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February 25, 2021

RE: *Investigation of the October 19, 2020 shooting involving Pagosa Springs Police Department Officer Justin Taylor in the area of Great West Avenue, Pagosa Springs, Colorado.*

The investigation, legal analysis, and review for potential criminal charges regarding the shooting by former Pagosa Springs Police Department (PSPD) Officer Justin Taylor on October 19, 2020 is complete. This letter contains a summary of the review and findings regarding this incident.<sup>1</sup>

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. In this instance, the prosecution would have the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. Applying the applicable statutes and case law to the facts presented through this investigation, I find that Officer Justin Taylor is not subject to criminal prosecution for his actions as his actions were legally justified.<sup>2</sup>

Based on standing protocol, the Officer Involved Incident Team (OIIT) for the Sixth Judicial District was deployed to investigate this case. The OIIT for the Sixth Judicial District, led by Colorado Bureau of Investigations (CBI) Agent Collin Reese, is comprised of detectives and crime scene technicians from multiple police agencies, including the Durango Police Department, the Colorado Bureau of Investigations, the Colorado State Patrol, the Archuleta County Sheriff's Office, the Montezuma County Sheriff's Office, and the Sixth Judicial District Attorney's Office, among others.

The factual findings of the investigation were presented to my office on January 4, 2021 by lead investigator Robert Taylor of the Durango Police Department. Investigator Taylor presented police reports, video footage from body-worn and dash-mounted cameras, photographs, diagrams, laboratory reports, and audio recordings and transcripts of the interview(s) of key witnesses, among other evidence. The Office of the District Attorney reviewed the full investigatory file and I, along with members of my staff, have been fully briefed regarding this incident by the OIIT. The Office of the District Attorney concludes that the investigation is thorough and complete.

My findings, analysis, and conclusions of law with respect to the officer's use of deadly force in this incident are as follows.

<sup>1</sup> C.R.S. §20-1-114, requires public disclosure of the District Attorney's findings following an officer involved shooting causing death or serious bodily injury. See C.R.S. §§20-1-114, 16-2.5-301. Although it remains unknown whether this shooting caused a death or serious bodily injury, this Office has chosen to complete this letter voluntarily. However, Colorado Rules of Professional Conduct 3.6 and 3.8 prevent the public release of this letter as it may have a tendency to influence the criminal case pending against Mr. Danny Shahan.

<sup>2</sup> This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the involved agency.

## **SUMMARY OF DECISION**

The filing standard for criminal charges requires that there be a reasonable likelihood of conviction based on the available evidence and relevant legal standards and authority. Here, the evidence establishes that the suspect was engaged in a high-speed chase, attempting to elude police officers, when he approached a roadblock set by Officer Taylor, who was outside of his vehicle and on-foot behind the roadblock. As the suspect approached his position at a high rate of speed and displayed no intention of stopping or slowing down, Officer Taylor fired his weapon at the driver in an attempt to stop the vehicle or ensure that it did not smash into the roadblock and kill him. Based on the circumstances, Officer Taylor had a reasonable belief that his life was in danger, that a felony was in progress and that the suspect was attempting to flee, and that deadly physical force was an appropriate response. Applying the applicable statutes and case law to the facts presented through this investigation, I find that Officer Justin Taylor was legally justified in his use of force, resulting in no reasonable likelihood of conviction, and is therefore not subject to criminal prosecution for his actions.

## **STATEMENT OF FACTS**

### **Overview**

On October 19, 2020, at 19:33 hours, dispatch aired that Mr. Danny Shahan, who had three open arrest warrants, was seen at a local restaurant in Pagosa Springs, Colorado. As he left the restaurant, a traffic stop was initiated, during which Mr. Shahan drove away without the officer's consent. A chase ensued, and a roadblock was set up by Officer Justin Taylor, who had taken a position on-foot in the middle of the roadway behind the roadblock. As the chase approached the roadblock, Mr. Shahan drove directly at Officer Taylor's position at a high rate of speed, causing Officer Taylor to believe that he was in danger. Officer Taylor discharged his firearm eight times at Mr. Shahan's vehicle in an attempt to ensure that he did not hit the roadblock and harm Officer Taylor and to prevent the suspect from fleeing. At the last second, Mr. Shahan swerved around and past Officer's Taylor's roadblock and continued to flee the area. Officers lost contact with Mr. Shahan and the chase was eventually terminated. Mr. Shahan's vehicle was later found nearby, having suffered extensive damage from a vehicle fire. Mr. Shahan remains at large; it is unknown if he was injured during the criminal episode.

### **Witness Statements, Police Reports, and Forensic Analysis**

Several law enforcement officers have contributed reports and evidence as part of the investigative packet, including ACSO deputies who were a part of the chase, and several members of the OIIT who conducted follow-up investigation after the shooting. The following is an amalgamation of those various submissions.

On October 19, 2020, off-duty ACSO Detective T.J. Fitzwater saw Danny Shahan at a restaurant in the town of Pagosa Springs, Colorado. Mr. Shahan was known to have three active warrants, and Detective Fitzwater called dispatch to make them aware of his sighting of Mr. Shahan, giving both a description of the appearance of Mr. Shahan and the vehicle he was driving. ACSO Deputies H. Brown and M. Guy responded to the general area of the sighting; both noted that Mr. Shahan has a history of being aggressive to law enforcement, having made multiple threats to "take out" law enforcement and being known to carry firearms with him in his car.

Deputy Guy located the vehicle and made a traffic stop, backed up by Deputy Brown. Knowing Mr. Shahan to represent a threat to their safety, the deputies conducted a felony-style traffic stop of Mr. Shahan, taking cover while issuing orders for Mr. Shahan to exit his vehicle. During the stop, the driver refused to exit the vehicle, and yelled responses back to the deputies, who confirmed his identity as Danny Shahan from prior encounters. As the deputies began to approach the vehicle on foot, Mr. Shahan shifted the car into drive and sped off from the traffic stop. The deputies gave chase.

During the chase, Mr. Shahan reached speed of 60 MPH and led the deputies off the main highway and onto residential and rural roads in Archuleta County. PSPD Officer Justin Taylor, who had been monitoring the radio traffic related to the chase, offered to set up a roadblock in Mr. Shahan's path of travel. He set the roadblock on Great West Avenue, a road in rural Archuleta County, by parking his truck diagonally across the majority of the roadway, although there was a small gap between the front of his vehicle and the side of the road.

As Mr. Shahan approached the roadblock, he was travelling at an estimated speed of 35-40 MPH with Deputies Guy and Brown in close pursuit. Photographs reveal that Officer Taylor's truck was emblazoned with a large reflective decal on the passenger side of the vehicle indicating "Pagosa Springs Police Department;" it would have been clear to Mr. Shahan that this was a police vehicle as he approached. Additionally, Officer Taylor was outside of his vehicle, behind the front bumper, and had a powerful flashlight pointed directly at Mr. Shahan as he approached. Furthermore, Mr. Shahan was honking persistently as he approached the roadblock. Finally, Officer Taylor's overhead red-and-blue lights were activated as Mr. Shahan approached the roadblock. All these factors combine to ensure that Mr. Shahan saw the vehicle blocking the road, knew that it was a police roadblock, and knew that an officer was right behind the front bumper as he approached.

Mr. Shahan's path of travel reveals that as he approached the roadblock, he was travelling down the middle of the roadway, directly at Officer Taylor's position. However, Mr. Shahan swerved at the last second to avoid hitting Officer's Taylor's truck, instead travelling past the front of the truck through the narrow gap between the front of Officer Taylor's truck and a speed limit sign on the side of the road. Mr. Shahan's passenger side tires left the roadway entirely, and cut a path through the brush on the shoulder of the road, which drops off toward the bar ditch at the side of the road.

As he passed Officer Taylor's position, Officer Taylor shot several times at Mr. Shahan.<sup>3</sup>

At 19:48, Officer Taylor called out over the radio "shots fired." Officer Taylor moved his truck from the roadway, allowing the deputies to continue the pursuit. During the next several minutes, Officer Taylor made statements heard by the deputies including "he tried to run me over," and "he tried to run me over, I discharged 4 rounds though." The pursuit was terminated when all law enforcement officers reported having lost visual contact of Mr. Shahan. Officer's Taylor's firearm was secured by a supervisor and later turned over to the OIIT investigators.

At 21:04, a vehicle matching the description of Mr. Shahan's car was reported to be engulfed in flames on a nearby county road. Upon inspection, the license plates matched the vehicle Mr. Shahan was driving. Mr. Shahan was nowhere to be found and remains at large.

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<sup>3</sup> The details of the shooting are examined in much greater detail in the review of Officer Taylor's body-worn camera footage below.

The OIIT was activated at 20:40 hours. As part of the investigation, the scene of the shooting was secured and searched; eight shell casings were found in the area where Officer Taylor was positioned during the shooting. Officer Taylor's firearm revealed eight shots fired. A search of Mr. Shahan's vehicle shows one round hit the engine hood; no other bullet strikes were observed.<sup>4</sup>

Evidence collected included items from the scene of the shooting as well as video footage from dash mounted and body-worn cameras. Analysis of the evidence revealed the chase lasted roughly 9 minutes and travelled a distance of 7.3 miles.

### **Interview with Officer Justin Taylor**

Officer Taylor was interviewed on October 22, 2020 by Colorado Bureau of Investigations Agents Jack Haynes and Rosa Perez. The following is Agent Perez's summary of Officer's Taylor's recollection of the events of October 19, 2020.

Taylor was at Sonic picking up dinner when he heard TJ Fitzwater air over the radio that he was at a restaurant, and Danny Shahan was at the bar. Fitzwater followed Shahan out to Shahan's vehicle. Taylor said, *"In my head, I'm like okay. So this is somethin' - somethin' serious going on if - if an off duty detective is following another person out to their vehicle."* Taylor believed Fitzwater identified the vehicle as a silver vehicle with one taillight out. Fitzwater didn't identify if there was any other people in the vehicle. *"So I don't know if there was or not from that perspective."* Taylor heard over the radio that Deputy Brown was on her way to that location and while en route, *"I can't remember 100%. I thought I heard that they said there was warrants for his arrest and, um, that he was a dangerous - dangerous, uh uh, person."* Deputy Brown decided to stop and wait for a cover unit before going to the restaurant. *"So in my head, I'm like okay. This guy - something's serious."* Deputy Brown then reported, *"He's leaving the scene."*

Deputy Matt Guy told Deputy Brown over the radio that he was in service and asked her for her location. Taylor then heard Deputy Brown say, *"get him, get him, get him,"* and she was *"urgent."* Deputy Guy indicated he was pulling the vehicle over, and Deputy Brown said, *"We're gonna prone him out."* Taylor thought, *"This is a high-risk felony stop."* The next thing Taylor heard was the deputies are in pursuit of the vehicle they tried to pull over. The deputies' mention several times the vehicle is going over the speed limit, ran a stoplight, and stop sign. Based on these comments, Taylor believed the driver *"had no due regard to public safety."* The deputies continue to call out the roadways they are on and state the vehicle is going 45 to 50 mph in a 25 mph zone. To Taylor, *"It sounds like this guy is just driving recklessly from over radio traffic."* Taylor asked the deputies if they wanted him to go to Great West Avenue and set up a roadblock, and the deputies told Taylor, *"yes."* According to Taylor, the sheriff's department doesn't chase after petty traffic violations like a tail light out, so *"it's something serious."* Taylor parked his vehicle across Great West Avenue where the speed limit sign was located so the sign was *"helping me with that roadblock."* The emergency lights were activated on Taylor's patrol vehicle. Taylor believed no regular vehicle would get through the gap between his patrol vehicle and the speed limit sign. Several minutes later, Taylor started hearing the sirens and seeing the

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<sup>4</sup> It is possible Officer Taylor's bullets went over the top of the vehicle; one was found lodged into a nearby building.

lights coming around the corner towards his roadblock. Taylor believed the driver of the vehicle would stop.

*Next thing I see is this guy hits the accelerator. Um, and I can kind of hear it. The auditory exclusion started kickin' in. Um, I started getting a little panicked 'cause I'm like this guy is comin' at my vehicle at a fast rate of speed. And, like, he was there like that. And, um, I'm like this guy is going to kill me if I don't do somethin' to try to-to-to divert this. He's gonna kill me because I'm standing right here and he is - he's heading this direction. So I know he could see my flashlight 'cause I was shining my flashlight. I don't know why but I was yelling, 'Stop.' There's no way he could hear me with the sirens and everything. It was just too loud but I was yelling stop because I - I wanted this guy to stop. I didn't want to have to - to go through this next step. I didn't want to - I wanted to get home to my own wife and kids.*

*And it's about 5 to 10 feet away. Um, I made the decision this guy's gonna hit my vehicle and kill me 'cause I have no chance to run. At the rate of speed he's going that vehicle's gonna fly around and just be on top of me. So I'm - in my head I'm like I need to divert this vehicle or make it stop. I have to stop the threat or get it away from me. So I begin firing at him - at roughly 5 to 10 [feet] - I can't remember exactly how far. It was that tunnel vision and all that came into play. Um, and I started shooting. And next thing I know is I'm following him because, uh, he's still so close to my vehicle. It's like it was - it was somethin' like, that really scared me. I'm just like, 'This guy is trying to kill me.' So he passes my vehicle. I'm still shooting because his vehicle's still so close. It could still hit me or hit - hit the truck and push the truck on top of me. After he passes, um, I continue to shoot because this guy just tried to kill me, and I was tryin' to stop a - a fleeing felon. Um, my whole hopes from the shooting was to either like I said stop it or push 'em either off the hill or towards the speed limit sign to get him away from me 'cause I - I have a family to go home to at the end of the day.*

A review of the interview with Officer Taylor reveals that he believed that Mr. Shahan "was trying to use his vehicle as a deadly weapon instead of an actual, like, knife or a gun." As Mr. Shahan approached, he perceived that Mr. Shahan accelerated and thought, "this guy is gonna hit me. He's gonna try to hit my vehicle and kill me and get away." Officer Taylor thought Mr. Shahan could not make it through the gap between his patrol vehicle and the speed limit sign. According to Taylor, the "options he has is hit my vehicle which is gonna be the easiest option for him to get away, hit the speed the speed limit sign and my vehicle or go down the embankment."

When Taylor started firing at the driver, "it looked like he was coming straight - straight towards me...I don't recall at what point that he pulled to the side or how he did it." The last radio transmission Taylor thought he heard prior to firing at the vehicle was, "He was roughly doing 45 -50 miles an hour on the dirt road." At the time Taylor fired his gun, he thought he shot four rounds. "I thought I shot two and then as he - when he got back or got by, I shot off another two, like, when he got he was trying to escape after trying to kill me." Officer Taylor was aiming for the driver of the vehicle. "I remember seeing the driver's seat and putting - trying to put rounds into the driver's seat, and it was just so fast he went by." Officer Taylor shot at the driver "because he was the veh - person in control of the vehicle and he was coming at me and I perceived it as he was gonna hit my vehicle to either try to injure me or kill me to get

away." Officer Taylor didn't try to jump out of the way; *"I'm turning with the vehicle, um, trying to push him away instead of, um, jumping 'cause I didn't - if I jump either the vehicle was gonna be on top of me or his vehicle was gonna be on top of me."* As the vehicle drove around Officer Taylor, he continued to fire at the vehicle/driver. *"His tail end was, like less than an inch away from - from my vehicle. He still had that potential to hit my vehicle and push it on top of me. So that's why I continued firing."* When Taylor was asked why he did not have any other option than to fire, Taylor said, *"Cause if I went left, he was gonna hit me. If I didn't do anything he was gonna hit my vehicle at that speed and shoot it at me and kill me either way. So I - the only three options I had was death. And my fourth option was to do something about it and push him away from - or, um, not so much push him but, um, divert him away from my vehicle."*

### **Video Evidence**

There were four videos submitted as evidence.

The video entitled 1D03A1EF20201019194246001i100 is a video from Deputy Guy's dash camera. It shows the stop of the Mr. Shahan's car on Hwy 160 on October 19, 2020 at roughly 19:42 hours. The video shows Deputy Guy begin to approach Mr. Shahan, but he drives off from the traffic stop, and Deputy Guy begins his pursuit. Mr. Shahan leaves the main highway and drives down several dirt roads in an attempt to avoid being apprehended while Deputy Guy remains in pursuit with his sirens and overhead lights activated. At the 19:47:53 mark of the video, Mr. Shahan approaches a partial roadblock set up by Officer Taylor. Officer Taylor's vehicle is blocking the left and middle portions of the roadway. Officer Taylor is positioned in the center of the roadway, behind his vehicle. Mr. Shahan approaches and slows slightly, but instead of stopping, he goes around the side of Officer Taylor's truck. At the 19:47:58 mark, as Mr. Shahan's vehicle passes Officer Taylor, several gunshots are heard. Officer Taylor then moves his vehicle, allowing Deputy Guy to continue the pursuit. At the 19:48:18 mark of the video, dispatch declares "shots fired" over the radio. For the next several minutes, Deputy Guy is attempting to locate Mr. Shahan's vehicle, but it is gone from sight. At 19:52:32, the decision is made to stop the pursuit, although continuing efforts are made to attempt to locate Mr. Shahan's vehicle for the remainder of the video. The video ends at 19:53:24; it is a total of 11:11 long

The video entitled 1D03A1EF20201019194246001i200 is audio of Deputy Guy, there are no video images. The time stamps listed above match the audio on this video, including the gunshots heard at the 19:47:58 mark and other radio traffic. It is otherwise unremarkable.

The video entitled Axon\_Body\_2\_Video\_X81027668\_2020-10-19\_194732 is the body-worn camera footage from Officer Justin Taylor. It begins at the 19:47:02 mark.<sup>5</sup> It shows Officer Taylor emerge from his vehicle, which is already stopped and positioned as a partial roadblock with his overhead lights activated. Sirens are heard in the background from the pursuit by Deputies Guy and Brown. At 19:47:50, Mr. Shahan's vehicle comes into view, closely followed by Deputies Guy and Brown. At 19:47:54, dispatch is heard stating that Mr. Shahan's estimated speed is 35-40 mph. At 19:48:00, Mr. Shahan's car has rounded the turn and is headed directly at Officer Taylor. A honking horn is heard being sounded as the car approaches Officer Taylor. Officer Taylor announced "stop the car!" with his gun and flashlight raised and pointed at Mr. Shahan's car; the flashlight partially illuminated Officer Taylor's gun,

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<sup>5</sup> There appears to be a time discrepancy between Deputy Guy's dash-mounted camera and Officer Taylor's body worn camera, which shows the date as 10/20/20 and the time of the video as 01:47:02. This is likely due to the settings on cameras; while the date and hour do not match Deputy Guy's dash mounted camera, the minutes and seconds do match, with a slight discrepancy.

making it visible to Mr. Shahan. Simultaneously, dispatch announces that Mr. Shahan's vehicle speed is estimated at 35-40 mph.<sup>6</sup> At 19:48:05, Mr. Shahan's car approaches Officer Taylor's position, continuously honking, and begins to maneuver around the front of Officer Taylor's vehicle. At 19:48:06, Officer Taylor fires the first shot as Mr. Shahan's car is rapidly approaching Officer Taylor's position, roughly 6-12 feet away. A second shot is fired as the driver's side door is almost parallel to Officer Taylor. A third shot is fired as the rear of the vehicle is roughly parallel to Officer Taylor. A fourth shot is fired after Mr. Shahan's car is about 10-15 feet past Officer Taylor. Shots five through eight are fired as the vehicle is about 15-30 feet past Officer Taylor. All eight shots are fired in under three seconds. At 19:48:12, Officer Taylor radios to dispatch "*shots fired*" and immediately enters his vehicle to move it from the roadway. He then begins to search for Mr. Shahan's vehicle. At 19:51:15, Officer Taylor states aloud "*motherfucker tried to run me the fuck over.*" At 1:52:00, Officer Taylor states "*he tried to run me over, I discharged four rounds at him.*" At 19:53:07, Officer Taylor states aloud "*motherfucker tried to run me the fuck over.*" At 1:53:18, Officer Taylor appears to have stopped his car and says to an unknown person "*mother fucker tried to run me over...four rounds I shot off.*" The two agree to return to where the shots were fired. At the 1:54:33 mark, Officer Taylor tells dispatch that he is returning to where shots were fired, and that "*I believe I discharged four rounds.*" The video ends at 1:55:25; it is a total of 8:24 long.

The video entitled Axon\_Body\_2\_Video\_X81027668\_2020-10-19\_200014 is another video from the body-worn camera of Officer Justin Taylor. It begins at the 20:00:14 mark and appears to be Officer Taylor and another peace officer at the scene of the shooting. At the 20:00:27 mark, Officer Taylor states "*I guess I shot off six,*" and 24 seconds later "*I guess I shot off six rounds...dude, I was, he tried to run me the fuck over, and I was like trying to tell him to stop.*" He then discusses the position of his vehicle and Mr. Shahan's path of travel. At the 20:01:18 mark, he states "*...I was right at the fuckin, the bumper, his vehicle, like I could feel the wind whenever it came flying by, and I was like 'oh shit, this motherfucker is trying to run me the fuck over.'*" At the 20:01:39 mark, he states "*I tried, I tried to get him to stop, um and I had my flashlight, but he was going so fucking fast I couldn't even see, see the person.*" While at the scene, the officers appear to be looking for shell casings. At 20:02:21, Officer Taylor finds the spot where he was standing and states "*I was standing right, right here and he fucking was just coming right at me, and I was telling him to stop and he wouldn't stop...yeah, I engaged four and as I, I don't know why the fuck I did it, but as he just kept going, I just fuckin put two more in the back. I don't know why. The four should be e-fucking-nough, but....*" At the 20:03:04 mark, he states "*honestly he was fucking speeding so fast, I didn't hear that, all I heard was the radio and his engine.*" At the 20:03:42 mark, he states "*I'm fine, I jumped out of the way just in time, but I engaged 'cause he did try to hit me, but I was engaging as I was getting out of the way, 'cause he wasn't slowing down.*" At the 20:12:06 mark, Officer Taylor is describing to another officer what happened, stating "*...he came flying in I want to say about 45 ish [mph]...I was aiming for the center, err the windshield, the front windshield, I was aiming at the one, or at the A, the A pillar area, I was aiming at the driver.*" At 20:17:24 mark, Officer Taylor begins a walk-through of the events with a supervisor, during which he describes that Mr. Shahan's vehicle "*barely missed the truck...and my leg was exposed, so I jumped out of the way before he could make contact, but before I jumped, I engaged...He came hauling around that corner, and he picked up speed, I remember hearing him honking, and he just frigging 'woosh' right through...*" The video ends at the 20:35:53 mark; it is a total of 35:40 long.

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<sup>6</sup> It is unclear from this video whether Mr. Shahan's vehicle slowed in any appreciable way as it approached Officer Taylor due to the perspective from which the video is shot, with Mr. Shahan's car driving directly at and past Officer Taylor.

## LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. The standard of proof for filing a criminal case requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual.

The evidence establishes that Officer Taylor intentionally fired his weapon at Danny Shahan. Officer Taylor indicated that he fired his weapon believing he was in imminent danger of being killed and to prevent a fleeing felon from escaping. The determination of whether Officer Taylor's conduct was criminal is, therefore, primarily a question of legal justification.

While knowingly or intentionally using deadly force against another human being is generally prohibited under Colorado law, the Criminal Code specifies certain circumstances in which the use of deadly force is justified. One of these specific circumstances is the use of deadly force to defend oneself or a third person. A second specific circumstance is the use of deadly force by a peace officer.

The legal framework for the analysis in this case is found in the following sections of the Colorado Revised Statutes:<sup>7</sup>

### **C.R.S. § 18-1-407-Affirmative defense**

(1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

### **C.R.S. § 18-1-710 Affirmative defense**

The issues of justification or exemption from criminal liability under C.R.S. sections 18-1-701 to 18-1-709 are affirmative defenses.

### **C.R.S. § 18-1-704 Use of physical force in defense of a person**

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

- (a) The actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury.

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<sup>7</sup> Inapplicable portions of these statutes are omitted from this letter for the sake of brevity.



### **C.R.S. § 18-1-707 Use of force by peace officers**

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
  - (a) Not use deadly force to apprehend a person who is suspected of only a minor or nonviolent offense;
  - (b) Use only a degree of force consistent with the minimization of injury to others;
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected person as soon as practicable; and
  - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
  - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
  - (b) The suspect poses an immediate threat to the peace officer or another person;
  - (c) The force employed does not create a substantial risk of injury to other persons.
- (4) A peace officer shall identify himself or herself as a peace officer and give clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

### **C.R.S. § 18-1-901 Definitions**

- (3)(d) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

### **LEGAL ANALYSIS**

In this case, the actions of Officer Taylor were legally justified under Colorado law. At the time Officer Taylor discharged his handgun, he was justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707.

Both statutory provisions provide an affirmative defense to the use of deadly force if done in order to protect oneself from the imminent use of deadly physical force. C.R.S. §18-1-704 is an affirmative defense applicable to all persons defending themselves. C.R.S. §18-1-707 is an affirmative defense limited in application to law enforcement officers' use of force, including situations in which the suspect is attempting to escape arrest for felony conduct involving the use or threatened use of deadly force and in which the suspect poses an immediate threat to the peace officer.

On October 19, 2020, Mr. Shahan endangered the life of Officer Justin Taylor. During the high-speed chase Mr. Shahan drove his vehicle at a high rate of speed directly at Officer Taylor's position behind a roadblock. Officer Taylor was extremely vulnerable in this scenario as he was positioned behind the front bumper of his vehicle, around which Mr. Shahan swerved at the last second, barely avoiding a collision. From Officer Taylor's statements, he believed Mr. Shahan to be dangerous, and as he drove at Officer Taylor, he could hear Mr. Shahan revving his engine and honking, and estimated his speed at 45-50 MPH. Officer Taylor reasonably believed that if Mr. Shahan had caused collision with the roadblock, he would have been crushed under the debris and likely killed or gravely injured. He fired his weapon to try to "push" or "divert" Mr. Shahan away from the roadblock and ensure that Mr. Shahan did not cause a collision. He continued to fire after the risk of collision was over in an attempt to stop Mr. Shahan from fleeing.

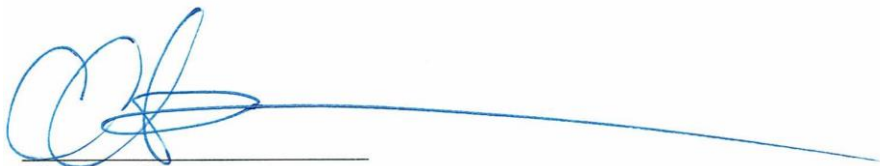
Under C.R.S. § 18-1-704, Officer Taylor was justified in using physical force against Mr. Shahan in order to defend himself from what he reasonably believed to be the use or imminent use of unlawful physical force against him, and he used a degree of force which he reasonably believed to be necessary for that purpose. In this case, deadly physical force was necessary because Officer Taylor reasonably believed that a lesser degree of force was inadequate and he had a reasonable ground to believe, and did believe, that he was in imminent danger of being killed or receiving great bodily injury.

Under C.R.S. § 18-1-707, Officer Taylor was justified in using deadly physical force for several reasons. As an initial matter, any nonviolent means were unreasonable given the circumstances; the speed, direction, and intention with which Mr. Shahan approached the roadblock prevented Officer Taylor from employing nonviolent means in any attempt to stop and apprehend Mr. Shahan. Officer Taylor had clearly identified himself as an officer, with emergency lights illuminated, among other indicators. Although it would be impossible for Mr. Shahan to hear any warnings issued by Officer Taylor, he nonetheless did issue a verbal warning to "*stop the car!*" while pointing his gun directly at Mr. Shahan. Mr. Shahan's criminal acts constituted more than mere minor or nonviolent offenses, but rather involved felony conduct including the use or threatened use of deadly physical force against Officer Taylor. As such, Officer Taylor had an objectively reasonable belief that a lesser degree of force was inadequate and reasonably believed he was in imminent danger of being killed. Given Mr. Shahan's extremely dangerous behavior and apparent disregard for human life, the use of deadly force as a means of stopping and apprehending of Mr. Shahan was justified under the circumstances.

## CONCLUSION

We find in our review of this shooting that the conduct by Pagosa Springs Department Officer Justin Taylor does not rise to the level of a criminal offense and that he was justified in using deadly force under the circumstances he encountered on October 19, 2020. Based on the applicable law and the facts and circumstances of this case, Officer Taylor's actions during this incident meet the legal requirements of the affirmative defense of using deadly physical force in self-defense as contained in C.R.S. § 18-1-704(2)(a).

The officer's actions also meet the legal requirements of C.R.S. § 18-1-707 involving the use of deadly physical force. Therefore, after review of the entire investigation of this incident, it is the final conclusion of my office that his conduct does not violate any criminal statutes and this office will not be filing criminal charges against Officer Taylor.



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Christian Champagne  
District Attorney  
6<sup>th</sup> Judicial District