



**OFFICE OF THE FIRST JUDICIAL
DISTRICT ATTORNEY OF COLORADO
District Attorney Alexis King**

January 9, 2024

Sheriff Reggie Marinelli
Jefferson County Sheriff's Office
200 Jefferson County Parkway
Golden, CO 80419

Re: Deputy Involved Shootings, April 7, 2022

Dear Sheriff Marinelli,

The First Judicial District Critical Incident Response Team has completed its investigation into the shooting at Kaelen Bernal and Daniel Reach, by the Jefferson County Sheriff's Department on April 7, 2022, by Jefferson County Sheriff's Office Deputy Manwaring, Deputy Gist and Deputy Zajac (the "Deputies"). Commander Bellomy from the Wheat Ridge Police Department presented the investigation to my office on July 7, 2022. The related criminal case resolved on October 20, 2023.

After a thorough review and analysis of the evidence, I find that the Deputies' use of deadly physical force was legally justified to defend themselves and others from the threat they perceived was posed by Mr. Kaelen Bernal. Given my conclusion, no criminal charges will be filed against the Deputies. I am issuing this letter to you pursuant to § 20-1-114(1), C.R.S.

The First Judicial District Critical Incident Response Team (CIRT) investigates any incident in which a law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a person while acting under the color of official law enforcement duties. The CIRT team is comprised of highly trained and skilled investigators working under my authority and appointed from multiple law enforcement agencies, including my office. This multi-jurisdictional team of objective, dispassionate professionals protect the integrity of the investigation by exercising independent judgment



in conducting a thorough investigation. To maintain transparency and reduce conflict of interest, officers from the involved agency do not perform critical duties related to the investigation.

Here, the Jefferson County Sheriff's Office ("JCSO") immediately activated the CIRT team to investigate the use of deadly force by the Deputies. Consistent with CIRT policy, JCSO did not participate in the substantive portions of the CIRT investigation. The CIRT team promptly responded to investigate, led by Commander Bellomy. Under his direction, the CIRT team processed the scene, completed interviews with those who saw or heard the events, and preserved necessary evidence. The involved officers provided voluntary statements and submitted to questioning. These interviews were recorded, reviewed as part of the investigation, and included within the file. Commander Bellomy briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

My team reviewed over 2500 photographs, 200 videos and approximately 727 pages of reports by the Jefferson County Sheriff's Office, Lakewood Police Department, Arvada Police Department, Wheat Ridge Police Department, Aurora Police Department and other CIRT agencies throughout the First Judicial District. I reviewed the recorded interviews of the officers and witnesses who heard or saw the events and the evidence collected from the scene and evaluated by independent examiners.

As District Attorney, my role is to determine whether the Deputies committed a criminal offense. No charges may be legally or ethically brought unless a crime can be proven beyond a reasonable doubt, a standard that applies to officers and civilians alike. Because this shooting was justified under Colorado law, no criminal charges can or should be filed against the Deputies.

A person may be held criminally liable under Colorado law only when the evidence proves beyond a reasonable doubt that they committed every element of an offense defined by Colorado statute. When a person intentionally shoots at another person, resulting in no injury to the person, they commit the crime of attempted murder unless a legally recognized justification exists. If a justification exists, the shooter is not criminally liable. Generally, acting in self-defense or defense of others is one such justification. These defenses are available to all Coloradoans, including the Deputies. A deputy is also specifically authorized to use deadly force under certain circumstances.

As relevant here, a peace officer is justified in using deadly force if: 1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or suffering serious bodily injury; 2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or suffering serious bodily injury; and 3) the officer has an objectively reasonable belief that a lesser degree of force is inadequate. §18-1-707(4.5), C.R.S. Acting in self-defense or defense of others is subject to the same analysis. §18-1-704(1) (2), C.R.S. By law, in deciding whether the Deputies were justified in acting in self-defense or defense of others, it does not matter whether Mr. Bernal or Mr. Reach were actually trying to injure the Deputies or another person, so long as a reasonable person, under like conditions and circumstances, would believe that it appeared that deadly physical force was necessary to prevent imminent harm. The facts must be viewed as they appeared to the Deputies at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time the Deputies shot at Mr. Bernal and his passenger, Mr. Reach, they had objectively reasonable grounds to believe, and did in fact believe, that they or another person was in imminent danger of being killed or suffering great bodily injury, and whether they reasonably believed a lesser degree of force was inadequate. In other words, would a reasonable person, confronted with the same facts and circumstances, believe that it was necessary to use deadly physical force to defend himself or others from Mr. Bernal? If so, the shooting is justified under Colorado law, and no criminal charges can or should be filed.

Facts Established by Investigation

On Thursday, April 7, 2022, at approximately 8:00 a.m., a male reported to Jefferson County Sheriff's Office ("JCSO") that his white 2000 Ford F350 pickup truck and cargo trailer was stolen from 19395 Goddard Ranch Court. The truck was equipped with a flatbed, crane, and various toolboxes attached to the bed. The 25-foot trailer had an off-highway vehicle attached to the bed.



Here is an image of the truck and trailer taken that day, before these events unfolded.

At approximately 6:07 p.m., the original reporting party ("RP") was southbound on Highway 285 in the Conifer area when he observed his stolen truck and trailer, occupied by two males, northbound on 285. The RP turned around and caught up to the truck as it pulled into Stop 4 Gas at 9064 Highway 285. The RP attempted to block the truck in; however, the truck maneuvered around him and continued northbound on 285. The RP followed the truck northbound on 285 to South Turkey Creek Road and then continued southbound toward the local family attraction, Tiny Town.

As the RP drove, he was on the phone reporting the incident to the Jefferson County Communication Center ("Jeffcom"), which dispatched JCSO deputies to the stolen vehicle incident. Deputy Manwaring responded to the area of North Turkey Creek Road and South Turkey Creek Road. He parked his marked patrol car with his emergency lights on in a driveway in the 6400 block of South Turkey Creek Road.

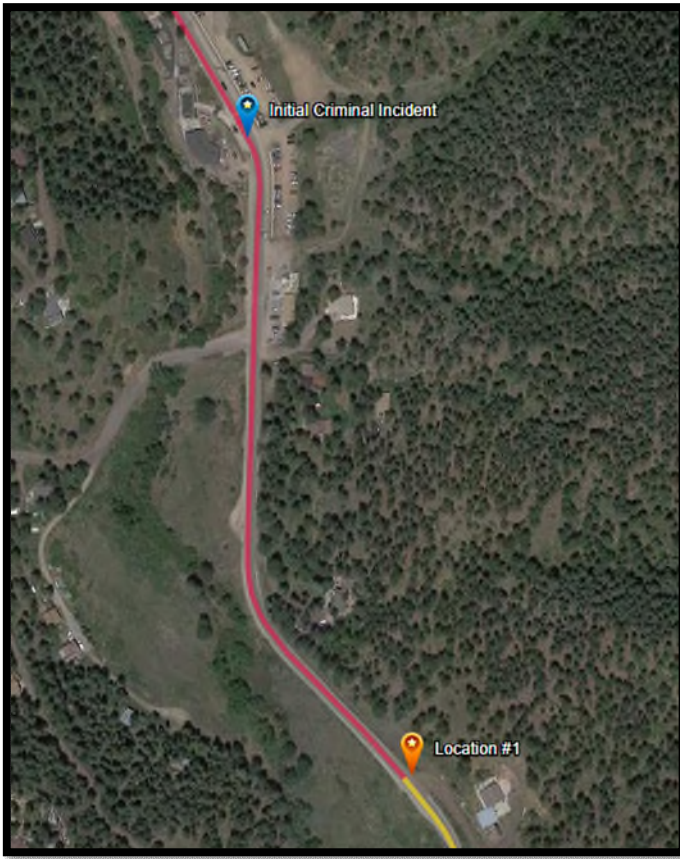


In the above map of the events, Initial Criminal Incident is where Mr. Bernal shot at the RP. Location #1 is where Deputy Manwaring first shot at Mr. Bernal and Mr. Reach. The green pin is where Mr. Bernal drove the truck off of 285 and onto Turkey Creek, eventually losing the trailer. Location #2 is where Deputy Manwaring shot at Mr. Bernal and Mr. Reach again. Location #3 is where Deputy Gist and Deputy Zajac shot at Mr. Bernal and Mr. Reach.

Deputy Manwaring

Deputy Manwaring graduated from the Jeffco Regional Police Academy in 2017. He worked in the JCSO detentions division for about a year before being assigned to the Mountain Division Patrol Unit at the end of 2018 and was where he was assigned in April 2022. Deputy Manwaring started his 3:00 p.m. shift that day by arriving about an hour early. He had slept approximately nine to ten hours the previous night.

At 6:16 p.m. near Tiny Town, located at 6249 South Turkey Creek Road, the stolen truck stopped on the roadway, and the driver exited and pointed a handgun at the RP who was still following him. The driver then fired five shots at the RP who heard the bullets ricochet past him and impact the truck he was driving. The RP was in fear for his life but did not want the suspects to get away. As the driver of the stolen truck returned to the wheel and continued down the road, so did the RP. They went southbound on Turkey Creek Road directly towards Deputy Manwaring's position. The RP was still on the phone with Jeffcom when the shooting occurred. Jeffcom 911 aired the shooting of the RP to law enforcement, including Deputy Manwaring and the other Deputies.



Approximately 75 seconds later, Deputy Manwaring saw the stolen truck and trailer headed towards him southbound on South Turkey Creek Road. Deputy Manwaring estimated the truck was traveling approximately 40 to 50 miles per hour and weaving back and forth between the north and southbound lanes. South Turkey Creek Road is a two-lane road without a barrier between the lanes of traffic. Deputy Manwaring positioned himself close to the roadway and due to that decision, Deputy Manwaring was vulnerable to the oncoming truck. With knowledge of the shooting just up the road, Deputy Manwaring shot at the oncoming truck as it passed him.

Deputy Manwaring drew his handgun, firing four rounds at the driver's side A-pillar area while aiming for the person in the driver's compartment. Deputy Manwaring did not see the driver or register whether the window was

up or down. Beyond the truck was a field-covered hill, and Deputy Manwaring's backdrop was clear.

The stolen truck continued southbound on South Turkey Creek Road and the RP continued to follow the truck. Deputy Manwaring got back into his patrol car, cut the RP off, and pursued the stolen truck with lights and sirens. He pursued the truck as it turned onto North Turkey Creek Road and merged onto northbound Highway 285. The truck was weaving back and forth using both lanes of traffic and driving erratically.

The driver was later identified Mr. Bernal and his passenger was Mr. Reach

At approximately 6:21 p.m., Deputies Gist and Zajac responded to the area to assist. They realized the pursuit was headed in their direction, so they parked their patrol cars on Highway 285 about $\frac{3}{4}$ mile south of the C470 interchange. Deputies Gist and Zajac planned on deploying Stop Sticks on the roadway as the pursuit passed to stop or slow the stolen truck. Radio traffic reflected a deputy calling out speeds of 80 miles per hour while Mr. Bernal traveled down 285.

About two minutes later, with Deputies Gist and Zajac ready on 285, Mr. Bernal jumped the embankment from 285 down onto Turkey Creek Road. Deputy Gist estimated the speed of Mr. Bernal's truck at 60 miles per hour. Turkey Creek Road runs parallel to 285 at a slightly lower elevation.

As the truck and trailer crossed the median, the trailer detached from the truck and the truck continued northbound on Turkey Creek Road.

Deputy Manwaring continued northbound on 285 driving parallel to the truck. Deputy Manwaring had his passenger side window down and his gun unholstered. While side by side on the parallel roadways, Mr. Bernal looked at Deputy Manwaring through the stolen truck's driver's side window, which appeared to be open. Mr. Bernal then ducked down and gripped the steering wheel with his left hand. Deputy Manwaring observed what appeared to be a dark-colored handgun in Bernal's right hand pointed at him.



Deputy Manwaring was in fear for his life. At 6:24 p.m., Deputy Manwaring fired four shots at Mr.

Bernal out of his open passenger side window. The truck was approximately 50 feet from his passenger side door on Turkey Creek Road and they were now traveling at approximately 20 miles per hour. Deputy Manwaring was not sure if Mr. Bernal shot at him. Deputy Manwaring was worried the truck may drive up the embankment and cross back over the median onto Highway 285 and strike Deputies Gist and Zajac. The area behind the stolen truck on Turkey Creek Road was a cliff, and Manwarings backdrop was clear.

Deputy Manwaring drove next to Bernal for a short period of time before backing off. Deputy Manwaring observed ahead of him, Deputies Gist and Zajac in marked cars out of their vehicles on 285 near the C470 interchange. Deputy Manwaring saw Deputies Gist and Zajac fire approximately 10 seconds after he shot and slowed his car. Deputy Manwaring was focused on Deputies Gist and Zajac because he did not want to hit them on the roadway. He observed "stuff" coming from their barrels, muzzle flashes, and the recoil from their handguns.

Deputy Manwaring drove around Deputies Gist and Zajac, exited on C470 eastbound, and drove across a median onto Turkey Creek Road to continue pursuing Mr. Bernal. Mr. Bernal turned eastbound on Quincy and drove into oncoming traffic prior to entering a construction zone. Mr. Bernal then collided with a streetlight and continued into a residential neighborhood, causing residents to have to run out of

the path of Mr. Bernal, who was weaving side to side. Mr. Bernal drove through a park where people were playing sports and sitting at picnic tables. People ran for safety. The stolen truck had at least one flat tire as Mr. Bernal drove out of the park and onto a side street. As the stolen truck slowed, Deputy Manwaring rammed the stolen truck with his patrol car. Mr. Bernal crashed into a parked truck, and Mr. Bernal and his passenger, Mr. Reach, ran from the truck and were apprehended by law enforcement.



Deputy Gist

Deputy Gist was dispatched to the area regarding a stolen truck. While driving, Deputy Manwaring told everyone by radio that shots were fired. Deputy Gist had also learned Mr. Bernal shot at the RP, the owner of the stolen truck earlier. Based on the radio traffic, Deputy Gist thought that when Deputy Manwaring aired shots fired, there was an exchange of gunfire between Mr. Bernal and Deputy Manwaring.

Deputy Gist started as a dispatcher with Jefferson County in 2013 and became a deputy in 2015, assigned to detentions. In 2016 he was transferred to patrol. Deputy Gist was assigned to watch 2, working from 3:00pm

through 1:00am, during this incident. Deputy Gist had no issues sleeping the night before his shift.

Deputy Gist saw Mr. Bernal northbound on 285 followed by pursuing deputies and saw Mr. Bernal drive down the embankment onto Turkey Creek Road. He parked on the median between 285 and Turkey Creek Road and deployed Stop Sticks onto Turkey Creek Road as Mr. Bernal was driving directly towards him on Turkey Creek Road. The stop sticks were deployed but were not effective in stopping or slowing Mr. Bernal's truck.

Deputy Gist then heard gunshots and thought the shots were coming from Mr. Bernal because the sound seemed to move with the truck. Deputy Gist thought bullets were flying by him. He did not believe the bullets were coming from other deputies. Deputy Gist thought the truck was traveling 55 to 70 miles per hour. He dropped the Stop Sticks, pulled out his handgun, and engaged Mr. Bernal's driver compartment as it was coming towards him with multiple rounds. He was fearful for his life and the life of his civilian rider.

Deputy Gist aimed for the windshield, where Mr. Bernal was seated. Deputy Gist started shooting when Mr. Bernal was about 40 to 60 yards from his position. His backdrop was the mountain. Deputy Gist kept shooting into the windshield and saw a hole or a cluster of shots where Deputy Gist believed Mr.

Bernal was shooting out from inside the truck. Deputy Gist saw one of his rounds hit the top left of the cluster on the windshield. As Mr. Bernal drove by, he transitioned his shots to the stolen truck's door until his handgun locked back. He reloaded a second magazine and shot four to five additional rounds as the truck drove past him. Deputy Gist was not sure if Mr. Bernal ran over the Stops Sticks.

It should be noted the time between Deputy Manwaring's last shot on 285 and the sounds of Deputy Gist and Zajac shooting was approximately two seconds.

Highway 285 and Turkey Creek Road run parallel to each other at this portion of the roadways. 285 is elevated approximately 4 to 6 feet from Turkey Creek. Deputy Gist's backdrop was a mountain side.

Deputy Gist did not realize Deputy Zajac was to his east until after he shot his first magazine and reloaded. As he turned, Deputy Zajac was at his 10 o'clock position. He did not hear or see Deputy Zajac shoot and did not know where Deputy Zajac was parked. He returned to his patrol car and drove southbound on 285 to reengage Mr. Bernal.

Deputy Zajac

Deputy Zajac has been a patrol officer since 2021. Deputy Zajac has a military background serving in the Army for four years as a medic. Deputy Zajac graduated from the Jeffco Regional Police Academy in 2021. His shift during this incident was from 3:00 p.m. through 1:00 a.m. Deputy Zajac heard a call aired over the radio involving a stolen vehicle. He noticed the call was escalating and the truck's owner reported shots were fired at him. As Deputy Zajac arrived in the area and parked on 285, he saw the stolen truck driving in his direction. He grabbed his Stop Sticks with the intent to deploy the Stop Sticks and deflate the tires on the stolen truck to reduce the truck's speed. Deputy Zajac was positioned approximately 100 feet east of Deputy Gist.

Deputy Zajac was ready to deploy his Stop Sticks onto South Turkey Creek Road when he heard about five shots coming from the direction of the stolen truck. Deputy Zajac did not see a gun or the people inside the stolen truck; however, he believed he was being shot at due to the sounds, and the "cloud" of glass coming from the driver's side window. Deputy Zajac was in fear of his life, the life of Deputy Gist, and anyone on 285, so he drew his handgun and fired multiple shots at the driver's side compartment of the truck. During this engagement Deputy Zajac backdrop was a mountain side, and he stopped shooting when the truck passed him due to a change in his backdrop. Mr. Bernal's truck passed the mountain side and Deputy Zajac's backdrop was no longer clear.

The stolen truck was about 75 to 100 yards away when he heard the shots. He shot Mr. Bernal with what he believed to be three to five rounds. He heard muffled gunshots up to the point when the stolen truck passed him and did not see the truck again after he shot. The truck was approximately 20 to 30 feet away when he fired his last shot.

Deputy Zajac recalled hearing separate, clearer gunshots during the incident. He suspected Deputy Gist was shooting, but he did not see Deputy Gist shooting.

SCENE

Daniel Reach sustained a broken nose, broken tooth, and a laceration to his leg during the incident. There was no evidence to suggest Mr. Bernal or Mr. Reach were struck by gunfire.

A total of 33 Law Enforcement 9mm handgun casings were recovered at the following scenes:

- 6548/ 6498 South Turkey Creek Road.....4
- Deputy Manwaring’s patrol vehicle.....3
- Highway 285 and the C470 Interchange Gist17
- Highway 285 and the C470 Interchange Zajac.....9

A Springfield XD 9mm handgun loaded with one round in the chamber and one round in the magazine was located on the passenger’s side floorboard of the stolen truck. No spent cartridge casings were located inside the F350. The handgun was stolen from Aurora during a vehicle trespass around November 2021, along with three ten-round magazines.



The following impacts were located on the F350 truck:

- 1 impact on the center of the hood that moved into the windshield
- 3 impacts to the windshield, all entering through the exterior of the windshield into the cab
- 2 impacts on the exterior of the driver’s door entering from the rear to front at a relatively horizontal angle
- 3 impacts to the roof
- 1 impact above the driver’s door created from a projectile entering from the driver’s side toward the passenger’s side and slightly rear to front
- 1 impact above the driver’s area of the roof entering front to back, slightly driver’s side to passenger side
- 1 impact above the passenger’s side roof from a projectile entering front to back, slightly from the passenger side
- 1 impact driver’s side contractor rack

Mr. Reach later described the shooting in an interview, stating that Mr. Bernal had his hand out the truck window holding a gun and shooting while he was driving. Mr. Reach described the location on 285 and noted that two police vehicles were ahead of them. Mr. Reach heard Mr. Bernal shoot just before the “explosion of glass” as they crossed the median on 285. The gunshots were too close to be coming from outside the truck, so he was sure Mr. Bernal was shooting. The gunshots he heard inside the truck were louder than the shots he heard when Mr. Bernal shot in Tiny Town.

Analysis

Deputy Manwaring’s initial contact with the stolen truck came on the heels of the driver shooting at the RP. Given the moments that passed between the shooting and Deputy Manwaring encountering the stolen truck, Deputy Manwaring had reasonable grounds to believe that the driver would place him or the community in imminent danger of being killed or suffering serious bodily injury. Deputy Manwaring knew of the shooting and erratic driving and believed the driver of the stolen truck posed an imminent threat. Given the use of a firearm, a lesser degree of force was inadequate.

As the pursuit continued and the stolen truck and Deputy Manwaring were side by side on the parallel roadways, Deputy Manwaring saw through the stolen truck’s driver’s side window Mr. Bernal duck down and grip the steering wheel with his left hand. Deputy Manwaring saw a dark-colored handgun in Mr. Bernal’s right hand pointed at him. With the cumulative knowledge of Mr. Bernal’s decisions that day, Deputy Manwaring shot at Mr. Bernal a second time. Though Deputy Manwaring was unsure if he was shot at, he was in the position to reasonably believe that he was in imminent danger of being shot and killed and that a lesser degree of force would not ameliorate the threat posed by Mr. Bernal.

Deputy Gist’s decision points rested on the assumption that since the shooting at the RP in Tiny Town, gunfire was exchanged between Mr. Bernal and law enforcement. Further, the gunshots he heard on 285 were coming solely from the stolen truck (though based on the investigation, he heard the shots fired by Deputy Manwaring). Deputy Gist was also in the unique position of having a civilian in his patrol car while these events unfolded. Based on his perception, Deputy Gist had reasonable grounds to believe that he, his fellow officers, those on the roadway, and his passenger were in imminent danger from the driver of the stolen truck shooting as it passed him. When confronted with a driver shooting from a moving vehicle, Deputy Gist had an objectively reasonable belief that lesser degree of force was adequate when addressing Mr. Bernal.

Deputy Zajac heard about five shots and saw a spray of glass coming from the stolen truck when he drew his firearm. The combination of the sound and his observation of the stolen truck led him to the reasonable conclusion that the driver was shooting at him. As he was only 100 feet east of Deputy Gist, their different but similar perceptions lead to the same result. Deputy Zajac had reasonable grounds to believe that the law enforcement on the roadway, as well as other drivers were in imminent danger from a man shooting his gun out of a stolen truck. Deputy Zajac also believed that they were all at risk of being killed or suffering serious bodily injury, and ultimately, his perceptions were objectively reasonable based on all of the information he had at the time he shot his weapon.

Though the impact of shooting the driver of a moving vehicle poses risks, no other force would be effective against a stolen truck with a driver shooting from the window. Given the location and timing of each Deputy at the time they fired their weapons on 285, they are fortunate that their shots did not result in crossfire.

Given all of the facts and reasonable perceptions at the time of the shootings, a reasonable person, confronted with the same facts and circumstances, would believe that it was necessary for the Deputies to use deadly physical force to defend themselves and others, and no charges shall be brought.

Please do not hesitate to contact me with questions or concerns regarding my determination of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Alexis King". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Alexis King
District Attorney
First Judicial District
Colorado