then responded by turning around and, without a word, fired toward Officer Vicars. The glass shattered at the passenger side door. Officer Vicars returned fire in the suspect’s direction and radioed to dispatch that shots were fired.

At the time of the incident, Corporal Davis wore a dark blue uniform with patches on the shoulders, badge and name plate. He also wore a bullet proof vest underneath his uniform. Officer Vicars wore a dark navy exterior vest carrier with "Police" in white letters. The front of the vest was the standard PPD badge. Officer Vicars stated the shirt he wore had the standard PPD patch on both shoulders. Both Officers wore standard police duty belts with standard police equipment.

After the shooting, Officer Vicars was transported to St. Mary-Corwin Hospital to be treated for injuries. Officer Vicars was struck by a bullet around his right orbital socket and another bullet struck him at the elbow.

The Critical Incident Team Investigation commenced.

### **Scene and Evidence Processing**

Photos were taken of both Officers. Officer Davis had dirt on his uniform and gun belt. Photos of Officer Vicars were taken after he was transported to St. Mary-Corwin Hospital. Photos were taken of Officer Vicars in a hospital gown and the uniform pictures were taken without Officer Vicars. Officer Vicars uniform showed dirt on his uniform and scrapes on his trousers.

The following injuries to Officer Davis were documented in the photos: an abrasion on the backside of the left forearm near the elbow. The abrasion was approximately three inches long. Multiple abrasions on the right elbow. The injuries were documented with photographs on the day of the incident.

The following injuries to Officer Vicars were documented in the photos: abrasion on the right-side of the face, near the cheekbone area. A puncture wound on the right elbow; dried blood was visible. The injuries were documented with photographs on the day of the incident. Shotgun bullets were removed from the right temple and right arm. On July 13<sup>th</sup>, Officer Vicars sent further photos to CBI Agent Christopher Adams showing bruising on the right-side of his stomach and the right buttocks.

Officer Davis' duty weapon was a Glock 17 Gen 5 .9mm, black in color with a Streamlight TLR-1 HL tactical light attached to the front of the frame of the gun. The serial number on the weapon was #BTWP683. A 17-round magazine was loaded in the magazine well of the gun and it contained 17 live Hydra shock hollow point .9mm cartridges. One additional live cartridge was found to be loaded in the chamber of the weapon. When collected, the weapon was at its maximum carrying capacity. Seventeen live cartridges were loaded in one spare magazine which were Hydra-shock hollow point cartridges. One magazine was empty.

Officer Vicars' duty weapon was a Glock 17 Gen 5 .9mm, black in color with Streamlight TLR-1 HL tactical light attached to the front frame of the gun and night sights. The serial number on the weapon was #BTWP602. A 17-round magazine was loaded in the magazine well of the gun and it contained 11 .9mm hollow point live cartridge. Officer Vicars also carried two additional 17-round

magazines. When collected, the weapon was seven rounds short of its maximum carrying capacity. Breakdown as follows: 17-round magazine filled to capacity, one round in the chamber, when recovered, a total of 12-rounds was located in the magazine and chamber. Both additional magazines were filled to capacity.

PCSO Detective Honeycutt and PCSO Detective Vanessa Simpson secured and processed the scene, which was located to the south of the Northside Walmart at 4200 Dillon Drive. Officer Davis and Officer Vicars fully marked PPD vehicle (#2108) was parked facing east toward the train tracks. The vehicle was partially off the dirt road. The front passenger side window of the vehicle had been shattered with pieces of glass attached to the window frame. Both the front passenger and rear passenger side of the vehicle showed punctures on the door frame. The driver side and rear driver side doors were open. Dash camera video from the vehicle was available for the incident.

The deceased, later identified as Mark Stevens Sales, was wearing a camouflaged bucket hat, patterned long-sleeved shirt, a black t-shirt underneath, blue jeans, and black and green patterned step in shoes. At his feet, was a spent shotgun shell casing and a Hawthorne Model 110 shotgun. Photographs were taken of the scene and a FARO brand laser was completed to document photos of the scene.

Coroner Hudgens was on-scene. All items, excluding the .9mm cartridges, were removed from the deceased body and were taken into custody by Coroner Hudgens. Mr. Sale's body was removed at 2019 hours. Pathologist Daniel Lingamfelter, D.O., performed the autopsy on Mr. Sales on July 1<sup>st</sup>, 2022.

### **Autopsy Viewing Summary**

On July 1<sup>st</sup>, 2022, CBI Agent Christopher Adams attended the autopsy of Mark Sales. Dr. Dan Lingamfelter performed the autopsy. CBI Crime Scene Analyst Heather Szech photographed the autopsy. All clothing was removed off Mr. Sales' body. Mr. Sales had the following injuries on his body: gunshot wound to the chest; two gunshot wounds to the abdomen; gunshot wound to the left arm; gunshot wound to the left thigh and abdomen, gunshot wound to the left leg, abrasion to the lower back and abrasions on the lower extremities. Multiple radiographic scans were taken and examined. Two bullets were identified in the region of the right torso. Bullet debris were present in the left upper arm and left shoulder region, minimal bullet debris were identified immediately underneath the right knee. Dr. Lingamfelter determined the cause of death to be multiple gunshot wounds causing massive blood loss. The manner of death was determined to be homicide.

The autopsy report was received on August 30<sup>th</sup>, 2022, with the toxicology report showing the following drugs in Mr. Sales' system: Ethanol, Morphine, Hydromorphone, Oxycodone, Oxymorphone and THC.

Based on body worn camera footage and the examination of Officer Vicars duty weapon, we knew that Officer Vicars fired a total of seven (7) shots total and Officer Davis fired nine (9) shots. Which were consistent with injuries, spent shell casings found during scene processing, and autopsy findings.

### **Interview: Corporal Shawn Davis**

On July 8<sup>th</sup>, 2022, Corporal Davis was interviewed at the Pueblo Police Department by CSP Investigator Jerald Wolff and CBI Agent Christopher Adams. Corporal Davis' counsel John Rice was also present for the interview. Corporal Davis' law enforcement experience started in 1998 with the Fremont County Sheriff's Office, later he moved to the Canon City Police Department. Corporal Davis attended the Police Academy in 2002 and became Peace Officer Standards and Training (POST) certified. Corporal Davis had worked for the Pueblo Police Department since 2013 and is currently a Police Training Officer. Corporal Davis is currently assigned to a two-man DICE unit which has been a proactive police unit.

On June 29<sup>th</sup>, 2022, Corporal Davis started his shift at 7:00 a.m. He was wearing his uniform and drove his fully marked PPD patrol vehicle (Unit #2108) on the day of the incident. Corporal Davis stated prior to the incident he had responded to a burglary in-progress where four (4) individuals were detained, trespass citations were issued, and released from custody. Corporal Davis stated he had heard on the radio that a female had been shot and the suspect had left on foot. The suspects whereabouts were unknown at the time. Corporal Davis responded with "Code 3" and activated the vehicles lights and sirens. While he listened to the radio traffic, Corporal Davis believed they were looking for a suspect wearing a white cowboy hat and the suspect had left the area behind the Walmart along the river. Due to Corporal Davis' DICE duties, he was familiar with the area and was aware of a road at 40<sup>th</sup> and Dillon that would take him to the river's edge with several homeless camps along that stretch. As it was described to Corporal Davis, he believed that was where the victim was located and was informed that someone would flag him down when he arrived.

Corporal Davis turned onto the dirt road and shut off the lights and sirens on the vehicle, as he did not want to alert the suspect of their presence. Corporal Davis was the driver and Officer Vicars was sitting in the front passenger seat. Corporal Davis drove up to a male who was walking away from the Officers' direction toward the north on the eastside of the road. Corporal Davis did not believe the male matched the description of the person they were looking for. He stated he expected someone to flag the patrol vehicle down and did not know if the male had anything to do with the incident. As Corporal Davis approached him, the male was on the passenger side of the vehicle. Corporal Davis stated that as he drove alongside of the male, he saw the male had a long gun. The male held the gun down in front of him while he was walking. Corporal Davis stated he said something to the effect that "he has got a rifle". The male turned and looked at Corporal Davis and Officer Vicars. As the male made eye contact with the Officers, he brought the gun up and pointed it at the Officers and fired the gun.

He knew the round had come through the window. According to Corporal Davis, when the round went off, it "was the scariest moment of my life". At this point, the vehicle had been moving. Corporal Davis stated he knew he was at a bad spot as he was on a small dirt road and the male had a rifle. If Corporal Davis drove away, he would have had nowhere to go, and the male would "wear them out with the rifle" as the Officers would be "sitting ducks at this point". Corporal Davis stated he knew Officer Vicars had been shot, perhaps dead, so he had to get out of the vehicle and engage the male before the male killed both Officers. Corporal Davis opened the door and exited the vehicle. Corporal Davis kept low, as his patrol vehicle was still moving, which caused him to lose cover once the vehicle moved passed the Officer. When Corporal Davis got out of the car, he heard multiple rounds and believed the male was "dumping" rounds into Officer Vicars. Once the vehicle was out of the way, Corporal Davis could see the male hunkered down. There was just enough of a rise on the road that Corporal Davis could not get a good shot. Corporal Davis came to his knees and as he did so, he saw the male hunkered down by the dirt, laying back, had his left knee up while loading bullets into the gun. Corporal Davis stated he was at a disadvantage since the male had a rifle and he only had a handgun and there was little distance between them. Corporal Davis yelled at the male to "put it down". Corporal Davis stated he could see his kids faces and telling himself "you have to make these rounds count or you are not going home today". Corporal Davis then took aim at a center mass and started shooting his gun. The male was still "fooling around" with the gun. Corporal Davis told Investigators that he knew he had hit the male and thought "why does he [the male] not stop". The male continued to try to reload the gun.

At this point Corporal Davis stated the male might have slid down a bit more but still had his knee up and tried to reload the gun. Corporal Davis remembered one of the rounds he fired went into the dirt left of the male's head and one below the male's feet. Corporal Davis told himself that he needed to breathe, by this point he was very rattled. When Corporal Davis fired again the male seemed to let the gun go. It was at that point that Corporal Davis felt that the male was not able to fire the gun anymore. Corporal Davis took a breath, remembered he shot quite a few rounds and reloaded. At first, Corporal Davis wanted to do a tactical reload and hold on to the magazine but decided against it. Up to this point Corporal Davis thought Officer Vicars was dead. Corporal Davis said his vehicle had rolled about 50-yards away and he was able to see Officer Vicars outside of the vehicle. Corporal Davis saw a tree stump behind him, and he moved behind the tree stump for cover.

After Corporal Davis got behind the tree stump, he used his radio that the male was down on his back and he (Corporal Davis) needed cover. At the same time, Officer Vicars had radioed to Corporal Davis to sit down and stay off the radio. Corporal Davis heard Officer Vicars over the radio saying he (Officer Vicars) had been hit so Corporal Davis needed to radio to have someone check on Officer Vicars. Corporal Davis stated he did not feel shot or injured. Corporal Davis said the first patrol vehicle that came by and passed in-between Corporal Davis and the male. As the patrol vehicle passed by Corporal Davis said he remembered seeing the male move one last time, so he told the vehicle (which was PPD Sergeant Robinson) to be careful, the male had been moving. Corporal Davis stated that he did not believe the male was dead. PPD Sergeant Vahlbusch arrived right after Sergeant Robinson but was unable to provide him with any cover and they were

unable to help Officer Vicars from their location. Both Sergeants were focused on the male and Sergeant Robinson stated the male had no longer been moving. Corporal Davis then went on to check Officer Vicars and noted that Officer Vicars was bleeding from his cheek. Once Corporal Davis was sure Officer Vicars was fine, he saw Sergeant Robinson and Sergeant Vahlbusch stack up behind Sergeant Robinson's car with a shield. Corporal Davis wanted to check on the male and render aide, but Sergeant Robinson told Corporal Davis that he was not going. The Sergeants then went and checked on the male and Corporal Davis was taken away from the scene.

Corporal David stated he saw medical come up as he was being taken away. Corporal Davis said when he was fired upon it was "the most scared he has ever been". Corporal Davis did not believe his Taser or OC spray would have been effective during the incident because the male had a gun and believed it was a rifle. The male was too far for both OC and/or Taser to be used. If Corporal Davis had messed with the Taser, he (Corporal Davis) would be dead. Corporal Davis stated the male had fired the weapon before he exited his vehicle. Corporal Davis said when he fired his gun, he was aiming for the chest and the back stop was a dirt mound behind the male. At the time, Corporal Davis thought he fired 10 to 12 rounds. Corporal Davis believed the first few shots he fired were on target as he remembered seeing the male's shirt moving on the chest area when he (Corporal Davis) fired rounds. Corporal Davis knew that two rounds missed the male. Corporal Davis did not know the male during the incident or at the time of the interview. Corporal Davis did not see any other weapon on the male. At the time of the incident, Corporal Davis thought the male had a rifle, subsequently Corporal Davis learned it was a 410 shotgun. At the time of the incident, Corporal Davis did not know if any other Officers fired. He thought the male had shot rounds into the patrol vehicle. After the incident, Corporal Davis found out other officers had fired as well. Corporal Davis said when the male first shot, it was so fast that the male did not even take aim. Corporal Davis stated after he was up, reloaded his service weapon and looked at Officer Vicars, Corporal Davis noticed a guy by the hill yelling something along the lines of "that's the guy that shot my girl". Corporal Davis yelled at the person to "get back".

Corporal Davis stated when the male first fired at him and Officer Vicars, the distance was very close, under 10-yards. Corporal Davis believed when he engaged the male, the distance was around 15- to 18-yards.

### **Interview: Officer Jonathan Vicars**

On July 8<sup>th</sup>, 2022, Officer Jonathan Vicars was interviewed at the Pueblo Police Department by CSP Investigator Jerald Wolff and CBI Agent Christopher Adams. Officer Vicars' counsel John Rice was present as well. Officer Vicars had worked for the Pueblo Police Department since 2014. Officer Vicars graduated from the PPD Police Academy in 2015 and was POST certified. Officer Vicars was currently assigned to the DICE unit, a temporary assignment to work on problem areas such as theft, trespass, trash and homeless. His normal duty shift was from 8:00 a.m. to 6:00 p.m. Officer Vicars was a Patrol Training Officer, driving instructor, report writing instructor and OSSI internal report system instructor.

On June 29<sup>th</sup>, 2022, Officer Vicars started his shift at 8:00 a.m. and had on his duty uniform. Officer Vicars was in the Patrol Vehicle with Corporal Davis, Unit #2108. Corporal Davis was the driver and Officer Vicars was the passenger. Prior to the incident, Officer Vicars was on a burglary in-progress call near 18<sup>th</sup> Street and Greenwood Avenue. After the burglary call, Officer Vicars responded to a shooting call at 4200 Dillon Drive. Officer Vicars was informed by dispatch that a woman had been shot and he responded to the call with lights and sirens. Dispatch described the location as Eagleridge Drive and Dillon Drive, east of Walmart along the Fountain Creek. Due to his experience with the DICE unit, Officer Vicars was familiar with the area described by dispatch and was aware of a dirt road access near 40th and Dillon Drive.

Officer Vicars and Corporal Davis drove down the dirt road access. Officer Vicars remembered getting a suspect description from dispatch but could not remember word-for-word what that description was. Officer Vicars saw a male walking on the right side of the dirt road. Officer Vicars said that Corporal Davis told him that the male “looks like he has a rifle”. Officer Vicars also saw the rifle. As Officer Vicars got closer, he could see the wooden stock on the rifle. Officer Vicars described the person as an older man wearing a plaid long-sleeved shirt and jeans. Officer Vicars believed the male was the suspect. As Officer Vicars and Corporal Davis approached the male in the Patrol Vehicle, Officer Vicars opened the passenger side door, unholstered his service weapon and told the male to “drop it”. Officer Vicars stated that when he told the male to “drop it” the male turned around with the rifle and without a word, fired the weapon from the hip at Officer Vicars. Officer Vicars said the passenger side glass shattered and at that moment Officer Vicars returned fired at the male’s direction. Officer Vicars said he remembered leaning back and radioed shots fired. Officer Vicars stated his intended target was the male and he believed he hit the male with the return fire as he saw the male stumble backward. According to Officer Vicars, the male shot at him one time. Officer Vicars stated he knew he fired three times, but it could have been more. Officer Vicars stated he saw and heard Corporal Davis’ gun fire as well.

Officer Vicars stated the Patrol Vehicle was moving at this point and he could not see Corporal Davis at the driver’s seat. Officer Vicars then got out of the vehicle, went around to the driver’s side and put the vehicle in park. At this point, Officer Vicars was able to see Corporal Davis out in the open with no cover. Officer Vicars saw the male was on the ground but due to the distance he could not see what the male was doing. Officer Vicars then radioed dispatch and described the area he and Corporal Davis was located. Officer Vicars saw a male with no shirt and a dog approach him from the train tracks. Officer Vicars remembered the male saying something to the effect that “the male was the guy who shot his friend”. Officer Vicars told the male to wait and to talk to an Officer. Officer Vicars told the Officer that came from the northwest to go and talk to the shirtless male. Officer Vicars stated that things were at a standstill and he did not know if the male was able to shoot at them. Officer Vicars told Corporal Davis that he [Officer Vicars] had been hit. Officer Vicars thought he was struck by the shattered glass. Officer Vicars stated that through the reflection from the car he could see he was bleeding. Officer Vicars remembered Corporal Davis told him the other units that arrived would get to him [Officer Vicars]. Officer Vicars stated two supervisors that first arrived, passed the male who shot at them. At this point, Officer Vicars was not sure if the male could access the weapon and was not safe to approach the



male. Officer Vicars remembered another Officer grabbed him and told him “let’s go! We need to get you some medical attention”.

Officer Vicars stated the male shot at him as soon as Officer Vicars told the male to “drop it”. Officer Vicars said the male shot at him so quickly that he didn’t have time to say “please” or even announce “Police Department”. Officer Vicars stated when he was fired at, he was in fear of his life and his partners’ life. Officer Vicars described the situation as the “scariest situation that I’ve ever been in my life”. Officer Vicars stated he realized he had been shot once he put the car in park and exited the driver side of the Patrol Vehicle. Officer Vicars stated he could see blood coming out of his eye area and the elbow. Initially, Officer Vicars thought the injuries were from the glass, however, after being checked at the hospital he was informed there was a pellet near his orbital socket and a pellet in his elbow.

Officer Vicars stated, neither OC nor a Taser would have been effective due to the male having a gun in his hand. Officer Vicars knew of the area and knew that the area behind the suspect was an open area and there were no residences, trailers or motor homes. Officer Vicars stated he knew medical was staged in the area and Officers approached the suspect with a shield but at that time Officer Vicars was already being transported to the hospital.

#### **Interview: Steven Charles Mills**

On June 29<sup>th</sup>, 2022, a witness, Steven Charles Mills (DOB 11/23/1983), was interviewed at the Pueblo Police Department by CBI Agent J. F. Somosky, Pueblo Field Office of the Major Crimes Unit. PPD Detective Jose Medina was present as well.

Mr. Mills resided at the transient camp along the Fountain Creek near the incident. Mr. Mills described himself as both a witness and a victim as the male suspect had pointed a firearm at him during the incident. Mr. Mills stated he was at his camp when he heard gunshots. Mr. Mills stated another transient known as “mom”, named Patty, told him to find out what happened. Mr. Mills and “Geno” Reyes left the camp to check out the source of the gunfire. Mr. Mills stated he heard at least 10 shots being fired and believed the shots sounded like it came from a 22-rifle. Mr. Mills stated he was close, less than 100-yards when the shooting that involved “Bobbie” occurred. Mr. Mills stated they encountered a male suspect who had carried a gun near a camp that belonged to a female known as “Bobbie”. Mr. Mills stated “Bobbie” had suffered from a gunshot wound. Mr. Mills described the male suspect as an older white gentleman, gray hair, wearing a fishing cap, thin. Mr. Mills have never seen him before. Mr. Mills saw that the male was holding a sawed-off 22-shotgun with both hands. The sawed-off gun had a brown stock, the male suspect also had a black-colored Glock on his right pant pocket. The slider for the Glock was locked back. The male suspect was irritated and pointed the sawed-off at Mr. Mills. Mr. Mills remembered the suspect said something about a dog. The male suspect continued to walk south down the trail.

Mr. Mills stated that “Bobbie” had been shot in the right hip and he helped carry her up the hill. “Bobbie” was able to walk after the incident. When Mr. Mills went back to the scene of the incident, he was able to see at least five (5) shell casings.

CBI Agent Somosky ended the interview when Mr. Mills became uncomfortable due to the stress of the situation.

### **Interview: Eugene Reyes**

On June 29<sup>th</sup>, 2022, a witness, Eugene Reyes (DOB 09/09/1978) was interviewed at the Pueblo Police Department by CBI Agent J.F. Somosky, Pueblo Field Officer of the Major Crimes Unit. PPD Detective Jose Medina was present as well.

Mr. Reyes stated he was living as a transient in a camp 300-yards east of the 4500 block of Dillion Drive in Pueblo, along the Fountain Creek. Mr. Reyes has a shortened version of his first name “Geno” and preferred to be called as such. Mr. Reyes had no visible physical injury but was visibly shaken from the incident involving the suspect, Mr. Sales. Mr. Reyes stated the incident occurred at around 4:30 p.m. and 5:00 p.m. Mr. Reyes stated he was at “mom’s” camp, which was near his own, along with Mr. Steven Charles Mills. While there, Mr. Reyes heard between seven (7) and eight (8) gunshots and estimated the shots originated 15- to 20-yards from where he had been seated. Shortly after he heard the shots, Mr. Reyes heard a female shout “I got shot! I got shot!”

Mr. Reyes said he and Mr. Mills ran towards the sound of the female voice, roughly 40-yards away. As Mr. Reyes approached where the female was located, he saw an adult white male with white hair in a ponytail extended past the shoulders, white beard and mustache, and was wearing a multi-colored plaid shirt with blacks, grays and browns. Mr. Reyes stated the male was roughly 5’9”, 130 pounds with a thin build, roughly 50 to 60 years old. Mr. Reyes said the male had a “12-gauge shotgun” with a wood stock and single sliver barrel. Mr. Reyes stated he also saw a “9mm” or a “38 special” handgun protruding from the male’s right front pant pocket. Mr. Reyes stated the male approached him with a firearm in each hand; a shotgun in one hand and the handgun, previously in the male’s pocket, in the other hand. Mr. Reyes said he saw what appeared to be a magazine for the handgun fall to the ground as the male approached him. Mr. Reyes stated the male told him “Oh, I’m going to shoot you!” Mr. Reyes said the male suspect pointed the shotgun at him and reached into his pocket, presumably to pull out ammunition for the shotgun. Mr. Reyes stated the male had put the handgun back into his pocket and used both hands to point the shotgun at Mr. Reyes. Mr. Reyes stated the male stood roughly 10-feet from him. Mr. Reyes said that Mr. Mills stood about 20-yards from him. Mr. Reyes stated the male suspect was telling him that, “If you don’t backup, I’m going to fucking shoot you. I’ll shoot you and your dog!” Mr. Reyes said the suspect also stated that he was a “psychopath killer” and “I already shot one, I’ll shoot another one!” Mr. Reyes stated the male suspect was acting “like he was crazy” and it “scared the shit out of” Mr. Reyes.

Mr. Reyes said the suspect male then started to walk away from him and Mr. Reyes yelled at the suspect to leave the area. Mr. Reyes followed the male suspect from a distance until he could no longer see the male. Mr. Reyes stated he then ran back to “mom’s” campsite and found a female who had been shot in the upper thigh or hip area. Mr. Reyes said his wife, Jennifer Spangler, was on her cellular phone calling for an ambulance.

Mr. Reyes stated the male suspect walked up an embankment, toward a nearby street and train tracks. Mr. Reyes said he saw Police Officers arrive on-scene and heard them giving verbal commands followed by multiple gunshots. Mr. Reyes estimated that he was 40-yards away from the suspect and the Officers at the time of the incident. Mr. Reyes said that he saw the male suspect shoot at the responding Officers. Mr. Reyes stated, “One Officer got shot” and stated he believed the injury to the Officer was to the upper left side of his torso. Mr. Reyes stated the male suspect laid on the ground after he had been shot by Officers. Mr. Reyes stated that after the male suspect was shot by Officers, he was given commands to back away as he was too close to the incident. Mr. Reyes yelled at the Officers the male suspect was the one who shot his friend.

Mr. Reyes stated he does not recall hearing emergency sirens before the encounter between the male suspect and the Officers, but he recalled seeing the emergency lights from the vehicle. Mr. Reyes stated the Patrol Vehicle appeared to have been left in gear as it continued to roll forward until it struck an embankment and came to a rest.

Mr. Reyes said that after the male suspect had been shot by the police, he led Officers into the camp where “Bobbie” had been shot. Mr. Reyes said Mr. Mills and the Officers helped “Bobbie” walk to the ambulance that responded to the scene.

Mr. Reyes agreed to attempt to identify the suspect through a photo lineup. PPD Detective Medina conducted the photo array and Mr. Reyes selected the subject positioned at #2. The subject at position #2 was not the suspect, Mr. Sales.

### **Body Worn Camera Review: Officer Jonathan Vicars**

Officer Vicars’ body worn camera showed him riding on the passenger side of Corporal Davis’ patrol vehicle as they drove down a dirt road. At 28 seconds of the video, Officer Vicars exited the vehicle with his service pistol drawn. Officer Vicars immediately recoiled back into the patrol vehicle and simultaneously heard a gunshot from a distance. Officer Vicars was seen discharging his service pistol six (6) or seven (7) times. The passenger side window was shattered as Officer Vicars discharged his weapon. Officer Vicars radioed “gun shots fired; shots fired”. Someone was heard yelling “put it down”. This was later confirmed to be from Corporal Davis through his body worn camera. The vehicle coasted toward the rail lines. Officer Vicars exited the passenger side of the patrol vehicle, ran around the front of the vehicle and entered the driver side of the vehicle. Officer Vicars put the vehicle in park while he was yelling in pain. Officer Vicars exited the vehicle. He radioed “40<sup>th</sup> and Dillon, got back rowed, a guy just shot at us with a rifle. I’m okay”. Officer Vicars then yelled “get back”. Officer Vicars then radioed “Vicars, I’m hit but I’m okay”.

Officer Vicars was behind the patrol vehicle next to the rear passenger side door. His service weapon was drawn and aimed at the general direction of the suspect. Corporal Davis was seen on the body worn camera behind a tree stump away from the patrol vehicle and had communicated with Officer Vicars. Officer Vicars was on the radio and gave direction to his location for backup units. Officer Vicars was heard on the body worn camera, yelling in pain on multiple occasions. At this point, a third-party approached from the train tracks. Officer Vicars told that person to “stay back, don’t move”. At roughly 3-minutes and 22-seconds of the body worn camera, two additional police vehicles were seen driving toward Officer Vicars with sirens. Officer Vicars radioed that “the guy with no shirt with the boxer, just told us that this is the suspect”.

Once other Officers arrived, Officer Vicars told the Officers that the suspect was the “old man on the ground” and warned Officers it was not safe to approach yet. Officer Vicars was heard yelling to other Officers that “he shot us”. Corporal Davis approached Officer Vicars and checked Officer Vicars injuries. Officer Vicars informed Officer Davis, “I’m good, he shot at us through the glass”. Officer Vicars directed the bystander next to the rail tracks to “Talk to that officer”. At 6-minutes and 56-second mark, multiple Officers can be seen approaching the suspect with a tactical shield. At around the 8-minute mark, Officer Vicars spoke to multiple Officers and stated, “He fucking shot us bro”. Officer Davis was examined for any injuries by fellow Officers and stated, “it came through the passenger window”. Officer Vicars went back to his patrol vehicle to get his keys. Officer Vicars walked to Officer Masterson’s patrol vehicle Officer Vicars stated, “He fucking raised the rifle at me” and repeatedly stated the suspect shot them.

Officer Vicars rode with Officer Masterson to St. Mary Corwin’s Hospital. Officer Vicars shut off his body worn camera right after he got into Officer Masterson’s vehicle.

### **Body Worn Camera Review: Corporal Shawn Davis**

Corporal Davis’ body worn camera began recording with Corporal Davis driving down a dirt road. At 28-seconds of the video, Officer Vicars was opening the passenger side door. At 30-seconds of the video, audio was available, and a gunshot sound can be heard, and Officer Vicars was seen recoiling back into to the vehicle. Between 30-second mark and 34-second mark, Corporal Davis opened the driver side door and exited the vehicle. At the same time, six (6) or seven (7) firearm discharges were heard in the background. At the 36-second mark, Corporal Davis rolled on the ground and unholstered his service weapon. In the background, Officer Vicars was heard saying “shots fired”. At the 40-second mark, Corporal Davis stood up, pointed his service weapon at the suspect and yelled “put it down” twice. There was a delay between the first command to “put it down” to when Corporal Davis discharged his service weapon. Corporal Davis discharged twice, yelled “put it down” again, then discharged his service weapon three more times. During the second round of discharge, the suspect was seen to fall sideways after the third shot was fired. Next, Corporal Davis moved closer to a tree trunk, pointed his service weapon at the suspect again and once more yelled “put it down” two additional time and discharged his weapon four additional times. During the third round of discharge, the second round appeared to have struck the dirt behind the suspect, the third round appeared to have struck the ground to the right of the suspect, and the

last round appeared to have struck the ground in front of the suspect. This was determined through the cloud of dust that resulted from each discharge. Corporal Davis was too far away from the suspect to see through the body worn camera if the suspect made any type of movement.

Corporal Davis continued to aim his weapon at the suspect while they shouted commands to the suspect to “put it down”. At the 1-minute and 14-second mark, Corporal Davis yelled “get back”. At this time, no movement was observed coming from the suspect. At the 1-minute and 23-second mark, Corporal Davis ejected his service weapon’s magazine and put a new magazine into the weapon. Corporal Davis continued to move away from the suspect and radioed that he “needed another car down here” and “I cannot get to Vicars”. Corporal Davis communicated with Officer Vicars through the radio and instructed Vicars to sit down. At the 2-minute mark, Corporal Davis reached the tree stump and took cover behind it. At the 3-minute and 41-minute mark, a Pueblo Police Department SUV arrived on-scene and Corporal Davis asked the arriving officer to roll up to Officer Vicars and check on him as Officer Vicars was hit. Corporal Davis warned the arriving Officer that the suspect was just moving. At 4-minutes and 18-seconds, Corporal Davis followed another officer who was carrying a tactical shield and approached the suspect. As they approach the suspect, Corporal Davis broke off and checked on Officer Vicars. On the body worn camera, Officer Vicars was bleeding down from the right side of his cheek. There appeared to be a puncture wound below his right eye, next to his right eye socket.

After checking on Officer Vicars and relaying what happened to other Officers, Corporal Davis attempted to move on the suspect with Sergeant Vahlbusch who had a tactical shield and Sergeant Robinson. Sergeant Robinson prevented Corporal Davis from going with them to check on the suspect. Corporal Davis confirmed with Sergeant Vahlbusch that he was not hit. Corporal DeCesaro then transported Corporal Davis to the Pueblo Police Department at 200 S. Main St. Pueblo, CO. Right after Corporal Davis entered Corporal DeCesaro’s patrol vehicle, he shut off the body worn camera.

### **Dash Camera Review: Corporal Davis and Officer Vicars**

There was one dash camera for Corporal Davis and Officer Vicars as both were in the same police vehicle. Corporal Davis was the driver and Officer Vicars was in the front passenger seat. The dash camera started with the vehicle parked in a residential area. The vehicle was traveling to 4200 Dillion Drive (Walmart) responding to a call with lights and sirens at 15:18:30. Both officers arrived at the general area at 15:22:30. A fire truck and an AMR vehicle were at the entrance of the dirt road.

The PPD vehicle traveled down the dirty road with lights on, but sirens were off for one minute. At the 15:23:38 mark of the video, a distant figure was seen walking toward the train tracks. At 15:23:51, dispatch was giving a description of the suspect, however, due to the bumpy road, the audio was unclear. At 15:23:27 of the video, the overhead lights for the PPD vehicle shut off. The PPD vehicle approached the figure at 15 miles per hour and at 15:23:57 of the video, the male figure appeared to have been walking with a long gun in his right-hand pointed toward the ground.

At 15:24:02, the figure was wearing long jeans, long-sleeved dark colored shirt. At 15:24:08, Corporal Davis was heard saying “is that a rifle?”. Immediately after, Officer Vicars was heard yelling “drop it”, followed by a “thud” sound, which was later determined to be the discharge of Mr. Sales shotgun, and a “grunt” from Officer Vicars. The discharge of Mr. Sales shotgun was followed by the sound of Officers Vicars weapon discharging six (6) to seven (7) times. The vehicle continued to roll forward toward the train tracks. Officer Vicars was heard saying “shots fired, shots fired”. Corporal Davis was heard commanding Mr. Sales to “put it down” followed by the discharge of his service weapon, two (2) times, Corporal Davis commanded Mr. Sales to “put it down” again, and was followed by the discharge of his service weapon three (3) more times.

At 15:24:33, a shirtless male was heard approaching the PPD vehicle with a dog and Officer Vicars ran across the front of the vehicle and the vehicle stopped in front of the train tracks next to a sign that states “No trespassing” at 15:24:44. The shirtless male continued to approach and pointed at the direction of Mr. Sales and was heard saying “that’s him”. Officer Vicars told the shirtless male to “get back”. The shirtless individual complied and stood by and watched. Corporal Davis was heard saying “I cannot get to Vicars”. At 15:27:33, Officer Vicars was heard saying “I’m good” and telling the shirtless male to “stay right there”. At 15:29:23, Office Vicars re-entered the dash cam and was bleeding from the cheek. The shirtless male lead another Officer off further down the dirt road. At 15:34:00, an Officer was assisting the victim alongside another male individual. Afterward, the dash camera recorded Officers speaking to witnesses and setting up crime scene tape.

### **Render Aid Summary**

After the incident, Sergeant Vahlbusch, approached the suspect while he held a tactical shield with Sergeant Robinson and Officer Masterson to determine if the suspect was still a threat and if possible, to render aid. Officer Ryan Masterson stated it was apparent the suspect was deceased. AMR and Fire Rescue personnel arrived on-scene and declared the male was deceased.

### **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 Police Department Corporal Shawn Davis and Officer Jonathan Vicars are justified. This conclusion is based on interviews of the involved officers, civilian witnesses to the incident, body worn camera video, the Patrol Vehicles on board dash camera and crime scene and evidence processing.

There is no evidence or facts collected to support any criminal wrongdoing by Corporal Shawn Davis and Officer Jonathan Vicars during the OIS incident. The actions taken by both Officers during the OIS incident were conducted with the justified belief that either their lives, or the lives of their fellow Officers, were in jeopardy.

It is my conclusion, based on the circumstances, that Corporal Shawn Davis and Officer Jonathan Vicars 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 Mark Steven Sales, 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 Officers 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 Corporal Shawn Davis and Officer Jonathan Vicars would not be appropriate, and therefore no criminal charges will be filed.

Dated this 17 day of February 2023



J.E. Chostner, District Attorney