



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

March 4, 2024

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

Sheriff David Lucero
Pueblo County Sheriff's Office
101 W 10th Street
Pueblo, CO 81003

Re: District Attorney CIT Decision Letter
Officer Involved Incident on March 1, 2023
Location: 945 29th Lane, Pueblo (County), Colorado
Decedent: Tony Raymond Guterrez (DOB 09/30/1982)
Officers Involved: Chris Kilpatrick and Chris Matott from the Pueblo County Sheriff's Office

Dear Chief Noeller and Sheriff Lucero:

The 10th Judicial District Critical Incident Team (CIT) was activated on March 1, 2023, to investigate an Officer Involved Shooting (OIS) Incident which resulted in the fatal shooting of Raymond Gutierrez (DOB 09/30/1982). The original call for service began on February 28, 2023, with the Pueblo County Sheriff's Office responded to a shots fired call near North Mesa Elementary School at 28881 Gale Road in the County of Pueblo, Colorado. The Pueblo Police Department (PPD) was designated as the lead investigative agency and other CIT participants included the Colorado State Patrol (CSP), Colorado Bureau of Investigation (CBI), Pueblo County Sheriff's Department (PCSO), 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 and Colorado State statute.

Summary of the Incident

On February 28th, 2023, at approximately 3:59 p.m., Pueblo County Sheriff's Office (PCSO) received a "shots fired" call in the area of North Mesa Elementary School located at 28881 Gale Road in Pueblo County, Colorado. The principal of North Mesa Elementary, Jeffrey Howes, called in to report someone shooting from a house next to the school. Kelly Gonzales (DOB 07/24/1977) also called dispatch and reported that she lives at 935 29th Lane and her neighbor, Tony Gutierrez (Gutierrez), who lives at 945 29th Lane is the person who shot the gun. Ms. Gonzales stated she had a video of Gutierrez shooting a silver handgun towards North Mesa Elementary School. PCSO Deputies arrived at the school and assisted with releasing students to their guardians.

Investigators were able to retrieve video from North Mesa Elementary that showed that some students were outside on the school grounds during shots being fired. The students and school personnel took cover inside the school building. The school shut down immediately and once all the students and teachers left the school, PCSO Deputies began doing surveillance on Gutierrez residence at 945 29th Lane. PCSO Detective Amy Lile attempted phone contact, but Gutierrez did not answer. During this time frame, PCSO Deputies also learned Gutierrez was currently on Probation. Deputies also received the video from Gutierrez's neighbor, Kelly Gonzales. In the video they observed a male, later identified as Gutierrez, exit the rear of his residence, point a silver handgun toward the school, and fire four (4) rounds. Kelly's husband, Mario Gonzales, later explained that they heard six (6) to seven (7) shots earlier and that is why they put Kelly's phone in the window to record Gutierrez's back door area.

Deputies attempted to contact Gutierrez at his residence. When they approached the residence, they observed Gutierrez on his porch, and he had a handgun. Deputies directed Gutierrez to drop the weapon and he told the Deputies to "Get Off!" and retreated back inside his residence. Deputies backed off and maintained containment on the residence.

PCSO Deputy Tyler Johnson authored and was granted a search warrant for 945 29th Lane, and an arrest warrant for Tony Gutierrez for Prohibited Use of a Weapon. PCSO activated their SWAT Team to execute the warrants. At approximately 11:30 p.m., PCSO SWAT Team approached the residence and made multiple announcements over the loudspeaker for Gutierrez to exit the residence. Detective Lile also continued attempting to contact Gutierrez by phone, approximately every 15 minutes during this incident with all attempts having negative results.

At approximately 11:30 p.m., PCSO SWAT used the ram attached to their Bearcat to breach the east and west garage doors in order to clear the garage and deem it clear and safe. PCSO SWAT members began making announcements over the loudspeaker identifying themselves and requesting Gutierrez to comply. Gutierrez did not acknowledge the announcements, nor did he comply.

PCSO SWAT members continued to make announcements and breached numerous windows in the residence to deploy gas munitions. Gutierrez continued to not communicate with the Deputies and Deputies could not hear any signs that the gas munitions were effective. These

signs would have included compliance, coughing, gagging, sneezing, etc. At one point, it was aired that Gutierrez was seen inside the residence in the living room.

On March 1st, 2023, at approximately 12:57 a.m., PCSO SWAT determined it necessary to make an entry point on the west side of the residence. A “Firehose” charge was placed on the west door of the residence and was set off. The charge successfully breached the west door and created an entry point. Shortly after the charge was set off, a single gunshot was heard from within the residence.

After getting no reaction from the gas munitions, SWAT deployed ball cameras inside the residence in an attempt to determine Gutierrez’s location in the house. Due to items in the way of the cameras, Deputies were not able to view anything of value that would assist them in contacting Gutierrez. SWAT members began clearing the residence visually by looking through broken windows. A large portion of the residence was deemed clear but areas such as closets, bathrooms, and stairwells could not be cleared visually.

On March 1st, 2023, at approximately 2:31 a.m., PCSO SWAT members made entry to the residence to clear the remaining areas that could not be cleared. Due to the fact that they had heard a single gunshot, they were concerned Gutierrez may have committed or attempted to commit suicide. Prior to entry and during the sweep, PCSO made numerous announcements regarding their presence and requesting compliance. While clearing the residence on the main floor, Lt. Kilpatrick, Sgt. Wolfe, Sgt. Hanratty, and Deputy Mattot approached a closed door which had previously been identified as a bathroom. Sgt. Wolf attempted to breach this door by kicking it. Sgt. Wolfe kicked through the door due to it being a hollow core door. Sgt. Wolf kicked the door two more times. On his third kick, Sgt. Wolfe heard a gunshot and observed a hole above the bathroom door handle.

After this, it was determined the SWAT team would use the Ram attached to the Bearcat to breach the wall on the outside of the residence which led to the bathroom. Sgt. Wolf, Lt. Kilpatrick, and other members of the SWAT Team did not give up the ground they secured, and they remained in the living room area while the Team on the outside began ramming the wall with the Bearcat.

As the Bearcat was working on the wall, Gutierrez exited the bathroom door toward the living room. SWAT members in the living room gave Gutierrez commands to, “Show me your hands”. Gutierrez had a silver handgun and leveled it toward the SWAT members in the living room. Gutierrez fired his handgun while pointing it towards the SWAT members. At approximately 3:00 a.m., Lt. Kilpatrick aired shots were fired by SWAT and Gutierrez was down. PCSO SWAT Medic D. Cullison entered the residence shortly after Gutierrez went down and checked for signs of life, which he had none. American Medical Response also responded and confirmed Gutierrez was deceased.

Scene and Evidence Processing

PPD Identification (ID) Detectives John Guerrero, Monique Mulder, Lee Medved, and John Trivett entered the secured scene and photographed the interior and exterior of the suspect’s residence. Numerous evidentiary items were collected from the various aspects of the exterior

scene. Moreover, the PCSO Lenco Bearcat vehicle was also inspected and photographed. Video from North Mesa Elementary and video from a neighbor was also collected.

Detectives Medved and Trivett, upon entering the exterior crime scene, observed, and collected four .38 Winchester bullet casings and two Win 9 mm Luger spent bullet casings. The porch area is where the neighbor saw Gutierrez shooting his handgun and was consistent with caliber and rounds found in Gutierrez's possession.¹ Detectives would later observe and collect several rounds apparently fired by Gutierrez in the direction of a detached garage. The two spent 9 mm Luger casing were where Deputy Matott engaged the suspect, firing at him as he exited the bathroom, gun pointed at officers and fired in their direction.

Detectives Guererro and Mulder entered the interior crime scene and observed several gas canisters that had been deployed by PCSO, numerous spent shell casings, and numerous impacts. Detective Guerrero documented Gutierrez's body and found near his right hand a Smith and Wesson Revolver, 357 Magnum 6-shot handgun. Several spent and unspent 357 cartridges were found in the residence as well as mostly full box of unspent 357 ammunition. Also found under his body was .177 caliber Pellet rifle. After Gutierrez' body was inspected and documented, Pueblo County Deputy Coroners Berner and McQueen placed his body in a body bag and removed it from the scene.

PCSO Deputy Matthew Mattot and PCSO Lieutenant Chris Kilpatrick were processed at the PPD Investigations Annex by PPD ID Detectives John Trivett and Monique Mulder. Deputy Mattot's service weapon was a Smith & Wesson M & P 9mm M2.0 pistol. Upon inspection, the firearm had a cartridge in the chamber and the seated magazine had 15 cartridges, out of a capacity of 17. The two spare magazines contained 17 and 15 cartridges and were loaded to capacity. Detectives were able to determine that Deputy Mattot had fired two rounds at Gutierrez.

Lt. Kilpatrick's FN MFG M16A2 5.56 carbine was inspected and documented. PPD Detectives were able to determine that the firearm had a .223 cartridge in the chamber and the seated magazine had 17 .223 cartridges. Lt. Kilpatrick informed Detectives Trivett and Mulder that he typically loaded his magazine with 28-29 cartridges to ensure the magazine seats when inserted into the magazine well. Based on the round count, Lt. Kilpatrick's magazine and weapon was down 10 or 11 cartridges after the shooting. Investigators were able to locate nine spent .223 casings. Lt. Kilpatrick's two spare .223 magazines and his Glock 34 duty weapon (and magazines) were checked, and each contained the full capacity of cartridges.

The documented and collected evidence located at the scene was consistent with the overall descriptions and reports provided by witnesses, both civilian and law enforcement.

Autopsy Viewing and Processing Summary

On March 3, 2023, PPD Detective Jeff Shay along with PD Identification Detectives, Lee Medved and John Trivett attended the autopsy of Tony Gutierrez conducted by Dr. Daniel Lingamfelter, the forensic pathologist employed by the Pueblo County Coroner's Office. Detective Mulder photographed the body, clothing, and personal items of Gutierrez. Detectives

¹ .38 caliber rounds can be fired in a .357 handgun.

also collected physical evidence. Radiographic scans were taken of the body and projectile fragments were collected. Gutierrez's clothing was removed from his body and separately processed. Gutierrez sustained gunshot wounds to his forehead, nose, upper left shoulder, and lower left shoulder. Dr. Lingamfelter also noted what he characterized as a ricochet bullet wound in Gutierrez's middle right back.

At the conclusion of the autopsy, Dr. Lingamfelter reported the manner of death as homicide and the immediate cause or condition resulting in death was from multiple gunshot wounds.

Gutierrez's blood was analyzed by a forensic toxicologist. The analysis was reported as part of the autopsy report and it showed that Gutierrez had alcohol, tetrahydrocannabinol (THC, the psychoactive ingredient contained in marijuana), and amphetamine in his system at the time he was killed.

Based on the body worn camera footage, examination of officer firearms, and interviews of all the witnesses, it is concluded that the officers discharged their weapons killing Gutierrez. The findings are consistent with the injuries, fragments recovered, and spent shell cartridges found during the scene processing.

Summary Mathew Mattot Interview

On March 3, 2023, at approximately 9:10 a.m., Deputy Mathew Mattot was interviewed by PPD Det. Jose Medina and CBI Agent Courtney McCormack. Mattot said he worked patrol for the Pueblo County Sheriff's Office. He said he was also on the SWAT Team and was an explosive breacher for the Team. He received a page at approximately 8:30 p.m. and the SWAT Team was activated for this incident. Mattot said the SWAT team responded to the PCSO Annex and he grabbed explosive charges for breaching doors. He said they were briefed and told that Gutierrez had gone out his back door and fired numerous rounds toward North Mesa Elementary School. PCSO Officers saw a video that showed Gutierrez shooting out his back door. He said they were also told that Deputies tried contacting Gutierrez, he brandished a handgun and told them to get off his property. They were provided with a photograph of Gutierrez.

Mattot described his training as a law enforcement officer. Mattot had never had any dealings with Gutierrez in the past. He said after they briefed at the Annex, they drove to the area and staged at the North Mesa Elementary. He said they all got their gear on and road in the Bearcat to Gutierrez's house, noticing a couple vehicles in the driveway. He reported that they began making announcements to Gutierrez over the loudspeaker. He said a few members of the team exited the Bearcat and cleared the vehicles, a shed, and the garage. Mattot was still in the Bearcat when it was used to breach the garage doors.

Mattot said they eventually exited the vehicle. He said he was on the $\frac{3}{4}$ corner of the residence. It was determined to introduce gas into the residence. Mattot and other team members broke the basement windows and introduced gas. He said he also heard team members say they saw movement in the residence. He was unsure how many gas canisters were deployed.

Matott said it was determined he would breach the back door with an explosive charge. He said he put a “firehose charge” in the door and initiated the charge. The charge was successful, and the door blew off the hinges. He said shortly after this charge went off; they heard a gunshot inside the residence. He was unsure whether Gutierrez shot himself or what else had occurred.

Mattot said they deployed cameras inside the residence, and they also attempted to deploy robots, but they did not work. Mattot said he and other members eventually entered the residence. They entered through the back door that he breached with explosives. He said they were clearing the residence when they encountered a locked door. He said he was carrying a less lethal shotgun with beanbag rounds. Mattot said Sgt. Wolf kicked the locked door and then they heard a gunshot come from inside the room behind the locked door.

Mattot said they pulled back a little to check Sgt. Wolf to make sure he was not hit. He said after the gunshot went off, he put his less lethal shotgun down. He said someone made the suggestion that team members should position themselves in the windows so they could see. Mattot and Sgt. Hanratty went outside and got on chairs to see in the windows. The door to the bathroom was locked, and Wolf kicked it in. Mattot noticed the Bearcat began pushing holes in the walls. At one point, he got down from the chair and he heard a team member say there was movement coming from the locked door.

He said a little bit of time went by and then he heard team members inside the house yelling loudly, “Show me your hands”. He said he saw Gutierrez appear by a wall and as he walked by he had his arm extended and a gun in Gutierrez’s hand. He said the gun was pointed towards the SWAT team members in the living room. He said he heard a gunshot go off and then fired his weapon two times at Gutierrez. Mattot said he believed Gutierrez was trying to and intended to kill one of his teammates. Mattot said he remembered Gutierrez had a silver gun that appeared to be the same one he fired out the back door towards the school in the previously viewed video.

Mattot reported that Gutierrez fell to the floor and there was a lot of blood. He said the team checked each other to make sure nobody was hit. Mattot said he heard on the radio from a medic that Gutierrez was deceased. Mattot said he was wearing his body worn camera and it was activated and recording in compliance with SB-217. Mattot was asked if commands were continually given to Gutierrez during this incident and he said they were. He said there were numerous commands and there was no doubt they were law enforcement, and their commands were clear.

Mattot was asked how many times he heard Gutierrez shoot his gun. He said he knew for sure he fired two shots. He said he did not know if Gutierrez got a shot off when he exited the bathroom and went toward the SWAT members inside, but he knew he had the gun extended and he heard a gunshot.

Interviewers asked him if he worked the day of the incident. He said he worked a normal shift on February 28, 2023 and got off work at 2:00 p.m. that day. He said he did not sleep any after his shift, but he felt good and was not tired. He was also asked about his backdrop when he shot. He said there were just walls and bedrooms. Mattot did not provide any further statement.

Summary Chris Kilpatrick Interview

On March 3, 2023, at approximately 11:05 a.m., Lt. Kilpatrick was interviewed by PPD Detective Jose Medina and CBI Agent Courtney McCormick. Kilpatrick began by saying he worked on the day of the incident, was home with his family when he received the call and he had plenty of sleep the night before. Kilpatrick explained his extensive training background regarding both SWAT and Investigations to the interviewers. He also explained the SWAT uniform he was wearing during this incident.

Kilpatrick explained he had three separate SWAT members assigned to potentially use less lethal force. He indicated he was aware of the suspects' history of not complying with law enforcement. Kilpatrick was wearing his body worn camera and activated it in compliance with Colorado SB-217.

Kilpatrick said around 3:40 p.m. that day, he was aware of a shots fired call in the area of North Mesa Elementary. He said Deputies went to the call and got students and staff out of the school safely. He monitored some of the radio traffic at this time. Kilpatrick used an arial photograph to point out Gutierrez's residence where it was determined the shots came from.

Kilpatrick said he was shown a video that patrol deputies recovered during their investigation. This video showed Gutierrez stepping out the back door onto the patio and firing shots towards the elementary school. He said that was what prompted the evacuation of the school. It was indicated to him that when deputies tried to contact Gutierrez at his residence, he had a gun in his possession, and he did not cooperate or comply. He said patrol officers backed off and continued to plan their next move to try to get Gutierrez to cooperate. At approximately 8:30 p.m., he received the page that the SWAT Team was being called out. He said while he was responding, he checked with Lt. Kindred to confirm the deputies working the call had surveillance on Gutierrez residence. He also said he heard narcotics detectives on the radio trying to identify people in a car that was at Gutierrez's residence and had left. Kilpatrick relayed to the narcotics detectives that he wanted that car stopped so it could not return to the residence.

Kilpatrick said they did in fact stop this vehicle at 29th Lane and Everette Road. He said Gutierrez's mother and father were the occupants in the vehicle. His family told deputies that they had stopped at Gutierrez's house, and they told deputies that Gutierrez would not answer the door when they were at his house. During the traffic stop, Gutierrez's parents also confirmed the phone numbers that Deputies had for Gutierrez were correct numbers.

Kilpatrick said they briefed at the office and then responded to the pre-determined staging area on the other side of the elementary school. They reviewed the plan again. He said it was going to be a "surround and callout". He said they had a "gas" plan and told his team they were not in a hurry. They used a marked patrol vehicle to open a gate for his team. He wanted them to use their emergency lights and white lighting, so it was clear their vehicles were law enforcement. Kilpatrick explained the layout of the residence, the entry doors to the residence, and layout of the yard. He described where he positioned his team members and snipers.

Kilpatrick said the vehicles that were in the yard limited where they could park the Bearcat. He said they affixed a ram to the front of the Bearcat when they were at the briefing area. He said

they entered the driveway at 945 29th Lane. Once the Bearcat was positioned on the north side of the residence, they began making announcements identifying themselves to Gutierrez and asking him to come out of the house because they had a warrant for his arrest and a search warrant for his residence. Kilpatrick also said it was announced that Gutierrez's safety was guaranteed if he cooperated.

Kilpatrick also said negotiators attempted to call and text Gutierrez with no response. He then began to direct his team to maintain less lethal and lethal weapons on the door of the residence while other members cleared the vehicles in the yard. He also cleared a shed in the yard. Kilpatrick and other members began attempting to get in the detached garage to clear it. He said the windows were walled off and the walk-through door could not be breached. They decided to use the ram attached to the front of the Bearcat to breach the main garage doors. Once the doors were pushed down, they cleared the garage. He said a portion of the garage had been walled off and was a marijuana grow. They were able to determine nobody was in that portion of the garage either.

Kilpatrick said announcements and commands continued during the entire time while they were clearing the vehicles and garage. He said at this point they had not heard any response from Gutierrez. He said he decided to introduce gas into the residence. Kilpatrick said they had been at the residence making announcements for approximately one hour and 45 minutes. Gas was introduced through the basement windows on opposite sides of the residence. There was no response from Gutierrez.

Kilpatrick stated they began to deploy gas in the windows on the main level of the house after no response from Gutierrez. He said at this point, they still had not heard anything inside the residence, nor did they see any movement. He said shortly after this, two of his team members said they saw movement in the house. They thought the movement was in the living room. He again said announcements continued to be made. He said they sat back and waited for the gas to take effect for approximately 45 minutes. At this point, they heard a single gunshot from inside the residence. They thought the shot came from the northeast portion of the residence. He said they believed Gutierrez may have shot himself, but they continued to wait to make sure. He said they decided to "break and rake" windows in an attempt to look inside to see if he was down or still alive baiting them.

Kilpatrick said they started to use technology and deployed throw ball cameras. He said the first camera ball they deployed rolled across the room and there was clothing in the way. They did not gain anything from this camera. They deployed another camera ball that has a tether and can be retrieved. He said they cleared as much of the residence as they could with the tethered ball camera. He said they then attempted to fly a drone through the house, but the drone would not fly due to the lack of light.

Kilpatrick offered while they were outside, they could see one door was closed. He said he could see what was, possibly, blood spatter on one of the walls but he was not sure. Kilpatrick then asked if he could back up because he forgot to mention one thing they did. He said after they administered gas in the basement and main floor and before they "break and raked" the windows to get visuals inside. He said they put an explosive breach on the back door of the residence. He said they breached this door in hopes the loud explosion would scare Gutierrez and he would exit

the residence and comply. He said they did not breach the door with the intent of making entry into the residence.

Kilpatrick continued explaining what he saw looking through the windows. He said he believed there was a chance Gutierrez shot himself when he saw the potential blood spatter on the wall. He and several members of his team went to the back door and took a look into the residence. He said they backed out again and re-grouped. At this point, they took a break because his Team had been masked up (wearing gas masks) for a long time. The Team took turns taking masks off and getting a drink. He said during this break, he spoke to Capt. Kindred, and it was determined they had to go into the residence to either apprehend Gutierrez or recover his body. Kindred and Kilpatrick had used all of their options to locate him and/or have him comply. It was agreed that to stop Gutierrez's actions and blatant disregard for human life, he had to be located and apprehended for the safety of the community.

Kilpatrick said they geared back up and it was determined they would make entry. He said they entered the back door. One team member stayed behind to hold the stairwell to the basement. He described the layout of the residence again. He said he was concerned someone could pop out of any of the three doors on the east side of the residence. He observed Sgt. Wolf reach around to one of the closed doors and determined it was locked. He said Wolf started to kick at the door, but he could not get a good angle to kick the door. He said Wolf kicked the door a couple times and his toes went through the hollow core door. Wolf was about to kick the door again and he heard a gunshot. Kilpatrick grabbed Wolf and moved with him to a different vantage point. He said they could see where the bullet had exited the door towards them about one inch above the doorknob. Kilpatrick stated he clearly believed Gutierrez attempted to shoot and kill Sgt. Wolf who was kicking the door. Kilpatrick said at this point he believed he could hear the cylinder of a revolver spinning. He said he yelled at his guys that he believed Gutierrez was reloading his gun. They then retreated toward the west end of the living room for a better vantage point and cover.

According to Kilpatrick, he stated that Landreth, Wolf and he held the living room and Kilpatrick sent the rest of his team to make sure there was no way Gutierrez could get to the basement. Kilpatrick said he began giving commands to Gutierrez asking him to come out, guaranteeing his safety. He said Gutierrez never responded. Kilpatrick said he kept asking the others if they could see in the bathroom where they believed Gutierrez was. He said nobody could see in the room. He instructed his team to put an extension on the Bearcat ram so they could breach walls to locate Gutierrez. He said he heard other members instruct a couple members to post up through the picture frame window in the living room. The Bearcat began by hitting the north wall of the residence that was for the master bedroom. He said he had to keep containment in the residence as the outside team continued to try to breach the walls on the north side of the residence.

Kilpatrick said he could tell Landreth was starting to breathe heavily, and Wolf told Landreth to cover their six. He said Wolf yelled there was movement at the door. He observed that Gutierrez had put the pieces Wolf had kicked out of the door, back in the door. Kilpatrick said he was scanning the door jamb; he saw the door flex as if someone was leaning against the door. He said he could hear the Bearcat still pushing through the wall of the residence.

Kilpatrick said the door flew open. He thought he was positioned midway into the living room when the door flew open. He said he immediately illuminated the area with the light on his rifle. He saw a silver gun and he saw it flash. He was not sure if the flash was a muzzle flash or a flash from his light hitting the silver gun. He said Gutierrez came out and the gun was in his hand. He said Gutierrez came at them immediately. He said he started engaging (shooting). He said it was clear Gutierrez was confronting them.

Kilpatrick said he engaged him, and Gutierrez continued to move toward him. He shot multiple times until Gutierrez was on the floor. After the shooting, he immediately began telling his guys to check themselves for injuries to ensure they had not been shot. He said he believed Gutierrez may have gotten a round off toward them. Kilpatrick said medics came in to check Deputies and Gutierrez. Based on the injuries he observed Gutierrez sustained, he said he could clearly see Gutierrez was deceased. Kilpatrick thought that he may have fired 8- to 10-rounds. Kilpatrick said once the scene was safe, he backed out.

Body Worn Camera (BWC) Review: Deputy Mattot

The review of the relevant portions of Deputy Mattot's BWC shows that his actions were consistent with his interview provided to PPD Detectives. The footage from his BWC is also consistent with all the evidenced that was analyzed, documented, and collected. At the time of the shooting, Deputy Mattot was positioned near the front porch and maintaining a line of sight of the team inside the house. Upon the suspect exiting the bathroom and firing towards officers, Deputy Mattot fired two rounds from his duty weapon.

Body Worn Camera Review: Lt. Kilpatrick

The review of the relevant portions of Lt. Kilpatrick's BWC shows that his actions were consistent with his interview provided to PPD Detectives. The footage from his BWC is also consistent with all the evidenced that was analyzed, documented, and collected. At the time of the shooting, Lt. Kilpatrick was inside the residence with the other members of the PCSO SWAT team. The BWC footage shows that team was focused on the bathroom door and upon the suspect exiting the bathroom and firing towards officers and narrowly missing Detective Landreth and Sgt. Wolf, Lt. Kilpatrick fired his duty rifle at the suspect, taking him down.

Render Aid Summary

All PCSO personnel on scene attempted to bring the hour-long standoff to a peaceful conclusion. This included trying to speak Gutierrez, making untold number of announcements, calling his phone number, deploying cameras, and trying to extricate him by firing several gas canisters into the residence. Although none of these attempts were successful, they were continuously and up to the end of standoff attempting to end it peacefully. PCSO determined that they had to attempt to apprehend Gutierrez to protect the safety of the community. After the shooting, PCSO SWAT medic D. Cullison entered the residence shortly after Gutierrez went down and checked for signs of life which he had none. American Medical Response also responded and confirmed Gutierrez 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. *See also* Graham v. Connor, 490 U.S. 386 (1989). “The Fourth Amendment “reasonableness” inquiry is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.”

Conclusion

Based on the facts of the investigation conducted by CIT investigators, the use of force by Pueblo County Sheriff's Lieutenant Chris Kilpatrick and Deputy Chris Matott 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. As stated previously, this investigation involved personnel from numerous agencies.

There is no evidence or facts collected to support any criminal wrongdoing by Lieutenant Chris Kilpatrick and Deputy Chris Matott during the OIS incident. The actions taken by both the Lieutenant and Deputy during the OIS incident were conducted with the justified belief that either their lives, the lives of their fellow deputies, or the civilians near the suspect's house were in jeopardy.

It is my conclusion, based on the circumstances, that Lieutenant Chris Kilpatrick and Deputy Chris Matott 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, fellow

officers, and civilians from what they reasonably believed to be the imminent use of unlawful physical and deadly force by Tony Raymond Gutierrez, and they reasonably believed that a lesser degree of force would be inadequate. They had reasonable grounds to believe, and did believe, that they, their fellow officers, and nearby citizens were in imminent danger of being killed or receiving great bodily injury. The actions of the Lieutenant and Deputy were based on the totality of the investigation, their own and fellow officers' observations, and perceptions. It was clear that their actions were reasonable.

Given the facts and circumstances of the situation and the governing law, criminal charges against Lieutenant Chris Kilpatrick and Deputy Chris Matott would not be justified nor appropriate, and therefore no criminal charges will be filed.

Dated this 4th day of MARCH 2024



J.E. Chostner
District Attorney