



MICHAEL J. ROURKE
District Attorney

ROBERT W. MILLER
Assistant District Attorney

Office of the District Attorney
Nineteenth Judicial District

915 10TH Street
P.O. Box 1167
Greeley, CO 80632
Phone: (970) 356-4010
Fax: (970) 352-8023
www.weldda.com

February 16, 2018

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

RE: Investigation of the December 21, 2017 Officer-Involved Shooting of Jose Agüero

Chief Garner:

The investigation into the shooting of Jose Agüero 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. Attached hereto are the findings of the Investigations section of the District Attorney's office based on the entirety of the CIRT investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

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 Aguero was an active member or associate of the Norteno 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.

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 Aguero 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...**

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 Aguero 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 apprehend Aguero for Aggravated Motor Vehicle Theft. When he was ultimately confronted by Officers, Aguero walked out into the middle of a harvested cornfield refusing to comply with officers' commands and keeping his

right hand hidden near his waist. Aguero was ultimately shot with less lethal bean bags to attempt to gain his compliance. When this happened, he went to his knees. While on his knees, he pulled his right hand from his waist, armed with a handgun. He pointed the handgun in the direction of some of the officers and the four Officers fired multiple times, including less lethal rounds.

Aguero would have clearly known that the individuals giving him commands were police officers because many of them were in uniform or still in their police vehicle.

The officers reasonably believed when they fired their weapons that they or other officers were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that the officers were justified in using lethal force against Aguero because they reasonably believed that it was necessary to defend themselves and other citizens from Aguero' threatened use of deadly physical force. Further, Aguero had committed a felony when he menaced officers with what they reasonably believed to be a deadly weapon.

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. Aguero. 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 that reads "Michael J. Rourke". The signature is written in a cursive style with a prominent initial "M".

Michael J. Rourke
District Attorney



Officer Involved Shooting December 21, 2017
Greeley Police Department
Unincorporated Weld County, Colorado
Investigator Don Potter

17G107166

SUMMARY

On December 21, 2017 at 9:01am Greeley Police officers were dispatched to a report of a stolen vehicle at the Dollar General Store, 1412 8th Ave. The victim had recently purchased a red 2018 Chevrolet Cruze and had received two sets of keys and two key fobs for the vehicle. The victim left her vehicle running in the parking lot with the keys in the ignition and entered the Dollar General with the second set of keys, believing that she had locked the doors from the outside with the second key fob. The victim believes that as she entered the store she observed a white vehicle occupied by two Hispanic males parked next to the store.

Inside the store a Hispanic male, later identified as Jose Aguero, was attempting to make a purchase with a credit card but the transaction was declined. Frustrated, Aguero abandoned the purchase and walked out of the store. Store employees stated that Aguero and an unidentified Hispanic male had been seated together in a white vehicle outside the store. When the victim exited the Dollar General she saw that her vehicle was gone, as was Aguero and the white vehicle.

Dispatch aired a verbal Be On the Look Out report for a red 2018 Chevy Cruze with a temporary registration. Several Greeley Police officers drove to the area of the Dollar General to attempt to locate the vehicle. As Officer Boren approached the intersection of 7th Ave and 15th St he observed a vehicle matching the description backed into a driveway. He saw the vehicle was running and was occupied by a male in the driver's seat. As Boren got closer the vehicle quickly left the driveway and headed north on 7th Ave. Boren lost sight of the vehicle as it turned east onto 14th St but could follow the tracks made by the vehicle in the freshly fallen snow. Boren again saw the vehicle as it turned westbound onto 17th St from 6th Ave. Multiple other officers observed the vehicle driving in the area but did not actively pursue due to weather conditions.

At 9:14 am dispatch advised officers of a suspicious vehicle call at Dictoguard located at 914 14th St. It was reported that a white sedan had driven quickly into the parking lot of the business. An unknown male driver then exited the vehicle with the engine still running and ran southbound down an alley. Sergeant Heck, while responding to Dictoguard, observed a red Chevy Cruze driving on the sidewalk at the intersection of 9th Ave and 14th St. Heck followed without lights and sirens and discontinued following due to weather conditions as the Cruze went southbound on 11th Ave.

On December 19, 2017 at approximately 6:45am Evans Police officers were dispatched to a report of a stolen blue Dodge Ram truck parked in the Bluebells neighborhood; the truck reported to have been stolen the previous day in Greeley. As officers approached the truck they observed two Hispanic males sleeping in the front seats. When officers began giving commands the males awakened. The male in the driver seat then started the truck and drove quickly away. Body cam footage of the incident was provided to Greeley detectives and the male in the driver's seat was identified as Jose Aguero using booking photos and a Facebook page. In the video Aguero can clearly be seen wearing a shoulder holster though it cannot be determined if there is a weapon in the holster. The male in the passenger seat has not been identified.

During the evening of December 19, 2017, a Greeley property owner reported that a white car and a blue truck had been parked on his property at 7:30 am. The property owner said the blue truck left leaving the white car behind; then later in the afternoon the truck returned and the white car left. The truck was recovered on the property by police and found to be the same truck as was contacted by Evans Police officers earlier that day.

Officer 3, who is a Detective in the property crimes unit of the Greeley Police Department, was assigned to do follow up regarding the stolen Oldsmobile Alero and Dodge Ram. On December 20, 2017 Officer 3 met with the mother and brother of Jose Aguero. He learned that Aguero had called his mother the previous day after the attempted contact by the Evans Police Department and told her that officers had pointed guns at him earlier in the day. During this contact Officer 3 also learned that Aguero had expressed suicidal ideations and had made mention of committing suicide by cop to multiple family members.

Through investigation Aguero was determined to be a primary suspect in the recent thefts of an ATV, Ford truck, Dodge truck, and Oldsmobile sedan. On the morning of December 21, 2017 Officer 3 was at the Greeley Police Department writing an arrest warrant with named Defendant Jose Aguero for the theft of the blue Dodge truck. He listened to the radio as officers were dispatched to the stolen vehicle at the Dollar General and then dispatched a few minutes later to the suspicious vehicle at Dictoguard. Officer 3 and Detective Jackson went to Dictoguard to examine the suspicious white vehicle abandoned in the parking lot.

Officer 3 determined the vehicle, a white Oldsmobile Alero was reported stolen 12/19/17 at 7:15am, approximately 30 minutes after Evans Police had attempted contact with the occupants of the blue Dodge truck. Located inside the Alero was a handheld two-way radio, a folding knife, an airsoft pistol loaded with bb's, and thirty-four live .38 caliber rounds. A matching two-way radio was recovered later from the stolen Chevy Cruze.

That morning at approximately 10:28am, just over an hour after the Chevrolet Cruze had been stolen, Officer 3 obtained the VIN number of the vehicle and contacted OnStar. OnStar provided a location for the vehicle of 4601 77th Ave (Two Rivers Parkway) and said that the vehicle had been remotely disabled. Multiple officers began driving that direction.

While officers were driving to Two Rivers Parkway it was relayed over the radio that the suspect was potentially Jose Aguero. The recent auto thefts in which he was a suspect were discussed, that he had recently been witnessed wearing a shoulder holster, and that he had recently expressed suicidal ideations and specifically mentioned suicide by cop to his family. Also aired on the radio and available to officers within the Spillman reporting system were two hazards which had been added to Jose Aguero's digital name file. The hazards state, "Party known to be violent. Threatened suicide by cop carrying and machete. Cocaine is his drug of choice. Use caution. (6/19/16)" and "Jose is possibly armed with a handgun, extremely paranoid and angry... (5/8/17)".

Sergeant Heck was the first to arrive to the area of 37th St and Two Rivers Parkway. He saw a red sedan south of the intersection off the west side of the road. The vehicle was nose first in a ditch and a pickup truck was behind it with an unknown male working to hook up a tow strap to

the vehicle to free it from the ditch. Heck determined that this was the stolen Chevy Cruze and asked the unknown male where the driver of the vehicle had gone. The male pointed toward his truck. As Heck looked at the truck he saw the same male he had previously seen driving the stolen vehicle at the intersection of 9th Ave and 14th St.

Aguero ran south from the truck on Two Rivers Parkway and then west into an oil tank battery. He ran through the battery and southwest into a mowed corn field. As he ran he held his right hand in his coat pocket while waving his left hand in the air. He yelled, "Don't shoot me. Don't shoot me. I don't want to die."

Heck reentered his patrol vehicle, a marked Chevrolet Tahoe with Greeley Police prominently displayed on the side, and drove into the field with his emergency lights activated to the west of Aguero. Officer 3 and Detective Jackson arrived in the area and drove into the field in their patrol vehicle. They followed Aguero southbound in the field remaining in their vehicle with both front doors open and each officer positioned seated in the vehicle while leaning out of the door looking between the A-pillar and the door.

Officer 3 and Detective Jackson were in an unmarked police sedan. The front red and blue lights and oscillating headlights were activated. Both yelled verbal commands to Aguero of "Show me your hands." Aguero continued to walk south, maintaining his right hand in his pocket and waving his left hand in the area. As he walked he yelled, "Don't shoot me. Don't shoot me. Shoot Me." and "Call my mom, don't shoot me".

Officer 4 arrived and joined Sergeant Heck to the west of Aguero. Officer 4 deployed a less lethal shotgun. Both she and Heck then exited their patrol vehicles and began approaching Aguero on foot from the west. Both Officer 4 and Sergeant Heck were in marked patrol vehicles and wearing standard Greeley Police uniforms.

Officer 1, Officer 2, and Officer Corliss arrived and entered the field east of Aguero. Officer Corliss went to the trunk of his vehicle to obtain a pepper ball launcher while Officers 1 and 2 continued southbound toward Aguero on foot. Officer 1 was in plain clothes but wearing an external ballistics vest with the word 'Police' across the front. Officer 2 was in standard Greeley Police uniform.

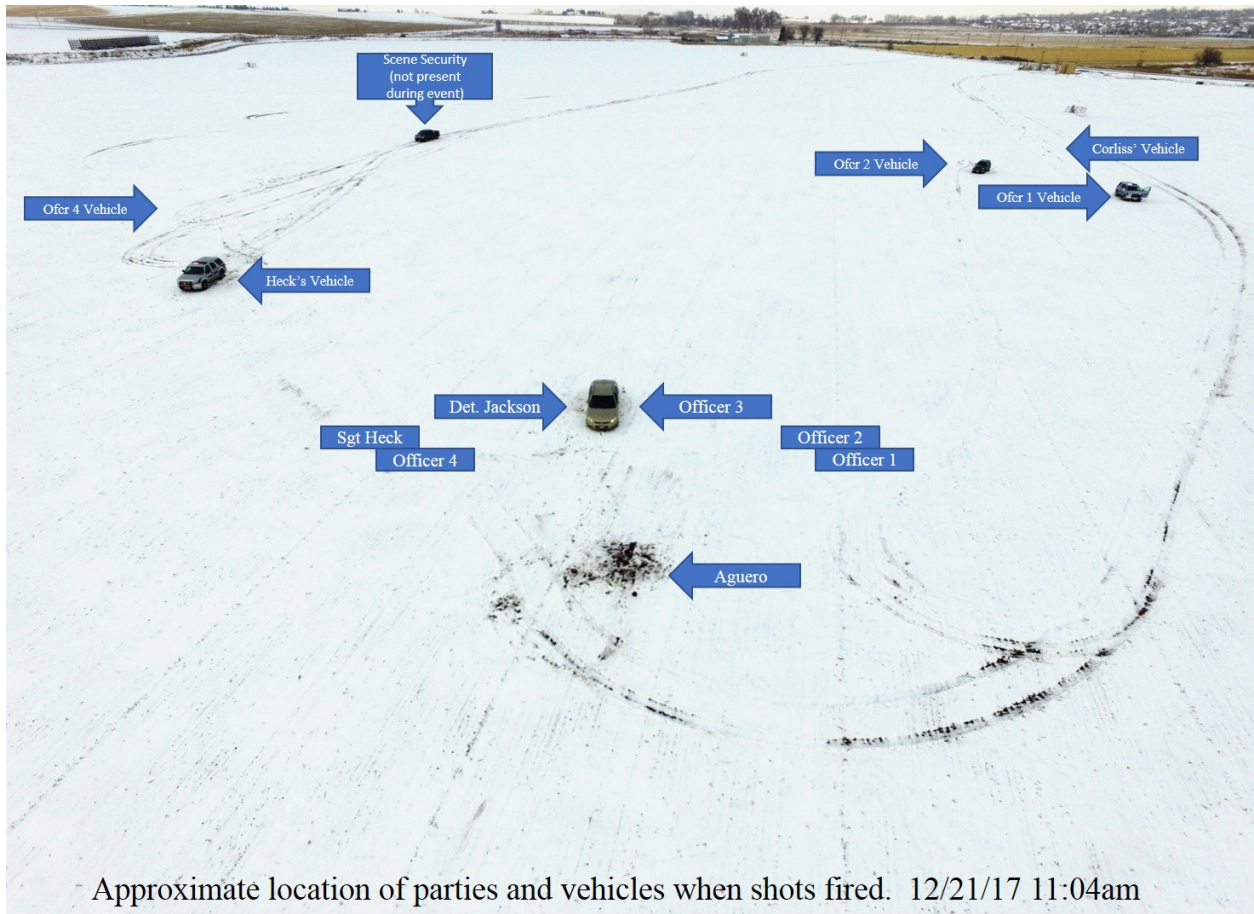
Officers following Aguero continued to issue verbal commands of "get on the ground," "show me your hands," "get your hand out of your pocket," and "stop." Aguero continued to disregard the commands and walk southbound away from the officers. Sergeant Heck announced verbally that a less lethal round would be fired and ordered Officer 4 to do so. Officer 4 fired a bean bag round which impacted Aguero in the back toward his right shoulder. Aguero fell to a knee and then stood back up. Officer 4 fired a second bean bag round which impacted Aguero in his lower left back and fell again to his knees. Aguero still maintained his right hand in his pocket and his left hand in the air.

Aguero was on his knees in the field facing to the southeast. Officers were positioned in a line to the north of his position. He pulled his right hand from his coat pocket and in his hand was a silver revolver. Officers yelled for Aguero to drop the gun. He did not. Aguero raised his right

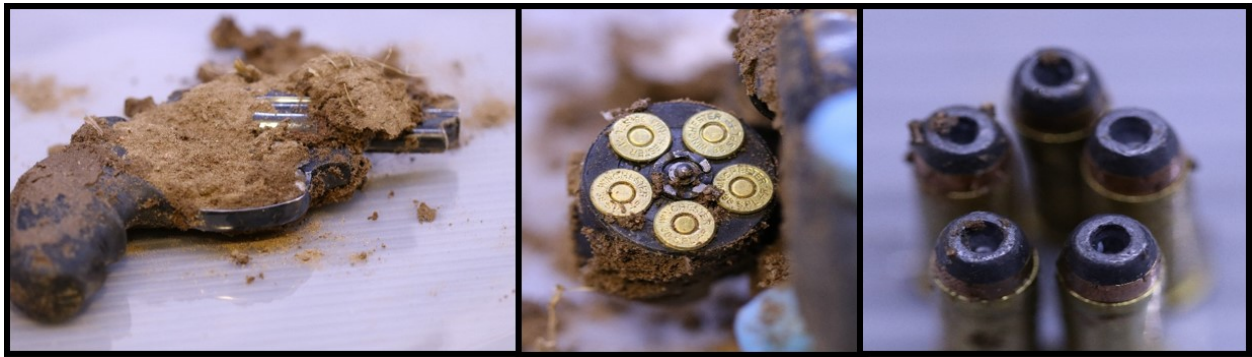
arm across his chest, pointing the barrel to the north east where Officers 1 and 2 were standing. When he did so, Officers 1, 2, and 3 discharged their weapons striking Aguero and causing him to fall face first into the field. His left hand was visible out to his side but his right hand was tucked under his body out of sight. The six officers then formed an L formation and approached Aguero, securing him behind his back with handcuffs. Aguero was rolled over to the east and a loaded .38 caliber revolver was located underneath where he had fallen. The revolver would later be found to have been stolen from a vehicle in Greeley on 11/30/17.

Officer 4 checked for and announced she could feel a pulse. She returned to her patrol vehicle and brought it to Aguero's location. Officers loaded Aguero into the back seat of the patrol vehicle and Officer 4 drove him to Two Rivers Parkway and 37th St where she met with medical personnel. Aguero was loaded into an ambulance. Shortly thereafter Aguero was declared deceased by medical personnel. He was not transported from the scene and remained in the ambulance until he was released to the coroner.

All officers present at the scene at the time shots were fired stated that they were aware of the potential identification of Aguero. They said that they had also been made aware from other officers of Aguero's statements concerning suicide by cop and that he had recently been observed wearing a shoulder holster and may be armed. Officer 3 said that he fired when he saw the gun raised and pointed in the direction of Officers 1 and 2. Officer 2 stated that he fired when he saw the barrel of the gun pointed in his direction. Officer 1 stated that due to Aguero's unwillingness to follow commands, he fired because he felt that his life and the life of fellow officers were in danger should Aguero choose to fire his weapon in their direction.



Firearm in Agüero's hand at the time of shooting.



TIMELINE OF EVENTS

12/21/17

09:00

Victim places a call to Weld County Dispatch reporting her car stolen from Dollar General at 1412 8th Ave.

09:08-9:11

Officer Boren observes the stolen vehicle backed into a driveway at 14th St and 7th Ave. Multiple Greeley Police officers follow the vehicle as it drives in the area it was located. Due to weather conditions officers followed at low speeds and did not actively pursue.

09:12

White Oldsmobile Alero reported left running in the parking lot of Dictoguard at 914 14th St.

09:37

Sergeant Heck observes the stolen Chevy Cruze driving on the sidewalk while responding to Dictoguard. Heck attempts to follow but does not actively pursue due to weather and loses visual of the vehicle as it turned south on 15th Ave from 13th St.

10:34

OnStar contacts Weld County Dispatch and provides a location for the stolen vehicle of 4601 77th Ave (Two Rivers Parkway) which is in unincorporated Weld County. Dispatch airs the location and multiple Greeley Police officers head that direction.

10:55

Sergeant Heck arrives at 37th St and Two Rivers Parkway and observes the red Chevy Cruze nose first in the ditch on the west side of the road.

10:58

Sergeant Heck identifies the vehicle as stolen and begins pursuing Aguero into the field.

11:00

Officer 3 and Detective Jackson arrive and begin pursuing Aguero in the field. Sergeant Heck requests less lethal cover emergent.

11:03

Officer 4 arrives and joins Sergeant Heck to the west of Aguero with less lethal shotgun. Officers 1, 2, and Corliss arrive and position themselves to the east of Aguero.

11:04:08

Sergeant Heck announces on the radio that less lethal is being deployed. Bean bag rounds are deployed, striking Aguero and causing him to fall to his knees.

11:04:51

Sergeant Heck advises dispatch, “shots fired, suspect down, multiple gunshot wounds”. Dispatch requests a response from medical personnel.

11:07

Fire and ambulance personnel announce they are enroute.

11:09

Aguero is loaded into Officer 4’s patrol vehicle and transported to the intersection of 37th St and Two Rivers Parkway.

11:15

Fire and ambulance personnel arrive and take over lifesaving efforts.

11:22

Aguero is pronounced deceased.

SUBJECT

Jose Angel Aguero DOB 04/13/1991 (26 years old)

Aguero has been the suspect or subject in at least 30 individual police actions and investigations since 3/28/06. Agencies with known contacts with Aguero are the Greeley, Evans, Ft. Collins, Windsor, and Sydney (NE) Police departments. He had been booked into the Weld County Jail on 22 separate occasions since 2009.

At one time Aguero was tracked by the Greeley Police Department as a Norteno gang member. He was removed from the active gang member rolls but remained a known associate of multiple tracked Norteno gang members.

On the date of the shooting Aguero did not have any active warrants or open court cases; however, he was the suspect in multiple vehicle theft cases and a warrant for his arrest was being written by Officer 3.

AUTOPSY REPORT

The autopsy report indicates an opinion that Jose Aguero died because of gunshot wounds in a police action. Nine gunshot wounds were located which matched the trajectory of officer statements and reported participant locations. Toxicology tests reported the presence of controlled substances at the following levels:

Delta-9 Carboxy	THC	17 ng/mL 001
Delta-9	THC	1.7 ng/mL 001
Amphetamine		68 ng/mL 001
Methamphetamine		330 ng/mL 001