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Chief Jerry Garner
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

RE: Investigation of the October 28, 2017 Officer-Involved Shooting of Danny Sanchez

Chief Garner:

The investigation into the shooting of Danny Sanchez has been completed by the Critical Response Incident Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officers who discharged their weapons. Included with this report is a summary of the investigation.

I have determined that, under the circumstances presented in this investigation, I will not release the names of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act (CJRA) requires disclosure of records of official actions by criminal justice agencies.

These cases are not directly on point as the release of the officers' names alone does not fall squarely within the CJRA, but they are informative in analyzing whether such disclosure is appropriate. The cases require a "balancing test" by the custodian of criminal justice records prior to the disclosure of criminal justice records. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

Here, the balancing test shows that the privacy interests of the individuals who may be impacted by a decision to allow inspection (i.e. the officers involved in this incident) outweigh the other four factors to be considered. The continued safety of the officers and their families is of paramount concern in this case since the individual involved in the incident with law enforcement has very strong and documented ties to known criminal gangs. This investigation has determined through several sources that Sanchez was an active member of the Sureno street gang. Therefore, I will not release the names of these officers, and they will be referred to in this report as Officers #1, 2, 3 and 4.

INVESTIGATIVE SUMMARY

On October 27, 2017 at approximately 11:12 p.m., an anonymous caller notified the Weld County Regional Communications Center that Danny Sanchez was leaving a motel in Longmont and headed back to a trailer located in the Villa West Trailer Park on 2626 1st Street in Greeley. The caller indicated that Sanchez was a fugitive with a parole revocation warrant and was possibly armed with a 9mm handgun. Further, the caller indicated that in recent conversations, Sanchez had stated that “my time is going to be coming soon, I’m not going back to prison.”

Officers were able to confirm that Sanchez had two active felony warrants, was identified as a member of the Surenos street gang, and had a history of methamphetamine use. Based on this warrant confirmation, Officers responded to the Villa West Trailer Park in an effort to contact and arrest Sanchez on these warrants. At approximately 1:30 a.m. on October 28, two officers were surveilling the cul-de-sac where Sanchez’s sister lived. Fifteen minutes later, Sanchez left the trailer and got into a 2001 black Ford Explorer. The officers positioned their unmarked car behind the Explorer, activated their emergency lights, and exited their car to conduct a stop on the Explorer. They identified themselves as officers and ordered Sanchez out of the car. In response, Sanchez revved the engine and backed the Explorer into the unmarked car, causing the officers to jump out of the way to avoid being run over.

Officers continued to order Sanchez out of the vehicle. Sanchez instead drove forward through a grassy area in between two trailers in order to flee the police. Other officers who were responding to the area began following and attempting to stop Sanchez. This pursuit lasted approximately 10 minutes according to the dispatch radio traffic. At one point during the pursuit, Sanchez swerved his Explorer into on-coming traffic, attempting to ram a police vehicle. At two other times during this pursuit, Sanchez brandished and pointed out the window at pursuing officers what appeared to be a black semi-automatic handgun.

At 1:55 a.m., Sanchez drove back into the cul-de-sac where his sister’s trailer was located. On a neighbor’s surveillance camera, Sanchez is seen jumping out of the Explorer while it was still rolling forward. Sanchez’s sister is seen directing him towards another vehicle which she had turned on for him just as Officers #1, 2, 3 and 4 are seen running into the area. The officers began yelling commands at Sanchez to include “drop the gun,” “stop,” and “show us your hands.” Officers described Sanchez running away from them, towards unit #275 which officers knew to be occupied by other persons to include children.

As he ran, officers described his right hand going towards his waistband and his right shoulder beginning to drop. This action, coupled with the failure to obey their commands, caused the officers to believe that he was going for a gun and was going to shoot them. Officers #1, 2, 3 and 4 all discharged their firearms at Sanchez, causing him to fall to the ground. Following an autopsy by a medical examiner, it was determined that one of these rounds had perforated Sanchez’s aorta. According to the coroner, Sanchez would have either been deceased or nearly deceased as he fell based on this single shot alone.

Sanchez fell to the ground landing on his stomach with both hands underneath him. The

officers, believing Sanchez was still alive and armed, attempted unsuccessfully to pry his arms out from underneath him. One officer reached underneath Sanchez's body and stated that he felt something hard and believed it to be a firearm. After several more efforts to pry out Sanchez's hands, Officer #3 asked Officer #1 if he had a shot. Officer #1 indicated that he did, and fired two additional rounds at Sanchez's head.

At the autopsy, it was determined that Sanchez was shot a total of 20 times by Officers #1, 2, 3 and 4. In addition, toxicology results indicated that Sanchez had 4,200 ng/ml of methamphetamines in his system. According to the coroner, this level is ten times the limit known to cause individuals to exhibit hallucinations, aggressive behaviors and irrational reactions.

Investigators from the CIRT processed the crime scene. Twenty-eight (28) shell casings were collected from the area where Officers #1-4 discharged their weapons. There was no firearm found underneath Sanchez but a cell phone was located and collected. Inside of the black Explorer investigators located what appeared to be a firearm tucked underneath a black duffel bag:



Once recovered, this "firearm" was determined to be a BB gun manufactured to look like a semi-automatic handgun:



APPLICATION OF THE FACTS TO THE LAW

The District Attorney's office may ethically charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. Because the evidence establishes that Sanchez was shot and killed by officers, the determination of whether their conduct was criminal is a question of legal justification.

C.R.S. § 18-1-707(2) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary...**to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force...** OR to effect an arrest...of a person he

reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

C.R.S. § 18-1-901(3)(d) “Deadly Physical Force” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Sanchez intended to use deadly force. The issue is whether it was reasonable for the officers to believe that he was about to use deadly physical force against the officers or another person with a deadly weapon.

In this case, the officers were attempting to stop Sanchez who pointed what appeared to be a firearm at them as he eluded them. This occurred after he had already rammed a police vehicle when he was initially contacted. When he was ultimately confronted by Officers, Sanchez attempted to enter a trailer home occupied by multiple people, including children. Thus, law enforcement believed the occupants of the home may be in danger. As Sanchez fled towards the house he motioned towards his waistband, dropped his shoulder and it appeared to the officers he was going to shoot at them with the weapon he had just brandished while he was eluding them. The four Officers fired multiple times and Sanchez went to the ground.

After going to the ground, officers attempted to gain control of Sanchez. They were unable gain control of his right arm, and felt a hard object that they believed to be a weapon. Officer #3, fearing for his safety and others asked if anyone had a shot. Officer #1 said he did, and fired two more rounds at Sanchez’ head.

Throughout the course of the incident, Sanchez refused to comply with commands, eluded police, and threatened them with what appeared to be a firearm. When ultimately stopped, he refused to show his hands and instead fled towards an occupied residence.

Sanchez would have clearly known that the individuals giving him commands were police officers because many of them were in uniform and he eluded law enforcement vehicles with their overhead lights on. Sanchez had been continuously pursued by officers after they attempted to arrest him nearly 10 minutes earlier. During the pursuit, he pointed what appeared to be a firearm at the officers.

The officers reasonably believed when they fired their weapons that other citizens at or near the residence in Villa West trailer park as well as themselves and other officers were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the officers were justified in using lethal force against Sanchez because they reasonably believed that it was necessary to defend themselves and other citizens from Sanchez’ threatened use of deadly physical force.

CONCLUSION

Under C.R.S. § 18-1-707(2)(a) and (b), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the lawless and dangerous actions of Mr. Sanchez. As a result, the Weld County District Attorney's Office will not file charges against the Officers for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Rourke". The signature is written in a cursive style with a prominent initial "M".

Michael J. Rourke
District Attorney