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Chief Mark Jones
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

RE: Investigation of the May 8, 2018 Officer-Involved Shooting of Thomas Garcia

Chief Jones:

The investigation into the shooting of Thomas Garcia 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 officer who discharged his weapon. 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 Garcia was an active member or associate of the Norteno street gang. Additionally, within a week of this shooting, Garcia's son was seen using his smartphone to record the identities of Greeley Police Department Officers as well as the layout of the secured parking lot at the Greeley Police Department.

Officer 1's identity will not be released following this balancing test because Officer 1 fired the shot which caused the death of Garcia. Officer 2's identity will not be released because Officer 2 was in contact with and was threatened by Garcia just before his death.

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 Garcia was shot and killed by Officer 1, the determination of whether the officer's 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 Garcia 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 contact Garcia regarding a suspicious vehicle in a residential neighborhood near an elementary school, and learned that he had active arrest warrants. When he was ultimately confronted by Officers, Garcia wielded a knife at officers and refused to comply with officers' commands. He menaced Officer 2 and fled toward the elementary school, which officers knew was in session. Further, Garcia had stated he was going to go to the school earlier in the contact. Garcia was initially shot with a TASER to gain his compliance. When this happened, the TASER had no effect. As Garcia, who was still armed with a knife, began to flee towards the occupied elementary school Officer 1 fired one round striking Garcia.

Toxicology results indicated that during this encounter with officers, Garcia's methamphetamine level was 540 ng/mL, a level which has been reported in methamphetamine abusers who exhibited violent and irrational behavior.

Garcia would have clearly known that the individuals giving him commands were police officers because they were in uniform near their police vehicles.

Officer 1 reasonably believed when he fired his weapons that the occupants of the elementary school were in imminent danger of death or serious bodily injury and Garcia had just menaced the officers with a deadly weapon.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that Officer 1 was justified in using lethal force against Garcia because he reasonably believed that it was necessary to defend other citizens, including elementary school children, from Garcia's threatened use of deadly physical force. Further, Garcia had committed a felony when he menaced officers with a deadly weapon.

CONCLUSION

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

Sincerely,



Michael J. Rourke
District Attorney



Officer Involved Shooting

May 8, 2018

Subject: Thomas Garcia

18DA00073

Keith Olson, Chief Investigator

SUMMARY

On May 8, 2018, Greeley Police Department receives a report of a suspicious vehicle parked in the 600 block of 40th Avenue, Greeley, Colorado. Officer 1 arrived on scene and contacted Thomas Garcia and Brandie Odle in the vehicle. Garcia left the location of the contact on foot ostensibly stating he was going to go to nearby Shawsheen Elementary school to urinate. Officer 2 was arriving on scene as Garcia was walking away from Officer 1's contact. While enroute and upon hearing Officer 1 advise the names of the subjects he was in contact with, she determined Garcia possibly had warrants out for his arrest. Officer 2 notified Officer 1 of the possible warrants and drove toward the location Garcia was last observed walking. Officer 1 got into his vehicle to assist in contacting Garcia.

Garcia was observed by officers coming out of the backyard of 617 40th Avenue. The officers got out of the vehicle and found Garcia to be non-compliant with their commands. Garcia pulled a knife from his pocket and wielded it in an aggressive manner, causing Officer 2 to begin retreating from Garcia. Officer 1 fired his Taser at Garcia, but it had no effect. As Garcia began sprinting toward Shawsheen Elementary school armed with the knife, Officer 1 fired one round at Garcia mortally wounding him.

The 19th Judicial District Critical Incident Response Team was notified and an immediate investigation was conducted.

INVESTIGATION

On May 8, 2018 at 8:01 a.m. Weld County Communications received a report of a suspicious vehicle parked in front of 609 40 Avenue, Greeley, Colorado. The reporting party lived at 605 40th Avenue. She reported that the two occupants had been there for a significant amount of time and they had ducked down when she went outside. The car, according to the reporting party, did not belong in the area.

Greeley Police Department's Patrol day shift had been on duty since 7:00 a.m. and were scheduled to end their shift at 5:00 p.m. Officer 1 and Officer 2 were assigned to that patrol shift on May 8, 2018.

At the time dispatch received the reporting party's call, there were no available police units. The call was held until Officer 2 cleared a call she was handling and began responding to the call at 8:33 a.m. Officer 1 was also clear and responded to the call at 8:37 a.m. and arrived on scene at 8:38 a.m.

Officer 1 contacted the driver of the car, Brandie Ogle and passenger Thomas Garcia. Officer 1 ran clearances for warrants on Ogle and Garcia. Officer 1 questioned Garcia about the purpose of

them being in the neighborhood. During this questioning, Garcia told Officer 1 that he was going to go to Shawsheen Elementary and “take a piss.” Garcia then walked away heading south on 40th Avenue and then rounded the corner continuing west on 7th Street.

While Officer 2 was enroute to the call, she had heard Officer 1 run clearances on two individuals. With that information, Officer 2 checked for local warrants on Thomas Garcia and discovered two outstanding warrants for a Thomas Garcia. When Officer 2 arrived on scene, she observed Garcia walking south on 40th Avenue. Officer 2 drove up to Officer 1’s location and advised that there were possible warrants for Garcia and she was going to contact him. Officer 2 then drove toward the area Garcia had last been seen turning west in the 4000 block of 7th Street toward Shawsheen Elementary School, 4020 7th Street.

As Officer 2 turned west onto 7th Street a male subject was observed going behind the residence of 617 40 Avenue, but Officer 2 continued toward Shawsheen Elementary school, not convinced the subject seen was not a resident at that address.

Officer 2 got to the Shawsheen Elementary School and observed the parking lot was full, indicating school was in session. A scan of the parking lot indicated to Officer 2 that Garcia was likely hiding along the route she had just travelled. Officer 2 proceeded east in the 4000 block of 7th Street and observed Garcia walking out of the backyard of 617 40th Avenue. She saw Officer 1 pulling to the curb in front of 617 40th Avenue and getting out of his patrol vehicle. Officer 2 pulled up to the location and while getting out of the patrol vehicle heard Officer 1 command Garcia to “stop.” Officer 2 stated she got out of her patrol vehicle and positioned herself between Garcia and the school.

Both Officer 1 and Officer 2 described Garcia as having his hands stuffed into his front pants pockets and refusing to obey commands to show his hands.

During Officer 1’s interview, he said Garcia removed his left hand from his pocket and took a “bladed” posture with his right hand concealed behind his back and the left arm positioned as if to block any potential assault or attempt by officers to take control of him. At that instance, Officer 1 drew the Taser and pointed it at Garcia. As Officer 1 fired his Taser, he immediately observed Garcia had a knife with a 3 to 4-inch blade held in his right hand. Officer 1 said Garcia appeared to lunge in the direction of Officer 2 just as he fired the Taser.

Officer 1 said he immediately dropped the Taser, even while the 5 second cycle was occurring and immediately drew his handgun. Officer 1 saw Garcia immediately start running towards Shawsheen Elementary School, which Officer 1 knew to be in session. Officer 1 fired one round at the fleeing Garcia and Garcia fell to the ground mortally wounded.

Officer 1 stated the reason he shot was “...[Garcia] was heading to that school with a weapon. He had a knife in his hand running. I thought he was going to take those kids, that I had seen when I came into the neighborhood, hostage. He had just attempted to stab Officer 2 and he was aggressively moving towards me and he had a knife in his hand. As he was fleeing he still had the knife, he could have hurt anybody with that weapon. That’s why I shot him.

During Officer 2's interview, Officer 2 stated, as Garcia came out of the backyard of 617 40th Avenue, he was failing to comply with her commands; "Get your hands out of your pockets, get your hands out of your pockets right now!"

Officer 2 recalled Garcia pulled his right hand out of his pocket and he was clinching a knife in his fist. Garcia was holding the knife in a menacing manner suggesting he would use the knife. Officer 2 immediately yelled "knife" to ensure Officer 1 was aware Garcia was armed with a knife. At this point Officer 2 said Garcia was within six or seven feet, or closer to her.

Officer 2 instinctively moved backwards, but her estimate was "not near far enough" as Garcia moved towards her. Officer 2 stated her gun was aimed at Garcia, but could not say why she did not shoot, even though she thought it appropriate to have done so.

Officer 2 recalled the Taser being fired as Garcia moved rapidly toward her and Shawsheen Elementary School behind her followed closely by gunfire.



WITNESS STATEMENTS

Candice Andrews

Andrews (with Jason Gollofer) also witnessed the incident:

Andrews said she and Jason were driving west on 7th St. in route to Shawsheen Elementary School to deliver items to the school. As they neared the school she observed two police cars stop abruptly in front of a house.

As they began driving around the police cars Andrews heard police yelling, "stop" several times and very loudly. Andrews said she could hear the officers clearly even with the windows up.

Andrews said she observed a male officer take out his gun and was holding it in front of him. Andrews said she couldn't see who the officers were confronting as a vehicle parked in the driveway was blocking her view of the subject.

While the officers were yelling commands to stop, Andrews observed a male begin running southwest toward Shawsheen Elementary. She immediately heard a Taser being fired, followed by a gun shot. Andrews said, "It wasn't even a few seconds later" between the sound of the Taser and the gun shot. Andrews said she was unable to actually observe the male get Tased or shot and that she only heard the sounds.

Jason Gollofer

Gollofer said he and Candice Andrews were driving in his car to Shawsheen Elementary School to deliver items. When he turned west onto 7th Street from 40th Avenue, he observed two police cars blocking the westbound lane of 7th Street, causing him to drive around them.

On approach Gollofer saw a female and male officer getting out of their patrol cars yelling "Stop!" Gollofer was certain he heard both officers yelling for the male to stop and described it as "very directed communication."

As he continued driving west on 7th Street, he observed the male running southwest and was "obviously fleeing." Gollofer heard a Taser being fired followed by a gun shot.

Gollofer said it appeared the male was holding something when he was running because his arms weren't swinging and his hands were close to his chest.

As he continued westbound he drove passed both patrol cars and observed the male positioned face down near the curb and estimated he was 10 to 15 yards from where he initially observed the male being contacted by police.

Rebecca Moore

Ms. Moore of 508 41st Avenue stated she had heard yelling and someone yell "Stop!" She then heard a single gunshot followed by commands from a male voice. She recalled the commands as: "Stay down!" "Keep your hands where I can see them."

Vicki Pearson

Ms. Pearson of 610 41st Avenue said she was in her residence and heard yelling, but it was not initially discernible. She heard additional yelling and this time heard a woman yelling: "Get your

hands up in the air!” “Get down on the ground!” Ms. Pearson said she then heard a single gunshot. She said the commands and the gunshot were relatively close together.

CRIME SCENE

At the western edge of the raised garden where Garcia had fallen, a folding knife was found. The blade of the knife was found to be partially extended from the handle of the knife at a near 90-degree angle.

The blade was consistent with descriptions of the knife provided by Officers 1 and 2.

Weld County Sheriff Deputy, Field Evidence Technician Rosebrock, reported that upon examining the knife he found there was no lock bar which allowed the blade to move freely from an open to closed position unimpeded by the typically present locking mechanism.¹

A single spent 9MM shell casing was found in the driveway of 617 4th Avenue. A Taser was also found in the same driveway, corroborating Officer 1’s statement regarding the use of the Taser followed by his firing a single round from his Smith and Wesson M&P 9MM semi-automatic pistol, Serial DXW6077.

AUTOPSY

May 9, 2018²

Michael A. Burson, M.D., PhD Forensic Pathology Consultant

Based on the history provided and the autopsy findings, the cause of death is complications of a penetrating gunshot wound of the torso.

ENTRANCE: On the left back, centered approximately 47 ½ inches above the bottom of the left heel and 2 inches left of midline is a 0.9 cm gunshot entrance wound. There is an up to 0.2 cm peripheral pale abrasion collar, as well as pink-purple contusions surrounding the defect. There is no soot, stippling or charring on the skin surrounding the defect.

EXIT: None.

ASSOCIATED INJURIES: The bullet sequentially perforated and lacerated the skin and subcutaneous tissue of the right back; perforated and lacerated the peritoneal space; perforated and lacerated the spleen, left lobe of the liver, stomach, diaphragm, left lung, anterior aspect of

¹ 18W016734 Supplement 3, Deputy Rosebrock

² AW18-090

the right atrium and ventricle and came to rest in the subcutaneous space at the junction of the right 7th rib and sternum.

RECOVERY: A deformed, copper jacketed lead bullet is recovered from the anterior aspect of the right chest.

TRAJECTORY: The bullet traveled from the decedent's left to right, back to front and slightly upward.

TOXICOLOGY

"Hospital Blood" held 540 ng/mL of "methamphetamine."

Garcia's NMS Labs' report indicates methamphetamine in this quantity (200-600 ng/mL) had been reported "in methamphetamine abusers who exhibited violent and irrational behavior."