



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

July 31, 2024

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 November 18, 2023
PPD 23021149 and 23S021160

Location: 1153 S. Prairie Ave., Pueblo, Colorado
Deceased: Gumaro Acosta (DOB 06/12/1997)
Officer(s) involved: Cpl. Richard Burns
Cpl. Mianna DeFusco

Dear Sheriff Lucero and Chief Noeller:

The 10th Judicial District Critical Incident Team (CIT) was activated on November 18, 2023, to investigate an Officer Involved Incident which resulted in the death of Gumaro Acosta.

The Pueblo County Sheriff's Office (PCSO) was designated as the lead investigative agency, and other CIT participants included the Colorado Bureau of Investigation (CBI).

After the investigation, the CIT prepared and submitted an executive summary and its investigative reports and materials to the District Attorney's Office (DA) for review. Those materials were reviewed, and this is the DA's Decision Letter pursuant to CIT protocol.

CRITICAL INCIDENT SUMMARY

DeFusco's and Burns' Body Worn Cameras and Dashcam

At the time of the incident, Corporals Richard Burns ("Burns") and Mianna DeFusco ("DeFusco") were both driving marked police department patrol vehicles and wearing full police uniforms marked with Pueblo Police patches. Both patrol vehicle dash cameras ("dashcam") and both corporals' body worn cameras ("BWC") captured the incident (collectively, the "media.")

On Saturday, November 18, 2023, at approximately 9:16 a.m., Cpl. Ben Muniz was dispatched to 1504 E. 3rd Street on a report of a stolen 2018 black Chevy Camaro (Colorado License plate number, AFIQ45) that had just occurred. One of the owners of the Camaro, Jerry Vargues, told Cpl. Muniz he had parked the Camaro on the street and left it running with the keys inside as he pulled his truck out of the driveway. He was switching out the vehicles so he could use the truck for the day.

During this process, a black sedan drove up and the male driver, wearing a black hoodie, got out. The man got into the Camaro and drove away. The sedan passenger then moved to the driver's seat and drove away. The black sedan matched a description of another vehicle, possibly a Hyundai, that had just been reported stolen.

Cpl. Muniz was in contact with OnStar requesting live tracking for the Camaro. Dispatch aired that the vehicle was northbound on Kingsroyal, passing Lehigh. Cpl. Burns and Cpl. DeFusco aired that they were responding to this location. Eventually, the vehicle was reported near the Trading Post, 1153 S. Prairie Ave. The Camaro was described as black with blue racing stripes. Cpl. Burns knew from experience that there were not many vehicles in Pueblo matching the description.

Cpl. DeFusco aired she was near the intersection of Stanford and Cambridge, and Cpl. Burns aired that he was nearby. As Cpl. Burns approached the area, he remembered that there was normally a flea market held at the Trading Post every Saturday and the flea market was going. There were many vehicles, tents, vendors and pedestrians in the area. As Cpl. Burns approached, he spotted the Camaro in the Trading Post parking lot, headed south toward Big Daddy's Sunset Bowl. He aired to Cpl. DeFusco that if she turned at Big Daddy's, "you're gonna run right into it."

[The following rendition from the media includes some of Cpl. Burns' thoughts as he was responding, as related in his later interview. The times come from the respective media, which were not perfectly synchronized, so the times provided are sometimes an average].

At 10:10:32, Cpl. DeFusco turned left into the parking lot and was immediately confronted by the black Camaro with blue racing stripes. The front passenger door was open. She aired, "They're bailing." Cpl. Burns was just seconds behind her and activated his lights and siren a couple times to move cars out of the way. Cpl. DeFusco approached when the Camaro reversed, cutting its wheels 90 degrees, and the front passenger door closed, with the passenger inside. The Camaro backed up between a Ford F-150 truck and a motorcycle. Cpl. DeFusco moved her patrol car forward, cutting off the Camaro's forward avenue of escape.

At 10:10:43, Cpl. Burn pulled in behind Cpl. DeFusco's patrol car as the Camaro moved forward and rammed Cpl. DeFusco's driver-side front end [hard enough to bend the bumper into her driver side front tire, effectively disabling her vehicle]. It then moved backward about six feet. The situation was "totally opposite" from what he expected: "Nobody's on foot, nobody's bailing." Immediately, "my whole goal was to pin the Camaro against the F150."

At 10:10:50, Cpl. DeFusco was out of her car and pointed her gun toward the Camaro windshield and yelled, "Put your fucking hands up!"

At 10:10:53, Cpl. DeFusco advanced toward the Camaro, yelling, and Cpl. Burns is exiting his vehicle and drawing his gun. She is coming between the front of Cpl. Burns' vehicle and the F-150, with her own vehicle directly behind her.

At 10:10:55, Cpl. Burns is out of his car with his gun drawn and pointed at the Camaro windshield, yelling, "Hands up! Hands up!" He is aware that DeFusco is directly in front of the Camaro. The Camaro seems to be hung up on the F-150 and is rocking back and forth. "And the only thing that I could think of at that time was he was gonna kill Cpl. DeFusco."

At 10:10:58, the Camaro moves forward toward Cpl. DeFusco, at which point Cpl. Burns shoots seven times into the windshield, aiming low on the passenger side but toward the driver. Both Cpl. Burns and Cpl. DeFusco air "shots fired!, shots fired!"

At 10:11:00, the Camaro frees itself from the truck and starts reversing, immediately hitting a vendor awning directly behind it, and dragging it along. "And at that time, kind of a second worst fear comes into play because there's at least 2, 3, 400 citizens that are in the shopping center, um, that kind of have no idea what's really going on." (*Id.*, p. 4). The Camaro continues to reverse, taking out a second awning and moving toward the line of vendors and tables on the opposite side of the flea market area. The officers give chase.

At 10:11:06, the Camaro significantly accelerates, still moving backward dragging the awning. DeFusco yells, "Oh my god!" as the Camaro starts hitting tables of goods, and people are screaming and running from its path.

At 10:11:10, an elderly man is hit and goes flying. Cpl. DeFusco again yells, "Oh my god!" then, "This is so bad!" Cpl. Burns yells, "They're just hitting everybody!" As Cpl. Burns ran by the man, he believed he was dead: "He flew up in the air and landed hard and then just kind of collapsed...I thought the old guy was dead." (*Id.*, p. 5; the man did not die but did sustain serious bodily injury).

At 10:11:15, the Camaro hits a trailer, stopping its backward momentum. The dragged awning partially covers it.

At 10:11:18, Cpl. Burns nears the Camaro, pointing his gun and yelling, "get on the ground!"

At 10:11:21, Cpl. Burns again yells, "get on the ground!" and approaches the driver window.

At 10:11:22, the Camaro starts moving forward toward a van parked on the street with its side sliding doors open and a man standing at the open doors. "At that time I believed he was gonna hit the gentleman in the van and possibly kill another citizen." (*Id.*, p. 11). He again opens fire, shooting seven times into the driver compartment. The Camaro slows, then comes to rest against the van. All motion inside the Camaro ceases, and the Camaro is stationary.

In the immediate aftermath, Burns stations himself at the driver door. The passenger was gone. Cpl. DeFusco thinks he might be under the Camaro. Off-camera, a citizen shouts to Cpl. Burns, "You did right." He tells dispatch, "I need a supervisor, we have shots fired" [his voice breaking]. Another civilian walks up to the vehicle, peers into the driver window, says "Motherfucker," then walks away. Cpl. Burns opens the driver door to put the car in park. Both he and Cpl. Defusco separately call for an ambulance. The driver was later identified as Gumaro Acosta (DOB 06/12/97) and declared deceased.

Unseen by either Cpl. Burns or Cpl. DeFusco at the time, passenger Tyler Trujillo (DOB 09/26/92) fled the Camaro just as the second set of shots were fired, and ran toward the apartment complex directly west. Learning this, Cpl. DeFusco sets out after him. However, she soon realizes she left her partner alone and starts making her way back. She was picked up by officers arriving on the scene. Trujillo was eventually found hiding under a bush in front of a nearby home and taken into custody.

Alone for several minutes, Cpl. Burns pleads with the encroaching crowd to stand back, as many gather around and start pulling out cellphones. He says to the crowd, "I didn't want to have to do this." Cpl. Burns asks a civilian to shut and lock both patrol vehicles.

One citizen appears agitated. It is not clear if he is challenging Cpl. Burns or just wanting to understand what happened. Cpl. Burns says, "The reason I did this is because he starts backing up killing people." The man asks, "What was the cause of...?" and Burns replies, "This is a stolen car." Another citizen asks, "Where's your crowd control?" Burns knows there was a fatal accident on the highway that morning, pulling many resources that way. Other citizens start helping with crowd control, and Cpl. Burns again asks for help from dispatch, saying there are approximately 200 people around him.

The same man Cpl. Burns asked to go secure the patrol vehicles walks up to him and says, "You did a good job, thank you sir...I'm with you 100 percent. I was the one telling you to shoot that [inaudible]." Burns would later say that people were surprisingly supportive, telling him he did what he had to do to prevent more people from being hurt. Some also helped with crowd control, telling people to "back up." His experience of officer involved shootings was that people are usually angry when officers shoot. So, "it was just weird to have people trying to help us...and to have people kind of be on our side".

When later asked how he was feeling at the time, he said "overwhelmed...the amount of sheer chaos...and people everywhere and a, a dead person".

Sergeant Beauvais, acting captain of the watch, arrived on scene and Cpl. Burns began to tell him what happened. Corporal Vicars arrived at the scene and Cpl. DeFusco was with him. Cpl. Vicars

said to Cpl. Burns, "we gotta get you a gatekeeper." Sgt. Beauvais appointed Cpl. Vicars to do just that. Sgt. Beauvais was informed that only Cpl. Burns shot, not Cpl. DeFusco, and that a different group of officers was working on catching the passenger.

Cpl. Burns asked for someone from medical to check on the driver, saying no one had checked on him yet. [He would later clarify that although he said that he had in fact grabbed the driver's wrist to check for a pulse]. Cpl. Burns then walked to his patrol car to grab his personal car keys, secure the door, and quickly call his wife before leaving with Cpl. Vicars in the patrol car.

The CIRT protocol was activated, and Pueblo Police Department worked on preserving the scene and interviewing witnesses. Pueblo County Sheriff Office took lead on the investigation, and several deputies arrived to help the officers. PCSO Detective Amy Colvin was assigned as the lead investigator.

At the time of this incident, Acosta had a no-bond warrant for Burglary and Aggravated Motor Vehicle Theft. The autopsy report would show that he died from multiple gunshot wounds, and that he had methamphetamine and fentanyl in his blood.

Witness Statements

[Only about half of the witness statements taken are summarized here].

Sharon Valdez was at the flea market with her husband. She heard gunshots, saw the Camaro stuck and spinning its tires, pinned up against the truck. She ran for cover, and saw the Camaro strike a shopper.

Charles Rivera saw a black car drive by and collide with a truck and get stuck. It freed itself and sped through the middle of the market. It knocked over several tables and struck a shopper. Two PPD Officers followed the vehicle and fired their weapons at the car. The passenger escaped but the driver did not. Charles ran after the suspect until he lost sight of him.

Kevin Gain saw the Camaro pinned up against the truck and the cops shoot at it. It broke free and drove through the market. Cops ran after it and shot at the Camaro. He did not see the passenger that fled.

James Crawford saw the Camaro pinned up against the truck. The cops approached the car and told the people inside to freeze. The cops fired their guns, and the Camaro broke free and drove through the marketplace. It struck several tables and crashed into a van.

Joseph Vigil saw the Camaro backing up and hit a man walking, and the man flew into the air. He heard gunshots and sought cover. He was not sure if there was gunfire from the Camaro or not.

Tina Moreno heard gunfire and sought cover. She saw the Camaro drive through the market and strike several tables. It hit the van and she heard more shots.

Stacey Gonzales saw the Camaro driving through the market and people trying to move out of the way. The vehicle started hitting everybody, it hit a man and ran him over. Officers were telling the driver to stop and get out of the vehicle. Stacey saw the passenger shoot back at the cops. Everyone was telling the police officer to "shoot him, shoot him, 'cause he wouldn't stop." The cops shot at the car and hit the driver. The passenger jumped out and looked like part of the crowd as they were scattering out.

Alex Ford heard five or six shots and saw people running, and the Camaro backed up and hit a man. It stopped and Alex went toward the victim. Alex looked at the Camaro and saw the driver was not moving. The passenger got out of the car and ran away. Alex directed the cops to where he saw the man run to.

David Vigil was with his wife behind the Trading Post. He heard two "volleys" of shots and then saw a Hispanic male running west away from the area in what looked like a white running suit.

Anthony Martinez saw marked PPD patrol cars attempt to contact a black and blue Camaro but it attempted to flee, first crashing into a parked truck, then reversing away from the officers towards the crowded market. Anthony saw the heavier-set officer fire towards the Camaro and thought he heard nine to ten gunshots. He saw a male chase after the passenger southwest through the parking lot. He saw an older male struck by the Camaro as it was reversing. "It was good they did shoot 'cause they would have ran over people."

Esteban Villalobos saw a Camaro drive towards a cop pulling in front of him. The Camaro then began driving backwards between a truck and a motorcycle. Esteban said the truck saved his life because the Camaro was "coming like a mad dog." The police officers drew their guns and told the driver to stop several times. The Camaro was blocked-in, so it started to reverse, hitting his tables and running over a man. Esteban said, "that officer had no choice."

Brian Shock said he heard gunshots, then heard someone yelling loudly "stop motherfucker" or "shoot that motherfucker." Then heard several more shots. He pulled his firearm out and put a round in the chamber. He noticed a vehicle flying through tents and everything flying into the air. He noticed an occupant get out and start running west, and he told the female officer where the suspect had run.

Cody Rasmussen was working security for the flea market. He observed a black Camaro revving its engine with a patrol car behind him. Then it backed up into a vendor and started hitting tables. He observed it hit a person. The officers were yelling "stop" and "shut the car off" several times. He then heard about 20 gunshots. The heavy-set male officer shot the driver. The passenger jumped out and ran toward Northern Avenue. He was tall and skinny, and had a white shirt on.

Some Officer/Deputy Observations

Sergeant Alfonso heard it reported that the fleeing passenger may have possessed and thrown a gun. Several officers and deputies searched his path of flight for any sign of a gun, but none was located.

PCSO Det. Vanessa Simpson arrived to find a white sheet draped over the front windshield and the open driver side door of the Camaro to shield the deceased from the gaze of onlookers. She noted the license plate of the Camaro as CO- AFIQ45, and because the deceased had not yet been identified, she lifted the sheet to get a good description of him. He was wearing a black hat, black hoodie, black sunglasses and jeans. He had gang-affiliated tattoos on his face and left hand, which were, in her experience, Duke and Sureno gang markings. She forwarded this information to other detectives, who identified him, and learned that he had an active warrant and was also on parole. She observed blood on the ground where the pedestrian was hit and collected a sample of the blood. She found several spent casings near the Camaro and photographed and collected these.

Pueblo County Coroner Investigator Jim Cain arrived on the scene and began assessing the body. He immediately stopped and told Det. Simpson that there was a handgun between the driver seat and the center console: a Rock Island 1911 10mm. Its serial number matched that of a gun reported stolen out of the PCSO, case #23S032982. It was collected and sent to the CBI.

DeFusco Interview

Cpl. DeFusco's interview was conducted by PPD Det. Ryan Torres and Det. Colvin. Attorney Thom Ledoux was present, as was another PPD Corporal (by his shirt markings) but he was not identified. Cpl. DeFusco was told that the interview was solely for the purpose of getting a search warrant and would be brief.

Cpl. Defusco noted that she worked the southside but usually scans "channel 2" on the north side to pay attention to what is happening there. She heard Cpl. Muniz air the theft of a Chevy Camaro, that it had OnStar installed, and that he and dispatch were in contact with OnStar to track the vehicle and were periodically airing its location. When they aired that it was near Kingsroyal and Lehigh, she was very close to that location, and then she heard Burns air that he was on the way to assist.

As they both approached the Trading Post, Burns aired that he could see it, and told her if she turned north on a certain access road, she would run right into it. She did, and "there he was, right in front of me." She aired, "I have him," and thought the passenger was getting out. She was on the radio and did not make contact at that time. She said the driver appeared to be looking down and seemed very unfamiliar with the transmission, but finally got it in reverse.

Cpl. DeFusco drew a sketch as she explained the position of the vehicles and what happened next. She describes that he reversed beside a Ford truck and thought he hit the truck. She repositioned her car up in front of him, and he then tried to drive out, hitting her bumper. "And that's when Cpl. Burns shows up."

The driver tried to reverse but appeared to be hung up because “he’s got the pedal to the floor but it’s not going...but he must have finally got the transmission all the way into reverse...when he hits the gas it just goes flying.” The Camaro reversed through the parking lot and when he hit the little old man, “he just goes flying up into the air.” That’s when she started running on foot.

She then provided more details about what happened at the first contact. “Burns had to have seen a gun in the passenger’s hand, or something,” because he starts firing into the passenger side of the vehicle. DeFusco had her gun out, but she wasn’t firing because she was focused on the driver, and “there’s not a jeopardy issue for me at the time.” When the two of them run after the vehicle, Burns ends up on the driver side and starts firing at the driver. She could tell the driver was hit because the car was in drive, but it was slowing, and she could see the driver fall to his side.

The passenger had gotten out, but she didn’t see him. Bystanders were yelling, “he’s running, he’s running.” She started chasing, and some citizens also chased him. She describes the hunt for the passenger, and more officers coming into the area when she realizes, “I just left Burns,” and went back to help him.

Cpl. Vicars and Pickerill came by just then and gave her a ride back to the crime scene. “And sure enough, “it’s just chaos and there’s a hundred people everywhere.” Cpl. Vicars says, “Why is Burns still here?” and he moved to get him out of there. She got a crime scene log out, and then “Fire Rescue was there... and they made sure the driver was ten-zero.” [Meaning “deceased”; she chokes up here].

She says she never saw anyone other than themselves with firearms. She saw the passenger with something in his hand, but it just looked “boxy...like a cooler.” She said that “people were just throwing stuff” at the car to try to get it to stop. The driver “took out several tables,” and people were “just, like, diving out of the way.”

She was asked how she felt during the incident. “Oh my gosh, it was extremely scary,” and noted that, the driver “just gave zero fucks,” and clearly cared about his own life more than anyone else’s. She said he had to have known how many people were around but, “he just had no regard for anybody.”

Tyler Trujillo Interview

Trujillo was interviewed by Detectives Torres and Colvin. He was provided a Miranda advisement and wanted to talk. “Dude, I was gonna come in here and fucking sing.” (Trujillo interview, line 222). He seemed very scared and eager to cooperate.

He talked about his morning, how he was with a girl, then gave \$5 for gas to a guy named AJ because he owed him money. He was riding with AJ to get gas and then a ride back to Joplin, when they met “Mex.” [The street name of the deceased]. Tyler knew him but not well.

Mex was in the Camaro. Tyler said that AJ and Mex steal cars as a hobby. (Lines 2645-46). He admitted that he saw the theft occur from about two blocks away (3568-89) but insists he didn’t know it was theft at the time (“for all I know it’s like family members or something” (3612-29)),

and that he had nothing to do with it. He didn't want to be mixed up in anything like that because he had a minor court case and was trying to stay out of trouble. When they met, Mex invited him to go smoke fentanyl with him, so he got in the Camaro but Mex also wanted to buy a Covid mask. They were close to the flea market, and Mex thought he can get one there.

But Tyler is getting uncomfortable and just wants out of the car because Mex is "driving all crazy" like he didn't care about the car, which indicated to Tyler that the car wasn't his, but he didn't think it was stolen because Mex had the keys. (1607-10). At the Trading Post, Tyler started to get out of the car, but Mex yelled at him to get back in.

Suddenly, Mex is reversing, and then he's going into a crowd of people and tables and the cops were shooting and Tyler is screaming, and "I was scared to fuck out of my mind," saying he had never been shot at like that. (597-609). Tyler was ducking down and didn't know Mex had hit anyone: "I hope not. I don't think so, honestly." (1758-61). He saw glass flying everywhere and didn't know why the cops were shooting. He was trying to get the car door open and finally did and just ran. He denied "dumping" anything but did admit to having fentanyl pills on him.

Torres says, "Tell us about the gun you had." (1968). Tyler steadfastly insists he did not have a gun, that he never has a gun. Torres presses him hard, telling him that several witnesses said he had a gun, and some said he was firing at the police. (1969-2192). Then he says Mex had a gun because he always has a gun, and Tyler saw one between the driver seat and center console as he got into the Camaro but they never spoke of it, and he insists that neither of them ever fired the gun. (2215-2384).

Burns' Interview

Cpl. Burns was interviewed on November 22, 2023, four days after the incident, by Det. Colvin and PCSO Det. Victor Herrera. Thom LeDoux was also present.

[The following uninterrupted excerpt is Cpl. Burns' recollection of events during the critical moments. He first recounts the events that put him and Cpl. DeFusco at the Trading Post, but just before he starts telling the incident, he becomes emotional and needs to take a few moments].

Um, so as I'm coming, um, down that access road, um, Cpl. Defusco gets on the radio, and she says they're bailing. Um, so I hit my lights and sirens to go around some of the vehicles there. Um, fully expecting a foot chase as soon as, um, I come around the corner, you know, waiting for her to air update directions of where suspects are going. Um, when I come around the corner, um, it's totally opposite. Nobody's on foot, nobody's bailing.

Um, and I see her facing northbound, uh, and the Camaro. This black Camaro with blue racing stripes, um, had just rammed the front of her patrol car. Um, so not knowing you know, what's going on other than I watched my partner just get her vehicle rammed and the vehicle start to back up. Um, her vehicle is basically stopped facing northbound. Um, I can see that there's like a gold Ford F-150 on the opposite side of that Camaro. Um, and as it's backing up, my whole goal was to try and pin that vehicle against the, the parked F-150. Um, so I come in and with a push, uh, push

bumper on my car, um, I don't ram the vehicle, but I intentionally put my front bumper against that Camaro trying to push it over into the F-150 to get it to stop moving.

Um, as I'm doing that, I see out of the corner of my eye that Corporal DeFusco has exited her patrol car, and she's between the parked pickup and my patrol car. Um, she's running up towards the vehicle. Um, and I see the vehicle, the driver and I think it's chaos inside that car, there's a, a driver who's fully covered up. The passenger is fully covered up, I can't see faces. All you can barely see is eyes and hands. Um, there's backpacks that the passenger's kind of putting up, they're moving inside the vehicle. I don't know what they're doing, but I can see the driver inside the vehicle. Um, and he's frantic. It looks like he's continually shifting gears. Um, knowing that that type of vehicle Camaro either has a, a manual transmission or uh, is an automatic transmission, it's in on the center console between the two seats, um, that he's shifting gears.

Um, the driver is shifting gears and the car is starting to lurch forward. The Camaro, um, and the only thing that I could think of at that time was he was gonna kill Cpl. DeFusco. Um, there was an alley for him to drive out of, um, and it would've been between our patrol cars, but he would've hit her, drug her under and slammed into her patrol car. Um, so as the vehicle's moving, starting to move forward, it's moving forward and then a couple steps back and then moving forward again, I get out of the vehicle, um, I leave cover from my car and go around the front of my vehicle. Um, and I am yelling at the car even though the windows are up to show me their hands. Um, when I exited my vehicle, um, I drew my gun right away when I exited, and I'm giving commands to show me your hands as I'm pointing my gun at the vehicle. Um, at this time, like Cpl. DeFusco is, I don't know, not a maybe six feet from the front of the vehicle and it keeps coming forward. And the only thing I can think of is what had just happened with the Parole Officer in Springs.¹ And he was gonna run her over.

Um, and as I came around the front of my vehicle, there was a motorcycle that was kind of in between us. Um, I stepped out around the front of my car to get past that motorcycle, um, and discharge my firearm through the windshield, um, towards the driver, um, as I was the best angle that I could get without putting myself in more safety [sic]. Um, shooting at the lower left portion of the, or as you face the car, the lower left corner of the, the windshield, um, trying to put rounds through the windshield, um, to strike the driver, to get him to stop moving the vehicle. Um, and I believe at that time I had probably discharged five or six rounds into the vehicle.

Um, the vehicle kind of seemed to stop momentarily. Um, and then all I can hear is tires squealing, um, and the vehicle starts to back up. Um, and at that time, kind of a second worst fear comes into play because there's at least 2, 3, 400 citizens that are in the shopping center, um, that kind of have no idea what's really going on. Um, the vehicle kind of breaks free after he squeals the tires, breaks free away from the F-150 and starts to back up slowly. Um, still trying to, I think at, at that time I was given commands like get on the ground. Um, as I'm, you know, the vehicle starts to back up. Um, and at first it backs up kind of slow, and then the, uh, the driver hits the accelerator, and you can hear it just start going backwards, um, at a high rate of speed.

¹ In late September 2023, a female PCSO deputy turned DOC parole officer was run over and killed by a parolee in Colorado Springs while she was trying to serve him a warrant.

Um, and I would equate it to, if you follow the Bible, Moses parting the Red Sea. It was just a sea of people that went from the middle and everybody's just running out. They're either running towards the, the trading post, um, or they're running towards the south where vehicles are like it, everybody just parks. Um, the vehicle starts accelerating rapidly, um, kind of towards the southwest, and as it goes, it turns and it, the driver or the vehicle just starts taking out tables. There's whatever the stuff people had at the flea market is just flying everywhere. Um, and there was an elderly gentleman that was trying to get out of the way, um, and that elderly gentleman got hit. Um, and when he got hit, um, he flew up in the air and landed hard, um, and then just kind of collapsed. And I thought that old guy was dead, he didn't move, he didn't do anything.

Um, at the same time, I'm still chasing the vehicle, um, to the east of the parking lot where it's going. And the driver's still rapidly accelerating until he, um, kind of goes under one of those like eight-by-eight awnings and collides with a parked cargo trailer. Um, as that's happening, um, I'm still running towards the vehicle and the, the Camaro kind of gets, instead of backing up like east to west, once it hits that trailer, it kind of doesn't necessarily spin it 180 degrees, but it starts to spin that Camaro. Um, and the Camaro's now pointed outwards towards that, um, alley access where we kind of had just driven through, but this time it's lined with parked vehicles from people trying to sell stuff at the flea market.

Uh, as the vehicle turns, there's a gentleman standing in the, in front of his van, the sliders, the sliding doors open, and he's standing in the doorway of the vehicle and the car's starting to turn and approach him. Uh, and my next fear is, is, and he had just charged my, you know, was getting ready to run over my partner. He had just hit an elderly gentleman. Um, and my fear at that time was, he's gonna hit this gentleman and try to, you know, push that van out of the way to get out of that area. Um, so as I'm running towards the vehicle, I initially didn't have, um, a very good line of sight, kind of the way that that canvas falls. Um, but as he turns and starts driving towards the van, I discharged my firearm a second time into the driver's compartment of the vehicle. Um, at that time the vehicle kind of slows and, um, still strikes the van. Um, but the gentleman had like kind of lumped, you know, thrown himself inside the vehicle and is hunched up, um, and like a sitting fetal position inside the van. Um, and the, um, driver isn't responding. He's not making any movements, um, and kind of in fear that the vehicle's gonna roll or move.

I reach in and, um, into the center console, past the, the driver and put it in park. Um, Corporal DeFusco ran up behind me. Um, we couldn't see the passenger inside the vehicle. Um, and initially it was believed that he had fallen out of the car and might be underneath the Camaro. Um, when then citizens came up and said that the, um, passenger had fled out of the vehicle on foot and he was running eastbound and there was people chasing him, um, Corporal DeFusco takes off, um, running east. And at that time I'm left surrounded by 300 citizens by myself with the car.
(Burns, pp. 4-5).

In response to some follow-up questions, Burns added the following:

He had wanted to try to pin the Camaro between his and Defusco's vehicles and up against the truck, but the scenario was such that he couldn't do that. (p. 8).

He considered the Camaro to be deadly force, given the imminent threat to Defusco in a "car v. person" scenario. He believed he needed to meet deadly force with deadly force. (p. 10). He said the Camaro occupants were not complying with any commands, although he could not be sure that they heard him or Defusco. (p. 12).

Just before firing the first time, he saw a person behind the F150, and realized "my backdrop was absolute shit," so he tried to minimize his backstop issues while still removing the threat to his partner. Thus, he tried to shoot directly into the windshield toward the driver. To do that, he had to change his position, requiring him to step completely away from the cover and concealment of his vehicle, and also step around the motorcycle, putting himself in a more dangerous position. (pp. 15, 26).

His backdrop at the second shooting site was "nerve wracking, 'cause it's also shit," but at least people were fleeing out of the way. His concern was the gentleman near the van, but his immediate backstop was the passenger who was still in the car as Burns approached. (p. 16). Burns barely had time to get out commands before the first set of shots and didn't remember doing so before the second set. (*Id.*) [His BWC discloses that he gave a command about four seconds, then one second before he was at the window, shooting the second time. Everything happened so quickly that he didn't remember he had given any commands at all until he watched his BWC. (*Id.*)].

He did believe they had the right vehicle because there's "maybe a handful of black Camaros with blue racing stripes that I've seen in the city of Pueblo," and OnStar had just placed it at the Trading Post. (p. 18).

He described the less lethal options potentially available to him, but they either weren't going to be effective to stop the threat (such as a taser through a windshield) or weren't accessible fast enough to meet how quickly events were unfolding. (pp. 10, 23-24). Nor was there time and opportunity to retreat and set up a perimeter, given the imminent threat to DeFusco, as well as the imminent likelihood that he would drive through a crowded market, running people over. (pp. 24, 26). He did not shoot at the Camaro's tires because, according to the Department's policies, "it isn't effective." Nor could he hope to stop the car by shooting at the engine because his handgun wasn't powerful enough to crack the engine block. (p. 29).

LAW AND ARGUMENT

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

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 ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.
C.R.S. § 18-1-704(2)(a).

When evaluating whether a person is legally justified in using deadly physical force, that person is entitled to act upon appearances, even though it turns out that the appearances were false, or he may have been mistaken as to the extent of the real or actual danger. *People v. La Voie*, 395 P.2d 1001 (Colo. 1964).

But the appearances must be such that, taking into consideration the circumstances at the particular instant, they would have caused a reasonable and prudent person to use such weapon for his protection. *Henwood v. People*, 1914, 143 P. 373 (Colo. 1914).

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 of death or serious bodily injury 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 peace officers at risk of injury or would create a risk of death or injury to other persons.

C.R.S. § 18-1-707(4).

Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively 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 of receiving serious bodily injury.
C.R.S. § 18-1-707(4.5).

Argument

Corporal Burns was suddenly in a situation opposite to what he believed it would be, and currently dangerous: he had just seen the Camaro ram Cpl. DeFusco's patrol car, and "nobody's on foot, nobody's bailing." He saw DeFusco approaching the Camaro, yelling, her gun leveled at the windshield. She is surrounded on all sides by vehicles (the truck, her own, Burns,' and the Camaro) and has no way out. He did in fact believe DeFusco was about to be killed: "And the only thing

that I could think of at that time was he was gonna kill Corporal DeFusco.” This belief was also informed by recent events and was therefore objectively reasonable: a very similar scenario had ended in the death of a parole officer in Colorado Springs.

Within seconds of arriving, he had to assess the entire situation, including the danger to himself and to DeFusco, and that there were many people around, including the man he saw beyond the truck. He put himself in even more danger by moving away from the cover of his vehicle to have an angle where he could shoot at the driver while minimizing the danger to the man behind the truck. In a split second, he assessed that there were no less lethal means immediately available or effective enough to stop the imminent danger presented by the Camaro, with its frantic driver trying to flee. When the Camaro lurched forward toward DeFusco, he shot into the left windshield toward the driver while also attempting to avoid hitting the passenger.

But the Camaro freed itself and started backing up, moving straight toward a crowd of flea market vendors and shoppers. The driver punched on the gas and accelerated rapidly, soon crashing into tables, awnings, and even people. As Burns ran after it, he saw an old man get hit and fly into the air, and believed the old man was dead.

Then, when the Camaro was stopped by a trailer and proceeded to move forward, he saw another gentlemen potentially in its path, standing at the sliding doors of his van. Having already believed the Camaro was going to run over his partner, and then see it hit and (he believed) kill a pedestrian, he now believed it would hit the man next to the van. The utter recklessness of the driver’s actions—his transparent concern only for himself that Cpl. DeFusco found so scary—drove Burns’ objectively reasonable belief that the Camaro continued to present an imminent danger of serious bodily injury and death to the people in its path. To stop the driver from hitting the second gentleman, while still trying to avoid hitting the passenger, he shot directly into the driver compartment.

Throughout, as is evident on the BWC, Burns shouted commands to the driver to stop, show his hands, get on the ground. Everything happened so fast he hadn’t even remembered doing so. Several witnesses expressed support afterward, saying “you did right,” and some had even shouted during the incident to “shoot the motherfucker.” He was surprised at the level of support he received because his experience was that people are angry with police in the aftermath of an officer involved shooting.

CONCLUSION

It is my conclusion that Cpl. Burns was justified in his use of deadly physical force in defense of himself, his partner, and the citizens in the immediate vicinity. He reasonably believed, and did believe, that the driver, Gumaro Acosta, was imminently poised to use unlawful deadly physical force, in the form of the stolen Camaro, against those around him. Cpl. Burns reasonably believed that no less lethal means were either immediately available or would have been effective in stopping the Camaro in order to prevent serious bodily injury or death to people in the vicinity. He issued warnings to the driver throughout, which went utterly unheeded. He also

did everything he could to minimize the risk to anyone else in the area, and indeed, no one other than the driver was hit by his gunfire.

Based on his knowledge, perception and observations at the time, and the governing statutes and case-law, Cpl. Burns' actions were reasonable under the totality of the circumstances, and he was justified in using deadly physical force. Because no criminal charges against Cpl. Burns are supported under these circumstances, none will be filed.

Dated this 31st day of July, 2024.



J.E. Chostner
District Attorney, Tenth Judicial District