

OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District
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Colorado Springs, CO 80903
ADMINISTRATION
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John R. Newsome
District Attorney

Amy Folsom Mullaney
Assistant District Attorney

May 13, 2008

Chief Richard Myers
Colorado Springs Police Department
105 South Nevada Avenue
Colorado Springs, CO 80903

Dear Chief Myers:

On April 5, 2008, at approximately 9:30 p.m., Colorado Springs Police Officer Christopher Darrow was located in the parking lot of a business establishment near Circle and Bijou streets in Colorado Springs. There, he observed a green Jeep Cherokee driving southbound on Circle with no headlights lit. Officer Darrow activated his overhead emergency lights to effect a traffic stop, with the intention of giving the driver a verbal warning.

During the course of making the stop, Officer Darrow observed a black male with a black shirt exit the vehicle while the vehicle was still moving at a slow rate of speed. Because the vehicle was still moving, Officer Darrow followed the vehicle and not the running driver. Within moments, and while the Jeep continued to move, he observed the passenger, dressed in a red shirt, exit the vehicle and fall to the ground. The suspect quickly got up and began running from the officer. Officer Darrow continued to follow the moving car to ensure the safety of the individuals in the area.

The suspect ran approximately 200 feet before Officer Darrow was able to exit his vehicle and begin pursuit. Officer Darrow then observed this suspect go over a fence and continue to run. Officer Darrow deployed his duty-issue Taser two times in an attempt to stop the passenger, to no avail. During this time, Officer Darrow was repeatedly yelling at the suspect to stop and put his hands in the air. At this point, the suspect, now 20-30 feet away, stopped, turned towards the officer and placed both hands near his waistband. According to Officer Darrow, he appeared to be reaching into the waistband at the same time that he turned towards the officer. The suspect, later identified as Aaron Hersch, DOB 6/13/84, admits to reaching to his waistband to "pull his pants up." Officer Darrow then fired a single shot from his duty handgun, which missed the suspect and struck a nearby home at 2876 Casden Avenue, approximately 200 feet away.

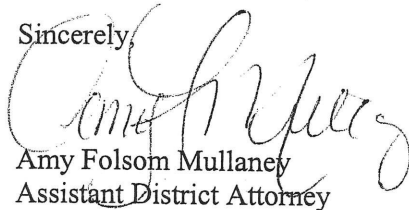
After the shot, the suspect Aaron Hesch continued to run, jumping another fence and running east towards Casden Avenue. Moments later, the suspect was located in the front yard of a residence on Casden, lying down next to a concrete barrier. After finding the suspect, Office Darrow continued to yell at the suspect to show his hands; the suspect did not initially comply, but rather continued to move his hands in a suspicious manner. Once a cover officer arrived, Officer Darrow was able to safely handcuff the suspect and take him into custody without further incident.

Because the incident did not involve bodily injury to another person as a result of the officer discharging his weapon, The 4th Judicial District Attorney's Critical Incident Team was not activated on that date. On Thursday, April 24th 2008, 4th Judicial District Attorney's Office Chief Investigator Larry Martin received CSPD Report 08-10598 entitled "Suspicious Circumstances." Thereafter the District Attorney Investigative Team reviewed the report for additional followup investigation. On May 5, 2008, I was assigned to review the case and to determine whether criminal charges should be filed against Officer Christopher Darrow for the discharge of his weapon.

Based upon all of the facts developed in this investigation, I conclude the evidence supports that Officer Christopher Darrow did, in fact, believe that as Aaron Hesch turned from the gate towards the officer (after running from him) with his hands near his waistband, that it was necessary for Officer Darrow to defend himself from imminent use of deadly force. I further find that Officer Darrow's belief was a reasonable one. The suspect in this case had eluded the officer, disobeyed formal commands and was heading into a neighborhood. Given the fact that suspect had indicated his commitment to avoiding apprehension at great costs, Officer Darrow's heightened concern for his safety at that time was reasonable. Then, when the suspect by his own admission stops, turns towards the officer and reaches for his waistband at the same time the officer had a reasonable belief that his life was in danger. Any person in the state of Colorado--whether police officer or citizen-- who reasonably believes his or her life is in danger, may defend themselves.

The investigation and legal analysis of the above referenced shooting has been completed, and on behalf of the 4th Judicial District Attorney's Office, I conclude **that under Colorado law, Officer Christopher Darrow was justified in using deadly force** against Aaron Hesch.

Sincerely,



Amy Folsom Mullaney
Assistant District Attorney

am/vr

**OFFICER INVOLVED SHOOTING REPORT
RE: OFFICER CHRISTOPHER DARROW/**

FACTUAL SUMMARY

On April 5, 2008, at approximately 9:30 pm, Colorado Springs Police Officer Christopher Darrow was located in the parking lot of a business establishment near Circle and Bijou streets in Colorado Springs. There, he observed a green Jeep Cherokee driving southbound on Circle with no headlights. Officer Darrow activated his overhead emergency lights to effect a traffic stop, with the intention of giving the driver a verbal warning.

During the course of making the stop, Officer Darrow observed a black male with a black shirt exit the vehicle while the vehicle was still moving at a slow rate of speed. Because the vehicle was still moving, Officer Darrow followed the vehicle and not the running driver. Within moments, and while the Jeep continued to move, he observed the passenger, dressed in a red shirt, exit the vehicle and fall to the ground. The suspect quickly got up and began running from the officer. Officer Darrow continued to follow the moving car to ensure the safety of the individuals in the area.

The suspect ran approximately 200 feet before Officer Darrow was able to exit his vehicle and begin pursuit. Officer Darrow then observed this suspect go over a fence and continue to run. Officer Darrow deployed his duty-issue Taser two times in an attempt to stop the passenger, to no avail. During this time, Officer Darrow was repeatedly yelling at the suspect to stop and put his hands in the air. At this point, the suspect, now 20-30 feet away stopped, turned towards the officer and placed both hands near his waistband. According to Officer Darrow, he appeared to be reaching into the waistband at the same time that he turned towards the officer. The suspect, later identified as Aaron Hersch, DOB 6/13/84, admits to reaching to his waistband to "pull his pants up." Officer Darrow then fired a single shot from his duty handgun, which missed the suspect and struck a nearby home at 2876 Casden Avenue, approximately 200 feet away.

After the shot, the suspect Aaron Hesch continued to run, jumping another fence and running east towards Casden Avenue. Moments later, the suspect was located in the front yard of a residence on Casden, lying down next to a concrete barrier. After finding the suspect, Office Darrow continued to yell at the suspect to show his hands; the suspect did not initially comply, but rather continued to move his hands in a suspicious manner. Once a cover officer arrived, Officer Darrow was able to safely handcuff the suspect and take him into custody without further incident.

Because the incident did not involve bodily injury to another person as a result of the officer discharging his weapon, The 4th Judicial District Attorney's Critical Incident

Team was not activated on that date. On Thursday, April 24th 2008, 4th Judicial District Attorney's Office Chief Investigator Larry Martin received CSPD Report 08-10598 entitled "Suspicious Circumstances." Thereafter the District Attorney Investigative Team reviewed the report for additional followup investigation. On May 5, 2008, I was assigned to review the case and to determine whether criminal charges should be filed against Officer Christopher Darrow for the discharge of his weapon.

That investigation and legal analysis of the above referenced shooting has been completed, and on behalf of the 4th Judicial District Attorney's Office, I conclude **that under Colorado law, Officer Christopher Darrow was justified in using deadly force against Aaron Hesch.**

MATERIALS REVIEWED

Detectives from the Colorado Springs Police Department office interviewed numerous witnesses, collected physical evidence and photo documented the scene. All of these items were forwarded to the District Attorney's Office with the file.

WITNESS STATEMENTS

The shooting incident currently under review occurred in the presence two primary witnesses: Officer Christopher Darrow and then suspect Aaron Hesch. For that reason their statements are of critical import.

STATEMENT OF OFFICER CHRISTOPHER DARROW

On April 5th, 2008 at approximately 11:06 p.m., Detective Richard Gysin of the Colorado Springs Police Department conducted an interview with Officer Christopher Darrow regarding the shooting. Detective Gysin completed a report concerning this interview and his report contained the following details.

Detective Gysin learned that Officer Darrow works the 2:00pm to midnight shift for the Colorado Springs Police Department.

Officer Darrow advised Detective Gysin that he had performed his shift on April 5th and at his approximate "close" time decided to pick up something to eat for "lunch." Officer Darrow stated that he picked up a sandwich from Subway and then parked his cruiser in the parking lot located at Circle and Bijou Streets. Officer Darrow stated that while sitting in his vehicle eating a sandwich, he observed a green Jeep Cherokee driving southbound on Circle Drive with no headlights on. Officer Darrow stated that the vehicle was driving southbound in heavy traffic with no headlights on, so he pulled out behind the vehicle to check it further. Officer Darrow ran the license plates on the vehicle and the plates did come back to the vehicle that it was on. Officer Darrow then stated that he

then turned his overhead lights on with the intent of giving a verbal warning to the driver and then returning to eat his lunch.

Officer Darrow stated that the vehicle made a left turn into the parking lot just to the north of the Tick Tock Shop. The vehicle continued going around the building, at which time he observed the dome light inside the vehicle come on.

Officer Darrow then observed a black male with a white "doo rag," black shirt and black or blue jeans jump out of the driver's side of the vehicle and begin running. Officer Darrow thereafter advised dispatch of the traffic stop and called out that he had a driver running. Because the suspect Jeep was still rolling and the suspect was already gone, the officer followed the Jeep to make sure it did not hit anybody.

Officer Darrow stated that as he got around the corner, and within moments, he observed a man in a red shirt—later identified as Aaron Hesch—jump out of the passenger's seat of the Jeep and hit the ground. This suspect then got up and also began running. Officer Darrow stated that he stayed in his vehicle and followed the suspect for approximately 200 feet before he jammed his car into park and got out. Officer Darrow observed the suspect jump a fence into a neighborhood, so he pulled his duty issue taser and deployed one shot in an attempt to stop the suspect. This taser shot either did not hit or did not reach the suspect. Officer Darrow inserted a new cartridge in the taser and deployed a second time; again the taser failed to stop the suspect. .

At this point, Officer Darrow was located on the outside of a chain link fence at the rear of a yard at 2871 Casden, while the suspect was inside the backyard and preparing to jump over the opposite side of the fence. The distance between the Officer and the suspect was approximately 20 to 30 feet away.

Officer Darrow stated that at that time the suspect began reaching into his waistband with his right hand while turning around to face Officer Darrow. Officer Darrow stated that he was screaming as loud as he could for the suspect to get his hands up, yelling "get your hands up, get your hands up." The suspect did not comply. Officer Darrow stated that after the second deployment of his taser, he transitioned to his handgun, so he already had his gun out at this point. At this point, the officer describes telling the suspect to pull his hands out to where they were visible; however, the officer observed the suspect reach into his waistband again. At this time, Officer Darrow fired one round from his duty handgun at the suspect.

After the shot, the suspect hit the ground, leading Officer Darrow to believe he had possibly shot the suspect. Officer Darrow then jumped the fence into the backyard where the suspect was located. However, as the officer jumped into the backyard, the suspect jumped back up and leaped the fence from the backyard to the front yard and began running east toward Casden Avenue.

Officer Darrow indicated that he followed the suspect and observed him turn to the left in front of or on the east side of the house. Because the officer was unsure of the street he

was on, he turned to the right in the hopes of seeing a street sign there to give him a location. Once he observed that he was on Casden, he notified dispatch and asked for cover.

Officer Darrow then started to run toward the north in the direction the suspect was last seen traveling. Officer Darrow then observed the suspect still in the same yard but on the north side of the front yard of 2871 Casden lying down next to a concrete or brick retaining wall. Officer Darrow stated that as he approached the suspect, he observed the suspect was lying down with his hands together at approximately chest level. Officer Darrow indicated that he was screaming at the suspect to show his hands; however, the suspect refused to do so. By this time, Officer Darrow stated that a cover officer had arrived on his right, and that the cover officer was also screaming for the suspect to show his hands.

While they were screaming for the suspect to show his hands, the suspect kept moving them up and down his body but would not completely show his hands. The suspect eventually showed his hands, at which time Officer Darrow came up behind the suspect, holstered his handgun, pulled his handcuffs out from his left rear duty belt, and was able to cuff the suspect without further incident.

STATEMENT OF AARON HESCH

Mr. Aaron Hersch was interviewed by Detective Donald Chagnon on April 5, 2008 shortly after his arrest. Mr. Hersch advised Detective Chagnon that he had been in prison for aggravated robbery that had been dropped down to a simple robbery while he was living in Pueblo several years earlier. Mr. Hersch also indicated that he is currently under a restraining order and then added that he and his wife both are under restraining orders. He indicated it was in reference to a domestic dispute they had approximately a month earlier. He indicated that this had occurred in Fort Collins, Colorado.

Detective Chagnon asked Mr. Hersch to tell him what had happened on the evening of April 5th. Mr. Hersch stated that they had gotten pulled over that evening. When asked who they were, he indicated that it was himself and a male whose name he does not know. He indicates he only knows him by a street name of "Doty" or "Dodo." He described Doty as a crackhead. He indicated that Doty is also a friend of his that when he gives him five or ten dollars, Doty will give him a ride to anywhere that he needs to go. Mr. Hersch indicated that he does not drive due to a previous DUI, and also indicated that Doty calls him frequently looking for money and offering rides for his addiction. He said when Doty called him this evening, he did need a ride, and that he gave Doty ten dollars.

Mr. Hersch continued by stating that "Doty" had given him a ride on the evening of April 5th, and thought that they were driving south on Circle Drive. "Doty" then stated that there was a cop behind them. Mr. Hersch indicated he was upset at that because he had an active warrant for his arrest. He indicated that the warrant was for probation violation, and that is why he ran away from the officer.

Mr. Hersch described how the officer activated the emergency lights, and "Doty" pulled over by turning left into a driveway by a gas station.

Mr. Hersch indicated that "Doty" turned left into the apartment complex and then began letting the car roll as "Doty" jumped out of the car. He stated when he saw "Doty" jump out of the car, he also jumped out and began running.

Mr. Hersch pointed out that he was initially going to run west back toward Circle Drive but stated that he dropped his cell phone. He stopped and picked up his cell phone and then began running the opposite direction east away from Circle Drive. Mr. Hersch described an area behind the storefront businesses along the north side of Pikes Peak Avenue between the rear of the storefronts and the apartment complex. He described a slight wall with a hill on the other side. Mr. Hersch described jumping over this wall and slipping and hurting his leg. He stated that he ran along the back side of the storefront businesses toward the residences on Casden Drive.

Detective Chagnon showed Mr. Hersch a map of the area, and Mr. Hersch pointed out a house on the map indicating that he jumped over a fence and fell into the backyard of this house. He stated that as he fell into the backyard, he noticed the cop was right behind him. Mr. Hersch indicated he thought the officer tasered him at this time, because all his muscles gave out and he fell to the ground. Mr. Hersch thereafter stated that he does not think he got tasered.

Mr. Hersch indicated that he kept trying to get up and kept falling back down as the cop was yelling at him, "stop, stop, stop."

Mr. Hersch then pointed out on the map how he ran around through the backyard of the home to the south side and then to the west side of Casden Drive. He stated he was going to jump over the fence into the front yard when he heard the officer say something along the lines of "he's going for his waistband." Mr. Hersch stated though that with his pants being very loose even with a belt, he was simply trying to adjust his pants so he could get over the fence. He said that at the fence when he was trying to go over it, there was a gate but there was a lock on the gate, so he was going to have to go over the gate and the fence.

Mr. Hersch stated that when he began to jump, the officer took a shot at him. Mr. Hersch stated he fell down to the other side of the fence and ran around to the front yard where he saw a car parked in the driveway. Mr. Hersch stated he crawled underneath and hid on the passenger's side of the car parked in that driveway. He stated he could hear the officers walking around making comments about him being gone. He stated he heard the officers describing him as wearing a red shirt and blue pants. Mr. Hersch stated that he then moved to an area at the north side of that yard where there was a small wall. He stated that he hid alongside that wall trying to avoid the officers.

Mr. Hersch then stated that a few moments later, an officer came down the street with a light shining and pointed it at him and told him to get up. He stated the officer was

telling him to stop and had his gun drawn. Mr. Hersch stated he complied with the demands of the officers to put his hands up. He added that he was not trying to resist the officers at that point.

Mr. Hersch was asked where the officer had been when the officer fired the shot at him. Mr. Hersch indicated he believed the officer was on the west side of the fence outside of the backyard at the house where he had been. Mr. Hersch indicated that he had just finished adjusting his pants and was getting ready to go over the fence when the officer fired the shot. He further described he had his hands on the fence and was getting ready to go over when the officer fired the shot.

EVIDENCE COLLECTED AT THE SCENE

The scene of the shooting was processed by detectives with the Colorado Springs Police Department. The entire scene was photo-and video documented. Detectives discovered the following relevant items:

- (a) **Officer Darrow's duty weapon;** to wit a Smith and Wesson .9mm semi-automatic handgun, serial number BDH2894. Officer Darrow describes loading his weapon with 15 rounds per magazine. When taken into evidence, the weapon contained 14 live rounds.
- (b) A **bullet hole** on the outside of the residence at 2876 Casden Avenue; a bullet hole in the living room and rear store room of same. Trajectory consistent with the travel of one bullet from across the street.
- (c) **Taser wire** in the rear of the yard at 2871 Casden; consistent with Officer Darrow's reports of attempting to taser the suspect, Aaron Hesch.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... when he reasonably believes that it is necessary
 - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

Under Colorado law, the operative question in this case is whether, at the instant he fired the shot at Aaron Hesch, Officer Darrow reasonably believed that he or another person in the community was in imminent danger of bodily injury or death by Aaron Hesch. The question presented for determining criminal culpability of Officer Darrow is **not** whether,

in fact, Aaron Hesch was threatening Officer Darrow with deadly force at the time Officer Darrow was attempting to make the stop or whether or not Aaron Hesch was, in fact, armed. The question is simply whether Officer Darrow, at the time that he fired his weapon, had a belief that deadly force was necessary to defend himself and, secondarily, whether that belief was a reasonable one.

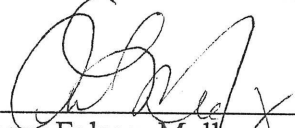
CONCLUSION

Based upon all of the facts developed in this investigation, I conclude the evidence supports that Officer Christopher Darrow did, in fact, believe that as Aaron Hesch turned from the gate towards the officer (after running from him) with his hands near his waistband, that it was necessary for Officer Darrow to defend himself from imminent use of deadly force. I further find that Officer Darrow's belief was a reasonable one. The suspect in this case had eluded the officer, disobeyed formal commands and was heading into a neighborhood. Given the fact that suspect had indicated his commitment to avoiding apprehension at great costs, Officer Darrow's heightened concern for his safety at that time was reasonable. Then, when the suspect by his own admission stops, turns towards the officer and reaches for his waistband at the same time the officer had a reasonable belief that his life was in danger. Any person in the state of Colorado-- whether police officer or citizen-- who reasonably believes his or her life is in danger, may defend themselves.

Given the unique facts and circumstances of this case, to wit: that the bullet fired by Officer Darrow traveled approximately 200 feet and entered the home at 2876 Casden, narrowly missing two members of our community, a secondary inquiry was made by detectives from CSPD and investigative members of the District Attorney's Office. Colorado law can provide for an inquiry where an individual, while entitled to use deadly force, exceeds those bounds by doing so negligently or recklessly so as to harm another. I further find that there is no evidence to support any finding that the Officer acted negligently or recklessly in his use of force. A single shot was fired, narrowly missing the suspect, and in response what the officer perceived to be a credible threat. Without taking lightly the risk to the community any time an officer fires his weapon, this officer did so in a controlled and reasonable manner, without undue threat to those around him.

Date

5/15/08



Amy Folsom Mullaney
Assistant District Attorney



John R. Newsome
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District
105 East Vermijo
Colorado Springs, CO 80903
ADMINISTRATION
(719) 520-6000 \ FAX (719) 520-6185



Amy Folsom Mullaney
Assistant District Attorney

July 30, 2008

Sheriff Terry Maketa
101 West Costilla Street
Colorado Springs, CO 80903

Dear Sheriff Maketa:

On Sunday June 22nd, 2008 at approximately 3:48 p.m., El Paso County Sheriff's Deputies Alex Garcia and Lisa Montville were dispatched to 6240 Waterfall Loop in Manitou Springs, Colorado regarding a welfare check for children in the residence. On that date at approximately 4:48 p.m., Deputy Garcia and Deputy Montville arrived on scene and contacted the mother of the children, Carrie Montgomery. Ms. Montgomery informed the deputies that she had recently left the children with her ex-husband, Scott Montgomery, according to previously arranged visitation agreements. Ms. Montgomery further reported, however, that she had been unable to contact Mr. Montgomery or the children since two days before, and had come to the home on Waterfall on Sunday, June 22nd, in an attempt to locate them. Upon arrival, Ms. Montgomery reported that she could not gain access to the home, and could not see inside the home because the doors and windows were covered.

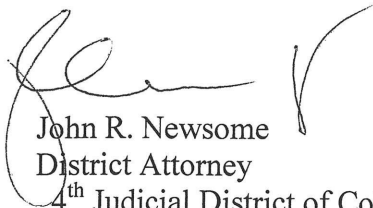
Ultimately, while Ms. Montgomery waited outside, Deputy Garcia and Deputy Montville gained entry into the home by breaking a rear window. Immediately upon entry, they observed the children, Skyler Montgomery and Canyon Montgomery, deceased on a bed. Deputies Garcia and Montville immediately began to search the home with weapons displayed. Within moments, Deputy Garcia discovered Scott Alan Montgomery lying nude inside a closet in a different room from where the children were found. As Deputy Garcia began to announce his presence, Scott Alan Montgomery got to his feet and began to quickly approach Deputy Garcia. As Deputy Garcia backed towards a wall in the bedroom he observed a "leatherman-type" knife in Mr. Montgomery's right hand; a knife which was later found by investigators at the scene. Despite loud verbal commands by Deputy Garcia to stop and put his hands up, Mr. Montgomery approached the deputy, knife in hand. Deputy Garcia thereafter fired his duty weapon (later identified as a Glock .40 caliber automatic pistol) at Mr. Montgomery a total of five times, striking Mr. Montgomery three times and resulting in his death.

Because this incident involved bodily injury or death to another person as a result of the officer discharging his weapon, the 4th Judicial District Attorney's Critical Incident Team was activated on that date and responded immediately to conduct the investigation. On July 8, 2008, Assistant District Attorney Amy Folsom Mullaney was assigned to review the case and to determine

whether criminal charges should be filed against Deputy Alex Garcia for the death of Scott Alan Montgomery.

That investigation and legal analysis of the above referenced shooting has been completed, and on behalf of the 4th Judicial District Attorney's Office, I conclude that under Colorado law, Deputy Alex Garcia was justified in using deadly force against Scott Alan Montgomery.

Sincerely,



John R. Newsome
District Attorney
4th Judicial District of Colorado

jrn/vr

**OFFICER INVOLVED SHOOTING REPORT
RE: DEPUTY ALEX GARCIA**

FACTUAL SUMMARY

On Sunday June 22nd, 2008 at approximately 3:48 p.m., El Paso County Sheriff's Deputies Alex Garcia and Lisa Montville were dispatched to 6240 Waterfall Loop in Manitou Springs, Colorado regarding a welfare check for children in the residence. On that date at approximately 4:48 p.m., Deputy Garcia and Deputy Montville arrived on scene and contacted the mother of the children, Carrie Montgomery. Ms. Montgomery informed the deputies that she had recently left the children with her estranged husband, Scott Montgomery, according to previously arranged visitation agreements. Ms. Montgomery further reported, however, that she had been unable to contact Mr. Montgomery or the children since two days before, and had come to the home on Waterfall on Sunday, June 22nd, in an attempt to locate them. Upon arrival, Ms. Montgomery reported that she could not gain access to the home, and could not see inside the home because the doors and windows were covered.

Ultimately, while Ms. Montgomery waited outside, Deputy Garcia and Deputy Montville gained entry into the home by breaking a rear window. Immediately before and after entry, they had observed the children, Skyler Montgomery and Canyon Montgomery, deceased on a bed. Deputies Garcia and Montville immediately began to search the home with weapons displayed. Within moments, Deputy Garcia discovered Scott Alan Montgomery lying nude inside a closet in a different room from where the children were found. As Deputy Garcia began to open the door of the closet, Scott Alan Montgomery got to his feet and began to quickly approach Deputy Garcia. As Deputy Garcia backed towards a wall in the bedroom he observed a "leatherman-type" knife in Mr. Montgomery's left hand; a knife which was later found by investigators at the scene. Despite loud verbal commands by Deputy Garcia, Mr. Montgomery approached the deputy, knife in hand. Deputy Garcia thereafter fired his duty weapon (later identified as a Glock .40 caliber semi-automatic pistol) at Mr. Montgomery a total of five times, striking Mr. Montgomery three times and resulting in his death.

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That investigation and legal analysis of the above referenced shooting has been completed, and on behalf of the 4th Judicial District Attorney's Office, **I conclude that**

under Colorado law, Deputy Alex Garcia was justified in using deadly force against Scott Alan Montgomery.

MATERIALS REVIEWED

Detectives from the El Paso County Sheriff's Office interviewed numerous witnesses, including Deputies Garcia and Montville, Carrie Montgomery, as well as neighbors to the scene. They also collected physical evidence and photo documented the scene. All of these items were forwarded to the District Attorney's Office with the file.

WITNESS STATEMENTS

The shooting incident currently under review occurred in the presence of two primary witnesses: Deputy Alex Garcia and Deputy Lisa Montville. The mother of the children, Carrie Montgomery, was outside of the residence with her friend, but within earshot at the time of the shooting. Several neighbors were also nearby and within earshot at the time of the shooting. For these reasons, their statements are of critical import. This report is not intended to be a comprehensive digest of all witness statements or evidence recovered, but rather a summary of facts and evidence pertinent to the ultimate conclusion.

STATEMENT OF MOTHER, CARRIE MONTGOMERY

On 06/22/2008 at approximately 8:41 p.m., Lonye Buck, an Investigator in and for the District Attorney's Office within the Fourth Judicial District, joined an interview with Ms. Carrie Montgomery that was already in progress. This interview was held at the El Paso County Sheriff's Office Law Enforcement Bureau at 101 West Costilla Street in Colorado Springs. The El Paso County Sheriff's Detective conducting the interview with Ms. Montgomery was Detective Charles "Chuck" Kull. The interview with Ms. Montgomery was videotaped.

Ms. Montgomery was visibly distraught, crying and shaking sporadically throughout the majority of the interview. Ms. Montgomery confirmed that she and Mr. Montgomery had two children together: Skyler Montgomery, age 5, and Canyon Montgomery, age 21 months. Ms. Montgomery indicated that although she and Mr. Montgomery had been together for several years during the births of the children, they had been "separated for a while."

Prior to the time of their separation, Ms. Montgomery indicated that she, Mr. Montgomery and the children had been living together at 6240 Waterfall Loop in Manitou Springs. During the later months of 2007 they began to have significant marital problems, resulting in Mr. Montgomery being charged with misdemeanor domestic violence. Ms. Montgomery stated that despite these difficulties, she stayed at the home

with Mr. Montgomery and their children until January or February of 2008. After leaving the residence at Waterfall Loop, Ms. Montgomery indicated that she obtained her own residence, and began dating an individual by the name of Phil Trew (a.k.a Stanley). Ms. Montgomery stated that, generally speaking, the living arrangements for her children thereafter were one week with Mr. Montgomery and one week with her.

Ms. Montgomery indicated that Mr. Montgomery had had physical custody of the children the week prior to the shooting while she was pursuing a job opportunity in Boulder, Colorado. Subsequent to receiving the job offer in Boulder during that week, Ms. Montgomery reported that she called Mr. Montgomery to inform him of the news. According to Ms. Montgomery, Mr. Montgomery was "not excited" about Ms. Montgomery's new career. Ms. Montgomery reported that during a telephone call with Mr. Montgomery on Thursday (believed to be on 06/19/2008), Mr. Montgomery said something to the effect of, "*thanks for taking my kids away from me.*" According to Ms. Montgomery, she responded to Mr. Montgomery by saying she was not going to take the children away from him.

Concerning the week prior to the shooting, Ms. Montgomery reported a brief conversation with her children via phone on Friday, June 20th, 2008. Ms. Montgomery estimated that she spoke with her children on Friday, June 20th, between 7:00 p.m. and 9:00 p.m., further indicating "that was the last time I spoke with them."

Ms. Montgomery stated that on Saturday, June 21st, she called Mr. Montgomery's cellular phone and found that the voice mailbox was full. She also tried the home phone, to no avail. Becoming concerned, she continued her attempts to contact Mr. Montgomery and the children throughout the weekend, both by telephone and through mutual friends.

On Sunday, June 22nd, 2008, Ms. Montgomery reported that between approximately 2:30 p.m. to 3:30 p.m., she took it upon herself to go up to 6240 Waterfall Loop in Manitou Springs with Mr. Trew. Upon arriving at the residence, Ms. Montgomery noted several things of concern, including that Mr. Montgomery's Jeep was not parked in its usual place, that the dog was loose in the yard and that the cabin doors and windows were locked and covered with blankets. At this time, Ms. Montgomery contacted law enforcement using the general number for the El Paso County Sheriff's Office.

Immediately thereafter, Ms. Montgomery reported that she returned to the cabin and attempted to remove (by pulling) a towel from the front door of the cabin. Although successful to some degree, Ms. Montgomery and Mr. Trew were unable to see anything discernable inside the cabin. She reported "immediately crying and freaking out" as she and Mr. Trew returned to her van.

When Deputies Alex Garcia and Lisa Montville from the El Paso County Sheriff's Office arrived on scene, Ms. Montgomery informed the deputies of the above information. Ms. Montgomery indicated that Deputies asked Ms. Montgomery to stay with her vehicle while they approached the cabin. Ms. Montgomery observed the Deputies knock on the doors and windows and identify themselves as deputy sheriffs. She also observed them

knocking on side windows of the cabin as they moved around to the back. At one point, Ms. Montgomery recalled that the deputies may have received assistance from a neighbor who offered them a crowbar. A few minutes later, Ms. Montgomery stated she heard glass breaking. Ms. Montgomery reported that she believed that the two Deputies on scene gained entry into the house, adding that "not very long after that, I heard them scream somethin' put your hands up, something... you know, freeze, or whatever they said. I can't even tell you, cause at that time, I think, I just kind of went into shock like oh my God, this is not happening." Ms. Montgomery indicated she did not hear Mr. Montgomery's voice during this time. When asked to clarify her statement, Ms. Montgomery reported that she believed the male deputy was telling Mr. Montgomery to put his hands up. When asked how many times the two Deputies on scene had identified themselves as deputies with the El Paso County Sheriff's Office, Ms. Montgomery responded by stating, "several."

Ms. Montgomery further reported that the Deputy was very loud with his directives, adding that she (Ms. Montgomery) was across the street approximately 50 to 75 feet away, and she was able to hear the same directives from the male Deputy. Other statements Ms. Montgomery thought she heard from the male Deputy included, "I want to say it was something along the lines like stop right there, put your hands up. Somethin' like that. I think he said, please, stop right there, put your hands up or somethin' along those lines, 'cause I know he identified himself." Ms. Montgomery stated that she and Mr. Trew retreated to the rear of her van. Ms. Montgomery stated that after hearing the male Deputy identify themselves and tell (who she believed to be Mr. Montgomery) to put his hands up, "I heard them shoot."

Ms. Montgomery stated that she heard, "Pop, pop, pop! I heard about four or five rounds shot off. But they didn't shoot immediately. There was probably a good minute that went by before they started shooting."

After hearing the shots fired, Ms. Montgomery indicated that she was crying. Ms. Montgomery said, "I never saw the male cop after that. I kinda checked out," adding that, "the female cop did come out. She was pale as a ghost with tears in her eyes." Ms. Montgomery reported that she asked the female Deputy if her children were alive, but the female Deputy indicated she could not give Ms. Montgomery details at that time.

Ms. Montgomery went on to state that other Law Enforcement Officers arrived approximately thirty minutes following shots being fired at the cabin.

STATEMENT OF DEPUTY LISA MONTVILLE

On 06/22/2008 at approximately 10:52 p.m., Lonye Buck, an Investigator in and for the District Attorney's Office, Fourth Judicial District, met with Deputy Lisa Montville at the El Paso County Sheriff's Office Law Enforcement Bureau, located at 101 West Costilla Street in Colorado Springs, Colorado. The interview with Deputy Montville began at

10:53 p.m. Also present during the interview was El Paso County Sheriff's Office Detective Joseph Kelemen. The interview was video-recorded.

Before the interview began, Deputy Montville was photographed in the standard El Paso County Sheriff's Office Deputy uniform she was wearing at the time of the shooting. Deputy Montville was not wearing her duty belt during the interview. However, all items contained on her duty belt were collected, examined and inventoried.

Deputy Montville reported that on June 22nd, she was working a swing shift rotation that began at 3:00 p.m. and concluded at 1:00 a.m.. Deputy Montville's usual workdays are from Sunday through Wednesday. On Sunday, June 22nd, at about 4:30 p.m., Deputy Montville received the call for service to 6240 Waterfall Loop in Manitou Springs, Colorado. At that time, Deputy Montville was in the area of Powers Avenue and Bradley Street in Colorado Springs. Deputy Montville was aware that fellow Deputy Alex Garcia was also dispatched to the same call.

The general scope of the dispatched call to 6240 Waterfall Loop in Manitou Springs, Colorado (as understood by Deputy Montville) was that of a "welfare check" requested by the mother of two children. Deputy Montville received further information from dispatch that the mother was recently separated from the husband; that the husband currently had the children; and that the mother had been unable to contact the husband or the children since Friday, June 20th. Additional information provided to Deputy Montville included that Ms. Montgomery was concerned about the welfare of her children, and that there was a history of domestic violence, suicidal ideations, and possible drug use (apparently on behalf of Mr. Montgomery).

Deputy Montville indicated that she and Deputy Garcia arrived at the scene in separate patrol cars at approximately 4:48 p.m. Upon arrival, she observed Ms. Montgomery in a white minivan with a male person Deputy Montville surmised was Ms. Montgomery's boyfriend. She and Deputy Garcia spoke with Ms. Montgomery at the scene. At that time, Ms. Montgomery reiterated that she, Ms. Montgomery, was worried about her children, adding that she had not heard from her children for some time.

Deputy Montville stated that thereafter she and Deputy Garcia approached the front of the residence "on the left side." At that time, she was able to observe that all of the windows to the residence appeared to be covered with sheets and blankets, blocking any view of the inside. Deputy Montville stated that she "banged on the door" and announced the presence of the Sheriff's Office, "knocking and announcing" with a closed fist. She also knocked on a window to the right of the front door and again announced "Sheriff's Office." They received no response. Additional efforts were made on the part of Deputy Montville and Deputy Garcia to look into other windows and doors on the cabin, to no avail.

At this juncture, Deputy Montville stated that she and Deputy Garcia decided to walk around to the rear of 6240 Waterfall Loop via the west side. As Deputy Montville and Deputy Garcia were walking around the west side of the residence, Deputy Montville

advised that she and Deputy Garcia observed a shed along with a Jeep Cherokee at the rear of the residence that was blue in color. Deputy Montville indicated that at the back of the residence, she observed a window, a door and a bathroom window. The deputies also observed a neighbor's home to the southwest, which looked "directly down" at the Montgomery cabin.

While Deputy Garcia contacted the neighbors in an attempt to gain further information, Deputy Montville continued to try to see inside the home. Ultimately, Deputy Garcia and Deputy Montville were able to look through a portion of the back door window. Deputy Montville stated she saw a side table that had candles on it knocked over on the floor. At this juncture, Deputy Montville reported that, "we (referring to herself and Deputy Garcia) look up in the corner of the room, there's a bed and obviously, you know, there's a child, who's obviously, not, you know, not breathing." Deputy Montville added that she determined that the child she observed was not breathing "just by looking at him."

At this point, Deputy Garcia took his ASP (expandable baton) from his duty belt, told Deputy Montville to stand back, and began to make attempts to gain entry into the rear door of the residence, while Deputy Montville called on her radio for medical assistance and a supervisor. As forced entry was successfully made, she and Deputy Garcia immediately located two small deceased children lying side by side on a bed, with obvious signs of lividity. They also observed a significant amount of blood—on the children, on the bed, and throughout the room.

At this point, Deputy Montville reported that both she and Deputy Garcia had their firearms displayed, while Deputy Garcia announced "very, very loudly, Sheriff's Office, Sheriff's Office!" Together they began to "clear" the home.

Deputy Montville stated that she and Deputy Garcia cleared the house to the point where they arrived at the easternmost bedroom of the home. She reported this bedroom initially appeared to be clear. Deputy Montville advised that to her left (in the same bedroom) was some type of storage area and / or a closet or crawlspace. Deputy Garcia told Deputy Montville to cover him while he opened the door to the storage area / closet. As Deputy Garcia opened the door, Deputy Montville observed a very pale leg from the knee down. Deputy Montville continued: "the next thing I see is a tall white male, very skinny, he's naked. He's not wearing any clothes. The best way to describe it would be like a, when you see people come across the finish line in a track race, just, with everything he has. Flying, flying across the room headed towards, um, it would be the, the end of the room here. And then, I still, I still had my gun and Alex was shooting." Deputy Montville continued, stating that, "he was bleeding from his abdomen. With, with, he had a Leatherman in his hand, but I don't know if I saw that before or after.... It happened so fast."

Deputy Montville recalled Deputy Garcia firing three or four shots. She was unable to recall during her interview if Deputy Garcia had said anything to the man just prior to the man jumping up and coming towards him. Deputy Montville also did not recall the man saying anything to the deputies prior to coming towards them.

Deputy Montville reported that the suspect fell, "and the Leatherman fell with him." She believed the Leatherman was in the right hand of the suspect, opened and positioned in his hand with the blade outward. Once the male suspect fell to the ground, Deputy Montville advised that she continued to have her gun trained on him to cover Deputy Garcia. Deputy Montville stated that Deputy Garcia then approached the male suspect and kicked the blade away. Deputy Montville did not, at any time, indicate that she had fired her own weapon or used deadly force against the suspect in any way.

Deputy Montville indicated that once the weapon was away from the male suspect, she "got on the radio and called for a code 20," meaning "shots fired, send immediate help." Shortly thereafter, she exited the residence through the front door and eventually placed crime scene tape around the residence. Deputy Montville indicated that she was putting up crime scene tape when members of the Manitou Springs Police Department began to arrive.

STATEMENTS OF NEIGHBORS

On June 22nd, 2008 at 9:12 p.m. El Paso County Sheriff's Detective Jeff Nohr and 4th Judicial District Investigatory Dan Edwards made contact with Shery Wilson and her husband, Archie Wilson, who live at an address neighboring Waterfall Loop. The purpose of the interview was to obtain the statements of neighbors in the area with respect to the events of that afternoon.

Shery Wilson stated that she and her husband had arrived home from church between 12:30 and 1:00 pm on June 22nd, 2008. She stated that everything appeared to be quiet at the Montgomery residence as well as in the entire neighborhood.

Mrs. Wilson indicated that the ex-wife, Carrie, had come to the house at approximately 4:00 pm on June 22nd, 2008. They noticed that she went to the front door and knocked, and then walked around the house looking in some of the windows and knocking on the back door. When she did not get a response, she backed her car out of the driveway of 6240 Waterfall Loop and parked it across the street. She then walked up to the Wilson's residence and asked if they had seen her ex-husband and the boys. When they told her they had not, she thanked them and went back to the car. Both Mr. and Mrs. Wilson indicated that Carrie appeared to be upset and worried about the welfare of the children.

At approximately 5:00 pm, two El Paso County Sheriff's Deputies arrived at the residence. Mr. Wilson stated that he, his wife, and son-in-law were standing outside working on an entrance into the basement when they saw Carrie Montgomery contacting the two deputies. As the deputies went up to the front door of the residence, Ms. Montgomery went back to her car. Mrs. Wilson said the male deputy (later identified as Deputy Alex Garcia) knocked on the front door announcing himself as a member of the "Colorado Springs" Sheriff's Office. When he did not get a response, Deputy Garcia

came up to the Wilson's home and asked if they had seen or heard anything from the Montgomery residence. Mr. Wilson told them about hearing the boy crying Friday evening. He then stated that the male deputy went back down to the residence and attempted to contact somebody at the back door. Both Mr. and Mrs. Wilson could see Deputy Garcia along with the female deputy (later identified as Deputy Lisa Montville) knocking on the back door announcing themselves as being with the Sheriff's Department.

After a couple of minutes, they both heard Deputy Garcia say "oh my God." Mr. Wilson stated that Deputy Garcia made the comment with extreme emotion. Deputy Garcia made the statement with intensity and was anxious to get into the house. Mr. Wilson stated that while Deputy Garcia was attempting to break out the window at the rear of the residence, Mr. Wilson's son-in-law went to Deputy Garcia and offered him a crowbar. Deputy Garcia told him, "this is a crime scene, go back." He could then see Deputy Garcia use something to break out the glass window in the rear door.

The Wilsons reported that Deputy Garcia and Deputy Montville thereafter entered the residence. Deputy Garcia continued to announce himself as being with the Sheriff's Office in a very loud voice. Mr. Wilson stated that he heard Deputy Garcia state "we're coming in." They then entered the house and they could still hear Deputy Garcia announcing their presence. Mr. Wilson stated that about 10-15 seconds elapsed, after which he could hear Deputy Garcia say something in a loud voice. Mrs. Wilson stated that she heard Deputy Garcia say "put your hands up." Mrs. Wilson further stated that earlier she could hear Deputy Garcia announce several times, as they were going into the house, that they were with the Sheriff's Department. Mrs. Wilson continued to report that after Deputy Garcia told someone to put their hands up, she could hear him continue to command "come out with your hands up." Neither Mr. nor Mrs. Wilson could hear the female deputy's voice coming from the residence.

Mr. Wilson stated that moments later he heard four to five gunshots. Mrs. Wilson thought there were five shots. She explained that she heard a "pop, pop, pop" and then a second later heard "pop, pop." Both of them advised that they were very familiar with the sound that a gun makes when discharged.

Mr. Wilson stated it seemed like it was about four to five minutes later when the female deputy came out of the residence. He stated that she walked down to her patrol car, where the ex-wife approached her. He could hear the ex-wife asking about her children. Mr. Wilson stated he started walking down toward the patrol cars to offer Ms. Montgomery some emotional support. He later observed the female deputy on her radio.

Mr. and Mrs. Wilson were asked if they could ever hear Scott Montgomery say anything to the deputies after they had entered the residence. Both Mr. and Mrs. Wilson stated they did not hear Mr. Montgomery speak.

STATEMENT OF DEPUTY ALEX GARCIA

On June 22, 2008, Dennis Pringle, an Investigator with the District Attorney's Office conducted an interview with Deputy Alex Torres Garcia, of the El Paso County Sheriff's Office. The interview was conducted at the Law Enforcement Bureau at 101 E. Costilla. Present during the interview was El Paso County Sheriff's Detective Ralph Losasso. The interview was videotaped.

Prior to the interview being conducted, a physical examination of Deputy Garcia's person and uniform was conducted for the presence of trace evidence. Photographs were also taken. Investigator Pringle noted that there were no unusual marks on Deputy Garcia, nor was there identifiable trace evidence on his boots, pants or shirt.

Deputy Alex Garcia reported that he joined the El Paso County Sheriff's Office by beginning the Police Academy on December 2, 2002. He had served two years in the Corrections Facility at the Criminal Justice Center, one year as a floor deputy and one year as a booking technician. He indicated that he is currently working patrol out of the South Substation, current hours 1500 to 0100. Sunday, June 22, 2008 would have been the second day of his shift. He indicated that he and Lisa Montville do not share the same days off but their shifts overlap.

Deputy Garcia stated that he had gotten off at approximately 0100 hrs that morning and had gone to bed at approximately 2:30am. He thereafter obtained a "normal" amount of sleep. He indicated that he had reported for work that day at approximately 2:30 p.m. and began to finish some paperwork from the previous shift. He recalled that it was approximately 3:40 p.m. when he called in service. At that time, dispatchers told him that he would be covering Deputy Lisa Montville at an address on Waterfall Loop regarding a "check the welfare" situation.

Deputy Garcia reported that at that time both he and Deputy Montville were informed that the mother of two children was at that address and would be on scene at their arrival.

Deputy Garcia indicated that he and Deputy Montville arrived at the gate in the road below the residence at approximately the same time and proceeded up the hill. Once they got to the fork in the road for Waterfall Loop, they chose the right fork and traveled only a few hundred feet up that road to make contact with the mother, who was parked in a white van across the street from the residence. Deputy Garcia stated that because it was "Deputy Montville's call," she made the initial contact with Carrie Montgomery.

According to Deputy Garcia, Ms. Montgomery explained that she was concerned for the welfare of her children. Ms. Montgomery described to the deputies that the house was locked up, the car was around the back, the dog was loose and the windows of the house were covered with sheets and blankets. She also stated that they had tried to get a response at the door, with negative results.

Deputy Garcia and Deputy Montville thereafter approached the home and knocked on the door several times, announcing the presence of the Sheriff's Department. Deputy Garcia observed at that time that the front door had a small window in the upper portion of the door that he could not quite see in; however, Deputy Montville, who was taller, was able to see inside and reported that there was nothing visible. This window was only partially covered by a blanket.

Deputy Garcia related that they then proceeded around the rear of the residence. As he did so, he observed the neighbors outside of their own home a short distance away. A brief interview with the neighbors yielded little additional information.

Deputy Garcia then re-joined Deputy Montville at the rear of the home, where she had found a small opening in the lower corner of the back door window. Deputy Garcia was able to then see what appeared to be a small table lying on its side having been knocked over and what he perceived to be a pool of blood. Using his flashlight to illuminate the room, he was able to see the children lying on the bed, apparently deceased and covered in blood. Deputy Garcia and Deputy Montville quickly made the decision to force entry.

Deputy Garcia indicated that his concern at that point was to get in and check the welfare of the children. There was no announcement that he could recall being made at that point. He indicated that once he entered into the room, the area was covered with a lot of blood, and the children appeared to have been deceased for a period of time. After clearing the room that the bodies of the boys were found in, Deputy Garcia and Deputy Montville began to clear the rest of the house. Deputy Garcia reported that loud announcements were made several times identifying themselves as Sheriff's Department.

After exiting the room in which the children were found, the Deputies cleared the small kitchen area and living room area. Deputy Garcia reported that adjacent to this living room area to the left was a doorway going into another room which appeared to be a bedroom. As Deputy Garcia entered this room, Deputy Montville stayed in the living room area by the doorway to the room as cover. Deputy Garcia described the room as being approximately 9 or 10 feet by 12 feet. On the floor of this room there was a series of what he described as packing boxes in a telescoping type fashion approximately eight feet long.

At this time, he informed Deputy Montville that he was going to check the closet. As he approached the closet, he indicated that he reached for the closet door with his left hand because he had his handgun in his right hand. As he opened the door of the closet, Deputy Garcia described seeing feet slightly to the right of the open door, with the body lying to the right on the floor of the closet. He described the man, later identified as Scott Alan Montgomery, as naked, lying on his back, very pale, even ashen in color. Deputy Garcia described initially believing he was dead. However, at about that time the individual rapidly sprang to his feet and stood in the doorway facing him. Startled by this, the deputy stepped back as the individual came out of the closet door and began walking directly toward him. Deputy Garcia described Scott Montgomery as having a stare in his eyes as if he was looking "1000 feet away."

Deputy Garcia further described the movement of the man as "fluid;" with the individual getting up off the floor and facing him before coming right at him. Deputy Garcia described giving verbal commands, telling the individual to "open his hands," "let me see your hands" and to "stop." As the man approached the deputy, Garcia could see that the man's hands were up at chest level, fists closed, with the left fist closed around a knife.

As the suspect ignored commands and began to close the distance between them with the knife in hand, Deputy Garcia described that he began to fire his weapon. He recalled that initially Deputy Montville did not have a shot because Deputy Garcia was somewhat between Deputy Montville and the suspect. Deputy Garcia described that he began to move rapidly backwards and slightly to the right towards the corner of the room as he fired his weapon. He indicated that as he moved backwards, he didn't even have time to pull his weapon up for a sight picture. He only recalled that he was giving commands and pulling the trigger. He believed he fired four times, with the last shot coming as he backed to the wall of the room, and the man was falling forward. He indicates that he was backed all the way to the back wall. Deputy Garcia recalled that as the subject was falling forward and to the subject's right, he did take a fourth shot.

Deputy Garcia indicated that after the suspect was on the ground on his back, Deputy Garcia realized that his weapon had jammed. He cleared the jam and covered the individual briefly. He then stepped to the left around the individual, observing that the knife had fallen near the suspect's left elbow. He recalled kicking the knife toward his left and away from the suspect. At that time, Lisa Montville had come into the room. He immediately checked the suspect for a pulse. Finding none, he radioed to dispatch that shots had been fired and requested medical. He thereafter instructed Lisa Montville to place crime scene tape outside the home, while he remained in the room.

Deputy Garcia stated that at no time before observing Mr. Montgomery in the closet had Mr. Montgomery spoken to them or otherwise indicated he was in the home.

EVIDENCE COLLECTED AT THE SCENE

The scene of the shooting was processed by detectives with the El Paso County Sheriff's Office, the District Attorney's Office and the Metro Crime Laboratory. The entire scene was photo-and video documented. Detectives discovered numerous relevant items, including, but not limited to, the following:

- (a) Deputy Alex Garcia's duty weapon; to wit. A Glock .40 caliber automatic pistol. When taken into evidence, the weapon contained 11 live rounds.
- (b) One (1) "Leatherman" knife, with knife blade exposed. Found in spare "bedroom" of the home on Waterfall loop, approximately two feet away from the body of the deceased, Scott Alan Montgomery
- (c) Five (5) Shell casings, .40 Caliber S&W with a "Speer" manufacturer; all casings consistent with the duty weapon used by Deputy Garcia.

- (d) Three (3) projectiles located in the bedroom with the body of the deceased; one projectile recovered from the surface of the carpet; two recovered from beneath the flooring
- (e) Two (2) projectiles recovered from the body of Scott Alan Montgomery at autopsy as described below.
- (f) One letter located on the dining room table in the dining room area with handwriting that read, "Please contact (name withheld) at (telephone listed) or Steven at (telephone listed) Thank you, Scott." Directly below the signature was the statement, "PS I would like Jay to have the Leatherman. He gave me it and it did a great job for years, and the hat for Steven." The case for the Leatherman tool was located next to the note under a hat.
- (g) One letter located in the bedroom in which the deceased was located, written on spiral notebook paper. On top of the note was a clear plastic CD case, and underneath the note read, "For my wife...Dear Carrie, no more fighting, no more lies.....Just PEACE...."

AUTOPSY OF SCOTT ALAN MONTGOMERY

On June 23rd, 2008, Investigator Dan Edwards with the 4th Judicial District Attorney's Office attended the autopsy of Scott Alan Montgomery performed by forensic pathologist and El Paso County Coroner Dr. Robert Bux. Dr. Bux noted external injuries to Mr. Montgomery in the form of numerous cuts to the arms as well as three superficial stab wounds to the chest. Dr. Bux located three gunshot wounds. One gunshot wound was found on the upper right arm, with an exit wound slightly higher on the back side of the arm. A second gunshot wound was found on the front right hip with no exit wound. The bullet from this wound was removed from the buttocks area. A third gunshot wound was located in the back, left of center line. The bullet that entered the subject's back was recovered from the front of the subject, just below the neck. Dr. Bux opined that the bullet that entered the back was the fatal shot. The bullet traveled from left to right and upward, penetrating the spinal column and severing the arteries on the left side. Both bullets found in the suspect were removed and taken into evidence. Dr. Bux opined that the cause of death of Mr. Montgomery was the gunshot wound to the back. The manner of death was ruled a homicide. According to Dr. Bux, the medical declaration of "homicide" as a manner of death is appropriate where he finds that the actions of one person could reasonably have been expected to cause the death of another; i.e. a shooting. However, he further explained, and it is important to note that, this is a different definition than the legal definition of "homicide."

On June 24th, 2008 at 1:50 p.m. Investigator Edwards re-contacted Dr. Bux, to clarify how the shots, as they struck Scott Montgomery, may have affected his movements. Of note was the fatal shot, which entered Mr. Montgomery's back. The question was presented to Dr. Bux whether, assuming that the first two shots to hit Mr. Montgomery were in the right arm and right hip, the momentum of those strikes could have caused him to turn to his right and bend over slightly, presenting his back for the final shot. Dr. Bux stated that could have very well happened, that the physics of motion would have carried

the subject an additional 180 degrees after being hit with the fatal shot. Dr. Bux further stated that the subject would be falling towards the ground thereafter, having no physical ability to continue forwards.

Dr. Bux also noted that while the above-described situation *may* be the actual sequence of events, care must be taken to consider that situations such as these are “dynamic, chaotic and very fast moving,” with all parties moving, reacting and observing different things at different times. For these reasons, it is extremely difficult to draw concrete conclusions about every minute event or sequence thereof.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... when he reasonably believes that it is necessary
 - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

Under Colorado law, the operative question in this case is whether, at the time he fired his weapon at Scott Alan Montgomery in the home on Waterfall Loop on June 22nd, Deputy Alex Garcia reasonably believed that he or another person in the community was in imminent danger of bodily injury or death by Scott Montgomery. The question presented for determining criminal culpability of Deputy Garcia is not whether, in fact, Scott Montgomery intended to actually kill the Deputies, or whether, in fact, Scott Montgomery was physically capable of causing the death. The question is simply whether Deputy Garcia, at the time that he fired his weapon, had a belief that deadly force was necessary to defend himself and, secondarily, whether that belief was a reasonable one.

CONCLUSION

The facts and circumstances surrounding this case as described by investigators support the following general conclusions:

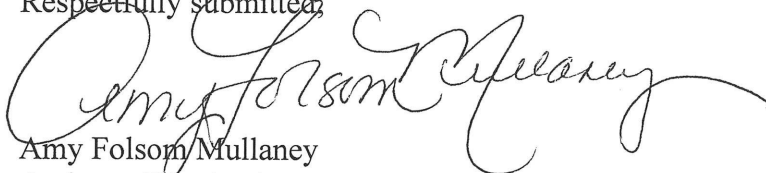
- (a) That when faced with the initial discovery in the home of two young children covered in blood, that Deputy Garcia had reason to believe that any individual in the home should be considered a suspect in the children’s death and should concomitantly be considered dangerous;
- (b) That Deputy Alex Garcia and Deputy Lisa Montville both separately and jointly announced the presence of the El Paso County Sheriff’s Office both

upon initial arrival and before they made forced entry to the rear of the residence;

- (c) That based upon the statements of Carrie Montgomery as well as the neighbors nearby, Deputy Garcia continued to announce the presence of law enforcement as he “cleared” the home after finding the bodies of the children;
- (d) That based upon those same statements, the announcements were made loud enough to be heard outside the residence;
- (e) That according to his statement, Deputy Alex Garcia believed his life was in imminent danger;
- (f) That given the actions of Mr. Montgomery when confronted by deputies as reported by Garcia and Montville and corroborated by those outside the home, Deputy Alex Garcia’s belief was a reasonable one based upon circumstances, including, but not limited to the following
 - a. Not responding to the deputies initial announcements outside the home or inside the home
 - b. Not complying with the deputy’s commands to “stop” or “put your hands up”
 - c. Facing the deputy with a knife
 - d. Positioning the knife in his hand blade out
 - e. Approaching the deputy quickly with the knife in a small room

Based upon all of the facts developed in this investigation, I conclude the evidence supports that Deputy Garcia did, in fact, believe that as Scott Alan Montgomery rose from the closet and approached him with a knife, Deputy Garcia believed that it was necessary to defend himself from the imminent use of deadly force against him. Further, I find that that based upon the totality of the evidence, that belief was a reasonable one. Under Colorado law, Deputy Alex Garcia was justified in using deadly force against Scott Alan Montgomery.

Respectfully submitted,



Amy Folsom Mullaney
Assistant District Attorney
4th Judicial District



News from the Office of the District Attorney

FOR IMMEDIATE RELEASE
October 28, 2008

Contact: Lin Billings linbillings@elpasoco.com
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DISTRICT ATTORNEY'S OFFICE COMPLETES REVIEW OF SEPTEMBER 17, 2008 OFFICER INVOLVED FATAL ACCIDENT ON COLORADO HWY 85/87

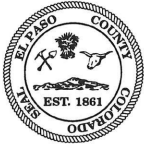
On September 17, 2008 Douglas Conrad was on routine patrol as a Trooper for the Colorado State Patrol in the Immigration Enforcement Unit. While on patrol, Trooper Conrad observed and received a complaint of a suspected intoxicated driver on a motorcycle. As Trooper Conrad continued southbound on Colorado 85/87 and approached the green signal light for the northbound access ramp onto south Academy Blvd., a northbound Honda Accord attempted to turn left at the access ramp intersection. Trooper Conrad swerved to the right but collided with the passenger side of the Honda. It was later determined that the Honda was driven by Jonathan L. Priest, who was pronounced dead at the scene of the collision.

Investigators from the 4th Judicial District Attorneys Office, in conjunction with law enforcement officers from The Colorado Springs Police Department Major Accident Unit and the Colorado State Patrol Accident Reconstruction Team interviewed numerous witnesses, obtained witness statements, collected all CSPD and CSP reports and records, photo documented the scene of the accident and obtained the digital video recording created by the dash mounted camera in Trooper Conrad's vehicle.

Based upon all of the facts developed in this investigation, Chief Deputy District Attorney Doug Miles concluded that the evidence supports a determination that Trooper Conrad's pursuit of a suspected intoxicated motorcycle rider on September 17, 2008 was lawful, reasonable and was not the cause of the collision that resulted in the death of Jonathan L. Priest. Chief Miles further concluded that Trooper Conrad was not required by law to display or make use of audible or visual signals because his pursuit was being made to obtain verification of and/or evidence of the guilt of the suspected violator. Further, his speed was not excessive in the 50 mph zone and he had the right of way as he approached the green signal light and entered the intersection of the on ramp from Colorado 85/87 to north-bound Colorado 83. The signal lights at the intersection were checked on the date of the collision and were found to be in proper working order. Trooper

Conrad swerved to the right but was unable to avoid colliding with the Honda which was turning left in front of Trooper Conrad's oncoming vehicle without sufficient time to execute the turn safely.

These conclusions are supported by the digital video recording obtained from the dash-mounted camera in Trooper Conrad's vehicle. A complete copy of the District Attorney's Office investigation and Chief Deputy District Attorney Doug Miles findings are attached to this press release.



John R. Newsome
District Attorney

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Amy Folsom Mullaney
Assistant District Attorney

October 27, 2008

OFFICER INVOLVED FATAL ACCIDENT REVIEW RE: COLORADO STATE PATROL TROOPER DOUGLAS CONRAD/ ACCIDENT INVOLVING JOHNATHAN L. PRIEST

FACTUAL SUMMARY

On September 17, 2008 Douglas Conrad was on routine patrol as a Trooper for the Colorado State Patrol in the Immigration Enforcement Unit. Trooper Conrad was driving a 2006 Ford Crown Victoria Sedan, license plate number CSP 198. Trooper Conrad's vehicle was a fully marked CSP vehicle and had an emergency lighting system and configuration commonly referred to as a "slick-top"; there was no emergency light bar attached to the roof of the vehicle.

On September 17, 2008 at approximately 4:45 p.m. Trooper Conrad, after attending a briefing, left the Colorado State Patrol Zone Office on Quail Lake Loop. Trooper Conrad cleared the Zone Office location on CAD (Computer Aided Dispatch) and proceeded onto Cheyenne Mountain Blvd. headed towards Venetucci Blvd. While waiting at the red signal light at Cheyenne Mountain Blvd. and Venetucci Blvd., Trooper Conrad recalls noticing a motorcycle stopped at the same intersection, although he does not recall why his attention was drawn to the motorcycle.

After stopping at the red signal light at Cheyenne Mountain Blvd. and Venetucci Blvd., Trooper Conrad turned right into the right-hand acceleration lane of southbound Venetucci Blvd. (Colorado 85/87). He then merged into the right-hand through lane of southbound Venetucci Blvd. Trooper Conrad next stopped at the red signal light at Cheyenne Meadows and Venetucci. While stopped for the red signal light, Trooper Conrad ran several license plate numbers on his mobile data computer.

After going through several curves on Venetucci Blvd., but before getting to B Street, Trooper Conrad pulled to the right shoulder of Venetucci Blvd. and stopped to wait for a red pick up truck to pass him. Trooper Conrad had previously observed that the pick up truck did not have a front license plate and he waited for the truck to pass his location in order to determine whether the truck had a rear license plate. Trooper Conrad also recalled noticing a motorcycle operator who, while driving through the curves on Venetucci Blvd. was weaving his motorcycle back and forth and appeared to be "horsing around" although Trooper Conrad stated that the motorcycle was several cars ahead of him and difficult to see because of the other traffic.

As the red pick up truck passed his location Trooper Conrad noticed that the truck did have a rear Colorado License plate. After the truck passed his location and after waiting for two other cars to pass, Trooper Conrad pulled into traffic on Colorado 85/87 and followed several cars through B Street. As traffic crossed over I-25, one of the cars between Trooper Conrad and the pick up truck turned right onto Maxwell St., leaving one car between the trooper and the pick up truck. As traffic approached East Las Vegas St. Trooper Conrad passed the vehicle in front of him by moving to the left-hand through lane and caught up to the red pick up truck. Trooper Conrad stated that the motorcycle was in front of the truck at this point.

Trooper Conrad activated his emergency lights and the red pick up truck slowed, pulled off the roadway and stopped on the right shoulder of Colorado 85/87. The trooper stated that the driver of the pick up truck began to "wave me on". Trooper Conrad called the traffic stop in to dispatch, exited his vehicle and made contact with the driver of the truck, later identified as Leonard Thomas. Mr. Thomas advised Trooper Conrad that the motorcycle driver was the one the trooper wanted. Thomas stated that the driver of the motorcycle was weaving all over the place and that "they" had to help the motorcycle driver back on to his motorcycle after he fell off. Trooper Conrad did not observe the driver fall off of his motorcycle as it apparently happened prior to Trooper Conrad entering Venetucci Blvd. Trooper Conrad thanked Mr. Thomas for the information, advised him to replace his front license plate and returned to his vehicle.

Trooper Conrad merged back into southbound traffic on Colorado 85/87 toward Academy Blvd. (Colorado 83). He contacted dispatch and cleared his traffic stop with Mr. Thomas. Trooper Conrad moved into the left-hand through lane of southbound traffic. The signal light for the southbound access ramp to south Academy was green and Trooper Conrad proceeded through the intersection moving into the right-hand through lane of southbound traffic on Colorado 85/87. Immediately after Trooper Conrad drove under Colorado 83. A light colored pick up truck traveling northbound on Colorado 85/87 safely turned left at the signal light ahead of him onto the northbound access ramp of south Academy Blvd.

As Trooper Conrad continued southbound on Colorado 85/87 and approached the green signal light for the northbound access ramp onto south Academy Blvd., a northbound Honda Accord attempted to turn left at the access ramp intersection. Trooper Conrad swerved to the right but collided with the passenger side of the Honda. It was later determined that the Honda was driven by Jonathan L. Priest. The Stratmoor Fire Department and an American Medical Response (AMR) ambulance responded to the scene of the collision. Both Trooper Conrad and Mr. Priest received medical attention at the scene. Mr. Priest was pronounced dead at the scene of the collision.

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorneys Office, in conjunction with law enforcement officers from The Colorado Springs Police Department Major Accident Unit and the Colorado State Patrol Accident Reconstruction Team interviewed numerous witnesses, obtained witness statements, collected all CSPD and CSP reports and records, photo documented

the scene of the accident and obtained the digital video recording created by the dash mounted camera in Trooper Conrad's vehicle.

All reports of the investigators, results of accident reconstruction calculations, scene photographs and the dash mounted video were submitted to me for review, and will be retained and preserved for public view.

WITNESS STATEMENTS

Witness statements were reviewed and compared to the digital video recording taken from Trooper Conrad's dash mounted camera.

Witness Chad Kibler stated he was on the off ramp from Colorado 83 to Colorado 85/87. He stated he was stopped at the white stop bar at the intersection waiting to yield to traffic and turn right. He stated that the light for the off ramp was red. He did not remember seeing emergency lights or hearing a siren from Trooper Conrad's vehicle. He estimated the speed of Trooper Conrad's vehicle to be 60-65 mph based upon the distance the Honda traveled after being struck by the trooper's vehicle.

Witness Christopher Wolf stated he was on the off ramp from Colorado 83 to Colorado 85/87. He stated that he was four cars back from the intersection in the right-hand turn lane. He stated that the light for the off ramp was red. He did not observe whether the trooper's vehicle had any emergency lights on. He stated that there were no emergency lights on after the collision.

Witness Leonard Thomas stated that he was the individual that Trooper Conrad contacted during a traffic stop on southbound Colorado 85/87 for no front license plate just prior to the collision. Mr. Thomas stated that he advised Trooper Conrad of a motorcycle driver ahead of him who had previously fallen off of the motorcycle and was going to hurt himself. Mr. Thomas observed Trooper Conrad pull around him and proceed southbound on Colorado 85/87. Mr. Thomas stated that the trooper had his front emergency lights activated when the trooper initiated the traffic stop and pulled him over. He also observed the rear emergency lights of the trooper's vehicle activated when the trooper terminated the traffic stop and pulled around him to proceed southbound on Colorado 85/87. Mr. Thomas stated that he did observe the rear emergency lights activated prior to Trooper Conrad going under the bridge (Colorado 83) but did not remember emergency lights at the time of the collision. Mr. Thomas stated that the trooper was going faster than the speed limit.

Witnesses Alysa Gauhreaux and Vincent Escobar stated they were traveling southbound on Colorado 85/87 and passed Trooper Conrad while he was pulled over for a traffic stop. Mr. Escobar stated that he observed the trooper coming up fast behind them as they traveled southbound. These two witnesses did not recall seeing any front emergency lights activated on Trooper Conrad's vehicle, but both stated that the rear emergency lights were activated as he passed them. Both stated that they were traveling around 50 mph and they estimated Trooper Conrad's speed at 60-65 mph or faster. They stated that the collision had already occurred as they came up to the signal lights at Colorado 83.

Witness Lindsey Richardson had contacted the Colorado State Patrol earlier in the day on the date of the collision. She had complained that the signal lights at the intersections of Colorado 85/87 and Colorado 83 were having problems. She stated that several cars at those intersections had turned left in front of her "like they had the right of way". She stated that her friend, Sarah Blake, had advised her that she (Ms. Blake) had almost been hit by several cars also turning left. Ms. Richardson stated that she did not observe the traffic signals malfunctioning; she simply assumed there was a problem because of the actions of the other cars.

Witness Jay Fisher is a Light Technician with the Colorado Department of Transportation. Mr. Fisher stated that he was called to the intersection of Colorado 85/87 and Colorado 83 to check the signal lights in response to Ms. Richardson's complaint. He stated that he checked the signals and they were operating properly.

SPEED COMPUTATIONS

The posted speed limit at the scene of the collision is 50 mph.

There were three separate computations regarding the speed of Trooper Conrad's vehicle in this case: Trooper Eric Zacharas of the Colorado State Patrol Accident Reconstruction Team, Detective Phil Tollefson of the Colorado Springs Police Department Major Accident Unit and Investigator Michael Miranda of the Office of the District Attorney, who has training and experience in accident reconstruction, all completed speed computations using different methods. Trooper Zacharas's and Detective Tollefson's calculations include roadway co-efficient of friction values measured independently by Sergeant Brian Lyons of the Colorado State Patrol Accident Reconstruction Team. Trooper Zacharas and Detective Tollefson also used measurements of the grade of the roadway and the super-elevation taken by Sgt. Lyons with an electronic level.

Trooper Zacharas used the 360° Momentum Method and the AR Pro computer program to determine the speed of Trooper Conrad's vehicle. He adjusted for roll out, utilized the Speed Loss from Rotation formula and then the combined speed formula to adjust his final calculation. Trooper Zacharas determined Trooper Conrad's speed at the time of impact to be 45-47 mph.

Detective Tollefson also used the 360° Momentum Method and the AR Pro computer program to determine the speed of Trooper Conrad's vehicle. He adjusted his co-efficient of friction to compensate for the changes that occurred during roll out of both vehicles (coming to an uncontrolled rest after impact). Detective Tollefson determined Trooper Conrad's speed at the time of impact to be between 50 and 60 mph.

Michael Miranda's calculations were based upon a review of the digital video recording of the accident and scene measurements taken by Trooper Zacharas. Utilizing time and distance traveled values, he determined Trooper Conrad's speed at the time of impact to be 49 mph. Because of the detailed time log information contained on the digital video recording, Investigator Miranda's speed computation appears to be the most precise and accurate.

APPLICABLE LAW

Colorado Revised Statutes 42-1-102. Definitions

...

- (6) **“Authorized emergency vehicle”** means such vehicles of the fire department, **police vehicles**, ambulances, and other special-purpose vehicles as are publicly owned and operated by or for a governmental agency to protect and preserve life and property in accordance with state laws regulating emergency vehicles said term also means the following if equipped and operated as emergency vehicles in the manner prescribed by state law: (emphasis added)

Colorado Revised Statutes 42-4-108. Public officers to obey provisions--exceptions for emergency vehicles

- (1) **The provisions of this article applicable to the drivers of vehicles upon the highways** shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or other political subdivision of the state, **subject to such specific exceptions as are set forth in this article with reference to authorized emergency vehicles.**

(2) **The driver of an authorized emergency vehicle**, when responding to an emergency call, or **when in pursuit of an actual or suspected violator of the law**, or when responding to but not upon returning from a fire alarm, **may exercise the privileges set forth in this section**, but subject to the conditions stated in this article. The driver of an authorized emergency vehicle may:

(a) Park or stand, irrespective of the provisions of this title;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) **Exceed the lawful speeds set forth in section 42-4-1101(2) or exceed the maximum lawful speed limits set forth in section 42-4-1101(8) so long as said driver does not endanger life or property;**

(d) Disregard regulations governing directions of movement or turning in specified directions.

(3) The exemptions and conditions provided in paragraphs (b) to (d), in their entirety, of subsection (2) of this section for an authorized emergency vehicle shall continue to apply to section 24-10-106(1)(a), C.R.S., only when such vehicle is making use of audible or visual signals meeting the requirements of section 42-4-213, and the exemption granted in paragraph (a) of subsection (2) of this section shall apply only when such vehicle is making use of visual signals meeting the requirements of section 42-4-213 unless using such visual signals would cause an obstruction to the normal flow of traffic; except that

an authorized emergency vehicle being operated as a **police vehicle while in actual pursuit of a suspected violator of any provision of this title need not display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator.** Nothing in this section shall be construed to require an emergency vehicle to make use of audible signals when such vehicle is not moving, whether or not the vehicle is occupied.

(4) The provisions of this section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of such driver's reckless disregard for the safety of others.

(5) The state motor vehicle licensing agency shall designate any particular vehicle as an authorized emergency vehicle upon a finding that the designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions. Such designation shall be in writing, and the written designation shall be carried in the vehicle at all times, but failure to carry the written designation shall not affect the status of the vehicle as an authorized emergency vehicle. (emphasis added)

CONCLUSION

Based upon all of the facts developed in this investigation, I conclude that the evidence supports a determination that Trooper Conrad's pursuit of a suspected intoxicated motorcycle rider on September 17, 2008 was lawful, reasonable and was not the cause of the collision that resulted in the death of Jonathan L. Priest. I further conclude that Trooper Conrad was not required by law to display or make use of audible or visual signals because his pursuit was being made to obtain verification of and/or evidence of the guilt of the suspected violator. Further, his speed was not excessive in the 50 mph zone and he had the right of way as he approached the green signal light and entered the intersection of the on ramp from Colorado 85/87 to north-bound Colorado 83. The signal lights at the intersection were checked on the date of the collision and were found to be in proper working order. Trooper Conrad swerved to the right but was unable to avoid colliding with the Honda which was turning left in front of Trooper Conrad's oncoming vehicle without sufficient time to execute the turn safely.

These conclusions are supported by the digital video recording obtained from the dash-mounted camera in Trooper Conrad's vehicle.

Douglas J. Miles

Chief Deputy District Attorney

October 27, 2008



News from the Office of the District Attorney

FOR IMMEDIATE RELEASE

January 26, 2009

Contact:

Public Information Officer
4th Judicial District
(719) 520-6000

INVESTIGATION INTO OFFICER INVOLVED SHOOTING IN COLORADO SPRINGS ON DECEMBER 5, 2008; DISTRICT ATTORNEY FINDS USE OF DEADLY FORCE BY EL PASO COUNTY SHERIFF'S DEPUTY WAS JUSTIFIED UNDER COLORADO LAW

The Office of the District Attorney and the Colorado Springs Police Department have completed the investigation of the events of December 5, 2008 where a suspect in a stolen pickup truck was shot and killed by an El Paso County Sheriff's Deputy. This incident occurred in an alleyway in the area of North Union Blvd and Constitution Ave in Colorado Springs.

Any time a law enforcement officer fires his weapon and a person is injured, the Office of the District Attorney conducts an independent investigation. The sole purpose of that investigation is to determine if any criminal laws were violated by the law enforcement officer shooting his/her weapon.

C.R.S. 18-1-707(2) allows for a peace officer to use deadly force if he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

The independent investigation consists of interviewing witnesses, to include the law enforcement officer who fired his weapon. Physical evidence is carefully examined. Forensic evidence is reviewed. According to Chief Investigator Larry Martin the District Attorney's Office was able to determine the following facts from this investigation:

On Friday December 5, 2008 at approximately 4:00 p.m. El Paso County Deputies assigned to the Crime Reduction Unit (C.R.U.) were working as a two man team in the vicinity of North Union Blvd. and Constitution Ave. inside the Colorado Springs city limits. C.R.U. members Deputy Bradley Bengford and Deputy Glenn Boarman were investigating a residence in the area which had been the subject of a search warrant several weeks earlier. At that time a stolen vehicle, a stolen gun, as well as some illegal narcotics had been recovered.

As Deputies Bengford and Boarman drove through the alleyway behind the address on North Union Blvd in an unmarked Chevy Impala they noticed a black F250 pickup truck parked in the alleyway that did not have any visible license plates. The Deputies conducted a VIN search on the truck and discovered that the truck had been reported stolen out of Yoder, Colorado.

The Deputies decided to set up surveillance on the truck at the top of the alleyway. As Deputy Boarman turned the unmarked patrol car around to begin the surveillance the Deputies noticed that the black F250 pickup truck was traveling northbound in the alley directly toward their vehicle. The Deputies activated the emergency lights on their unmarked patrol car in an attempt to stop the stolen truck. When the Deputies activated the emergency lights the driver of the stolen truck, identified later as Christopher Barnes Obertino, immediately put the truck in reverse and started to accelerate southbound down the alleyway at a high rate of speed.

The Deputies pursued the truck with the emergency lights activated on their patrol vehicle. Mr. Obertino rapidly backed the stolen truck into a driveway off the west side of the alley at which time the truck struck a large tree and a chain link fence. The Deputies believed the truck would not be able to continue after this crash so they exited their patrol car in an attempt to get Mr. Obertino out of the truck and place him into custody. Deputy Boarman exited the patrol car from the driver's door with his weapon drawn and took a position directly in front of the truck so he could view Mr. Obertino through the truck's windshield. Deputy Bengford exited the passenger door of the patrol car with his weapon drawn and took a position on the north side of the truck so that he could see Mr. Obertino through the truck's driver's side windows. Both Deputies gave numerous loud verbal commands to Mr. Obertino that they were Sheriff Deputies and that he needed to shut the truck engine off and show his hands. Mr. Obertino refused to comply with the Deputies verbal commands.

As both Deputies continued to shout verbal commands to Mr. Obertino, he shifted the truck back into drive and started accelerating the truck directly towards Deputy Boarman. Deputy Boarman sidestepped out of the path of the truck and Mr. Obertino nearly struck a concrete retaining wall on the east side of the alley with the truck. Deputy Boarman would have been struck by the truck if he had not sidestepped out of the truck's path. Deputy Boarman considered shooting at Mr. Obertino as the truck was accelerating directly towards him, but did not fire because he was unsure of Deputy Bengford's exact location at that time.

After quickly moving out of the truck's path Deputy Boarman ended up next to the driver's side window. Deputy Boarman attempted to knock out the glass on the driver's side window with the barrel of his weapon but he was unable to break the window glass. Then Mr. Obertino placed the truck in reverse and again quickly reversed the truck approximately four feet back into the driveway off the alley. Mr. Obertino placed the truck back into drive and again accelerated quickly towards Deputy Boarman. Deputy Bengford maintained a position on the north side of the truck covering Deputy Boarman and continued to shout verbal commands while Mr. Obertino accelerated the truck towards

Deputy Boarman. As the truck accelerated at Deputy Boarman a second time Deputy Bengford began to fire shots into the cab of the truck. Deputy Bengford believed that Mr. Obertino was going to hit Deputy Boarman with the truck and possibly pin Deputy Boarman against the concrete retaining wall. Deputy Bengford fired eight rounds very quickly as the truck accelerated towards Deputy Boarman. Deputy Boarman was able to jump out of the way of the truck a second time as the truck moved rapidly toward him.

Mr. Obertino was able to turn the truck down the alleyway at this point and drove the truck southbound toward Constitution Ave. His truck struck and knocked over a light pole on the corner of the alleyway and Constitution Ave. before heading west on Constitution Ave. Mr. Obertino subsequently crashed the truck into a large tree on the north side of Constitution Ave. Deputy Boarman and Deputy Bengford pursued Mr. Obertino's truck in their patrol car. When the Deputies made contact with the truck Mr. Obertino was removed from the truck and handcuffed. He was unresponsive. Medical personal were called and Mr. Obertino was transported to Memorial hospital by ambulance. Mr. Obertino was struck by two of the bullets fired by Deputy Bengford which resulted in his death. Mr. Obertino was first struck by a bullet in the left arm which traveled through the left arm into the left side of his body and then traversed the chest cavity. Mr. Obertino was struck by a second bullet in the lower back on the left side of his body which traversed his body in an upward direction and exited through the front of his right shoulder. Mr. Obertino was struck by the second bullet as he slumped forward in the driver's seat after being struck by the bullet that entered the left side of his body.

Because this incident involved bodily injury or death to another person as a result of the deputy discharging his weapon, the 4th Judicial District Attorney's Critical Incident Team was activated on the night of December 5, 2008 and responded immediately to conduct the investigation of the shooting in association with personal from the Colorado Springs Police Department's Violent Crimes Section. Senior Deputy District Attorney Frederick Stein was the lead prosecutor on the Critical Incident Team to review the case.

That investigation and legal analysis of the above referenced shooting has been completed, and the 4th Judicial District Attorney's Office concludes that under Colorado law, Deputy Bengford was justified in using deadly force against Christopher Obertino.



Daniel H. May
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District
105 East Vermijo
Colorado Springs, CO 80903
CRIMINAL DIVISION
(719) 520-6000 \ FAX (719) 520-6185



Daniel C. Zook
Assistant District Attorney

January 22, 2009

Sheriff Terry Maketa
101 West Costilla Street
Colorado Springs, CO 80903

Dear Sheriff Maketa:

On Friday December 5, 2008 at approximately 4:00 p.m. El Paso County Deputies assigned to the Crime Reduction Unit (C.R.U.) were working as a two man team in the vicinity of North Union Blvd. and Constitution Ave. inside the Colorado Springs city limits. C.R.U. members Deputy Bradley Bengford and Deputy Glenn Boarman were investigating a residence in the area which had been the subject of a search warrant several weeks earlier. At that time a stolen vehicle, a stolen gun, as well as some illegal narcotics had been recovered.

As Deputies Bengford and Boarman drove through the alleyway behind the address on North Union Blvd in an unmarked Chevy Impala they noticed a black F250 pickup truck parked in the alleyway that did not have any visible license plates. The Deputies conducted a VIN search on the truck and discovered that the truck had been reported stolen out of Yoder, Colorado.

The Deputies decided to set up surveillance on the truck at the top of the alleyway. As Deputy Boarman turned the unmarked patrol car around to begin the surveillance the Deputies noticed that the black F250 pickup truck was traveling northbound in the alley directly toward their vehicle. The Deputies activated the emergency lights on their unmarked patrol car in an attempt to stop the stolen truck. When the Deputies activated the emergency lights the driver of the stolen truck, identified later as Christopher Barnes Obertino, immediately put the truck in reverse and started to accelerate southbound down the alleyway at a high rate of speed.

The Deputies pursued the truck with the emergency lights activated on their patrol vehicle. Mr. Obertino rapidly backed the stolen truck into a driveway off the west side of the alley at which time the truck struck a large tree and a chain link fence. The Deputies believed the truck would not be able to continue after this crash so they exited their patrol car in an attempt to get Mr. Obertino out of the truck and place him into custody. Deputy Boarman exited the patrol car from the driver's door with his weapon drawn and took a position directly in front of the truck so he could view Mr. Obertino through the truck's windshield. Deputy Bengford exited the passenger door of the patrol car with his weapon drawn and took a position on the north side of the truck so that he could see Mr. Obertino through the truck's driver's side windows.

Both Deputies gave numerous loud verbal commands to Mr. Obertino that they were Sheriff Deputies and that he needed to shut the truck engine off and show his hands. Mr. Obertino refused to comply with the Deputies verbal commands.

As both Deputies continued to shout verbal commands to Mr. Obertino, he shifted the truck back into drive and started accelerating the truck directly towards Deputy Boarman. Deputy Boarman sidestepped out of the path of the truck and Mr. Obertino nearly struck a concrete retaining wall on the east side of the alley with the truck. Deputy Boarman would have been struck by the truck if he had not sidestepped out of the truck's path. Deputy Boarman considered shooting at Mr. Obertino as the truck was accelerating directly towards him, but did not fire because he was unsure of Deputy Bengford's exact location at that time.

After quickly moving out of the truck's path Deputy Boarman ended up directly next to the driver's side window. Deputy Boarman attempted to knock out the glass on the driver's side window with the barrel of his weapon but he was unable to break the window glass. Then Mr. Obertino placed the truck in reverse and again quickly reversed the truck approximately four feet back into the driveway off the alley. Mr. Obertino placed the truck back into drive and again accelerated quickly towards Deputy Boarman. Deputy Bengford maintained a position on the north side of the truck covering Deputy Boarman and continued to shout verbal commands while Mr. Obertino accelerated the truck towards Deputy Boarman. As the truck accelerated at Deputy Boarman a second time Deputy Bengford began to fire shots into the cab of the truck. Deputy Bengford believed that Mr. Obertino was going to hit Deputy Boarman with the truck and possibly pin Deputy Boarman against the concrete retaining wall. Deputy Bengford fired eight rounds very quickly as the truck accelerated towards Deputy Boarman. Deputy Boarman was able to jump out of the way of the truck a second time as the truck moved rapidly toward him.

Mr. Obertino was able to turn the truck down the alleyway at this point and drove the truck southbound toward Constitution Ave. His truck struck and knocked over a light pole on the corner of the alleyway and Constitution Ave. before heading west on Constitution Ave. Mr. Obertino's subsequently crashed the truck into a large tree on the north side of Constitution Ave. Deputy Boarman and Deputy Bengford pursued Mr. Obertino's truck in their patrol car. When the Deputies made contact with the truck Mr. Obertino was removed from the truck and handcuffed. He was unresponsive. Medical personal were called and Mr. Obertino was transported to Memorial hospital by ambulance. Mr. Obertino was struck by two of the bullets fired by Deputy Bengford which resulted in his death. Mr. Obertino was first struck by a bullet in the left arm which traveled through the left arm into the left side of his body and then traversed the chest cavity. Mr. Obertino was struck by a second bullet in the lower back on the left side of his body which traversed his body in an upward direction and exited through the front of his right shoulder. Mr. Obertino was struck by the second bullet as he slumped forward in the driver's seat after being struck by the bullet that entered the left side of his body.

Because this incident involved bodily injury or death to another person as a result of the deputy discharging his weapon, the 4th Judicial District Attorney's Critical Incident Team was activated on that date and responded immediately to conduct the investigation of the shooting in association with personal from the Colorado Springs Police Department's Violent Crimes Section. Senior Deputy District Attorney Frederick Stein was the lead prosecutor on the Critical Incident Team to review the case.

Colorado Revised Statute 18-1-707(2) provides the following language which is applicable to situations involving the use of deadly physical force by peace officers:

A peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary.

The statute provides two different circumstances where deadly physical force may be justified:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

That investigation and legal analysis of the above referenced shooting has been completed, and the 4th Judicial District Attorney's Office concludes that under either statutory authority, Deputy Bengford was justified in using deadly force against Christopher Obertino.

Sincerely,



Daniel H. May
District Attorney
4th Judicial District

OFFICER INVOLVED SHOOTING REPORT

RE: DEPUTY BRAD BENGFOR

FACTUAL SUMMARY

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Both Deputies gave numerous loud verbal commands to Mr. Obertino that they were Sheriff Deputies and that he needed to shut the truck engine off and show his hands. Mr. Obertino refused to comply with the Deputies verbal commands.

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Mr. Obertino was able to turn the truck down the alleyway at this point and drove the truck southbound toward Constitution Ave. His truck struck and knocked over a light pole on the corner of the alleyway and Constitution Ave. before heading west on Constitution Ave. Mr. Obertino's subsequently crashed the truck into a large tree on the north side of Constitution Ave. Deputy Boarman and Deputy Bengford pursued Mr. Obertino's truck in their patrol car. When the Deputies made contact with the truck Mr. Obertino was removed from the truck and handcuffed. He was unresponsive. Medical personal were called and Mr. Obertino was transported to Memorial hospital by ambulance. Mr. Obertino was struck by two of the bullets fired by Deputy Bengford which resulted in his death. Mr. Obertino was first struck by a bullet in the left arm which traveled through the left arm into the left side of his body and then traversed the chest cavity. Mr. Obertino was struck by a second bullet in the

lower back on the left side of his body which traversed his body in an upward direction and exited through the front of his right shoulder. Mr. Obertino was struck by the second bullet as he slumped forward in the driver's seat after being struck by the bullet that entered the left side of his body.

Because this incident involved bodily injury or death to another person as a result of the deputy discharging his weapon, the 4th Judicial District Attorney's Critical Incident Team was activated on that date and responded immediately to conduct the investigation of the shooting in association with personal from the Colorado Springs Police Department's Violent Crimes Section. Senior Deputy District Attorney Frederick Stein was the lead prosecutor on the Critical Incident Team to review the case.

That investigation and legal analysis of the above referenced shooting has been completed, and the 4th Judicial District Attorney's Office concludes that under Colorado law, Deputy Bengford was justified in using deadly force against Christopher Obertino.

MATERIALS REVIEWED

The Colorado Springs Police Department Violent Crimes Section along with Investigators from the 4th Judicial District Attorney's Office interviewed numerous witnesses including Deputy Bengford and Deputy Boarman as well as other witnesses at the scene. They also collected physical evidence, performed a scene re-creation, and completed photo documentation of the scene. All of these items were forwarded to the District Attorney's Office with the file.

WITNESS STATEMENTS

The shooting incident currently under review occurred in the presence of two primary witnesses: Deputy Brad Bengford and Deputy Glenn Boarman. In addition, a family of three, Robert Cvek, Karen Owsely, and Tiffany Martin, also viewed the shooting from the northern end of the alleyway. For that reason their statements are of critical importance. This report is not intended to be a comprehensive digest of all witness statements or evidence recovered, but rather a summary of facts and evidence pertinent to the ultimate conclusion.

STATEMENT OF DEPUTY BRAD BENGFORD

On December 5, 2008 at approximately 8:14 p.m. Detective Derek Graham of the Colorado Springs Police Department's Violent Crimes Section and District Attorney Deputy Chief Investigator Linda Dix interviewed Deputy Brad Bengford regarding the

shooting involving Christopher Obertino. Detective Graham and Deputy Chief Investigator Dix completed reports on their interview with Deputy Bengford and their reports contained the following details.

Deputy Bengford is assigned to the Crime Reduction Unit (C.R.U.) of the El Paso County Sheriff's Department. He has been a member of the Unit since March or May of 2007. Deputy Bengford indicated that he currently works a 10 hour work schedule which is typically from 2:00 pm to midnight.

Deputy Bengford indicated that C.R.U. members always work as a two man unit. Normally Deputy Bengford partners with Deputy Chris Gonzales; however since Deputy Gonzales called in sick on December 5, 2008 he and Deputy Boarman were assigned to partner that day. Deputy Bengford stated he had partnered with Deputy Boarman on prior occasions.

Detective Graham asked Deputy Bengford how the C.R.U. typically operated. Deputy Bengford indicated that they are involved in fugitive apprehension and following up on tips from the tip line generally involving stolen property or illegal drugs. He also indicated that they conduct follow up from self generated calls and they work with confidential informants to generate leads.

Detective Graham asked Deputy Bengford about his duty weapon and the number of rounds he generally carries in the clip. Deputy Bengford advised that he carries the standard issue .40 caliber Glock and he carries 1 round in the chamber and has 15 rounds in the magazine for a total load of 16 rounds. Deputy Bengford advised he carries an extra clip that is loaded with 15 rounds. Upon inspection of Deputy Bengford's weapon it was found to contain 1 round in the chamber and 7 live rounds in the clip. Deputy Bengford indicated that he does carry a back up weapon, a .40 caliber Glock, which contains a total of 10 live rounds with 1 in the chamber and 9 in the clip. Upon inspection of Deputy Bengford's back up weapon it contained all 10 live rounds that Deputy Bengford normally carries.

Detective Graham asked Deputy Bengford to describe how he is normally attired while on patrol with C.R.U., and Deputy Bengford indicated that he wears a black long sleeved t-shirt that has the word "SHERIFF" in large white block letters on the both sleeves. He also wears his sheriff's badge on a lanyard that hangs around his neck. He was not wearing a coat. He was also wearing a baseball cap and blue jeans. Deputy Bengford stated he wore a standard black holster on his right hip which contained his primary service weapon.

Deputy Bengford indicated that he was the passenger in the unmarked Chevy Impala patrol car and that Deputy Boarman was the driver. Deputy Bengford indicated that

the unmarked car is equipped with lights and sirens. He stated that the unmarked EPSO vehicle has wigwags in the headlights and that it also has a visor light bar. He confirmed that there were no overhead lights on the unmarked vehicle.

Deputy Bengford stated that he and Deputy Boarman were in the vicinity of North Union Blvd. and Constitution Ave. at approximately 4:00 p.m. to investigate a residence, 2210 North Union Blvd., where there had been a lot of prior criminal activity. The 2210 North Union address was the residence of Kito Dale who is a known associate with the Rolling 30 Crips. Deputy Bengford indicated that a couple of weeks ago the C.R.U. had executed a search warrant at that residence, and at that time a stolen vehicle, a stolen gun, as well as some illegal narcotics had been recovered. Deputy Bengford said that as Deputy Boarman drove through the alleyway behind the 2210 North Union Blvd address in the unmarked patrol car they noticed a black F250 pickup truck parked in the alleyway that did not have any visible license plates. Deputy Bengford stated it was decided to run a VIN search on the truck to check for any stolen vehicle hits. Deputy Bengford exited the patrol car and retrieved the VIN from the black F250. Once he returned Deputy Boarman then drove the patrol vehicle northbound through the alley as Deputy Bengford contacted EPSO dispatch to run the VIN on the truck. Deputy Bengford then was advised by EPSO dispatch that the truck had been reported stolen out of Yoder Colorado.

Deputy Bengford stated that he and Deputy Boarman decided to set up surveillance on the truck at the top of the alleyway. As Deputy Boarman turned the unmarked patrol car around to begin the surveillance Deputy Bengford said they both noticed that the black F250 pickup truck was traveling northbound in the alley directly toward their vehicle. Deputy Bengford stated that as soon as he saw the truck approaching them the Deputies activated their wigwag lights and their headlights. He also indicated that the visor light on the unmarked patrol was activated. Deputy Bengford could not recall if Deputy Boarman activated the siren. As soon as the patrol car's lights were activated Deputy Bengford stated that the truck which was occupied only by the driver immediately began to reverse and accelerate backwards down the alleyway. Deputy Bengford described the occupant of the vehicle as backing up at a very rapid pace and trying to get away from them.

Deputy Bengford stated the truck backed into a chain link fence off to the west of the alleyway and may also have struck a tree with the bumper and bed area of the truck. Deputy Bengford indicated that he and Deputy Boarman got out of the patrol car when the truck backed into the chain link fence. Deputy Bengford stated he could clearly see the visor light functioning properly on the unmarked car as he exited the passenger side of the car.

Deputy Bengford stated he approached toward the rear of the truck while Deputy Boarman approached the front of the truck. Deputy Bengford stated that both he and Deputy Boarman had pulled out their duty weapons and were giving loud verbal commands like saying "Sheriff's Department" and telling the driver of the truck to shut off the vehicle. Deputy Bengford also stated that he was giving verbal commands that the driver was to show his hands, however, the driver did not comply with those verbal commands. Deputy Bengford indicated that he was approximately 8 feet away from the suspect's truck. Deputy Bengford stated the driver's window on the truck was rolled up. Deputy Bengford described the driver as a white male with short hair probably in his 30s. Deputy Bengford said that the driver never made eye contact with him and appeared to be looking at Deputy Boarman.

Deputy Bengford next saw the truck rev forward toward the cement retaining wall and an old couch on the east side of the alleyway. Deputy Bengford stated he believed the retaining wall had stopped the truck as it moved forward. Deputy Bengford then saw Deputy Boarman move toward the driver's side window and punch the glass with his weapon in an attempt to break out the window. Deputy Bengford stated he was still toward the rear of the truck and that he was trying to approach and cover Deputy Boarman at this time.

Deputy Bengford stated that after the suspect was unable to go forward any further because of the retaining wall the suspect suddenly put the truck into reverse. The suspect turned the wheel which forced Deputy Boarman to jump out of the way. Deputy Bengford described how the suspect backed up about 4 feet and then suddenly accelerated forward directly toward Deputy Boarman. Deputy Bengford described that the suspect was then driving directly at Deputy Boarman, as which time Deputy Bengford fired several shots. Deputy Bengford thought he fired approximately 4 to 5 shots. Deputy Bengford said that after firing several shots the suspect continued to pull away in the truck down the alleyway.

Deputy Bengford said that the reason why he fired at the suspect through the driver's side window was because it was Deputy Bengford's belief that the suspect was going to try to run over Deputy Boarman. Deputy Bengford said that it was his belief that if the suspect struck Deputy Boarman it would pin Deputy Boarman between the truck and the retaining wall causing serious bodily injury or death to Deputy Boarman. Deputy Bengford estimated that he was approximately 5 to 8 feet away from the suspect when he was firing. Deputy Bengford stated he was stationary when he was firing and that the truck was moving at the time of the shooting. Deputy Bengford indicated that he was able to see the left shoulder and the left arm of the suspect through the driver's side window and that was his target.

After the shots were fired Deputy Bengford stated he and Deputy Boarman got back into the patrol car and pursued the suspect's truck down the alleyway. Deputy Bengford said that he observed that the suspect's truck had crashed into tree on the north side of Constitution Ave. Deputy Bengford stated both he and Deputy Boarman exited their patrol car and again approached the truck while yelling verbal commands at the suspect. The suspect was unresponsive. Deputy Bengford stated he found the driver's door unlock so he opened the door and pulled the suspect onto the ground. At that time the suspect was handcuffed. Deputy Bengford said that Deputy Boarman then requested medical to be dispatched to the scene to treat the suspect.

STATEMENT OF DEPUTY GLENN BOARMAN

On December 5, 2008 at approximately 8:29 p.m. Detective Mareshah Hale of the Colorado Springs Police Department's Violent Crimes Section and District Attorney Investigator Lynn Chance interviewed Deputy Glenn Boarman regarding the shooting involving Christopher Obertino. Detective Hale and Investigator Chance completed reports on their interview with Deputy Boarman and their reports contained the following details.

Deputy Boarman is assigned to the Crime Reduction Unit (C.R.U.) of the El Paso County Sheriff's Department. Deputy Boarman indicated that he currently works a 10 hour work schedule which is typically from 2:00 pm to midnight.

Detective Hale asked Deputy Boarman about his duty weapon and the number of rounds he generally carries in the clip. Deputy Boarman advised that he carries the standard issue .40 caliber Glock and he carries 1 round in the chamber and has 14 rounds in the magazine for a total load of 15 rounds. Upon inspection of Deputy Boarman's weapon it was found to contain 15 total live rounds with 1 round in the chamber and 14 rounds in the clip. Deputy Boarman advised that he did not carry a back-up weapon.

Deputy Boarman indicated that he was dressed in the exact same manner as Deputy Bengford which included a black a long sleeved t-shirt that had the word "SHERIFF" in large white block letters on the both sleeves. He also wore his sheriff's badge on a lanyard around his neck. He did not wear a coat.

Deputy Boarman stated that on that day he drove an unmarked Chevy Impala. He said that the vehicle had emergency lights on the visor and sirens. He also indicated that the vehicle had back wig-wag lights.

Deputy Boarman said that they were in the vicinity of North Union Blvd. and Constitution Ave. at approximately 4:00 p.m. in order to check out a residence in the

area that had been the subject of a search warrant about two weeks ago. Deputy Boarman stated that Deputy Bengford suggested that they should drive up the alleyway behind Kito Dale's residence to see if there might be any stolen cars or motorcycles visible in the alleyway. Deputy Boarman indicated that as he proceeded through the alleyway they noticed a truck with no visible license plates. Deputy Bengford obtained the VIN off the truck and after it was run by EPSO dispatch he and Deputy Bengford were notified that the truck was stolen.

Deputy Boarman said that he and Deputy Bengford were going to notify the other two C.R.U. deputies on duty so that surveillance could be set up on the truck. He stated normally each C.R.U. team would set up at each end of the alleyway and watch the truck. Deputy Boarman stated as he was driving southbound through the alleyway to get into position for the surveillance he noticed that the black truck was driving northbound in the alleyway directly towards the patrol car. Deputy Boarman then stated that they flipped down the visor and activated the emergency lights. At that moment the truck reversed direction and accelerated backwards down the alleyway.

Deputy Boarman described the truck as rapidly moving in reverse down the alleyway and then he said the truck tried to make a whip turn into a driveway on the west side of the alleyway. Deputy Boarman said when the truck made this maneuver the truck's back end crashed into a tree. Deputy Boarman said he stopped the patrol car about a car length away from the front of the truck. Deputy Boarman said the driver of the truck did not put the truck back into drive right away after striking the tree and Deputy Boarman believed that the driver may have been stunned by the impact of the truck into the tree.

Deputy Boarman said he and Deputy Bengford both got out of the patrol car and drew their weapons. He stated he was yelling "Sheriff's Office! Stop!" He stated he positioned himself in front of the truck and Deputy Bengford went toward the rear of the truck. Deputy Boarman said he quickly lost sight of Deputy Bengford because he was focused on the front of the truck and the driver. Deputy Boarman said he was slightly off center of the front of the truck and approximately 2 feet from the bumper as he was yelling verbal commands at the driver. Deputy Boarman indicated he observed the driver trying hard to get the truck into drive so he began to back off from the front of the truck. Deputy Boarman stated when the suspect got the truck into drive he gunned the engine and accelerated toward Deputy Boarman. Deputy Boardman said he backed up quickly about 5 to 10 feet and as the truck got close to him he side stepped out of the way of the truck. Deputy Boarman indicated that the truck could not make the turn to go south down the alleyway because of the concrete retaining wall. Deputy Boarman stated that if he had not moved out of the way as the truck was accelerating toward him he would have been struck by the truck. Deputy

Boarman thought about shooting at the suspect as the truck accelerated toward him; however he did not fire because he was not sure where Deputy Bengford was positioned. Deputy Boarman stated he was worried that if he fired he might place Deputy Bengford into a cross fire situation.

Deputy Boarman stated at this point that he was standing right next to the driver's side window so he tried to punch out the glass with his gun. He struck the window several times but the glass did not break. The suspect then put the truck back into reverse and backed straight into the driveway. Deputy Boarman said the suspect then put the truck back into drive and accelerated toward him again. Deputy Boarman stated that he was again standing in front of the truck with his weapon pointed at the driver when the driver began to accelerate a second time toward him. Deputy Boarman indicated that he was approximately 5 to 10 feet from the front of the truck when it accelerated at him at this point. Deputy Boarman said as the truck accelerated toward him he stepped out of the way again and at the same time he heard shots fired. Deputy Boarman described how the truck turned southbound as several more shots were fired. Deputy Boarman described all the shots taking place very quickly. Deputy Boarman believed he heard 5 to 6 shots fired in two quick bursts.

Both Deputies returned to the patrol vehicle to pursue the truck. Deputy Boarman recalled hearing Deputy Bengford state "I thought he was going to run over you." Deputy Boarman did not recall making any statements in response to Deputy Bengford.

Deputy Boarman indicated that the suspect was detained after he crashed his truck into a tree on the north side of Constitution Ave. Deputy Boarman's account of how the suspect was placed into custody was the same as Deputy Bengford's narrative.

STATEMENTS OF CIVILIAN WITNESSES

On December 5, 2008 at approximately 5:50 p.m. detectives with the Colorado Springs Police Department's Violent Crimes Section and investigators with District Attorney's Office interviewed civilian witnesses to the shooting involving Christopher Obertino. The following eye witnesses were interviewed Robert Cvek, Karen Owsely, and Tiffany Martin. The reports of their interviews contained the following details.

CSPD Detective Deborah Adelbush and Deputy Chief Investigator Linda Dix interviewed Robert Cvek who resides at 2213 N. Meade Street with his wife Karen Owsely and his step daughter Tiffany Martin. Mr. Cvek stated he was cleaning out his van in his garage which is on the west side of the alleyway between Mead St. and N.

Union Blvd. His wife Mrs. Oswely and his step-daughter Ms. Martin were helping him clean out the van.

Mr. Cvek stated that all of a sudden he saw a black truck going quickly in reverse southbound down the alleyway. He then stated he saw "a cop car" going forward after the truck. Mr. Cvek knew it was a police vehicle chasing the truck because he saw lights on the vehicle. Mr. Cvek described how the truck crashed into something further down the alley but was unsure what that was. He then moved from his garage area into the alley. Mr. Cvek stated he knew that the people who got out of the patrol car were Sheriff's Deputies because they were wearing shirts that had SHERIFF lettering on them. He described the shirts as black with white lettering. Mr. Cvek heard the Deputies yelling "get out, get out" at the driver of the truck. He said that one Deputy was near the driver's window and other Deputy was up at the rear of the truck. Mr. Cvek saw the truck go towards the Deputies. He said at about that time he heard 4 to 6 shots fired. Mr. Cvek describes the shots as being very quick. Mr. Cvek said he believed that it was the Deputy closest to the window who fired the shots but he was not sure. Mr. Cvek stated that it looked like the "bad guy" was trying to run over the Deputies and they did what they had to do.

During a re-enactment of the shooting with Mr. Cvek on December 15, 2008 it was determined that he was 103 feet north of the area where the shooting occurred as he witnessed the events.

Detective Adelbush and Deputy Chief Investigator Dix also interviewed Tiffany Martin who resides at 2213 N. Meade Street with her mother Karen Owsely and her step-father Robert Cvek. Ms. Martin said she was helping her mother and step-father clean out the van in the garage next to the alleyway between Mead St. and Union Blvd.

Ms. Martin saw a dark colored truck come flying down the alleyway followed by a purple Chevy Impala. Ms. Martin said she saw red and blue emergency lights on the Chevy Impala and she believed that it was "a police vehicle." Ms. Martin said that when she saw the Deputies they appeared to be wearing jackets that said something like Colorado Sheriff's Department. Ms. Martin said she was not able to hear the Deputies or the man in the truck saying anything during the incident. She said that a Deputy, she was not sure which, only fired at the truck when it was perpendicular to the alley. She described to Detective Adelbush being only 6 feet from the shooting when it occurred; however during a re-enactment of the shooting with Ms. Martin on December 15, 2008 it was determined that she was at least 100 feet north of the area where the shooting occurred as she witnessed the events.

District Attorney Investigator Rick Stark interviewed Karen Owsley along with CSPD Detective Shawn Peterson. Karen Owsely resides at 2213 N. Meade Street with her husband Robert Cvek and her daughter Tiffany Martin. Mrs. Owsely said she was helping her husband and daughter clean out the van in the garage next to the alleyway between Mead St. and Union Blvd. Mrs. Owsely recounted all events in a similar manner as her husband Mr. Cvek. She did state that she thought the truck pulled forward very fast and was revving it's engine, and if the Deputy had not moved when the truck went forward that he would have been run over.

EVIDENCE COLLECTED AT THE SCENE

The scene of the shooting was processed by detectives from the Colorado Springs Police Department's Violent Crimes Section, investigators from the District Attorney's Office, and members of the Metro Crime Laboratory. The entire scene was photo documented. The investigators discovered numerous relevant items, including but not limited to, the following:

- 1) Deputy Bengford's duty weapon; to wit A Glock .40 caliber semi-automatic pistol. When taken into evidence the weapon contained 1 live round in the chamber and 7 live rounds in the clip.
- 2) Eight (8) Shell casings, .40 caliber S&W with a "Speer" manufacturer stamp; all casing were consistent with the duty weapon used by Deputy Bengford.
- 3) One (1) .223 caliber semi-automatic rifle and one black magazine containing 18 live rounds found in the a green backpack recovered from behind the driver's seat of the F250 truck driven by Christopher Obertino.
- 4) One (1) green Camelbak backpack recovered from the passenger side rear floorboard of the F250 truck containing among other items a fixed blade Ka-Bar survival knife, 14" bolt cutters, and a Daisey Powerline BB gun.
- 5) Eight (8) coin envelope containing lead and copper projectile fragments recovered from different areas inside and in the bed of the F250 truck.
- 6) One (1) distorted projectile recovered from the body of Christopher Obertino at the autopsy conducted by the El Paso County Coroner.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

(2) A peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

CONCLUSION

The facts and circumstances surrounding this case as described by the investigators reports and evidence collected support the following general conclusions:

- 1) That Deputy Boarman had activated the visor emergency light bar on the unmarked patrol vehicle and at that point the truck driven by Mr. Obertino began to reverse rapidly down the alleyway away from the Deputies.
- 2) That Deputy Bengford and Deputy Boarman had their badges displayed on lanyards around their necks and both wore black long-sleeved tee shirts with large white lettering down the sleeves that said "SHERIFF."
- 3) That Deputy Bengford and Deputy Boarman verbally identified themselves numerous times as sheriff deputies after they exited their patrol car and confronted the truck driven by Mr. Obertino.
- 4) That Mr. Obertino was driving a stolen truck and attempted to flee the scene when he was initially confronted by the Deputies in their unmarked patrol car which had active emergency lights.
- 5) That Mr. Obertino after crashing the backend of the truck into a tree on the west side of the alleyway put the truck back into gear and rapidly accelerated directly toward Deputy Boarman who had taken a position in front of the truck.
- 6) That according to his statement, Deputy Boarman believed his life was in imminent danger at this point and he would have fired his weapon at the oncoming truck if he was certain of the position of his partner Deputy Bengford.
- 7) That Deputy Boarman was able to quickly sidestep out of the path of the accelerating truck and the truck then almost struck the cement retaining wall on the east side of the alley.

- 8) That the truck again reversed and then rapidly accelerated again toward Deputy Boarman who was approximately 4 to 5 feet from the front of the truck.
- 9) That Deputy Bengford at this point believed that Deputy Boarman's life was in imminent danger because of the possibility that the truck would strike Deputy Boarman and pin him against the cement retaining wall.
- 10) That as the truck rapidly accelerated a second time toward Deputy Boarman who was only approximately 4 to 5 feet from the front of the truck Deputy Bengford quickly fired his weapon eight times into the driver's side window of the truck at Mr. Obertino.
- 11) That the number of live rounds found in Deputy Bengford's weapon (8 total live rounds out of a possible 16 rounds) after the shooting correlates with the eight (8) shell casing found at the scene of the shooting.

The investigation and legal analysis of the above referenced shooting has been completed, and the 4th Judicial District Attorney's Office concludes that under either statutory authority, Deputy Bengford was justified in using deadly force against Christopher Obertino.

Respectfully submitted,



Daniel H. May
District Attorney
4th Judicial District