



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

April 9, 2025

Interim Chief Reeves  
Justice Center Headquarters  
9551 Civic Center Drive  
Thornton, CO 80229

Re: *Officer Involved Shooting, April 30, 2024, at Second Avenue & Garrison Street, Lakewood*

Dear Interim Chief Reeves,

The First Judicial District Critical Incident Response Team (CIRT) has completed its investigation into the fatal shooting of Ms. Jasmine Castro and Mr. Joby Vigil, by Thornton Police Officers Tim Fuss, Marc Faivre, and Scott Schilb on April 30, 2024, at approximately 3:02 a.m., at the intersection of Second Avenue and Garrison in the City of Lakewood. Jefferson County Sheriff's Office Division Chief Bost presented the investigation to my office on June 24, 2024, and we received an expert opinion on January 9, 2025.

After a thorough review and analysis of the evidence, I find Officers Fuss, Faivre, and Schilb's (the "Officers") use of deadly physical force does not present a reasonable likelihood of conviction, as such no criminal charges will be filed against the Officers. 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 police officer uses deadly force, or attempts to use deadly force, against a person while acting under the color of official law enforcement duties within the First Judicial District. CIRT 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 First Judicial District CIRT team was asked to investigate the use of deadly force by Officers Fuss, Faivre, and Schilb as the shooting occurred in their jurisdiction. Consistent with



CIRT policy, the Thornton Police Department “TPD” did not participate in the substantive portion of the CIRT investigation. The CIRT team promptly responded to investigate, led by Division Chief Bost. Under his direction, the CIRT team processed the scene, completed interviews with those who saw or heard the events, and preserved necessary evidence. Officers Fuss, Faivre, and Schilb provided voluntary statements and submitted to questioning. The interviews were recorded, reviewed as part of the investigation, and included within the file. Division Chief Bost briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

My team reviewed over 2,988 photographs, numerous body-worn camera videos, and approximately 660 pages of reports by the Arvada Police Department, Lakewood Police Department, Jefferson County Sheriff’s Office, Wheat Ridge Police Department, Thornton Police Department and my office. We reviewed the recorded interviews of the Officers and witnesses who heard or saw the events, as well as evidence collected from the scene and evaluated by independent examiners.

As District Attorney my role is to determine whether the Officers 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 of our ethical obligations requiring a reasonable likelihood of conviction, no criminal charges can or should be filed against the Officers.

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 another person, resulting in that person’s death, they commit the crime of murder, unless a legally recognized justification exists. If a justification exists, the shooter is not criminally liable. Generally, acting in self-defense is one such justification. This defense is available to all Coloradans, including officers. An officer is also specifically authorized to use deadly physical 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 is in imminent danger of being killed or suffering serious bodily injury; 2) the officer does in fact believe that the officer 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 is subject to the same analysis § 18-1-704(1)-(2), C.R.S. By law, in deciding whether Officers Fuss, Faivre, and Schilb were justified in acting in self-defense, it does not matter whether Ms. Castro and Mr. Vigil were trying to injure them, 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 Officers Fuss, Faivre, and Schilb at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time Officers Fuss, Faivre, and Schilb shot Ms. Castro and Mr. Vigil, they had objectively reasonable grounds to believe, and did in fact believe, that they

were in imminent danger of being killed or suffering great bodily injury, and whether they 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 Ms. Castro and Mr. Vigil? If not, I must then determine whether I believe we have a reasonable likelihood of success in convicting one or all of the Officers in front of a jury of twelve. Given the facts and circumstances surrounding the Officers' decisions, I do not find a reasonable likelihood of conviction and therefore no criminal charges can or should be filed.



*Tuesday, April 30, 2024, at Intersection of 2<sup>nd</sup> Avenue and Garrison Stret Lakewood, Jefferson County Colorado after the crash was cleared.*

### **Facts Established by Investigation**

On Tuesday, April 30, 2024, Thornton Police Officers Faivre, Schilb, and Fuss were assigned to Thornton Police Department's Impact Team, a specialized proactive unit within the patrol division. Officers Faivre, Schilb, and Fuss utilized unmarked police vehicles with concealed emergency lights. When activated, the emergency lights were highly visible and looked like a marked police vehicle. Their police uniforms consisted of civilian-like clothes with an external vest system that had badges and other markings like a police uniform. As part of this unit, the Officers routinely investigated stolen vehicles, deployed mobile surveillance techniques, and trained to safely end vehicle pursuits.

At approximately 2:37 AM, Officers Faivre and Schilb were on routine patrol driving northbound in the 8400 Block of Washington Street in Adams County, Colorado, when they observed an Infiniti pass them in the southbound lanes. Officers Faivre and Schilb were partnered in an unmarked police truck. Officer Faivre was driving, and Officer Schilb was in the front passenger seat. The Infiniti was the only car on the roadway and had a tinted vanity cover over where the plate should have been attached.



*License plate cover on the rear of the Infiniti*

Officer Schilb looked through binoculars and saw that the Infiniti did not have a rear license plate at all. Officers Faivre and Schilb suspected the Infiniti was stolen and covertly followed the Infiniti in their truck. Officer Fuss joined them in an unmarked police SUV to help follow the Infiniti.

Officers Faivre, Schilb, and Fuss covertly followed the Infiniti, and it stopped briefly in a residential area around Jennie Drive and Kidder Drive (approximately - West 70<sup>th</sup> Avenue and Broadway Street, Adams County). Their plan was to conduct a traffic stop on the Infiniti to investigate if the Infiniti was stolen. As the Infiniti left the area, Officers Faivre and Schilb attempted to stop the Infiniti by activating the emergency lights on their truck in the Twin Lakes Park parking lot while they were behind the Infiniti.

Instead of stopping, the Infiniti made a U-turn in front of them and left at a high rate of speed. Officer Schilb could not tell how many people were in the Infiniti but someone inside the car turned around and looked at the Officers' truck and the emergency lights. Officer Faivre thought the driver was male and believed the driver looked right at him and clearly saw the police vehicle before driving away. Officers Faivre, Schilb, and Fuss decided to follow the Infiniti, without their lights, southbound on I-25 to the 8<sup>th</sup> Avenue exit as the Infiniti drove at or near the speed limit. At that point, the Officers believed the Infiniti did not have proper registration and had eluded them when it left the parking lot. The Officers continued to follow the Infiniti. They believed they were driving in a covert manner as they headed westbound on 8<sup>th</sup> Avenue, southbound Federal Boulevard, and ultimately westbound on Alameda Avenue.



*Area of attempted traffic stop*

At the intersection of Alameda Avenue and Sheridan Boulevard, Officer Fuss observed the Infiniti turn into the Shell Gas Station on the northwest corner of 5205 West Alameda Avenue, City of Lakewood, and County of Jefferson. Officer Fuss watched the Infiniti drive through the gas



station and into the adjacent strip mall parking lot to the north. Officer Fuss turned north onto Sheridan Boulevard and west into the mall parking lot. As Officer Fuss was driving through the parking lot he saw the Infiniti stop, and watched the driver walk to the back of the Infiniti. Based on his experience with stolen car investigations, Officer Fuss thought it was possible that the Infiniti driver was checking the rear of the car for tracking devices.



Officer Fuss then observed the driver pointing at him from about 50 to 75 yards away. The driver stood in the same manner as someone holding a firearm. Officer Fuss reported that because his window was down, he clearly heard a “bang” from what he believed was a gun and the “whiz” of what he believed was a bullet. Officer Fuss believed the driver of the Infiniti shot and tried to kill him. Because of the attempted traffic stop up north, Officer Fuss thought the occupant(s) of the Infiniti knew he was police officer. Officer Fuss aired over the police radio that the driver “just shot at me” and then immediately heard a second gunshot. Officer Fuss believed the second gunshot was also from the Infiniti and aimed towards Officers Faivre and Schilb’s truck on the roadway. The Infiniti drove south through the strip mall parking lot towards Alameda Avenue. Officer Fuss activated the emergency lights on his SUV to stop the Infiniti; however, the Infiniti continued through the parking lot and drove westbound on Alameda Avenue.

Simultaneously, Officers Faivre and Schilb heard Officer Fuss’ police radio traffic and pulled into the strip mall parking lot from northbound Sheridan Boulevard. Officers Faivre and Schilb did not hear the first gunshot aired by Officer Fuss. As they pulled into the parking lot, they heard the second gunshot and Officer Faivre “remembered flinching” when he heard it. All of the Officers were in their vehicles but Officers Faivre and Schilb could not recall if their windows were up, down or cracked. When Officer Schilb heard a single gunshot, he believed it came from the Infiniti. Officer Faivre heard a loud “crack and bang” that he identified as a gunshot “coming directly” from the Infiniti towards their truck. Officer Schilb and Faivre identified the same Infiniti from the attempted traffic stop up north. Officer Faivre believed the occupant(s) of the Infiniti recognized their truck from the attempted traffic stop and knew they were shooting at police. Officer Faivre did not see anyone outside the Infiniti when he heard the second shot. The Officers estimated the Infiniti was about fifty (50) yards away from their truck at the time of the second gunshot.

Officer Fuss, followed by Officers Faivre and Schilb, pursued the Infiniti with their visible emergency light and sirens activated westbound on Alameda Avenue. The Infiniti drove at speeds of

approximately 100 miles per hour while the Officers followed. The Infiniti turned northbound on Garrison Street, into a residential neighborhood, to the area of 1<sup>st</sup> Avenue and Garrison Street. In that moment, Officer Faivre and Schilb both believed the occupant(s) of the Infiniti had tried to kill them, knowing that they were police, and would shoot at them again to hurt or kill them. Furthermore, Officer Schilb felt the Infiniti was “a danger to the public, and they need to be stopped immediately.”

As the Infiniti headed northbound on Garrison Street, Officer Fuss saw the Infiniti drive onto the righthand shoulder of the roadway and suspected it was maneuvering into a position so the occupant(s) could shoot into his windshield. Officer Faivre also saw the Infiniti shift to the right and believed the Infiniti was trying to see how many police cars were behind them and was concerned the occupant(s) of the Infiniti were going to shoot at them again. Officer Faivre aired over the police radio “he’s gonna bail out here and shoot at us, PIT him.” because he thought the occupant(s) were setting up to “do something.” Officer Faivre believed this because the occupant(s), shot at them twice, had not stopped, and knew they were police officers.

Officer Fuss wanted to stop the Infiniti and end the chase, so he performed a precision immobilization technique (PIT) and intentionally struck the driver’s side rear of the Infiniti with his SUV, which caused the Infiniti driver to lose control and spin. The Infiniti was now face to face with Officer Fuss so he rammed the driver’s side to knock any potential weapons from the occupant(s) hands.



*2<sup>nd</sup> and Garrison St. final resting points of vehicles after PIT*

Officer Faivre then came in to pin the vehicle but due to it spinning around, he hit the passenger side of the vehicle. The Infiniti came to rest facing northwest in a drainage ditch on the southwest corner of the 2<sup>nd</sup> Avenue and Garrison Street intersection. As the Infiniti spun, Officer Faivre saw two people in the Infiniti “frantically and chaotically moving around” and Officer Fuss recalled making eye contact with the driver. Officer Faivre stopped the truck next to the Infiniti and Officer Fuss’s SUV stopped next to Officer Faivre’s truck.

Officer Fuss quickly exited his SUV and moved to the driver’s side rear corner of the Infiniti. Officer Fuss felt there was “an imminent gun battle coming,” and saw the driver of the Infiniti, later identified as Ms. Castro, climbing out the driver’s side window. Officer Fuss told Ms. Castro “hands up”; however, Ms. Castro did not respond. Officer Fuss saw “something black” in Ms. Castro’s hand. Given the unknown occupant(s), Fuss did not believe he could pursue Ms.

Castro on foot because of officer safety concerns. Furthermore, Officer Fuss believed Ms. Castro's intent was to flee from the police or shoot at the police until she was able to get away. Officer Fuss said he was concerned about Ms. Castro fleeing into the neighborhood, but he could not clearly identify the black object in Ms. Castro's hand as a gun. Officer Fuss believed he could not let Ms. Castro "get away with this," and he had no other tools available to stop Ms. Castro other than to shoot at her. Officer Fuss said his "decision [to shoot at Ms. Castro] was already made" because he could not let her go and he had to assume she still had a gun because she just tried to shoot him in the parking lot. Officer Fuss was entirely focused on Ms. Castro and shot at Ms. Castro with his Glock handgun until she was down on the ground and no longer a threat. Officer Fuss then looked around and saw a male, later identified Mr. Vigil, on the ground between the ditch and driver's door who was not moving. At this time, as Officer Fuss realized there was at least one passenger in the Infiniti.

As Officer Fuss moved, so did Officer Schilb. He got out of the truck's passenger side and moved to the passenger side rear area of the Infiniti. Officer Schilb immediately heard gunfire and assumed he was going to come around the corner of the Infiniti and "engage in a gunfight." Officer Schilb stood to the right (or northeast) of Officer Fuss. Officer Schilb saw Ms. Castro on the ground and a firearm near her waistband; and he believed Ms. Castro would use the gun again. Officer Schilb believed if he did not act immediately, he and the other Officers would be shot and killed. Officer Schilb shot at Ms. Castro with his Colt M4 rifle until he no longer perceived Ms. Castro as a threat because she lay still on the ground.



While shooting at Ms. Castro, Officer Schilb observed Mr. Vigil climbing out of the driver's side window of the Infiniti. He transitioned his focus from Ms. Castro to Mr. Vigil because he believed Mr. Vigil could use Ms. Castro's handgun. When Officer Schilb saw Mr. Vigil curl up and roll towards the Infiniti, he did not believe Mr. Vigil was a threat and he did not believe he shot Mr. Vigil with his rifle.

Officer Faivre remained in the driver's seat of the truck with the driver's door open. He described his position as less than ten (10) feet away from the Infiniti and tactically poor because his driver's window was almost "perfectly aligned" with the passenger window of the Infiniti. Officer Faivre feared he was going to be "shot at immediately." Officer Faivre looked through his window into the passenger compartment of the Infiniti and saw Ms. Castro and Mr. Vigil in the front seats "just grabbing and reaching all over the car." He believed Ms. Castro and Mr. Vigil were trying to get

a gun from within the Infiniti, as Officer Faivre knew there was a firearm in the Infiniti after the shooting in the parking lot.

Officer Faivre then saw Ms. Castro climbing out of the Infiniti, away from him, through the driver's side window and towards the other two Officers. Officer Faivre believed Ms. Castro and Mr. Vigil were an imminent threat to himself and Officers Fuss and Schilb who were at the back of the Infiniti, especially because he could not see what was in Ms. Castro or Mr. Vigil's hands. Officer Faivre believed Ms. Castro and Mr. Vigil were going to shoot at them again and began firing his Glock handgun at Ms. Castro as she was fleeing out the driver's side of the Infiniti.

Officer Faivre's focus shifted from Ms. Castro to Mr. Vigil because Officer Faivre now believed Mr. Vigil was the closest threat. He saw the "outline of [Mr. Vigil's] body coming up... [his] torso and head," and backside but "couldn't see his hands at all." To Officer Faivre, it looked like Mr. Vigil was twisting his body out of the driver's side window of the Infiniti, moving away from him. Though he never saw it, Officer Faivre believed Mr. Vigil had a gun and was going to use it to kill the officers and get away. Officer Faivre shot at Mr. Vigil and kept firing until both parties were down. Officer Faivre shot Ms. Castro and Mr. Vigil through the passenger compartment and across the windshield of the Infiniti from approximately 10 to 15 feet away. His goal was to stop the Infiniti and arrest Ms. Castro and Mr. Vigil for attempted murder.

Once Ms. Castro and Mr. Vigil were down, Officers Fuss, Faivre, and Schilb approached them and saw a Glock handgun about one foot from Ms. Castro. After the Officers assessed the injuries to Ms. Castro and Mr. Vigil, they provided medical aid to Ms. Castro. Both Ms. Castro and Mr. Vigil died on scene.

### **The Scenes - General**

Jefferson County Critical Incident Response Team (CIRT) investigators and crime scene analysts from the Arvada, Golden, Lakewood, and Wheat Ridge Police Departments, the Jefferson County Sheriff's Office, and the District Attorney's Office gathered and coordinated the preservation and analysis of physical evidence, obtained statements from witnesses who saw or heard parts of the event, and utilized digital documentation to memorialize the scenes.

Officers Fuss, Schilb, and Faivre were relieved of their firearms. Their firearms were photographed and processed. During the ammunition inventory, it was determined Officer Fuss fired six (6) rounds from his Glock 9mm handgun, Officer Faivre fired eleven (11) rounds from his Glock 9mm handgun, and Officer Schilb fired eight (8) rounds from his Colt M4 rifle. The CIRT determined the Officers did not discharge any other firearms or utilize any other weapons during the incident. Officers Fuss, Schilb, and Faivre activated their body-worn cameras (BWC) at the onset of the pursuit from Sheridan Boulevard and Alameda Avenue. The BWCs were collected, downloaded, and analyzed as a crucial component of the CIRT investigation.

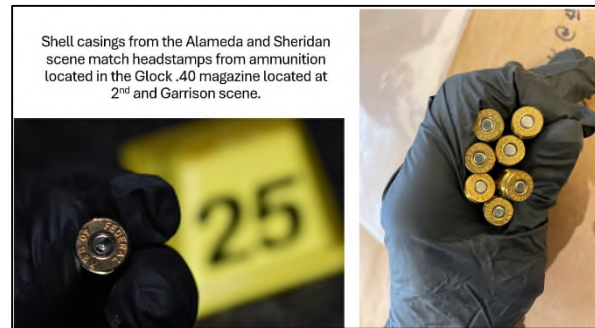
CIRT investigators obtained statements from Officers Fuss, Schilb and Faivre. They also identified and conducted interviews with civilian and law enforcement witnesses.



The distance from the initial observation of the Infiniti in Thornton by Officer Schilb to the 2<sup>nd</sup> and Garrison Street scene was approximately 17 ½ miles. The approximate time of the initial observation called into dispatch for a suspicious vehicle was 2:37am. The approximate time of the shooting was 3:02am. About three minutes passed between the shooting at Alameda Avenue to the shooting on Garrison Street.

### The Scene – Alameda Avenue and Sheridan Boulevard

Crime scene analysts located two (2) .40 Caliber shell casings in the strip mall parking lot in the area where the Officers described the Infiniti before it went down Alameda Avenue. The casing headstamps matched the casing headstamps recovered from the Glock .40 magazine found next to Ms. Castro at the 2<sup>nd</sup> and Garrison Street scene. Despite a large search effort, CIRT was unable to locate any evidence of where the bullets traveled or may have impacted the surrounding area.



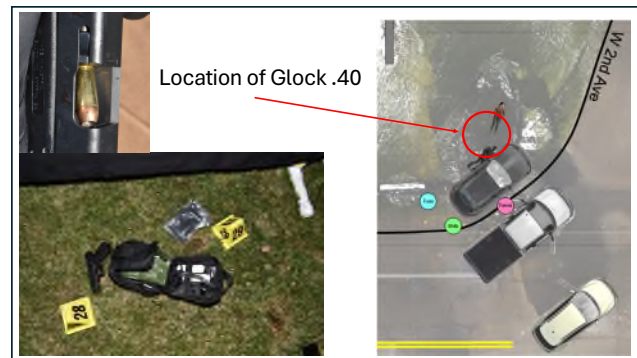
Gunfire locator technology recorded two (2) gunshots from the strip mall parking lot at 2:59:54 AM less than a second apart. Radio traffic from Officer Fuss, BWC from Officer Faivre, and witness statements reflect two (2) gunshots were fired in the strip mall parking lot while the Infiniti and Officers Fuss and Faivre's vehicles were present in the parking lot.



### The Scene – 2<sup>nd</sup> Avenue and Garrison Street

Crime scene analysts recovered seventeen (17) 9mm casings and eight (8) .223 caliber rifle casings matching the issued handguns and rifle duty ammunition provided by the Thornton Police Department to Officers Faivre, Fuss and Schilb.

A Glock .40 caliber handgun was recovered by crime scene analysts on the ground near Ms. Castro and Mr. Vigil. The Glock .40 was loaded with one (1) round in the chamber and seven (7) rounds in a seated magazine. The Jefferson County Regional Crime Laboratory analyzed the Glock .40, determined it was operable, and located Ms. Castro and Mr. Vigil's DNA on the Glock .40.



Analysis of the Infiniti revealed four (4) bullet impacts to the interior side of the driver's door, two (2) impacts to the outside of the passenger side door A pillar, and two (2) of the seventeen (17) 9mm casings were recovered from the passenger seat/ center console area of the Infiniti.



*Faivre Impacts to Infiniti*

### **Coroner's reports:**

#### **Jasmine Castro Autopsy**

Forensic Pathologist Dr. John Carver conducted the autopsy on May 1, 2024, with the following results:

1. Gunshot wound of lower leg, indeterminate range.
  - a. Trajectory: front to back, upward, and slightly left to right
2. Gunshot wound of left wrist, indeterminate range.
  - a. Trajectory: front to back, slightly down, and with no discernible left/right deviation.
3. Graze wound of right forearm, indeterminate range.
  - a. Trajectory: front to back, slightly down, and with no discernible left/right deviation.
4. Graze wound of anterior right axilla, indeterminate range.
  - a. The favored trajectory is front to back, slightly downward, and slightly left to right.
5. Gunshot wound of right buttock, indeterminate range.
  - a. Recovery: deformed 9mm bullet
  - b. Trajectory: back to front, down, and slightly left to right. Graze wound of anterior right axilla, indeterminate range.
6. Gunshot wound of right jaw, indeterminate range.
  - a. Recovery: deformed 9mm bullet
  - b. Trajectory: front to back, up, and slightly right to left.
7. Gunshot wound of head, indeterminate range.
  - a. Recovery: deformed 9mm bullet
  - b. Trajectory: back to front, left to right, and roughly horizontal.
8. Gunshot wound of right chest, indeterminate range.
  - a. Trajectory: right to left, up, and with no discernible front/back deviation.
9. Gunshot wound of right chest, indeterminate range.
  - a. Recovery: deformed 9mm bullet
  - b. Trajectory: front to back, up, and slightly right to left.
10. Gunshot wound of left abdomen, indeterminate range.
  - a. Recovery: deformed .223 caliber bullet
  - b. Trajectory: The internal wound paths for both are difficult to trace, and may converge and commingle, but appear limited to the soft tissues of the abdominal wall, and up and to the decedent's left.
11. Gunshot wound of right lateral back, indeterminate range.
  - a. Recovery: may be associated with recovery of the 9 mm bullet from the right pleural cavity, or of either of the .223 caliber bullets recovered from the right upper back and posterior left neck.

- b. Trajectory: right to left, up, and with an undetermined degree of front/back deviation.
12. Gunshot wound of left lateral back, indeterminate range.
  - a. Recovery: may be associated with recovery of the 9 mm bullet from the right pleural cavity, or of either of the .223 caliber bullets recovered from the right upper back and posterior left neck.
  - b. Trajectory: left to right, up, and with undetermined front/back deviation.
13. Gunshot entrance wound to posterior left shoulder, indeterminate range.
  - a. Recovery: may be associated with recovery of the 9 mm bullet from the right pleural cavity, or of either of the .223 caliber bullets recovered from the right upper back and posterior left neck.
  - b. Trajectory: left to right, and with undetermined up/down and back/front deviation.

Blood basic drug screen:

- Blood methamphetamine: 1400 ng/mL; amphetamine: 120 ng/mL
- Blood fentanyl: 2.9 ng/mL; norfentanyl: 1.4 ng/mL

The cause of death is multiple gunshot wounds. The manner of death is homicide.

### **Joby Vigil Autopsy**

Forensic Pathologist Dr. John Carver conducted the autopsy on May 1, 2024, with the following results:

1. Gunshot wound of head, indeterminate range.
  - a. Trajectory: left to right, slightly up, and slightly front to back.
2. Gunshot wound of head, indeterminate range.
  - a. Trajectory: left to right, slightly up, and slightly front to back.
3. Gunshot injury of right buttock, indeterminate range.
  - a. Recovery: mushroomed 9 mm bullet from right lower abdominal wall
  - b. Trajectory: back to front, slightly left to right, and slightly up.
4. Gunshot wound of right thigh, indeterminate range.
  - a. Trajectory: back to front, slightly up, and with no right/left deviation.

Blood basic drug screen:

- Blood methamphetamine: 1200 ng/mL; amphetamine: 130 ng/mL
- Blood fentanyl: 82 ng/mL; norfentanyl: 130 ng/mL; acetyl fentanyl: 0.25 ng/mL

The cause of death is multiple gunshot wounds. The manner of death is homicide.

### **Analysis**

As noted above, 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. When a person, including a police officer, intentionally shoots another person, resulting in death, they commit the crime of murder unless a legally recognized justification, like defense of oneself or others, exists. This defense is available to all Coloradoans, including police. Self-defense or defense

of others hinges on whether each officer's perception is reasonable and whether a reasonable person, under like conditions or circumstances would believe that deadly physical force was necessary to prevent imminent harm. The facts must be viewed as they appeared to each individual officer, at the time they decided to use deadly force.

Given the description provided by the Officers and their statements on body worn cameras, the 1<sup>st</sup> Judicial District Attorney sought additional review from Seth Stoughton, an expert who looks at police decisions to use force<sup>1</sup>. Specifically, there was concern that the Officers did not delineate between the events at the strip mall, the pursuit, the PTT, the stop, and the shooting. The question was whether each decision point was reasonable as the circumstances unfolded. The expert was asked to consider the reasonableness of the Officers' decisions in light of generally accepted police practices. The expert does not include prosecution as an area of expertise, so the expert's report was another factor, rather than a determining factor, in the analysis of this event for criminal charges.

Like the framework discussed here, the expert agrees that Officers may use deadly force when they have reason to believe that they, or another, are facing an imminent threat of serious bodily injury or death. For the expert, imminence means the subject had the ability, opportunity, and intention to cause serious injury or death. The expert defines someone's ability as their "capacity to cause the identified harm through some explicitly identified means or mechanism; opportunity as someone's "proximity to the potential target in light of the specific harm at issue," and, lastly; intention means someone's "perceived mental state, their apparent desire to cause the identified harm." The expert then distinguishes between an imminent threat and a risk, as the following:

*"...to distinguish the concept of 'threat,' meaning an imminent danger to a legitimate governmental interest, from the concept of 'risk.' Risk is best described as a potential threat. More precisely, risk is the presence of at least one but not all three of the prerequisites of threat (ability, opportunity, and intent) and the potential for the remaining factors to materialize. While it may be wise, in many cases for officers to mitigate risk in various ways, the lack of imminent danger to a governmental interest makes it inappropriate to use force at that point ... Additionally, the distinction between risk and threat "makes clear that a use of force cannot be predicated on an officer's speculative articulation of what an individual might have done or the threat that could have existed if the individual were to have taken certain actions."*

Evaluating the Officers' reasonableness, as it related to their perception of imminent threats, is a key component for the facts presented in this shooting. When a District Attorney evaluates a case for criminal charges, a prosecutor must prove every element of the offense but also be prepared to

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<sup>1</sup> Mr. Stoughton is widely relied upon in the field of use of force. His published research has been broadly cited by legal scholars in top journals including the *Yale Law Journal*, the *Harvard Law Review*, the *California Law Review*, the *Duke Law Journal*, the *Columbia Law Review*, the *N.Y.U. Law Review*, the *Georgetown Law Journal*, and the *Cornell Law Review*, just to name a few. He has also been broadly cited by scholars in other disciplines, most prominently in criminology (e.g., in *Criminology & Public Policy*, *Police Quarterly*, *Police Practice & Research*, *Policing: An International Journal*, the *Journal of Criminal Justice*, the *Journal of Research in Crime and Delinquency*, and the *British Journal of Criminology*) but also in public administration (e.g., in *Public Administration Review*), geography (e.g., in *Political Geography*) and psychology (e.g., in *Psychonomic Bulletin & Review* and the *Journal of Police and Criminal Psychology*). It has also been cited in textbooks, casebooks, treatises (e.g., in Wayne LaFave's *A Treatise on the Fourth Amendment*), and both popular books and academic texts (including in James Forman, Jr.'s *Locking Up Our Own*, Barry Friedman's *Unwarranted: Policing Without Permission*, Stephen Rushin's *Federal Intervention in American Police Departments*, Chris Hayes' *A Colony in a Nation*, and Norm Stamper's *To Protect and Serve*). Further, his academic research has been featured in national and international media, including in *The New York Times*, on National Public Radio, and in a host of other publications.



disprove every element of the affirmative defense or self-defense beyond a reasonable doubt. To move forward, a prosecutor is ethically bound to have a reasonable likelihood of success at trial, meaning that the prosecutor must have a good faith belief that they can prove the offense, and disprove the defense, beyond a reasonable doubt to a jury of twelve community members.

As discussed above, the Officers intended to shoot and kill two people which is murder. Knowing that the elements of the offense are present, the next step is to consider viability of a prosecution in light of self-defense, and ethical obligations at the forefront of the analysis. The evaluation of self-defense rests on whether each Officers' perceptions and decisions were reasonable based on the information they had at the time they used deadly force. After determining reasonableness, as District Attorney, I must consider whether, in light of all the facts and circumstances regarding the use deadly force and the defense of others, there is a reasonable likelihood of success in proving the case against one or all of the Officer to a jury beyond a reasonable doubt. This final question relies on all the facts, circumstances, and experience of the professionals involved in analyzing and evaluating these events, which included CIRT team members and the 1st Judicial District Attorney's Office.

### **Officer Fuss**

Though Officer Fuss was alone in his unmarked SUV in the early morning hours of April 30, 2024, he was with Officers Schilb and Faivre from the initial attempted contact with the Infiniti until all the Officers opened fire on the occupants of the Infiniti. Officer Fuss knew that the Infiniti did not have a plate and once the unmarked truck tried to contact the Infiniti, it ignored the unmarked but fully illuminated police truck and drove away. Officer Fuss continued on with the other Officers, following the Infiniti as they drove out of their jurisdiction and into Jefferson County.

Once the Infiniti drove into the gas station, without stopping for gas, and moved into the mall parking area in the wee hours of the morning, Officer Fuss saw the driver and heard and felt the first gunshot coming from the Infiniti, followed quickly by a second gunshot. Officer Fuss activated his emergency lights, confirming for the SUV that he was a police officer, then followed the Infiniti down Alameda Avenue, driving at up to 100 miles per hour. The Infiniti did not slow down until turning onto a much smaller and quieter street where Officer Fuss saw the Infiniti move over, onto the shoulder, and presumed it was a tactical decision that further put himself and the Officers behind him in danger. Once Officer Fuss and his team decided to PIT the Infiniti, Officer Fuss considered the PIT maneuver, especially at the high speed, to be deadly force.

After the Infiniti stopped in the ditch, Office Fuss jumped out of his SUV with his handgun ready and came around to where the driver, who was wearing a hoodie, was climbing out of the window. He gave one command to the driver, and he saw a black object in her hand. Officer Fuss made the decision to shoot his firearm, knowing that the occupant(s) of the Infiniti had, minutes before, shot at him and were not responding to his lights, sirens or command. Officer Fuss never verbalized that he saw a black object in Ms. Castro's hand to his fellow Officers.

While the expert concluded that Ms. Castro climbing out of the driver's side window and moving away from the Officers with something black in her hand, gave way to reasonable inference that Ms. Castro had ability and opportunity to hurt Officer Fuss or others, the expert did not believe Officer Fuss aptly perceived Ms. Castro's intent. Officer Fuss articulated a concern that Ms. Castro was going to run into the neighborhood, created a risk rather than an imminent threat. Further,

when Ms. Castro came out of the Infiniti's driver's side window, she fell to her hands and knees with her head facing toward him but was turning away as she stood, which is when Officer Fuss shot his firearm. Thus, based on generally accepted police practices, Officer Fuss's perception that Ms. Castro intended imminent serious bodily injury or death to Officer Fuss or others, was unreasonable based on an "ambiguous circumstance."

With the expert's perspective in mind, the question turns to whether there is a reasonable likelihood that twelve jurors will convict Officer Fuss of murder. The facts presented to the jury would include the Officers being shot at moments before by someone in a black hoodie who was now coming out of the Infiniti and seeing a black object in their hand, with an expert finding the circumstances ambiguous but the perception unreasonable. I conclude that given all the facts at play, there is no reasonable likelihood that a jury will convict Officer Fuss of murder beyond a reasonable doubt given all of the facts that relate to his viable self-defense. Thus, no charges shall be brought against Officer Fuss.

### **Officer Schilb**

On the evening of April 30, 2024, Officer Schilb sat as Officer Faivre's passenger in the unmarked police truck that tried to stop the Infiniti in Adams County. After hearing the gunshots in the mall parking lot, chasing the Infiniti down Alameda at 100 mph, and then seeing the Infiniti make a tactical move to the right on the roadway, Officer Schilb was aware of the danger presented by the occupant(s) of the Infiniti.

Once the Infiniti crashed into the ditch, and Officer Schilb came around the cars with his rifle, he heard gunshots and was able to see Ms. Castro had a firearm near her waistband. He did not give any commands to Ms. Castro and Mr. Vigil and did not verbalize seeing the gun to fellow Officers. Officer Schilb's perceptions and actions were reasonable, and a reasonable person, confronted with the same facts and circumstances, would believe it was necessary to use deadly physical force to address the threat posed by Ms. Castro. Therefore, no charges shall be brought against Officer Schilb.

### **Officer Faivre**

Of the three Officers who engaged with the Infiniti that night, Officer Faivre's decision making is the most problematic. Per the expert, Officer Faivre took steps that were inconsistent with generally accepted police practices. Before the Infiniti crashed into the ditch on Garrison Street, Officer Faivre initiated the stop in Adams County, decided to follow the Infiniti to Jefferson County, and knew about the initial shot fired in the mall parking lot followed by the second shot that he perceived to be directed at him and his partner, though there is a lack of evidence to confirm that perception. Officer Faivre was also part of the pursuit and saw the Infiniti move to the right side of the road in a potentially tactical manner. Once the Infiniti crashed, Officer Faivre put his truck, and himself, within about 10 feet of the occupants of the Infiniti. Officer Faivre knew this was a terrible position to be in relation to the Infiniti that he had reason to believe contained a functional firearm.

Officer Faivre could see Ms. Castro and Mr. Vigil moving around inside the Infiniti but he could not see their hands. Officer Faivre did not give any commands to Ms. Castro or Mr. Vigil or communicate to the other Officers. Instead, he chose to open fire, without a sight picture, as both

Ms. Castro and Mr. Vigil moved away from Officer Faivre, through the passenger compartment, and proceeded to climb out of the driver's side window, headfirst.

Like the other Officers, Officer Faivre's description of his decision to use deadly force is based on the events before the vehicles came to a stop on Garrison, including occupant(s) of the Infiniti firing two shots in the strip mall parking lot, eluding Officers at high speeds down Alameda Avenue, and not yielding to the Officers after the crash. These events all took place in a matter of three minutes. But unlike the other Officers, Officer Faivre had no additional information after the crash other than the occupants frantically reaching around the car, to justify his own use of deadly force. Specifically, Officer Faivre did not see or know about a black object, did not see a firearm, and could not articulate where he was shooting.

For the expert, Officer Faivre's perception is unreasonable because Ms. Castro and/or Mr. Vigil lacked the ability to pose an imminent threat. This is an interesting perspective, since the Officers had been shot at, had a reasonable belief that there was a gun in the Infiniti, and after the crash, Ms. Castro and Mr. Vigil did not cede to the Officers' authority. When considering imminence, the expert did not address the opportunity or proximity of Ms. Castro, Mr. Vigil, and the firearm, which was dramatically increased by Officer Faivre's decision to park next to the Infiniti. However, certainly the intention, as it relates directly to Officer Faivre, is lacking because Ms. Castro and Mr. Vigil are clearly moving away from Officer Faivre, and he does not have information about what his fellow Officers are seeing as Ms. Castro climbs out of the Infiniti. The autopsy further confirms Officer Faivre's perceptions as he shot Mr. Vigil along the backside of his torso and legs. Thus, both the expert and I believe Officer Faivre's perceptions of an imminent threat and decision to shoot were not reasonable at the time he decided to use deadly force.

Having concluded that Officer Faivre's actions were unreasonable, the CIRT team conducted additional investigation to determine whether there would be, in light of a self-defense or defense of others claim, a reasonable likelihood of conviction beyond a reasonable doubt to a jury of twelve people. I considered Policy 300 from the Thornton Police Department that was in effect at the time of the shooting defining imminence:

*Response to Resistance: Under such circumstances, a verbal warning should precede the use of deadly force where feasible. **Imminent does not mean immediate or instantaneous.** An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon and the officer believes the individual intends to do so.*

While our expert has seen similar policies, it is problematic here. First, Colorado's criminal law does not define 'imminent' because it so commonly used. A common definition of 'imminent' is that something is about to happen or is ready to take place which runs contrary to Thornton's policy. The expert further differentiates between an imminent risk versus an imminent threat, an officer must have an objectively reasonable belief that something is happening, not just that something might possibly happen.

Both the common definition and the structure provided by the expert run afoul of Thornton's policy for imminence, ignoring that any officer must have a reasonable belief that deadly force is only necessary to prevent imminent serious bodily injury or death. Generally, a policy does

not protect someone from criminal liability, but it can hinder the reasonable likelihood of conviction when an officer appears to be within his policy despite the unreasonableness of his actions.

Based on all of the facts and evidence in this case, particularly the shots fired from the Infiniti at the strip mall, the Infiniti's failure to respond when being chased down Alameda Avenue and that the occupant(s) were armed when he pulled up next to them, I find no reasonable likelihood of conviction at trial as a jury would struggle to parse out the risk caused by the Infiniti and the impact of Thornton's policy on the actions taken by Officer Faivre, particularly when combined with the temporal actions taken by the two other Officers. For these reasons, I do not find that we would have a reasonable likelihood of success at trial and no charges will be filed against Officer Faivre.

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

Regards,

A handwritten signature in cursive script, appearing to read "Alexis D. King", with a long horizontal flourish extending to the right.

Alexis D. King  
District Attorney  
First Judicial District  
Colorado