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Honorable Tyler Brown
Arapahoe County Sheriff
13101 E. Broncos Parkway
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RE: January 22, 2020 shooting of Diego Gallegos by Deputy Trevor Cuaz

Sheriff Brown,

The 18th Judicial District Critical Incident Response Team (“CIRT”) has completed their investigation, CIRT 20-1, into the January 22, 2020 shooting of Diego Gallegos by Arapahoe County Sheriff’s Deputy Trevor Cuaz. Investigator Michael Buoniconti, 18th Judicial District Attorney’s Office, was the lead CIRT investigator. Arapahoe County Sheriff’s Office Investigator Antonio Hernandez conducted a parallel criminal investigation under case numbers AC20-1461 and AC20-1477. I have completed my review of both investigations. Below is my summary of the facts, investigation, legal analysis and conclusion.

EXECUTIVE SUMMARY

On January 22, 2020, members of the Arapahoe County Sheriff’s Office (“ACSO”) and East Metro Auto Theft Task Force (“EMATT”) learned that Diego Gallegos would be delivering drugs in a stolen vehicle to the Cornerstar Ranch Apartments located near S. Parker Road and S. Chambers Road. Uniformed and undercover deputies responded to the apartment complex to arrest Mr. Gallegos. Sgt. Todd Fechner was driving an unmarked Ford F150 (“F150”) with Deputies Alan Wilson and Trevor Cuaz. Mr. Gallegos arrived at the complex driving a stolen Chevrolet Silverado Super Sport (“Silverado”).¹ He backed into a parking spot but did not get out of his vehicle. Sgt. Fechner drove his F150 directly in front of the Silverado placing his front bumper against the Silverado’s front bumper. Deputies Wilson and Cuaz immediately got out of the F150 and approached the Silverado yelling at Mr. Gallegos to show his hands. Mr. Gallegos attempted to drive forward into the F150 to escape. When that was unsuccessful, Mr. Gallegos drove backwards, pinning Deputy Wilson between the Silverado and a Ford Escape parked in the adjacent space. Deputy Wilson received serious bodily injury from being crushed between the two vehicles. Mr. Gallegos reversed onto a grassy area and crashed into an electrical box. Mr. Gallegos then drove forward towards the parking space where he previously struck Deputy Wilson. Deputy Cuaz fired his weapon eight times to protect Deputy Wilson and himself. Mr. Gallegos was struck three times, rounds grazed his head and chest, and one penetrated his left arm. Mr.

¹ The Silverado was stolen on December 30, 2019 in Thornton from [REDACTED]

Gallegos crashed the Silverado into several parked cars and he was immediately arrested. Mr. Gallegos survived the gunshot wounds and is facing criminal charges for his actions.

Based on my review of all materials, I find that Deputy Trevor Cuaz legally and justifiably shot Diego Gallegos based on his reasonable fear that Diego Gallegos posed an imminent threat of death or serious bodily injury to Deputy Alan Wilson and himself.

**THE STATUTORY FRAMEWORK FOR INVESTIGATIONS INTO
OFFICER-INVOLVED SHOOTINGS**

C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shootings.

This statute provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Elbert County Sheriff's Office, Littleton Police Department, Parker Police Department and Sheridan Police Department and 18th Judicial District Attorney's Office.

C.R.S. § 20-1-114 provides, in relevant part:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18th Judicial District, and includes the basis of the decision not to charge the involved officer with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I have been provided investigative materials produced by the 18th Judicial Critical Response Team and the Arapahoe County Sheriff's Office into the shooting and related criminal activity. The materials I reviewed include:

- All reports completed by members of the Arapahoe County Sheriff's Office and the 18th Judicial District Critical Incident Response Team.
- Body Worn Camera videos of Deputies Workman, Wilson, Sears, Wood, Barslund, Keuhlen, Schaefer, Fechner, and Cuaz.
- Photographs of the scene, involved vehicles, and physical evidence.
- FARO scans of the scene.
- Dispatch Recordings
- Recorded Interviews of Deputies Cuaz, Butterfield, Gagnepain, Keuhlen, McCauley, Wilson and Wood, Sgt. Fechner, Diego Gallegos, [REDACTED], and Amalia Castro.

SUMMARY OF THE FACTS

On January 22, 2020, at approximately 3:19 p.m. ACSO patrol deputies located a stolen red Dodge Ram 1500 ("Ram") abandoned on the median on East Arapahoe Road near South Nome Street.² Based on witness descriptions of three individuals associated with the stolen Ram, ACSO deputies contacted and arrested Jorge Jaime-Baez, Alexis Ruder-Iturrino and Jose Munoz-Valdes attempting to leave the area in a taxi.

Ms. Ruder-Iturrino told ACSO deputies that Diego Gallegos sold them the Ram and they knew it was stolen. She and her husband, Jorge Jaime-Baez, still owed Mr. Gallegos money for the Ram. Mr. Gallegos was going to her apartment later that evening and he would be driving a stolen white Dodge Ram truck or black Chevy Silverado Super Sport. She further advised that Mr. Gallegos steals trucks, sells methamphetamines and carries a 9 mm handgun. Ms. Ruder-Iturrino cooperated with ACSO and communicated with Mr. Gallegos to arrange the meeting at her apartment. Ms. Ruder-Iturrino was arrested on outstanding warrants. While being booked into the Arapahoe County Jail, her water broke and she was transported to the hospital, where she gave birth.

Around 5:00 p.m., undercover vehicles with ACSO and EMATT responded to the Cornerstone Ranch Apartments. Marked patrol vehicles waited nearby. The Computer-aided Dispatch "CAD" provided the following information to the officers.

5:46:09 DIEGO ASSOC W/ BLK LOWRIDER PICKUP WITH LOUD MUFFLER – KNOWN TO BE ARMED FOR HIS PROTECTION – SUPPOSEDLY NOT VIOLENT BUT DOES HAVE A VIOLENT HIST

5:46:25 NORMAL PATTERN – INFORMANT WILL CALL HIM AND SET UP A MEET AND HE WILL WALK RIGHT IN TO THAT APT

² On January 19, 2020 [REDACTED] reported to the Denver Police Department that his Dodge Ram was stolen. [REDACTED] was dating [REDACTED] and her wallet containing her driver's license and bankcards were in the Ram when it was stolen.

5:46:40 ASSOC W/ ANOTHER MALE WHO USUALLY STAYS IN CAR/ ASSOC W/
CARTEL

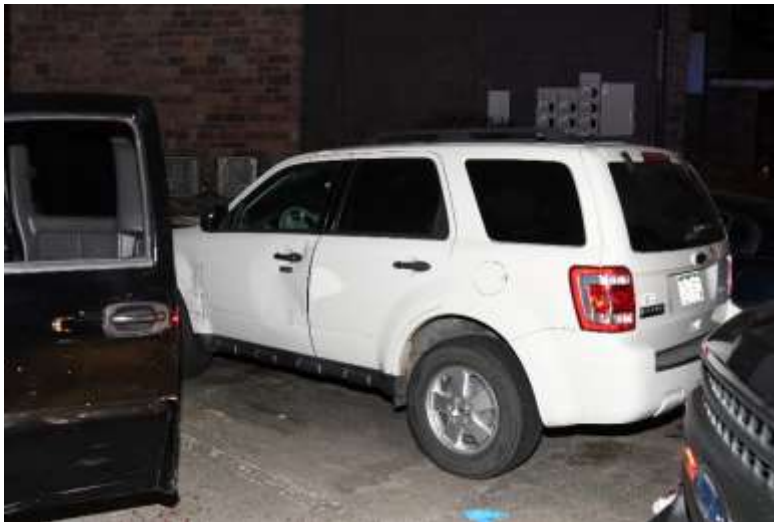
Sgt. Todd Fechner responded to the apartment complex in his unmarked Ford F150. Deputies Alan Wilson and Trevor Cuaz were in Sgt. Fechner's vehicle. Both were dressed in their ACSO uniforms. Their assignment was to contact and arrest Mr. Gallegos. Deputy Wilson was in the front passenger seat. He was armed with an AR-15. Deputy Cuaz was in the rear passenger seat and he was the less lethal cover deputy, armed with a 40 mm baton launcher.

The deputies formulated several plans to arrest Mr. Gallegos. The Deputies hoped to arrest Mr. Gallegos after he parked his vehicle while walking to Ms. Ruder-Iturrino's apartment. If Mr. Gallegos did not get out of the stolen vehicle, they planned to block his vehicle with the F150 while Deputies Wilson and Cuaz approached and ordered him to surrender.

Around 7:40 p.m., Diego Gallegos arrived at the apartment complex driving a black 2003 Chevy Silverado with a loud exhaust. The vehicle matched the description provided by Ms. Ruder-Iturrino. There were no available parking spaces near Ms. Ruder-Iturrino's apartment so Mr. Gallegos drove through the apartment complex. Deputy Butterfield, driving an unmarked vehicle, left his parking space to locate Mr. Gallegos after ACSO lost sight of him. Mr. Gallegos returned to the area and backed into the parking space vacated by Deputy Butterfield. At 7:44:37 p.m., Deputy Butterfield aired that Mr. Gallegos was backing into his former parking space. A Ford Escape and Dodge Caravan were parked next to the parking space. The parking space backed to a curb and small grassy hill.

Mr. Gallegos did not get out of the Silverado. At 7:46 p.m., Sgt. Fechner activated his emergency red and blue lights and blocked the Silverado in the parking space by placing his front bumper against the Silverado's front bumper. Deputies Wilson and Cuaz left the F150 and approached the driver's side of the Silverado. At the same time, Mr. Gallegos accelerated forward into the F150 attempting to force his way past it. Deputy Wilson ordered Mr. Gallegos to stop the vehicle and show his hands. Deputy Wilson was near the driver's door with his rifle raised at the driver's window. Deputy Cuaz was also on the driver's side of the Silverado standing behind Deputy Wilson. [REDACTED] was in the Silverado's front passenger seat and fled the vehicle shortly after Sgt. Fechner blocked the Silverado. Sgt. Fechner was the only officer who observed [REDACTED] escape the Silverado. Mr. Gallegos was unable to force his way past the F150 so he placed the Silverado in reverse and drove backwards over the curb and onto the grassy area.

In the process of reversing, Mr. Gallegos pinned Deputy Wilson between the Silverado and the parked white Ford Escape in the adjacent parking space. Sgt. Fechner was afraid Deputy Wilson would be run over and observed Deputy Wilson get pinned between the two vehicles and fall to the ground. Deputy Cuaz heard Deputy Wilson scream and observed him fall to the ground as Mr. Gallegos drove backwards. Deputy Cuaz ran after the Silverado onto the grassy area crossing to the passenger side of the Silverado. Deputy Cuaz dropped his baton launcher, believing it would be ineffective against Mr. Gallegos while inside the Silverado, and armed himself with his Glock 34 9mm.



Mr. Gallegos quickly drove backwards onto the grassy area and crashed into two electrical boxes, stopping the Silverado. Mr. Gallegos then drove forward, quickly accelerating toward the parking space where he originally struck Deputy Wilson.



Deputy Cuaz was on the grassy area near the front of the passenger side of the Silverado. Deputy Cuaz fired at Mr. Gallegos as the truck accelerated towards him and Deputy Wilson. At 7:47 p.m., Sgt. Fechner aired “Shots fired.” After being shot, Mr. Gallegos crashed the Silverado into the Ford Escape and Dodge Caravan.

Deputies arrested Mr. Gallegos and Amalia Castro. Ms. Castro was sitting in the rear passenger seat of the Silverado. Deputies immediately rendered aid until emergency medical arrived and transported him to the hospital. Mr. Gallegos sustained gunshot wounds to his head, chest and left arm. The head wound was a non-penetrating wound that resulted from a bullet striking the upper side of Mr. Gallegos’ head and traveling across his hairline. The chest wound was a grazing wound. The bullet penetrated his right pectoral area and exited on his left side. The left arm injury resulted from a bullet that penetrated the inside of Mr. Gallegos’ left arm, struck and broke the tibia, and exited the outside of his forearm. Mr. Gallegos was treated and released from the hospital and is currently in custody in the Arapahoe County Jail. Mr. Gallegos has been charged in Arapahoe

County case 20CR260 with Assault in the First Degree, Assault in the Second Degree, Vehicular Eluding and Aggravated Motor Vehicle Theft.

Crime Scene Investigators Ashley Simpson and Amy McCowan processed the scene. They observed the Silverado's engine was running despite the absence of a key in the ignition. The side driver and passenger's windows were shattered. The Silverado's front bumper struck the white Dodge Caravan SE, which was parked in a parking space. The Silverado pushed the Dodge Caravan into the passenger side door of a Hyundai Santa Fe parked next to it. The Silverado's rear driver's side bumper was in contact with the front driver's side bumper of the white Ford Escape. Deputy Cuaz's 40mm baton launcher was located on the pavement near the front driver side of the Silverado.



The Crime Scene Investigators observed bullet defects in the windows and frame of the Silverado primarily on the passenger side. A bullet defect, hair, and flesh were observed inside the Silverado.

In the grassy area, the Investigators observed tire tracks leading from the parking space where the Silverado initially parked to two electrical boxes and then to the location where the Silverado stopped. The two electrical boxes were heavily damaged. The investigators located eight spent cartridge casings and a bullet fragment in the grassy area. The casings and bullet fragment were marked with numbered placards and pictured below.



Deputy Cuaz was photographed at the Arapahoe County Sheriff's Office. Deputy Cuaz was wearing his department issued uniform and bulletproof vest. Deputy Cuaz was armed with a 9mm Glock 34. The Glock contained one live "Hornady 9mm Luger+P" cartridge in the chamber. The magazine in the Glock during the shooting contained eight live "Hornady 9mm Luger+P" cartridges. Deputy Cuaz had two magazines in addition to the one in his firearm. Each magazine had a 17 round capacity. Deputy Cuaz fired eight rounds at Mr. Gallegos.

Deputy Wilson was transported to the hospital where he was examined and treated for his injury. Deputy Wilson suffered serious bodily injury, specifically a torn labrum in his hip which may require surgery in the future.³ Deputy Wilson was interviewed after he was released from the hospital that night. At the time of the interview, Deputy Wilson was wearing his department issued pants and shoes. The right rear pocket of his pants was ripped.

The Silverado was searched at the ACSO vehicle bay on January 31, 2020. A black Titleist backpack located in the bed of the Silverado contained four pills stamped "M-30" folded into a torn \$1 bill. A pink wallet was located on the rear passenger seat. Investigators searched the wallet and found a Colorado Driver's License issued to [REDACTED], social security card issued to [REDACTED], one "M-30" pill, white crystal substance in a brown plastic bindle, white crystal substance in a small foil package, and white powder in a small baggie. Glass pipes were found on the driver and passenger's side floorboards and center console. In the center dash cubby, investigators found another small baggie with white powder residue and [REDACTED]'s debit card. Nine white capsules filled with white powder were seized out of a black bag on the rear floorboard. All of the suspected controlled substances have been sent to the Unified Metropolitan Forensic Crime lab for testing. Five bullet fragments were located inside the

³ Colorado law defines "serious bodily injury" as bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree. C.R.S. §18-1-901(3)(p).

Silverado in the following locations: passenger side doorframe, driver's side A pillar, passenger side headrest and two fragments in the passenger side doorframe seal. No firearms were found in the Silverado.

CIRT canvassed the apartment complex in an attempt to locate witnesses or recordings of the shooting. [REDACTED] lived in the complex and observed the shooting. She provided the following written statement.

At around 8 PM on 1/22/20, a black truck was surrounded by police officers. The truck tried to abruptly back out of the parking spot and hit the power box that was behind it. After hitting the power box, it drove forward and hit at least two parked vehicles. Afterward, the cops were yelling for the driver to put his hands where they could see them. After the cops repeated themselves multiple times, shots were fired (I don't know who was firing). The dogs were brought onto the scene to try to find the escaped driver, who had abandoned the truck.

CIRT and ACSO interviewed all officers involved in the surveillance and shooting. Witnesses and suspects associated with the stolen vehicles were also interviewed.

Sergeant Todd Fechner

Sergeant Fechner was interviewed the evening of the shooting and provided the following information. After Mr. Gallegos backed into the parking space, Sgt. Fechner blocked the Silverado using his F150. Sgt. Fechner observed Mr. Gallegos in the driver's seat and recognized him based on information provided to the surveillance team. As Mr. Gallegos accelerated into the F150, he feared Deputies Wilson and Cuaz could be killed. He observed Deputy Wilson get pinned between the Silverado and another parked car. He then observed Deputies Wilson and Cuaz move to the rear passenger side panel of the Silverado prior to Mr. Gallegos backing up. Sgt. Fechner observed the front passenger, [REDACTED], flee the vehicle prior to Deputy Cuaz shooting. The Silverado backed directly towards Deputies Cuaz and Wilson and he believed that is when Deputy Cuaz fired his weapon. Sgt. Fechner recalled hearing three shots. The Silverado then rolled forward into the parking space and stopped after hitting parked cars. Sgt. Fechner left his vehicle and attempted to open the driver's door, but it was locked. Sgt. Fechner observed the driver's side door window was shattered from a bullet so he removed the glass and opened the door by reaching into the Silverado. He removed Mr. Gallegos from the driver's seat and placed him under arrest. Deputy Gagnepain and Investigator McCauley tended to his injuries until emergency medical arrived. Sgt. Fechner coordinated the search for [REDACTED]. Sgt. Fechner noted that everything happened very quickly. Sgt. Fechner did not fire any weapons.

Deputy Alan Wilson

Deputy Wilson was interviewed the evening of the shooting after being released from the hospital. Deputy Wilson provided the following information. After Sgt. Fechner blocked the Silverado with the F150, Deputy Wilson observed Mr. Gallegos in the driver's seat moving his hands up and down when he was trying to escape. Deputy Wilson ordered Mr. Gallegos to show his hands and pointed his rifle at the driver's side window. Mr. Gallegos slammed the Silverado into reverse and pinned Deputy Wilson between the Silverado and Ford Escape. Deputy Wilson was dragged along the car and he thought he was going to die. Deputy Wilson did not see the front or rear passengers.

After Mr. Gallegos drove backwards onto the grass, Deputy Wilson ran across the parking space and repositioned himself on the passenger side of the Silverado. He heard Deputy Cuaz fire multiple shots when the truck drove forward. Deputy Wilson feared for his safety during the incident. After the Silverado crashed, Deputy Wilson broke out the passenger side window and located Amalia Castro in the rear passenger seat. Deputy Wilson was wearing his body worn camera but he did not turn it on until after the Silverado crashed. Deputy Wilson did not fire his weapon.

Amalia Castro

Ms. Castro was arrested for several outstanding warrants following the shooting and crash. She was interviewed at the Arapahoe County Sheriff's Office after being advised of and waiving her *Miranda* rights. She identified the driver of the Silverado as Diego and the passenger as [REDACTED]. Diego and [REDACTED] picked her up around 7 pm. Diego drove to an apartment complex and backed into a parking spot. Diego contacted a "girl" on his cellphone and she told him to wait downstairs. She observed a cop car with red and blue lights ram them. She heard two deputies yelling at Diego to stop the car. She yelled, "Go, go, go!" at Diego and ducked. She felt the Silverado reverse and heard shots being fired. She felt the car hit something. She observed the passenger door open but did not see [REDACTED], her boyfriend, run away. She claimed that she did not know the Silverado was stolen. Later in the interview, she said that Diego and [REDACTED] knew the Silverado was stolen. She also reported there were no firearms inside the Silverado.

[REDACTED]

On January 24, 2020, [REDACTED] unexpectedly showed up at the Arapahoe County Sheriff's Office. Law enforcement had not contacted him prior to his arrival. He was interviewed at the Arapahoe County Sheriff's Office by Investigator Antonio Hernandez and 18th Judicial District Attorney Investigator Christopher Dulmage. [REDACTED] provided the following information. He is a friend of Diego and they regularly hang out and smoke marijuana and methamphetamine. He knows that Diego steals cars. He has not seen Diego possess a gun and does not believe he is involved in any gangs. On January 22, 2020, he hung out with Diego starting in the early afternoon. He observed Diego place drugs in the Silverado wrapped in a \$1 bill. He does not know who owned the Silverado. He first saw Diego driving the truck fifteen days before the shooting. Later, Diego drove [REDACTED] and Ms. Castro to the apartments on East Fremont Ave. Diego said he was going there to get money. When they arrived, Diego parked the car and called someone. The police arrived immediately driving a car with red and blue lights. [REDACTED] observed two officers exit the police car; they yelled and pointed guns at them. Diego immediately turned on the Silverado and accelerated into the police car. [REDACTED] knew Diego was trying to escape. [REDACTED] fled the vehicle from the passenger door. [REDACTED] heard approximately four shots while running away. [REDACTED] hid in weeds outside the apartment complex until the next morning.

Diego Gallegos

On January 22, 2020, ACSO Investigator Garner and 18th Judicial District Attorney Investigator Christopher Dulmage attempted to interview Mr. Gallegos at the hospital but he refused. On January 27, 2020, Mr. Gallegos called ACSO Investigator Christopher Garner and left a message indicating that he wanted to make a statement. He also claimed that he did not steal the Silverado.

Investigator Garner notified Investigator Hernandez who, along with ACSO Investigator Horvarth and 18th Judicial District Investigator Buoniconti, spoke with Mr. Gallegos in the Arapahoe County Jail Medical Unit. Mr. Gallegos provided the following information. Mr. Gallegos reported that [REDACTED] steals cars. Mr. Gallegos and Ms. Castro were with [REDACTED] when [REDACTED] stole the Dodge Ram. Before January 22, 2020, Mr. Gallegos delivered the stolen red Dodge Ram to Jorge Jaime-Baez. [REDACTED] also stole the Silverado. On January 22, 2020, [REDACTED] requested Mr. Gallegos drive him to Mr. Jaime-Baez's house to collect \$750 for the stolen Dodge Ram. When they arrived at the apartment complex, they called Mr. Jaime-Baez's wife and she told them to wait outside. He backed into a parking spot. The police contacted them within five minutes. Their red and blue lights were on. [REDACTED] immediately ran from the Silverado. Ms. Castro told Mr. Gallegos to drive off. Mr. Gallegos believed she wanted to escape because she had active warrants for her arrest. Mr. Gallegos accelerated into the police car. Two police officers got out of the truck and they went to each side of the Silverado. He knew they were peace officers because of the red and blue lights. Both officers were screaming at him to stop. One of the officers tried to break out his window. He did not stop because Ms. Castro was yelling at him and he was nervous. He drove into a grassy area and then drove forward. He did not remember hitting anything as he backed up. He was shot at least three times. After being shot, he put the car in park. Officers pulled him out of the Silverado and arrested him. Mr. Gallegos admitted possessing methamphetamine in the truck. He claimed that Ms. Castro had methamphetamine in her purse and smoked "M-30" fentanyl pills. Mr. Gallegos stated there were no firearms in the truck. Mr. Gallegos stated he did not know that he hit a peace officer and felt bad about it. Mr. Gallegos expressed remorse for the trouble he caused. During the interview, Mr. Gallegos pointed to where he was shot in the arm and said that he may have earned that.

Mr. Gallegos has an extensive criminal history. He was on probation for Theft, Carrying a Concealed Weapon and Aggravated Motor Vehicle Theft during this incident. Mr. Gallegos has prior arrests for Theft, Drugs, Carrying a Concealed Weapon, Aggravated Motor Vehicle Theft, Eluding a Peace Officer and Assault. Law enforcement searched Mr. Gallegos' Facebook account and found evidence of drug dealing and photos of assault weapons, a 9mm pistol, methamphetamine and pills.

Deputy Trevor Cuaz

Deputy Cuaz was interviewed on January 24, 2020, by Investigator Antonio Hernandez and 18th Judicial District Attorney Investigator Christopher Dulmage. Deputy Cuaz provided the following information. Deputy Cuaz is a veteran and saw combat in Iraq. Deputy Cuaz joined the Sheriff's Office in 2012. He is assigned to patrol and is on the SWAT team. On January 22, 2020, he worked his normal patrol shift from noon to 10 p.m. He assisted in the investigation of the Ram that led to the arrest of Jorge Jaime-Baez, Alexis Ruder-Iturrino and Jose Munoz-Valdes. Ms. Ruder-Iturrino told Deputy Cuaz that Diego stole the truck and that he was going to her apartment to sell drugs. She also claimed that he was associated with a Cartel. Sergeant Fechner and Deputies Wilson and Cuaz were assigned to arrest Diego when he arrived at Ms. Ruder-Iturrino's apartment. They were told that Diego was armed and dangerous. After Mr. Gallegos parked the Silverado, Sergeant Fechner pinned the vehicle in the parking space. Deputies Wilson and Cuaz approached the driver side of the Silverado. Deputy Cuaz recognized Diego Gallegos as the driver of the Silverado. Mr. Gallegos moved his hands up and down; Deputy Cuaz was concerned because he did not know what Mr. Gallegos was doing. Mr. Gallegos drove forward attempting to drive past Sgt. Fechner's F150. Deputy Cuaz heard the Silverado's engine revving and the tires

spinning. Deputy Cuaz feared for Deputy Wilson's safety because he was on the driver's side of the Silverado with cars parked next to him. After Mr. Gallegos was unable to escape by driving forward, he drove in reverse and "smashed" Deputy Wilson between the Silverado and the car parked next to it. Deputy Cuaz felt this might have been intentional. Deputy Wilson screamed in pain and fell to the ground in the parking spot. Deputy Cuaz believed Mr. Gallegos posed a lethal threat based on his driving actions. Deputy Cuaz dropped his 40mm baton launcher and pulled his handgun. Deputy Cuaz followed the Silverado as it drove backwards onto the grassy area, crossing to the passenger side. Deputy Cuaz passed Deputy Wilson who was on the ground in the parking space and did not see Deputy Wilson again until after he fired his weapon. Deputy Cuaz did not fire at Mr. Gallegos while he was driving backwards because no one was behind him and he did not pose a lethal threat. The Silverado stopped after hitting electrical boxes. Deputy Cuaz believed the truck could only drive forward through the parking space where he believed Deputy Cuaz would be struck or run over by the Silverado. As the truck drove forward, Deputy Cuaz shot at the driver through the passenger side of the Silverado. Deputy Cuaz believed he fired 5-6 times. Deputy Cuaz fired because he was scared that Mr. Gallegos would run over Deputy Wilson or himself. Deputy Cuaz stopped firing when the vehicle stopped accelerating. The truck drove forward and stopped after crashing into two parked cars. Deputy Cuaz went to the passenger side of the vehicle and removed Ms. Castro from the rear passenger seat. Deputy Cuaz did not see [REDACTED] in the Silverado or fleeing from it. Deputy Cuaz assisted in searching for [REDACTED] until Sgt. Fechner called him back to the scene. Deputy Cuaz was armed with a Glock 34 9mm handgun. Deputy Cuaz was carrying three magazines with a 17 round capacity. He was not carrying a backup handgun. Deputy Cuaz was not wearing his body worn camera during the shooting because the battery was dead.

APPLICABLE LAW

The District Attorney's review of this event is guided by the following statutes pertaining to the use of deadly force by peace officers:

Deputy Cuaz's use of his service weapon, and firing eight shots constituted the use of deadly physical force, as that term is defined by Colorado law. Deadly physical force "means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death." C.R.S. § 18-1-901(3)(d).

C.R.S. § 18-1-707 states in relevant part:

(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.

ANALYSIS AND CONCLUSION

The question presented is whether Deputy Cuaz reasonably believed that the use of deadly physical force was necessary to defend himself or others from what he reasonably believed to be the imminent use of deadly physical force. Deputy Cuaz's actions were reasonable and justifiable based on Diego Gallegos's actions. Deputy Cuaz observed Mr. Gallegos disregard Deputy Wilson's lawful commands to stop. Mr. Gallegos attempted to escape by forcing his vehicle past the F150. When that did not work, Mr. Gallegos intentionally drove backwards attempting to escape the officers and, in so doing, pinned Deputy Wilson between two vehicles causing serious bodily injury. After striking the electrical boxes, Mr. Gallegos then drove forward towards the deputies. Mr. Gallegos posed a specific and imminent threat to Deputy Wilson and himself. I find that Deputy Cuaz reasonably believed that Mr. Gallegos posed an imminent threat of deadly physical force to Deputy Wilson and himself when he drove towards the deputies. As such, I find that Deputy Cuaz was justified in using deadly physical force against Diego Gallegos to defend Deputy Wilson and himself from the imminent use of deadly physical force. No criminal charges will be filed against Deputy Cuaz.



Jason Siers
Chief Deputy District Attorney