



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

January 25, 2019

Sheriff Jeff Shrader
Jefferson County Sheriff's Office
200 Jefferson County Parkway
Golden CO 80401

Colonel Matthew Packard
Colorado State Patrol
700 Kipling Street
Denver CO 80215

Re: Critical Incident Team Investigation 18-04 (Officer Involved Police Shooting of Ryan Millsap on November 4, 2018)

Dear Sheriff Shrader and Colonel Packard,

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on November 4, 2018 to investigate the shooting of Ryan Millsap by Deputy Sheriff Vincent Alonso and CSP Trooper Gregorio Retana. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. In this instance, CIRT conducted a thorough investigation into the use of force by Deputy Sheriff Alonso and CSP Trooper Retana on November 4, 2018. The investigation was conducted for the purpose of determining whether criminal charges are warranted with respect to Deputy Sheriff Alonso or CSP Trooper Retana.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. She observed key interviews of witnesses including both shooting officers, and has reviewed the entirety of the investigative files.

CIRT investigators completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital media containing recorded interviews, police communications, photographs, audio and video recordings and 3D animations related to the incident.

A review of CIRT reports and documentation filed with my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by CIRT Commanders in charge of the investigation.

My findings, analysis, and conclusions of law with respect to Deputy Alonso and Trooper Retana's use of force in this incident are as follows:

Applicable Law

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes.

§ 18-1-704, C.R.S. Use of physical force in defense of a person

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

§ 18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsections (2) and (2.5) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose

specified in subsection (1) of this section only 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; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

§18-1-901, C.R.S. Definitions

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

§ 18-1-407, C.R.S. Affirmative defense

(1) “Affirmative defense” means that unless the state’s evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

§ 18-1-710, C.R.S. Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

Summary of Opinion

Applying these statutes to the facts presented through this investigation, I find that neither law enforcement officer is subject to criminal prosecution for his actions on November 4, 2018.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. Moreover, in cases where the evidence supports an affirmative defense of self-defense there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time Deputy Alonso shot at Ryan Millsap it was reasonable to believe that Millsap posed an imminent threat of death or serious bodily injury to the law enforcement officers on scene. The evidence also establishes that Trooper Retana had a reasonable belief that Millsap posed an imminent threat of death or serious bodily injury to law enforcement officers on scene.

Therefore, there is no reasonable probability of disproving the affirmative defenses in the shooting of Ryan Millsap and criminal charges against Deputy Alonso and Trooper Retana are not warranted.

Factual Summary

The following is a synopsis of the information collected during the investigation. This information came from interviews done by the CIRT investigators of numerous witnesses including CSP Trooper Retana, GPD Officer Barr, JCSO Deputy Valbert, JCSO Deputy Alonso and lay witness J.H.

On November 4, 2018, Colorado State Patrol (CSP) Trooper Gregorio Retana was on patrol wearing his CSP daily duty uniform and driving a marked CSP patrol vehicle. At approximately 2022 hours, Trooper Retana located a tan 2002 Toyota 4Runner bearing Colorado license plate 002KIN on a dirt pull-off of Highway 6 at mile marker 267, approximately two miles west of the intersection with Highway 93.

Trooper Retana believed the vehicle was abandoned and placed his marked patrol vehicle at the front of the 4Runner, contacted dispatch and identified the contact as an abandoned vehicle. He also gave his location and the vehicle's license plate. Trooper Retana learned from dispatch that the vehicle was stolen out of Louisville, Colorado. He also learned that the occupant of the vehicle may be armed and dangerous and was the suspect in an attempted murder earlier in the weekend in Lafayette, Colorado.

Trooper Retana believed the vehicle was unoccupied and he exited his vehicle to approach the suspect vehicle. When he got to a position close enough to see into the passenger compartment of the vehicle, he saw individuals in the reclined driver's seat and the reclined front passenger seat. Those individuals appeared to be asleep. The individual in the driver's seat was later identified as Ryan Millsap (DOB 02/11/1999) and the individual in the passenger seat was later identified as J.H. (DOB 07/10/2002). Trooper Retana immediately retreated to his patrol vehicle and requested cover. Trooper Retana positioned himself at the rear of his patrol vehicle for cover and waited for assistance to arrive.

At approximately 2031 hours, Golden Police Officer Frank Barr arrived on-scene, placed his marked police vehicle to the left (south) of Trooper Retana's patrol vehicle and took a position that allowed him to provide lethal cover on the suspect vehicle. A short time later, Jefferson County Sheriff's Deputy James Valbert arrived and parked his marked patrol vehicle behind the Golden PD patrol vehicle, and partially behind the CSP patrol vehicle. He then responded to

Trooper Retana's position to get a briefing.

A short time later Jefferson County Deputy Vincent Alonso arrived on-scene and placed his marked patrol vehicle next to Deputy Valbert's vehicle. In consulting with the other officers, Deputy Alonso moved his patrol vehicle to the right (north) side of Trooper Retana's marked patrol vehicle. This put Deputy Alonso's vehicle next to and partially on Highway 6.

At approximately 2038 hours, units on-scene requested the additional responding units from other agencies to shut down Highway 6 as part of their tactical plan. At approximately 2042 hours, Highway 6 was shut down for both east and west traffic.

At approximately 2043 hours, loud verbal commands were initiated directing the driver to exit the vehicle. After a short period of time, and additional loud verbal commands, the driver woke up and raised his hands per the officers' commands.

The officers on scene observed the driver attempting to wake the passenger, and after a short period of time she sat up in the seat. Officers continued to yell commands to the occupants to show their hands and then, as both occupants had their hands raised, the commands changed to yelling at the driver to get out of the car. Instead, the driver appeared to reach down for something. The driver then quickly started the stolen vehicle and drove forward towards Deputy Valbert's patrol car as he was also turning the steering wheel to the left (north).

At approximately 8:46 pm, Deputy Valbert announced over the radio "shots fired." The stolen vehicle then veered to the south, drove off the roadway and into the embankment on the south side of the road, then rolled down the embankment (approximately 55 feet) into the ravine. It lodged on some brush and stopped. Officer Barr immediately went down the embankment and responded to the driver and attempted to render first aid. Deputies Valbert and Alonso went to the passenger, rendered first aid and helped remove her from the vehicle.

Other officers and medical and fire personnel arrived to assist and medical was cleared to enter the scene at 8:51pm. Deputy Keily Walton went down the embankment and quickly checked over the female passenger for injuries and found a large bruise on the female's right side. Medical personnel were arriving so Deputy Walton turned the female over to them. Deputy Walton observed Deputy Alonso positioned by the rear passenger side door of the SUV. He informed Deputy Walton he had fired his rifle during the incident. Deputy Walton instructed Deputy Alonso to go back up to the road and contact his Sergeant. Deputy Walton then took Deputy Alonso's position and she observed a large amount of blood throughout the vehicle. She also observed a small black handgun on the front passenger side floor of the vehicle but she did not touch it. She informed a supervisor about the weapon and its location.

Investigators responded to Saint Anthony's Hospital at about 11:15 p.m. and met Coroner's Investigator Deron Dempsey and Trauma Surgeon Doctor Robert Marshall who had treated the driver of the vehicle identified as Ryan Michael Millsap, DOB 02/11/1999. Doctor Marshall explained that Millsap had wounds on his left forearm and right thumb, and what appeared to be a potential gunshot wound to his right temple area, near his right eye. He said that they had administered life saving measures on Millsap but he had died from his wounds at 10:18 pm.

On November 6, 2018, an autopsy was conducted by Forensic Pathologist Dawn Holmes. During the autopsy, Dr. Holmes found a penetrating indeterminate-range gunshot wound to the head. The wound course was described as slightly front to back, right to left and along a straight path. A deformed lead bullet was recovered from inside Millsap's left scalp. It was also noted that he had sustained a through and through indeterminate range gunshot wound to his left forearm. The wound was front to back, slightly left to right and upward. It went through his left ulnar artery. He also had damage to his left middle finger knuckle and his right thumb knuckle. There was also toxicological evidence of THC and recent cocaine use in the blood drawn by the hospital. The cause of death was determined to be due to multiple gunshot wounds. As described to CIRT investigators by Dr. Holmes, either gunshot wound could have been fatal to Millsap. CIRT investigators examined the bullet and found it to be too deformed for identification which caused it to be unable to be linked conclusively to either officer's weapon.

Significant Witness Interviews

Sight and Sound Witness – J.H. (Interviewed on November 4th, 2018 at St Anthony's Central Hospital)

The passenger was transported to St Anthony's Central for medical treatment and assessment associated with minor injuries received in the event. She was identified as 16-year-old J.H. CIRT investigators met with her at the hospital and learned that she was a ward of the court and was a runaway from a Boulder County group home.

She indicated that she left the group home with the driver of the vehicle, Ryan Millsap, approximately one week earlier. She had met him one year ago and they had been in a relationship for about one month. During the week since she left the group home, they had been sleeping in various vehicles. She indicated she did not know if they were stolen vehicles, however, she believed they might have been.

J.H. noted that on the day of the shooting, Millsap had driven her to Lafayette, Colorado where Millsap was helping a friend paint a bathroom. She said that he was driving a silver car that he said belonged to his brother. When they left that home, the police were behind their car, flashed their lights and tried to stop them, however, Millsap drove really fast. She estimated that he was driving approximately 100 mph and the police were falling behind and they eventually stopped following them. J.H. said she told him to stop while the police were behind them and he did not say anything. She asked Millsap why he did not stop and he told her he had a bunch of warrants.

J.H. noted that they eventually decided to go to Golden to find a place to sleep for the night. J.H. fell asleep as they drove and when she woke up, they were surrounded by police talking through their speakers. She could see red and blue lights flashing so she knew it was the police. She said that Millsap was sitting up at the steering wheel. She heard them saying they had to put their hands up. She then heard them say that he needed to get out of the car. She said Millsap grabbed the ignition keys next to him and started the car. She said that he then tried to make a u-turn. She noted that he started out driving at the police officers, and when he did, the police shot

at the car. She said the glass came in from her passenger side window and hit her in the shoulder.

J.H. stated that the vehicle went out of control and she grabbed the steering wheel and attempted to control the vehicle. However, it veered towards an embankment and drove over the edge. She said that the police came down to the car and helped her get out, offered medical attention and transported her to the hospital. J.H. said that she received some scrapes and cuts from the shattering glass. She was asked if Millsap had any weapons and she stated that she had learned that night that there was a gun under the seat. She said she heard the officers yelling about the gun when Millsap was at the scene and that is how she knew it was there. She said she had not seen it in the car before and she had not seen him with a gun previously.

Sight and Sound Witness – GPD Officer F. Barr’s Interview (November 5th, 2018)

Golden Police Officer Barr was interviewed by CIRT investigators at JCSO directly after the incident. He described that he was on duty that evening in a marked Golden PD patrol vehicle, wearing his daily duty uniform with no jacket. He responded emergent (lights and siren) after hearing the call for assistance on Jeffcom which is the Jefferson County police radio channel and clearing it with his sergeant. The information he received was that Colorado State Patrol had a stolen vehicle on Highway 6 and they requested emergent cover.

Officer Barr headed up Highway 6 through Clear Creek Canyon. He subsequently heard over the radio that there were people sleeping in the car. Upon approaching the scene, he deactivated his lights and siren to avoid waking the occupants of the stolen vehicle. Officer Barr saw that the CSP vehicle had rear overhead lights activated, and his headlights were on. Officer Barr re-activated his rear overhead lights and parked on the south side of Trooper Retana’s patrol vehicle. Officer Barr believed that they were setting up for a felony stop and he positioned his patrol vehicle to facilitate this.

A trooper (Trooper Retana) responded to the back of Officer Barr’s vehicle and briefed him on the incident. Trooper Retana told Officer Barr about seeing the vehicle which he thought was abandoned and then his realization that there were two people asleep inside. Trooper Retana told Officer Barr that he learned from dispatch that the vehicle was stolen. Officer Barr was unsure whether he learned from dispatch or the trooper that the person associated with the vehicle was armed and dangerous and had been involved in a “homicide” in Lafayette but he definitely had that information at that time. He also believed that the homicide incident was recent. He and the trooper did not come up with a plan as to how to proceed at that time as they were waiting for other deputies to arrive.

Officer Barr recalled that minutes later, a JCSO K9 deputy (Deputy Valbert) arrived and parked on the shoulder behind Trooper Retana’s vehicle, somewhat offset towards the right (north) of Trooper Retana’s vehicle. Another JCSO deputy (Deputy Alonso) arrived on-scene a short time later and parked on the north side of Trooper Retana’s vehicle, closest to the roadway. Officer Barr was unsure if Deputy Alonso was on the roadway or the shoulder of the roadway.

A tactical plan was established by the officers. Officer Barr was uncertain who was leading the

discussion but he recalled the plan was to get the driver out first from the vehicle. Officer Barr initiated a request to Golden PD to help shut down traffic on Highway 6. Officer Barr confirmed that the roadway was shut down prior to commands being given to the occupants of the vehicle.

Officer Barr was next to his driver's door when the loud verbal commands were given directing the occupants to show their hands. Officer Barr then turned on his spotlight to illuminate the car. Officer Barr was unsure which officer was giving the commands. Officer Barr noted the commands were by voice only at that time and that the occupants were not responding to the commands. Officer Barr was concerned that, based on his training and experience, if the occupants were heroin users that they might be in a deep sleep and not hearing the commands. He retrieved his microphone from the vehicle and also began giving loud commands through his vehicle PA system. After a short period of time, the driver sat up and other officers began giving additional commands to show his hands. The driver showed his empty hands as directed.

Officer Barr stopped giving commands due to multiple officers giving commands. He saw the passenger sit up in the passenger seat but she failed to follow directions to show her hands initially. She eventually showed her hands. The commands then changed to ordering the driver to get out of the car. He saw the driver put his right hand down and then saw the driver start the stolen vehicle. Commands were immediately given to shut the car off. Officer Barr recalls the driver getting a determined look on his face and reaching toward the steering wheel. He described the look on the driver's face as "I'm going."

From his location by the left rear of his patrol vehicle, Officer Barr saw the stolen vehicle accelerating, kicking up gravel due to acceleration, turning left and veering towards the roadway. Officer Barr stated that the driver appeared to have been attempting to flee the area by driving around the patrol vehicles parked in front of him. It was not clear to Officer Barr if the driver was going to head east or west on the roadway as both directions were available to him. Officer Barr was not sure if the second JCSO vehicle was parked partially on the roadway or fully on the roadway.

Officer Barr was unsure of the exact location of the trooper or of the two deputies when the driver took off or how close the stolen vehicle was to the police vehicles. Officer Barr had been focused on the two people in the car with his patrol shotgun pointed at the car. He saw the car moving and then he heard gunshots. He did not fire his weapon, as he did not perceive a threat to himself personally. Based on his position, he could not tell if there was a threat posed to any of the other law enforcement personnel.

Officer Barr did not see who fired shots but he remembered, at some point in time, seeing shots hitting the windshield of the stolen vehicle. He said it all happened very fast and that the vehicle was out of his field of view "fairly quickly". He was still standing by the door of his car when he saw the car take a "serious right turn" fairly close to his position and go straight down the embankment. He estimated when the car went by him, it was approximately fifteen feet behind his vehicle. Officer Barr then got on his radio and yelled "shots fired, shots fired, car's going down the embankment."

Officer Barr went down the embankment followed by the trooper. He kept his shotgun in position and established that the driver was injured and still breathing. Officer Barr attempted to administer first aid to the driver after the deputies secured the passenger who had minor injuries. Other law enforcement soon arrived, followed by medical personnel. Once the driver had been removed from the car, he heard a JCSO female deputy say that there was a firearm on the passenger's side floorboard of the car.

Sight and Sound Witness – JCSO Deputy Valbert's Interview (November 5th, 2018)

Deputy Valbert was interviewed by CIRT investigators at JCSO directly after the incident. Deputy Valbert described being on duty as a K9 officer on Sunday, November 4th. He was in his duty uniform driving a marked JCSO patrol unit when he heard the radio request from Colorado State Patrol for emergent cover on Highway 6 at mile marker 267. Deputy Valbert responded emergent with lights and sirens activated.

Upon arrival, Deputy Valbert saw a CSP trooper (Trooper Retana) and a Golden officer (Officer Barr) on the south side of the roadway with their overhead lights illuminated. Officer Barr was parked to the south side of Trooper Retana's patrol vehicle. From the radio traffic, Deputy Valbert knew that the vehicle was a stolen vehicle and was presently occupied. He responded to Trooper Retana's location and was told that Trooper Retana had walked up to the car and saw a male and female sleeping. Deputy Valbert noted that, from his vantage point, he was unable to see anyone inside the stolen vehicle. He estimated the car was fifteen to twenty feet in front of them. Deputy Alonso arrived a short time after Deputy Valbert.

Deputy Valbert has over thirty years of law enforcement experience and is an academy instructor on high risk stops. He took over the responsibility for creating a tactical plan. As part of that plan, he requested Deputy Alonso move his patrol vehicle to the north side of Trooper Retana's patrol vehicle to improve their angles on the stolen vehicle. During this time, Deputy Valbert also learned via his police radio that the driver was possibly associated with an attempted homicide or a shooting in Lafayette.

Deputy Valbert requested Officer Barr to arrange shutting Highway 6 down due to the possibility the driver may be armed. Due to this dangerous situation, Deputy Valbert also made a radio request that a deputy respond who is a SWAT officer that typically worked this shift, however, he learned that the officer was not on duty. Once the roadway was shut down, Deputy Valbert explained that he directed Deputy Alonso to initiate loud verbal commands to the occupants of the stolen vehicle. Deputy Valbert was at the rear between Deputy Alonso's car and the CSP trooper's car when the commands were started.

Deputy Valbert noted that Deputy Alonso's loud verbal commands were having no effect on the occupants. Officer Barr then began making loud verbal commands over his patrol vehicle's PA system. After a short period of time, Deputy Valbert saw the driver sit up with a surprised look on his face and show his hands. After some additional commands, the passenger sat up as well. However, she did not immediately follow the commands to show her hands. At this time,

Deputy Valbert was standing at the rear driver's side of Deputy Alonso's patrol vehicle with the driver's side door open providing cover for him.

The passenger began to follow directions when the driver was talking to the passenger. Deputy Valbert believed he was directing her to put her hands up.

At that time, Deputy Alonso and Officer Barr began giving commands to the driver to exit the vehicle. Instead, the driver started the vehicle, turned the steering wheel hard to the left and accelerated to the left (north) sending gravel into the air from the acceleration. Deputy Valbert estimated the vehicle was fifteen feet in front of the officers and he believed the stolen vehicle was driving towards the front passenger side of Deputy Alonso's patrol vehicle. Deputy Valbert lost sight of the vehicle and he then heard approximately five shots. Deputy Valbert did not see who was shooting and he could not tell where the shots were coming from.

Deputy Valbert was positioned on the south side of Deputy Alonso's patrol vehicle towards the rear of the vehicle the entire time. Throughout the commands, he looked towards Deputy Alonso several times and he noted that Deputy Alonso was at his front passenger door giving commands. He saw the Golden officer by his vehicle and he saw the CSP officer walking back and forth behind the cars. As the stolen car started moving, he dropped back for cover and he heard shots. He could not see Deputy Alonso's position during the shooting. After the shooting, he then saw the trooper had moved in front of him between him and the road. He saw the stolen vehicle go past him with bullet holes in the passenger side window and make a turn to the right (south) and drive toward the embankment, behind the patrol vehicles, and then down the embankment and into the ravine. Deputy Valbert estimated the drop into the ravine was 50 to 100 feet.

Deputy Valbert stated that Officer Barr and Deputy Alonso responded to the vehicle. Once at a position approximately halfway down the embankment, Deputy Valbert took a position of lethal cover on the stolen vehicle while Deputy Alonso assisted the passenger from the stolen vehicle and Officer Barr administered first aid to the driver. He could not recall where the trooper was during this time.

Once the passenger was extracted from the vehicle, Deputy Valbert secured her and began assessing her injuries.

JCSO Deputy Alonso's Interview (November 6th, 2018)

Deputy Alonso was not interviewed immediately after the incident. His attorney stated that Deputy Alonso needed time to rest therefore his interview was scheduled for Tuesday, November 6th at 10am.

The following information was provided by Deputy Alonso to CIRT investigators on November 6th. Present with him during the interview was attorney Doug Jewell. On Sunday, November 4th, he was on duty and in his full duty uniform wearing a light duty jacket. He was also wearing his department-issued body-worn camera recording device. driving a marked Jefferson County patrol vehicle when he heard a request over the radio from CSP for emergent cover (lights and sirens) on Highway 6. He was assigned the call along with JCSO Deputy Valvert who was

ahead on him going to the scene. He also learned that a Golden officer was assigned and ahead of him as well.

By reading the CAD notes in his vehicle, Deputy Alonso learned that the vehicle in question was a stolen vehicle, involved in a "homicide" earlier in the weekend, that there was possibly a gun involved in the earlier incident, that it was currently occupied by two sleeping individuals and that CSP was waiting for cover before any action was taken.

Based upon the emergency nature of the call, Deputy Alonzo drove at high speeds until he neared the area. He then slowed down and deactivated his siren but left his overhead lights on. Deputy Alonso observed Officer Barr's patrol vehicle parked to the left (south) of a CSP (Trooper Retana's) patrol vehicle and Deputy Valbert was parked behind Trooper Retana's patrol vehicle. All the vehicles were facing the suspect vehicle.

Initially, Deputy Alonso pulled up next to Deputy Valbert's patrol vehicle. He saw that Deputy Valbert was armed with a rifle and was speaking with the CSP trooper and the other officer (Officer Barr). Deputy Alonso described that his understanding was the encounter with the suspect vehicle would be handled in a similar fashion to a "felony stop" since dispatch had aired that "the suspect had been involved in a homicide involving an ex-girlfriend and was possibly armed". Deputy Alonso indicated he had to be prepared for a high risk stop since the subject was potentially non-cooperative and dangerous. He described hearing the other officers discuss shutting Highway 6 down. Deputy Alonso indicated that he had not met either the CSP trooper or the Golden officer previously.

As part of the tactical plan, Deputy Alonso moved his patrol vehicle to the north side of the CSP patrol vehicle. He believed his patrol vehicle was parked halfway onto the roadway. Deputy Alonso retrieved his Colt M4 .223 semi-automatic rifle and took a position on the passenger side/north side of his patrol vehicle, next to his passenger rear view mirror, using the engine block as cover facing the suspect vehicle. Deputy Alonso did not have his rifle light illuminated as he was pointing his weapon at the car.

He described that the Officer Barr was positioned on the driver's side/south side of the GPD car, Trooper Retana was on the driver's side/south side of the CSP vehicle and Deputy Valbert was on the passenger side/north side of the CSP vehicle. To help explain the scenario, Deputy Alonso drew a diagram of the location of the vehicles and the officers during the CIRT interview. Deputy Alonso described having the best access to see inside the passenger compartment of the suspect vehicle based upon where he was stationed on the north side of his patrol car. Deputy Alonso was very close to, if not actually standing on the east-bound side of Highway 6.

As the officers waited for Highway 6 to be shut down before they initiated the plan, they all had their spotlights trained on the suspect vehicle. Once Highway 6 was closed, Deputy Alonso was directed by Deputy Valbert to issue verbal commands to the occupants of the car. Deputy Alonso yelled very loudly to the occupants "This is the police. Show your hands." After yelling this a series of times, he saw the male driver slowly sitting up from the reclined seat and begin to follow his commands to put his hands up. He then saw motion on the passenger side of the car

and saw what he perceived to be a female with dark longer hair. He saw her left hand start to come up but not her right hand. He heard the Golden officer start to yell at them to show their hands and the female passenger finally raised her right hand. He indicated that once they both had their hands up, he transitioned to his second command which was for the driver to show his hands and get out of the vehicle. This was met with no response from the driver but as Deputy Alonso stated the command for the driver to get out of the vehicle a second time, he saw the young man in the driver's seat to reach down and start the ignition. Deputy Alonso immediately then heard all the other officers start yelling commands to the driver to get out of the vehicle since the driver was not following Deputy Alonso's orders. Deputy Alonso's description of what happens next is as follows:

“Um, the driver starts the car. Uh, the female you can see at this point is very afraid and has her hands clearly showing in the passenger side. Um, the driver quickly throws it into gear, um, and begins moving forward. He has to turn hard to the left and starts, uh, moving around my side of the vehicle. Um, he clears me by a few feet, um, and punches it. He punched it there, but then he stopped kind of like was he gonna clear it and then he punched it hard, cleared me, and started heading in this direction. Um, got into the, uh, the eastbound lane, um, and hit the gas hard. Um, at that point the vehicle was out of the spotlights. Um, I could clearly see the, the female with her hands up, my front side post was trained on the driver. Um, it had been for the past few minutes, even while I was issuing commands. Um, I was focused on the driver of that vehicle as he accelerated past me. Um, he was out of the spotlight at this point. The only illumination we had was our, um, emergent lights, kinda like a strobe light effect on the side of that vehicle. He wasn't that far away, um, so I continued to follow him with carbine as he drove by me. Um, the passenger became, came into my line of sight. Um, as he drove by me, she was showing her hands. Um, as the vehicle cleared the front of my vehicle and was just about even with me, um, I, I, only thing I could see of the driver at that point, um, because the illumination was so bad and had to see through the window, um, was kinda the outline of his head and his back. Um, I couldn't see his hands. Um, it was gettin' pretty dark. Um, when he was even with me, uh, just goin' past me, I heard a single gunshot coming from the vehicle. I was still trained on the driver, uh, the center mass of the driver, which was the upper torso, back of the side, back of the head, very dark, but it's kind of the strobe light effect. Um, female still clearly visible with her hands showing. Um, single gunshot. My immediate thought was, uh, in attempting to escape the driver discharged a firearm. Worst case scenario that was a trigger, um, to initiate fire. Um, deadly force, putting the lives of fellow deputies, fellow officers in danger. I didn't hesitate more than half a second. Um, by this, by the time I initiated his vehicle was accelerating up to 15, 20 miles an hour, moving rapidly away. It already passed by my vehicle, um, and I had already tak, I'd taken about two steps back here, so Position 2, uh, for me would be right about here. I stepped away from the engine block. I was kinda following his progress as he swung past me going this direction. I initiated fire when the suspect vehicle was right about there, and it's not to scale. He was more like 20 feet away, but from this position through the right rear passenger window, which was closed I fired at least three shots from carbine at the center mass of the suspect. Um, the suspect vehicle continued very short, uh, by the time, by the third round he, he was over here somewhere. Um, I lost sight of the vehicle, um, so I did not continue firing. Three rounds, three, at least three rounds. The vehicle immediate – after my third or fourth round, the vehicle was out of my sight and someone was yelling he's going into the embankment, so he went like this and ended up in the embankment at the bottom of a steep embankment. Um,

so I had fired at least three shots. Um, focused, still, still focused on the, uh, the suspect. I had no idea the status. I didn't know whether I hit him. Um, it looked, appeared that the vehicle had lost control was the first thing I thought. Why would he have suddenly veered into the embankment? Um, completely focused on the, the tar, this, the target center mass. I did not know the positions of the other officers. I had no idea the positions after the center of the, uh, of the officers until the vehicle, after the vehicle started moving past me. I was totally focused on center mass of the suspect. Um, and I continue to move, um, after the vehicle."

Transcript, P. 23-24

When Deputy Alonso described the driver's actions more specifically, he said that the driver then reached down with both hands, started the car and put it in gear. He said that the car began to move forward in a very jerky fashion and the driver spun the wheels to the left, veering towards the north, making a very tight turn. The driver then accelerated quickly in the direction of the patrol car but veered to the north as he drove onto east-bound Highway 6, coming within a few feet of Deputy Alonso but not hitting him. Deputy Alonso tracked the vehicle through his front sight post of his rifle constantly.

Deputy Alonso noted that as the stolen vehicle was just past him, he heard a single gunshot come from the stolen vehicle. He stated that it sounded like a "pistol caliber" shot. He stated that in response, he fired three to four rounds from his rifle at the driver. Deputy Alonso was unsure if he had struck the driver but he was firing at the driver's center mass. The vehicle then veered off to the south immediately and proceeded over the embankment. It appeared to Deputy Alonso that the driver lost control of the car.

Deputy Alonso indicated that he was focused on the vehicle and the center mass of the driver as it came towards him and as it drove by his position. He was worried that he was going to be hit by the driver but the driver cleared him. He then became concerned that the driver may hit someone else or open fire. He believed that the shot came from the vehicle as he was focused on the vehicle, and he stated that the shot's sound "came from the vehicle, the direction, the vicinity from the vehicle." T. p. 41 He stated during his interview that his thought when he pulled the trigger was that since the suspect was known to be armed that he was using the firearm to escape. He also stated that he identified the shot as being from a pistol based upon his training and experience and his extensive time in the military. He said that a rifle shot sounds much sharper due to the higher velocity of the weapon.

Since the time he had positioned himself at the north side of his vehicle to cover the driver, he was not aware if any of the other officers had changed their positions. He indicated that he was completely focused on the driver. He could hear Deputy Valbert and the Golden officer also giving commands to his left/south side of him as he faced the vehicle and he knew that someone was in contact with the Jeffcom Dispatch Center on their radio.

After the vehicle went off the road, Deputy Alonso ran over and went down the steep embankment in pursuit of the suspect driver. He was attempting to get a line of sight on him and take him into custody. As he arrived, he saw that the suspect was injured and the Golden PD officer had started to render first-aid assistance to the suspect driver. Deputy Alonso assisted with helping the passenger get out of the car and other officers provided cover with weapons

pointed at the driver. It appeared to Deputy Alonso that the driver was deceased. Additional officers arrived and Deputy Alonso was told to report to Sgt. Parr. He pointed out three of his rifle shell casings to Sgt. Parr and described where he had been during the incident including at the time of the shooting. Sgt. Parr had him put his rifle in the passenger seat of his vehicle and told him to get into Deputy Mahoney's vehicle and remain with that deputy.

Deputy Alonso indicated that his body worn camera device was on during the entire incident and he shut it off after he received clearance to do so from a lieutenant who later arrived on scene. He indicated that prior to shutting off the BWC, he accessed it in the car when he was sitting with Deputy Mahoney. He stated he added the case report number to the event but he did not review the video at that time. His BWC was not removed from him on scene and he stated that after he was transported back to headquarters, he did review most of the video which he indicated was 39 minutes long. His attorney was present with him when he viewed it. Deputy Alonso indicated that there was not much that was able to be seen from his camera because the camera is positioned in the middle of his chest and his jacket obscured much of what occurred. However, he indicated that the audio portion of the recording was clear. He stated that his BWC was removed from him by an evidence technician as he was being photographed and processed. He indicated that he had not been told what the departmental policy was regarding whether an involved officer was allowed to watch their BWC video in an officer-involved shooting. He told the CIRT investigators that watching the video did not impact his statement.

Deputy Alonso was asked if he discussed the shooting with the other officers who initially responded to the call and he indicated he did not. He indicated that he became aware that there was another officer who fired his weapon when he saw that another officer was being processed as he was being processed after the incident.

Deputy Alonso indicated to CIRT investigators that he did not view the vehicle as a threat to himself and he could not see his fellow officers so he could not speak for whether the vehicle was a threat to them. He believed the gunshot presented a deadly threat to his fellow officers. He stated that if he had not heard the gunshot, he would not have fired.

Deputy Alonso stated that after the incident, he was concerned when he saw the cartridges at the crime scene. He observed three cartridges which he believed were from his weapon and he also saw a nickel-plated pistol cartridge about ten to fifteen feet east of his three cartridges. He stated that his first thought was that the cartridge was police issue ammunition and this immediately placed doubt in his mind about where the discharge occurred of the other weapon. He said that was the first time that he considered that someone else other than the suspect had fired the pistol shot.

Deputy Alonso was allowed to watch his BWC video and he had nothing further to add to his statement after he viewed the video. CIRT investigators had no further questions at that time.

CSP Trooper Retana's Interview (November 8th, 2018)

Colorado State Patrol Trooper Retana was not interviewed immediately after the incident. Trooper Retana's attorney, Mallory Revel, requested a delay for conducting the interview. He

was then scheduled for an interview on Tuesday, November 6th. However, on that date, his attorney requested a further delay. She also requested that he be given access to watch his dashcam video prior to the interview. She was told that no such access would be given and that the District Attorney's Office objected to any delays in interviews of the involved officers. However, the attorney requested the interview be delayed until Thursday, November 8th.

Trooper Retana was then interviewed by CIRT investigators on November 8 with his attorney present. His attorney indicated again during the taping of the interview that she had requested of the CIRT that her client be allowed to view the dash cam video of this incident and that request had been denied. Trooper Retana also indicated that he had not reviewed his notes, his video or his tablet and that his memory was fuzzy of the incident.

Trooper Retana described that he has been employed by the Colorado State Patrol as a trooper since 2013. He was on duty Sunday evening, November 4th and he was working the 7pm to 5am shift. He was assigned to the CSP Gaming Team where he patrolled the roadways that lead to Black Hawk and Central City. He was wearing his CSP duty uniform and was driving a fully marked CSP patrol vehicle. His patrol car was outfitted with a dash camera recording device which records both in front of and behind his vehicle simultaneously. He was armed with a Smith and Wesson 40 handgun on his duty belt and carried a shotgun in the cage in his vehicle.

He was patrolling west-bound at approximately mile marker 267 on Highway 6 when he came across a tan 2002 Toyota 4Runner bearing Colorado license plate 002KIN in a dirt pull-off on the south side of the highway. He called out his intention to investigate the vehicle on the radio along with his location and the license plate. Trooper Retana believed it was possibly a motorist assist or an abandoned vehicle. After he pulled over on the south side of the road facing the vehicle, Trooper Retana began to fill out a red abandoned vehicle tag. As he was finishing the red abandoned vehicle tag, dispatch contacted him via radio and told him that the 4Runner was a vehicle used in an attempted homicide on a female and that there had been a male driver and to be cautious because there was a weapon involved.

Trooper Retana believed the vehicle was unoccupied and approached it as if it was abandoned. However, as he got closer, he realized there were two occupants reclined in the front seats of the stolen vehicle. Trooper Retana retreated to his patrol car where he turned on his camera to ensure it was recording and he turned on his spot lamp to illuminate the vehicle. He drew his handgun and informed dispatch that the vehicle was occupied. He requested assistance from other law enforcement in the area and moved to the rear of his patrol vehicle for cover.

Trooper Retana stated that it seemed like a long time before other law enforcement officers arrived on scene. He recalled a Golden Police Officer (Officer Barr) arriving first and he parked his patrol car to the south side of Trooper Retana's patrol car. Trooper Retana went to the south side of Officer Barr's car and briefed him on the situation. Officer Barr told Trooper Retana that JCSO deputies were also on their way. After a short period of time, Trooper Retana recalled that a JCSO Deputy arrived next who parked his car to his right (north) of Trooper Retana. Trooper Retana also briefed the deputy but he could not recall where they stood as he was briefing them.

Trooper Retana noted that he became very concerned with traffic on the roadway and worked to

get the highway shut down. Trooper Retana noted that during this time, another JCSO deputy arrived and parked behind his car. Trooper Retana indicated that, as they were talking, he told the other officers that he was inexperienced in these types of tactical situations and that he deferred to them to make the tactical plan for addressing and securing the occupants. He also indicated that, at some point in time, he turned his overhead lights on and that the deputy to the north of his vehicle also had his overhead lights oscillating. Later in his interview, he indicated that during the planning, he was “wishing for “and did inquire of the others whether there was a way he could use stop sticks during this encounter to help prevent the vehicle from moving. He was told that it would be too dangerous to get close to the vehicle to place the sticks.

Trooper Retana was asked where he was located in relation to the other officers prior to the commands being given. He indicated that he was not sure where one of the JCSO deputies was, that the Golden officer (Barr) was to the left of the Golden PD vehicle, and that the other JCSO Deputy (Alonso) was on the right side of the JCSO vehicle at the front corner and that Deputy Alonso was the officer closest to the roadway. Trooper Retana drew on a diagram that he was behind Deputy Alonso but on the right side of Deputy Alonso’s vehicle as well. Trooper Retana indicated that Deputy Alonso was armed with a rifle and that he thought the GPD officer had a long gun. He believed that Deputy Alonso had arrived on scene prior to the other deputy.

Trooper Retana noted that once Highway 6 was closed the deputy began giving commands to the occupants. Trooper Retana noted that there was no movement or response from the vehicle at first and he began getting nervous that this was a murder/suicide. He also heard the Golden officer give commands from his position.

After a short period of time, the driver who was reclined, began to get up but he did not comply otherwise. Commands continued to be given for him to show his hands and he eventually responded and did show his hands. A short time later, the passenger responded and she started to follow commands to show her hands. Trooper Retana noted that once both their hands were up, someone who he thought was the deputy began to give commands for the driver to exit the vehicle. He stated that the driver did not respond to the command to get out and that he instead dropped his hands.

Trooper Retana noted that as this was happening, he recalled what dispatch had advised him that the person associated with the vehicle had “violent tendencies” and he was concerned that the driver was attempting to access a gun.

Trooper Retana noted that after the driver dropped his hands, the vehicle began moving. Trooper Retana was concerned about the CSP trooper that was blocking the road to the west of them and the other officer that was blocking the road from the east and that both those officers were most likely outside their vehicles, turning traffic around on the roadway.

Trooper Retana described being concerned for the safety of the passenger and the other law enforcement on scene. Trooper Retana stated that he was concerned that the driver could fire a weapon and he was focused on the vehicle driving towards them, closing the gap between his car and the officers.

From Trooper Retana's interview:

Um as that gap closed, um at that point I just ... I was not feeling good about it. I was exposed, deputy's exposed, I'm thinking vehicle's not cover, he could potentially come at us, you know, just hank the wheel, come at us, um hit the vehicle, the vehicle hits us or he could just try and directly take one of us out. I'm worried the deputy's in front of me, he's closer to the vehicle, the gap's closing in faster and closer on him than me. I'm concerned and as that vehicle gets closer and closer, um it was just like at any given time I could hear gunshot. At any time this guy could potentially shoot us because now we're probably in a good distance where he could see us, his lighting. And again I don't know if his lights were on but from where I was at, not good cover. And I'm thinking all that, thinking all that, and once that gap reached a certain location I was like, it's just too much. This guy has a drop on us, no longer do I have cover, no longer does the deputy have cover. If he starts shooting right now, we are totally exposed. And it's just, it was ... at that point is where I have not a fear like that for myself but it was more for the deputy that he's the one closest in the gap. That deputy is right there at that corner totally exposed, no cover. I remember reverting to my training and sight picture was on him and I was like a head shot on a moving target, that's, that's a touch one. Breath, what does training say. Aim center mass and that's what I did and I fired my weapon.

HV: *You said that it was ... there was a certain point where it got to be too much, ...*

GR: *Uh-huh (yes).*

HV: *... what was that point?*

GR: *When the deputy and I were totally exposed, no cover whatsoever between the vehicle, the male, the potential threat of him having the weapon, potential threat of him hitting us with the vehicle. We had no cover whatsoever.*

HV: *Can you tell me about that point was there a distance to it? Ah how close were you guys? You said there was no cover there, what, what does that mean?*

GR: *As ah ... 'cause the vehicle was already coming towards us, no longer directly in front of patrol car but north now and so we were just sitting ducks open to any gunfire that he potentially had open to if he was to come at us with the vehicle. Um I couldn't give an accurate assessment of space. Um if I guess it'd be about 15 feet. Um the vehicle's still ... it's in front of my still and that gap was closing in, still in front of me though when I first fired that first shot.*

HV: *Can you see the hood of the car, the, the front grill?*

GR: *Yes.*

HV: *Okay. Can you see the front windshield?*

GR: Yes.

HV: Can you see into the car?

GR: At that point, yes. Yes.

HV: Um can you hear anything?

GR: No. No. At that point I wasn't hearing anything. Um I don't know if it was auditory exclusion, but I can't recall hearing anything, I was processing so much. I had a lot of process.

HV: And then so you mentioned you tried to slow your breathing ...

GR: Uh-huh (yes).

HV: ... and then you fired, ...

GR: Yes.

HV: ... do you recall how many times you fired?

GR: I know without a doubt I fired my weapon one time center mass at that point.

Transcript, p. 39-42

Later in the interview, Trooper Retana stated that he feared the worst-case scenario of "two dead cops."

Trooper Retana recalled firing his weapon one time at the driver through the windshield of the car. Trooper Retana later indicated that he fired his weapon twice and he changed his initial opinion of only firing once due to seeing two shell casings on the ground later in the evening. Trooper Retana recalled hearing additional shots from one of the deputies on scene after he fired. Trooper Retana was unsure how many rounds the deputy fired and guessed six or seven. He stated that he stopped firing once he could no longer see into the vehicle as he knew that the female could be exposed to any further gunfire.

After the shots were fired, Trooper Retana recalled the stolen vehicle then veered to the south behind the patrol vehicles and down the embankment. Trooper Retana responded to the stolen vehicle at the bottom of the embankment. Trooper Retana used his flashlight to illuminate the area while Officer Barr and Deputy Alonso attempted to assist the occupants. Trooper Retana provided lethal cover for Officer Barr and Deputy Alonso until other law enforcement personnel arrived and took over. He was then told to go back up to the roadway to meet with a CSP supervisor. He was then told to sit with Trooper McCowski until he was taken to JCSO for

processing and interviews.

During the interview by CIRT, Trooper Retana was asked what he thought would have happened if he did not fire his weapon. He stated that he believed “any second that vehicle could potentially come into that patrol car, us. At any second I can hear a gun fire and I’m either gonna drop or this guy’s gonna drop and obviously this deputy might drop here in a second.” Transcript, p. 59 He went on to indicate that he was trained to never use his vehicle for cover because it is not cover since the vehicle could spin if it was hit and he could get pinned between the two vehicles. He described that in the position they were at, they had no cover and nothing to protect themselves from the oncoming vehicle.

Trooper Retana described this situation as a felony stop and that he hoped that the driver would be compliant. His plan was to handcuff the suspect and that was his goal but then the situation changed when the driver did not comply and he had to quickly reevaluate.

He was asked why he moved over to where Deputy Alonso was standing. He indicated that he was thinking about the felony stop and the need to handcuff the suspect. If the driver exited his driver’s side door, one officer would be “hands-on arresting” while the other provided cover. He thought he would be the one doing the arrest. He felt it would be better to have the suspect come to them on the north side so he was positioning himself on the north side.

Trooper Retana described that he viewed the male driver as a threat because he was in control of the vehicle, he had a weapon, he had been described as having violent tendencies and because he was the one that did not comply with orders. The driver dropped his hands and set the vehicle in motion so the trooper perceived him to be the aggressor. He viewed the vehicle being in motion and the potential for the driver having a weapon that could be fired as being two potential threats. As the gap closed between the car and himself and the other deputy, he no longer had cover and he had two threats coming his way. He also expressed concern about the officers that were closing the road down as being in danger from the vehicle if he was not apprehended at the scene.

After the CIRT investigators had finished their questioning of Trooper Retana, he was allowed to watch his dash-cam video in private along with his attorney. At the same time, in a different location, CIRT team members also watched the video. Trooper Retana was then questioned further by the CIRT investigators and asked why he used deadly physical force. He stated:

“Due to the nature of the circumstance of being told by my dispatcher this vehicle had been associated with a homicide, attempted homicide, female victim. Then the next piece of information, male, violent tendencies, possibly has a weapon on him. Um we tried attempt to ah do a felony stop, um we get compliance and then we don’t get compliance. This party um puts the vehicle in motion, so I have a vehicle in motion and then I have the ah threat of a weapon possibly by a male that has violent tendencies. I ah was position next to the roadway where my cover was the vehicle. Once that vehicle was in motion, myself and the deputy next to me no longer had any cover, any protection from the threat of the moving vehicle or potentially being shot at. Um I also had to take in other factors, um the roadway closed both ends by one ah officer at each end, um knowing that area because I work it I understand, you know, that’s not a

simple task. It's not as easy as just pulling up and have your lights on. Most of the time you're out of the vehicle, you're talking to cars, and so for one guy to do it it's tough. For a guy that's not up there as much probably even harder. Um I felt both of those officers were inexperienced with canyons, most likely they're out of their vehicles ah talking to people." Transcript. p. 77

Trooper Retana was asked about his location prior to the shooting as he had stated in the interview that he was next to the deputy prior to the commands being given and during the entire time leading up to the shooting. The video showed that he did not move north towards the deputy's location until orders were finally given for the driver to get out of the car. Trooper Retana stated that he did not realize he had been moving between his patrol car and the deputy but once he knew that the driver would be coming out of the driver's side, he moved to provide cover as needed.

Additional CIRT Investigation

The radio traffic involving this incident was reviewed and the following information was learned from that review: Prior to approaching the vehicle, Trooper Retana provided the license plate number to CSP dispatch. Dispatch informed him that the plate listed to a stolen vehicle that had been involved in a shooting and attempted murder in Lafayette. Trooper Retana indicated he believed the vehicle was abandoned but then called dispatch to ask for assistance when he discovered that the vehicle was occupied. Dispatch asked for cars to assist and notified that Golden PD was on the way. After Golden PD arrived, CSP dispatch also informed Trooper Retana that per Clear of Boulder County, the party inside the vehicle might be a homicide suspect who shot at a girlfriend and then got into a pursuit but that pursuit was called off by Boulder County. A few minutes later, CSP dispatch aired to Trooper Retana that the driver may have a .380 with him and that he had "violent tendencies". This was the last CSP dispatch communication prior to the shooting.

The videos of the incident were reviewed including Deputy Valbert's body-worn camera video, Deputy Alonso's body-worn camera video and Trooper Retana's dash-cam video. Deputy Valbert's body-worn camera video was somewhat obstructed but it demonstrated his position during the time he was giving commands and during the shooting. He was at the driver's side rear-quarter panel of Deputy Alonso's vehicle where he remained until the shooting. When the shots were fired, he turns to his right, towards the road and watches as the suspect vehicle turns towards the embankment and descends to the ravine. The shooting event could not be seen from his video but the information from dispatch indicating that the person associated with the vehicle was a homicide suspect who shot at his girlfriend and that he had been in a pursuit by Boulder County was audible. Also the planning discussion and having Deputy Alonso move his vehicle next to the roadway to provide cover was recorded.

Deputy Alonso's video camera recording was obstructed on the left side by Deputy Alonso's jacket. Throughout his issuing of commands to the driver and passenger to show their hands, the view from the camera is limited to a view to the right which showed Highway 6. The suspect vehicle is to the left and that is totally obscured. Then, as the audio of the BWC captures the verbal commands ordering the driver to get out of the vehicle, the sound of a vehicle starting up

can be heard. Headlights are then visible partially illuminating 6th Avenue. Very quickly, tires accelerating on gravel are heard and then there is a shot, immediately followed by a horn honking and an image of the Toyota's hood going past the camera heading towards the right. Immediately following that image are more shots being fired. After the shots end, there is a quick image of Trooper Retana with his handgun raised in the air as the vehicle continues past, heading towards the ravine. As soon as the sounds of the vehicle starting to move are heard on the video, it appears that Deputy Valbert is no longer stationary and that he is continuing to turn to his right following the movement of the car based upon the camera angle.

Trooper Retana's dash-cam shows two separate images. One of the images is the view from the front of the car facing the Toyota and the other image is a view showing his rear seat and the view looking behind the car through the rear window. The relevant images for this inquiry are found in the rear dash-cam videos. In that video, prior to commands being given, Trooper Retana can be seen primarily through the rear window. He was visible and moving from the left passenger's rear side to the right driver's rear side of his vehicle. He is having conversations with the Jefferson County Deputies regarding stop sticks and highway closure. He is also on his radio instructing another CSP deputy to go past them to close east-bound traffic.

Once the road is closed and the verbal commands begin at 20:44:18, Trooper Retana positioned himself at the rear driver's side of his vehicle and does not move. He has his arms raised, presumably pointing his handgun at the Toyota although it is only his midriff which is visible on the video. He can be heard taking a call from dispatch at 20:44:20 and "violent tendencies" can be heard through the audio dash-cam recording. At 20:45:16, as a person (Deputy Valbert) is heard telling Deputy Alonso to get the driver out of the vehicle and Alonso then makes that command, Trooper Retana moves and can be seen crossing from the right driver's rear side to the left passenger's rear side. He is moving towards the north rear side of his vehicle when he goes out of camera view. At 20:45:30, a car can be heard on the gravel and Highway 6 appears illuminated. At 20:45:35, a shot is heard, rapidly followed by other shots.

In reviewing the dash cam video of the incident, CIRT investigators listened to a recording of Trooper Retana meeting with a CSP Sergeant who was unidentified. In this video which took place 11 minutes after the shooting, Trooper Retana is answering questions about the shooting. The following is a partial transcript:

Trooper Retana: - pretty intense just right away.

CSP Sergeant: I'll bet it was. So did you, shoot?

Trooper Retana: So, I initiated the shot. Um, the guy, they had their hands up. He put the vehicle in motion and so, w, I was staged over here.

Vehicles in front of my car.

CSP Sergeant: Well, which way were you facin`?

Trooper Retana: We were facing that way.

CSP Sergeant: Oh, really?

Trooper Retana: Yeah, they were facing us. Um, deputy, or, I think it was Deputy; he`s callin` out, makin` the calls. He`s right here. Vehicle comes this way. Uh, saw it veer. That`s why I shot, so like, he was going to hit us. You know, we`re backin` up and he veered I was like he`s gonna hit us. Uh, I didn`t shoot the driver, wanted to like shoot the vehicle possibly disable.

*CSP Sergeant: *** shootin` at the driver?*

Trooper Retana: Yeah.

CSP Sergeant: Okay.

Trooper Retana: And, um –

CSP Sergeant: I –

Trooper Retana: - you know, when he came, I thought like, aim, drop down from backin` up. So I know I didn`t hit the, the driver, I know it went down. Um, that is when the other officer decide continued firing, uh, vehicle

CSP Sergeant: Who continued firing?

Trooper Retana: The one, that was with me right here.

CSP Sergeant: Jeffco?

Trooper Retana: Yeah. And the vehicle just veered, went down -

CSP Sergeant: So how many rounds did you fire you think?

Trooper Retana: One.

CSP Sergeant: Only 1? Okay.

CSP Corporal Meyers completed a report in this matter which was provided to CIRT investigators. It indicated that he arrived on scene at 10:08pm and met with Trooper Retana who was standing with Trooper Makowski. The report indicated that Corporal Meyers asked him how he was and Trooper Retana stated he was fine, but felt bad because the passenger was injured. Corporal Meyers asked if he knew about the driver. Trooper Retana just said, "That guy tried to kill me."

Members of the CIRT provided oversight in the processing of the crime scene and were primarily involved in aspects of the crime scene investigation along with the Jefferson County Crime Scene Investigation Unit. Utilizing artificial light to illuminate the scene, the area was searched for any potential evidence relating to the incident and several shell casings were located. Each was covered with an evidence tent marker for preservation. Tire tracks in the

gravel were noted to be traveling eastbound toward the parked JCSO SUV and turning northbound. Photographs were taken of the area and the scene was also documented using Faro 3-D terrestrial laser scanners. One of the laser scanners is equipped with GPS, which provides the best documentation of the location of this event and, in conjunction with other technology, provided an accurate overhead view of the scene. Utilizing the raw scans from the Faro with various software applications, a virtual copy of the crime scene was created which provided scale measurements and 2 and 3-dimensional scene diagrams. Additionally, numerous recreations of the incident were created utilizing this technology.

CIRT procedures dictate that no officer involved in a critical incident will be allowed to watch any BWC or dash-cam video prior to their interview. Once the interview of the involved officer has been completed, the officer and their attorney will be provided access to watch the video. After the viewing, the officer is allowed to provide any additional information to the CIRT investigators and the CIRT investigators are also allowed to ask additional questions. In this matter, Deputy Alonso did view his video prior to CIRT investigators securing his camera which occurred prior to the interview. Trooper Retana did not have access to his dash-cam videos prior to his interview.

Both Trooper Retana's handgun and Deputy Alonso's rifle were collected and examined that evening along with all other officers' weapons who were on scene at the time of the shooting. The examination of Trooper Retana's Smith and Wesson .40 caliber handgun and magazine showed that his 15-round magazine contained 13 live rounds with 1 round in the chamber of the handgun. Per Trooper Retana, his practice was to keep a fully loaded magazine in his weapon with 1 round chambered. Deputy Alonso's rifle contained 1 .223 caliber round in the chamber and a 30 round magazine with 23 .223 caliber rounds. Per Deputy Alonso, his practice was to keep a fully loaded magazine in his rifle and to not keep a round in the chamber. He stated in his interview that when he removed the rifle from his patrol vehicle that evening, there was no round in the chamber but that the magazine was fully loaded.

At the scene, all items of evidence were marked including the shell casings located on the roadway. Two .40 Smith & Wesson shell casings were recovered which appeared to have been fired from Trooper Retana's handgun, despite Trooper Retana's belief that he only fired once. Six .223 caliber expended bullet cases were recovered which appeared to have been fired by Deputy Alonso's rifle. The exact initial location of these casings could not be precisely determined due to the emergency response presence, however, based upon the video evidence, their photographed location is not inconsistent with the descriptions provided of the shooting. This photograph was taken after the casings were marked by yellow plastic tents.



The suspect vehicle which was a silver 2002 Toyota 4-Runner was towed from the creek bed and taken to an indoor storage facility. The weapon had been photographed on scene in the vehicle. It was collected from a pile of clutter on the passenger side floorboard and was bloody. It was removed from the vehicle prior to towing by Crime Scene Technician Esqueda along with some other loose evidence to avoid damage or loss since the vehicle had broken windows and was not secure. The weapon was a Remington semi-automatic handgun with 1 full metal jacketed .380 caliber round in the chamber and 3 full metal jacketed .380 caliber rounds in the magazine.

CIRT investigators also created a synopsis of the video and audio from the body worn cameras in this incident. Only 7 shots could be heard in either audio from the cameras of Deputy Alonso and Deputy Valbert. In consultation with the Director of the National Center for Media Forensics at UC-Denver, it was determined that 7 shots were audible with the first shot being unique in frequency from the other 6 shots.

This photograph taken the night of the incident by Crime Scene Technician Esqueda, prior to the marking of evidence, depicts the location of the four law enforcement vehicles at the time of the shooting.



The investigation revealed that the Toyota 4-Runner was reported stolen to the Louisville Police Department the morning of November 3rd, 2018 by the registered owner. The vehicle was discovered to be missing by the owner from his home in Louisville during the evening of November 2nd. Lafayette Police were dispatched to a 911 call on November 3rd at approximately 3:30pm in Lafayette, Colorado. The residents of the home described that they heard two shots and saw a vehicle driving away. One of the homeowners was in a bedroom when the shot came through that room. The residents suspected that the shooter could be Ryan Michael Millsap due to his history of coming after their daughter and damaging and stealing the family's property. A neighbor provided a video recording of the incident which showed the stolen Toyota 4-Runner stopping in front of the residence, the driver firing at the house and then speeding away. Another resident saw the incident and gave a description of the driver which was consistent with Ryan Michael Millsap. This Toyota 4-Runner was the same vehicle involved with the shooting incident investigated by CIRT.

The owner of the Toyota 4-Runner was contacted on November 7th and he gave consent for the vehicle to be searched. In addition, a search warrant was procured from Jefferson County Judge Ryan Stuart and the vehicle was fully searched by members of the CIRT on Wednesday, November 7th. There was no glass in the driver's window, passenger window or the right rear passenger window. Both the driver and passenger seats were in a reclined position. Of note inside the vehicle was a pouch with suspected marijuana wax, LSD tabs and drug paraphernalia. A hard-sided plastic handgun case was found inside a blue backpack that was on the floorboard

behind the front passenger seat. An empty magazine for a handgun was found in the front zipper pocket of a black backpack that was behind the driver's seat.

One .223 caliber bullet was recovered from the dash of the vehicle and the Faro 3D scanner was utilized to document the vehicle. There were windows broken out and numerous holes and defects which indicated impact throughout the vehicle. Investigators identified various defects possibly caused by fired bullets as they attempted to evaluate trajectory. There were two defects that were of assistance in this evaluation. A defect showing an exit in the driver's side lower portion of the windshield and a defect in the passenger side B pillar on the back side were subjected to a trajectory rod which appeared to show the path of one bullet projectile traveling through the vehicle from the right rear passenger window frame, to the steering wheel and exiting through the windshield on the driver's side. No other valid trajectories could be identified.

Based upon the entirety of this investigation, it cannot be stated with certainty who fired either of the fatal or potentially fatal shots. However, the physical evidence combined with the statements of the firing officers would suggest that one of the rounds fired by Deputy Alonso created the trajectory described in the preceding paragraph.

After completing the multiple 3 and 2 dimensional diagrams of the scene, it was determined that the Toyota had come within 2.5 feet of the right front of Deputy Alonso's vehicle as it was fleeing the scene. There were several 3-D animations completed based on the physical evidence. All items were to scale except for the speed for the Toyota as it was driven away from the scene. There was inadequate information to determine where Trooper Retana was standing as he fired at the vehicle. There was also no physical evidence to determine the speed of the vehicle accurately as it drove towards Deputy Alonso's vehicle or as it drove past him and Trooper Retana.

Legal Analysis

In Colorado, all citizens including police officers have the right to self-defense, including the right to use "deadly physical force" under certain circumstances. Under § 18-1-704, C.R.S. (1), a person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or another, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. A critical issue in self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or 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, or is attempting to escape by the use of a deadly weapon.

Each officer's conduct in this matter must be reviewed separately as a matter of law. The analysis centers on the reasons for their use of deadly physical force based upon their own individual perceptions.

Deputy Alonso was aware that the vehicle had been identified as a stolen vehicle, that a male driving that vehicle had been involved in a potential homicide against an ex-girlfriend and that he had been armed with a weapon. He knew that there were two occupants of the vehicle that appeared to be asleep. He justifiably viewed the situation as high risk and knew that the driver was likely armed. Deputy Alonso had his rifle trained on the vehicle while he shouted verbal commands to the couple in the car. His focus was the people in the car and his plan was to get the driver out of the car and into custody. When the driver did not respond to his commands quickly or completely, that was a concern. When the driver did not get out of the vehicle as ordered but instead started the car and began to immediately drive away, Deputy Alonso believed that the driver was trying to escape. He initially was concerned that the driver was going to hit him with the car but when the car cleared him, he was no longer afraid. When he heard the pistol shot, he believed that the driver was shooting at him or the other officers in attempting to escape. He shot at the center mass of the driver because he believed the driver had shot at him and his fellow officers. Deputy Alonso's focus was on the driver of the car and he was unaware of any other officers next to him on the roadway. Based on the video footage from the trooper's car, Trooper Retana had just moved into a position closer to and behind Deputy Alonso to his right on the roadway as the vehicle started speeding away. Deputy Alonso's focus and responsibility was on the suspect vehicle. Due to that responsibility and focus, it was reasonable that Deputy Alonso was unaware of Trooper Retana's very recently changed position which also makes it reasonable for Deputy Alonso to have presumed that the gunshot had been fired by the vehicle. Tragically, he was wrong. However, under the law, while his belief was mistaken, it was not unreasonable for Deputy Alonso to believe that, at that moment, he and other officers were in imminent danger of being killed or of receiving great bodily injury and that his use of deadly physical force was justified to prevent that from occurring.

Trooper Retana gave several statements regarding what occurred that evening. On scene, minutes after the shooting, he described that the driver was going to hit them with the vehicle so he shot at the vehicle to disable it. He stated he was not shooting at the driver. In another statement shortly after the shooting, he stated that the driver was trying to kill him.

Unfortunately, the CIRT investigators were not given access to Trooper Retana that Sunday evening for questioning purposes because his attorney stated that he wanted to be interviewed at a later time. The interview was then scheduled for the following Tuesday but his attorney requested another delay and his interview finally occurred on Thursday, four days after the shooting.

At the Thursday interview, Trooper Retana described being uncertain of some details regarding that evening but he did provide a full statement. After the interview, he was provided access and the opportunity to watch his dash cam videos. While there are inconsistencies in his report of what occurred, that is not entirely unexpected in situations involving a shooting. It is

unfortunately unknown if his recollection would have been more accurate if he had been interviewed closer in time to the actual event.

The dashcam video demonstrated that Trooper Retana's initial belief as to his primary location that evening was incorrect. However, it is clear from Trooper Retana's statements that this was a stressful situation for him and he had great concern about the danger presented by this vehicle and the driver. He mentioned numerous times in his interview that the driver was likely armed, had been involved in a homicide or attempted homicide and that he had "violent tendencies". It is also clear that he felt that when the vehicle started moving, he perceived it to be a threat to him and to his fellow officers. He expressed numerous times that his and the deputy's cover had become non-existent as the vehicle approached them and he believed that they could easily be hit by the car. Attempts at reconstructing the scene through animation were not able to definitively answer the question of whether the vehicle could have hit the trooper because there is no physical evidence that demonstrates exactly where the trooper was standing. However, the animations suggest that the trooper could have been hit by the vehicle but that is dependent on Trooper Retana's specific location. The fact that Deputy Alonso was not in fear of being hit by the vehicle is not conclusive evidence that Trooper Retana's fear was unreasonable since Deputy Retana was further to the east than Deputy Alonso.

It appears that all officers on scene were presuming that the person in the stolen vehicle was the same person who had been involved in the earlier attempted homicide in Lafayette and that there was likely a gun in the car. Those were both reasonable assumptions based on all the information at hand and, although not central to this analysis, were accurate assumptions.

Based on Trooper Retana's statements, he believed that the car's movement and the likelihood that the driver was armed presented an imminent threat of serious bodily injury or death to him and Deputy Alonso. By all accounts including Millsap's passenger, there was no confusion that there was a heavy police presence on scene and they were present to get Millsap to comply with orders in order to get him out of the vehicle and take him into custody. Millsap deliberately ignored these direct police commands. While he did not hit Deputy Alonso's vehicle, Trooper Retana perceived that based upon his location, he and Deputy Alonso were in grave danger of being struck or shot. He believed that he had to use deadly physical force to protect himself and Deputy Alonso from being killed.

While this review is focused only on the potential criminal liability of the shooting officers in the case, it cannot be ignored that Trooper Retana's action of shooting into a moving vehicle from the front raises questions regarding proper police tactics since he had not seen any visible evidence of a weapon. However, he stated that his actions were not based solely on the possible weapon but on Millsap's driving behavior and the information he had regarding Millsap being involved in a homicide/attempted homicide and having violent tendencies. Additionally, of concern is that the interviews demonstrate that Trooper Retana's location was not apparent to the other officers. Based upon his dashcam video and audio recordings, the trooper's location was not being communicated to others and his decision to come up behind Deputy Alonso to help with the arrest of the driver was also not communicated. Whether communicating his position would have changed Deputy Alonso's perception that the shot was fired from within the car is unknown. However, Deputy Alonso was clearly unaware of Trooper Retana's location and

having this awareness may have impacted his belief that the shot came from the car.

In the final analysis, Ryan Millsap's failure to follow police commands and his efforts to escape in the manner described created this extremely unfortunate situation.

It is the conclusion of my office, based upon the applicable law and the investigation, that Deputy Alonso's actions during this incident met the legal requirements of the affirmative defense as contained in § 18-1-704 C.R.S. Based upon the evidence and the interviews in this matter, there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defense available to Deputy Alonso beyond a reasonable doubt.

It is also the conclusion of my office, based upon the applicable law and the investigation, that Trooper Retana's actions during this incident met the legal requirements of the affirmative defense as contained in § 18-1-704 C.R.S. Based upon the evidence and the interviews in this matter, there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defense available to Trooper Retana beyond a reasonable doubt.

No criminal charges will be filed against either officer.

Sincerely,



Peter Weir
District Attorney
First Judicial District Attorney