

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

April 4, 2016

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

RE: Investigation of the January 25, 2016 Officer-Involved Shooting of Joseph Perez

Chief Garner:

The investigation into the shooting of Joseph Valentino Perez has been completed by the Weld County Critical Incident Response Team. Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officer who discharged his weapons. Included with this report is a summary of the investigation and the pertinent Colorado law.

INVESTIGATIVE SUMMARY

On 01/25/16 at approximately 0215 hours Greeley Police Officers were dispatched to 1327 16th Ave Greeley, Weld County, Colorado. Valentine Perez reported to dispatch that his son, Joseph Valentino Perez (DOB 12/13/88), who was wanted for an outstanding warrant had returned home. Five Greeley Police Officers in uniform and marked patrol vehicles arrived shortly thereafter and met with Joseph Perez' mother, Joyce Perez.

Joyce Perez led three officers into the home and into the basement where Joseph Perez was located with his girlfriend, Tiffany Peoples. The fourth and fifth officers remained outside of the home near the two entry ways to the home in the event Joseph Perez decided to flee. As officers descended the stairs Joseph Perez stabbed himself with a folding knife in his bedroom at the base of the stairs. One officer then engaged Joseph Perez with a Taser, causing Joseph Perez to fall onto and break a glass table in the bedroom. Joseph Perez arose from the floor and advanced aggressively toward the officers. A second officer then attempted to tase Joseph Perez but was unsuccessful.

Joseph Perez continued forward and made contact with one officer; causing the officer to fall backward into a wall. A third officer fearing Joseph Perez to still be armed with a knife and an imminent threat to officers fired two shots from his service weapon striking Perez. The impact of the bullets caused him to fall, ultimately coming to rest outside of the bedroom at the base of the stairs. A fourth Greeley officer then entered the home and assisted securing Joseph Perez and evacuated him from the home. Joseph Perez was transported to North Colorado

Medical Center by paramedics where he was treated for non-fatal self and officer inflicted injuries.

The active warrants for Joseph Perez included charges of Second Degree Assault, a class four felony, and Escape, a class three felony. Officers had been dispatched earlier that morning at 12:07 a.m. to a call involving a suspicious person at an address nearby. During this call, law enforcement contacted Valentine Perez because there were clothing and personal items on the street in front of the Perez residence. Valentine Perez told stated that the items in the street belonged to his son, Joseph Perez. He also told police that Joseph Perez was wanted for cutting off his ankle monitor, however, Joseph Perez was not currently at the residence. At 1:26 a.m. officers were dispatched to the Perez residence. Valentine Perez informed dispatch that Joseph Perez was under the influence and acting violently. He was threatening Tiffany Peoples, his girlfriend, with a knife. When police arrived both Joseph Perez and Peoples were gone. Valentine Perez was told to call law enforcement if Joseph Perez returned.

At 2:15 a.m. police were again dispatched to the Perez residence. Valentine Perez advised dispatch Joseph Perez had returned home and was intoxicated, but unsure of the specific intoxicant. Valentine Perez stayed on the phone with dispatch until he observed officers arrive on scene. Joyce Perez then went outside to meet with Officers Jackson, Shannon, and Garcia at the front door.

Officer Shannon was interviewed that morning after the incident by an Investigator from the District Attorney's office and a Sergeant from the Weld County Sheriff's office, both members of the Critical Incident Response Team (CIRT). Officer Shannon described being present at one of the earlier calls and was aware of the other contacts at this address. When he arrived at approximately 2:15 a.m. he described Joyce Perez greeting them at the front of the house and inviting them inside. She said that Joseph Perez was in the basement and led them downstairs. Officer Shannon described having his Taser drawn and observed that Officer Jackson had his gun drawn and Officer Garcia also had his Taser drawn.

Officer Shannon stated Joyce Perez announced to Joseph Perez that the police were there for him. As they reached the bottom of the stairs Officer Shannon could see Joseph Perez in the bedroom and said Joseph Perez looked toward him with "crazy eyes" and then stabbed himself "samurai style." Officer Garcia then fired his Taser at Joseph Perez. Joseph Perez then pulled the knife out of his abdomen and lunged towards the officers. Officer Shannon then attempted to tase Joseph Perez, but it was ineffective. Officer Shannon then heard two gunshots. He stated that Joseph Perez ultimately fell near the stairs and was handcuffed by Officer Garcia and Officer Klassen who was initially positioned outside the residence. Officer Shannon felt his and Officer Garcia's lives were in imminent danger since Joseph Perez was attacking them with a knife in a confined area, and the tasers were ineffective.

Officer Garcia was interviewed by the same members of the CIRT team that morning after the incident occurred. He had initially been at the Perez residence during the 12:07 a.m. dispatch and he heard the 1:26 a.m. dispatch over the radio. He believed Joseph Perez was armed because recalled hearing an officer state over the radio he was utilizing a "less lethal" shotgun during this attempt to locate Joseph Perez.

Officer Garcia went to the Perez residence and was met outside by Joyce Perez. He waited for other officers to arrive. The officers were then led downstairs by Joyce Perez. Officer Garcia said he had a weird feeling and told the others he was going down the stairs with his taser out of the holster. He said as they went down the stairs Officers Shannon and Jackson began engaging the male verbally; though he could not recall what had been said. Officer Garcia said he then heard a woman's voice, not the mother, yell, "He just stabbed himself." Officer Garcia said that after he heard the suspect was armed with a knife he wanted to tase the suspect as soon as possible to avoid a possible shooting and rushed to the bottom of the stairs. Officer Garcia said there was a female in the room next to the suspect when he first encountered him. He said they were both lower to the ground but was unsure if the pair was seated or kneeling.

Officer Garcia said he deployed his taser at the male, making contact and causing the suspect to fall to the ground. Officer Garcia said the male then jumped up and another officer, likely Officer Shannon, attempted to tase the suspect but it had no effect. Officer Garcia said he did not see a knife in the suspect's hands but saw his hands held tightly to his body and assumed he had just stabbed himself due to the female voice he had heard earlier. He said the suspect began advancing quickly toward the door of the bedroom after the taser was unsuccessful. Officer Garcia said he pulled the trigger on his taser again hoping the probes to still be in the suspect, but the trigger pull did not affect the suspect. He then reached toward his firearm to draw as he thought the suspect still had a knife, but the suspect approached too quickly. He was unable to draw his firearm, but managed to raise his left hand in which he was carrying a flashlight and knock the suspect back.

Officer Garcia said as he made contact with the suspect he was thrown backwards into a wall, causing him to receive a bruise on his right arm. At this point, Officer Garcia was certain he was going to be stabbed as he believed the suspect still had a knife and shouted, "Shoot him, shoot him!" Officer Garcia said he then heard one gunshot and he and the suspect both fell to the ground. He said he has been told there were two shots but could only recall hearing one. He observed the suspect on the ground and it appeared he was attempting to remove the taser wires. Officer Garcia said Officer Klassen came down the stairs and assisted him in handcuffing the suspect, after which Klassen began evaluating the suspect's injuries. He said that he and Klassen carried the suspect to the top of the stairs where he was transferred to paramedics.

Officer Jackson was interviewed by the same CIRT team members that morning. He had been to the Perez home previously that morning and participated in the search around the home as officers looked for Joseph Perez, who was reported to be suicidal and armed with a knife. When Officer Jackson arrived at the home again he awaited other officers' arrival. He said he was led into the home through the front door by the suspect's mother who stated something similar to "Come on in, he's down in the basement. He doesn't know you're here, but he'll be peaceful or calm".

Officer Jackson described that he heard a male yelling as he descended the stairs. He said as he got to the door of the bedroom he saw a female in a sitting position near the bed and a male in the room who was stabbing himself and yelling incoherently. Officer Jackson said he pulled his gun from the holster. Officer Garcia came down quickly and tased the male. Officer Jackson said the taser worked as it should and he saw the male go stiff and fall to the ground.

Officer Jackson said that as the male fell, he entered the room and grabbed the female by her clothing near the back of her neck and attempted to pull her from the room. As he did so the male began to stand, keeping his hands near his stomach. He said the male then began advancing toward the officers, yelling and advancing in an aggressive manner. Officer Jackson said the male was advancing with his shoulders forward with something still in his hands, though Officer Jackson could not tell exactly what was in his hands. Officer Jackson said that based on the way the male was yelling and advancing towards them it appeared that he intended to stab one of the officers, specifically Officer Garcia as he was the closest to the suspect.

Officer Jackson said he feared Officer Garcia was about to get stabbed. In an effort to prevent this he fired 2 shots at the suspect. Officer Jackson said his shots impacted the suspect but was unsure of the location on the suspect's body. After being shot the suspect fell to the ground in the hallway near the stairs. Officer Jackson said Officer Garcia then approached the suspect who was lying on his back. Officer Jackson said it appeared Officer Garcia used his left hand to grab something from the right hand of the suspect and threw the object over his right shoulder with an upward motion across his chest. He said Officer Garcia then placed handcuffs on the suspect.

Joyce Perez, the mother of Joseph Perez, was interviewed the morning of the incident by a Detective from the Erie Police Department who is a member of the CIRT team. She confirmed greeting the officers at the front door of her residence and taking them downstairs. She said she observed her son in his bedroom kneeling talking to his girlfriend, Tiffany Peoples. She said she announced to them that the police were there and Joseph stood up. She claimed at the point she heard two shots and that he was only tased after the officer fired his gun.

The Erie Detective also interviewed Tiffany Peoples, Joseph Perez' girlfriend, that morning. She described that she went down to Joseph Perez' bedroom upon his return to the house early that morning while his parents contacted law enforcement. She said when she went down to his room, he told her to turn off the light, but she wanted to see him before turning the light off because he had been violent all night. Once she believed him to not be a threat she turned the light off and shut the door, but left it cracked open to allow some light into the room. She said Joseph would not talk to her and stared at a mirror that allowed him to see who was coming down the stairs. He told her he was not mad at her, and that he loved her and apologized to her.

Tiffany described that as she was sitting on an ottoman at the foot of the bed, Joseph was kneeling next to the bed by the glass nightstand. She said his hands were clinched together near his stomach. When she asked him what he is doing he told her, "Nothing, if the cops don't show up, nothing is going to happen." She asked why he is still here if he thought the police were on their way. Joseph told her that he wanted her there, but asked that she go upstairs because he did not want her involved in what is about to happen. She then knelt down and told him she loves him, she then hugged him and asked what he is doing. He stated nothing was going to happen, but told her she should go upstairs. She stated that Joyce opened the door and the police were behind her. Upon seeing the police Joseph's eyes teared up and he stabbed himself in the stomach while kneeling on the ground, he then stood up and slashed himself across his stomach with the knife. Tiffany exclaimed, "Oh my God, he just cut himself!" She

saw Joseph get tased and fall onto the glass nightstand causing him to roll on top of her. She said officers were yelling at her to get away. She said Joseph then stood up and the officers shot him twice and she claimed she did not know why. She described the room was very dark.

Other witnesses were interviewed by members of the CIRT team. Valentine Perez was interviewed and gave a similar account of police arriving at his residence and being escorted downstairs by his wife. He stated he remained upstairs during the incident, but then claimed Joseph Perez was shot in the hallway by an officer laying on his back near the stairs, which is inconsistent with all other statements and evidence. Justin Reed was in a bedroom across the hall from Joseph's room. He was interviewed and said initially he believed officers did not say anything and heard them shoot Joseph immediately. He then said he did hear glass breaking before the shooting, but was unable to see where the officer was located who fired the shots. Justin stated he did not believe Joseph Perez was armed, but admitted that he was unable to see Joseph from his vantage point. He said Joseph was tased after he was shot and the officer who tased Joseph was standing in his doorway.

Officer Klassen, administered aid to Joseph Perez by putting pressure on his wounds and reported that initially he was unable to lift Perez' shirt because of taser probes. Because of this he asked Joseph Perez where he had been shot, Perez told Klassen to shoot him in the head. Klassen described that he was finally able to view the wounds once Perez was removed from the house and saw what he believed to be a gunshot wound below his pectoral muscle and a suspected stab wound near his navel.

The CIRT team has been unable to obtain medical records in this case since Joseph Perez refused to sign a medical waiver. However, photos were taken of the injuries by law enforcement. The photographs were taken while Joseph Perez was being treated by medical personnel and show six distinct injuries to Perez. On the left side of Perez' neck is a long wound that runs along the side of his neck front to back where the neck meets the shoulder. On Perez' abdomen near the naval is an oval shaped wound. Based upon the CIRT team investigators' training and experience these wounds do not appear consistent with bullet wounds.

CIRT team investigators observed that on the outside of Perez' right bicep is an injury that appears consistent with a bullet entrance wound. On the inside of the right bicep is a wound that appears consistent with a bullet exit wound. On the right side of Perez' chest just below the nipple and on the left side of Perez' abdomen are wounds that appear consistent with bullet wounds, though investigators are unable to determine whether they are entrance or exit wounds. The photos of the injuries also suggest that the four suspected bullet wounds could have been a result of a single bullet due to the proximity of the wounds.

After the shooting occurred the scene was preserved and evidence was collected by Crime Scene Investigators who are members of the CIRT team. The FARO system was utilized to document the scene. There was a significant amount of blood in the area where Joseph Perez was observed stabbing himself. There was a broken glass top nightstand next to Joseph Perez' bed. Shards of glass from this nightstand were strewn about the floor near the bed. On top of some of the shards of broken glass a bloody folding knife was located, thus showing the knife was still in the suspects hand at some point after being tased and falling onto the glass

nightstand. Blood spatter observed at the scene indicates that Joseph Perez was moving toward the doorway where officers were located when he was shot. Taser blast doors and AFIDs were located inside the bedroom indicating the taser had been fired into the room. One bullet was located in the west wall of the bedroom suggesting the round to have been fired across the bedroom from east to west. A second bullet was located in the basement hallway. The officers use of the taser was corroborated by the taser download data. This data confirmed that Officer Garcia pulled the trigger on his taser at 2:24:29 a.m. and at 2:24:37 a.m. and Officer Shannon pulled the trigger on his taser at 2:24:50 a.m., 2:24:58 a.m., and 2:25:03 a.m.

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 that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide or attempted 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 Joseph Perez was shot by an officer, the determination of whether this conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707(2)(a) 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) of the Colorado Revised Statutes defines the term "Deadly Physical Force" as follows:

(2)(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.

Further, 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 Joseph Perez intended to stab the officers. The issue is whether or not it was reasonable for the officers to believe that Perez was going to stab the officers.

In this case, the officers were attempting to contact Perez because he had two active warrants and based on the information relayed to dispatch and learned earlier in the morning from the previous contacts at the Perez residence. It is also clear that law enforcement knew that Perez was likely in possession of a knife or weapon when they were responding to the scene.

Throughout the course of the incident, Perez refused to comply with the commands of the officers. He stabbed himself when he knew he was going to be taken into custody. A Taser was utilized, but Perez was able to continue to be non-compliant and a danger to himself, officers and others in the bedroom.

The officers reasonably believed, at that time, based on all of the surrounding facts and circumstances known to them, they were in imminent danger of death or serious bodily injury.

Perez would have known that the individuals coming to his bedroom were police officers because they were in uniform and they were announced as officers by his mother.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the officer was justified in using potentially lethal force against Perez because he reasonably believed that it was necessary to defend himself and others from Perez's threatened use of deadly physical force.

CONCLUSION

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

Sincerely,



Michael J. Rourke
District Attorney