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July 18, 2023

Chief Adam Turk
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

RE: Investigation of the April 29, 2023, Officer-Involved Shooting of Ernesto Flores

Chief Turk:

The investigation into the shooting of Ernesto Flores has been completed by the Critical Incident Response Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officers involved in this incident. Attached hereto are the findings of the Investigations Unit 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.

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 Ernesto Flores was shot and killed by law enforcement, the determination of whether the conduct was criminal is a question of legal justification.

Colorado Revised Statutes § 18-1-707, as amended by the Colorado General Assembly in 2020 by SB 20-217, establishes when a peace officer can use potentially deadly force to defend himself or others. The pertinent subsections of the statute read as follows:

C.R.S. § 18-1-707(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

C.R.S. § 18-1-707(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms...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.

C.R.S. § 18-1-707(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(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 Flores intended to use deadly force. The issue is whether it was reasonable for the officer to believe that he was about to use deadly physical force against him or another person with a deadly weapon.

In this case, Greeley officers were attempting to locate and arrest Ernesto Flores for violent felonies he committed in Greeley and Evans. Officers learned Ernesto Flores was at 1802 27th Street and responded there to apprehend him. When police arrived, Flores fled into the residence, and as he ran, he started shooting at the officers. He shot at officers from the back patio and from other locations within the house. Fearing for their own safety and the safety of others in the area, Officers Perkins, Kantor, and Clifford returned fire. Shortly thereafter, Flores and another male came out of the residence appearing to turn themselves in. Flores then attempted to escape through the backyard. As he was escaping, he began to climb a fence and Officer English shot at Flores from her position in a parking lot south of the residence. Officer Kantor chased Flores and shot at him as well. Flores was later pronounced dead at the scene and an autopsy revealed he had been shot six times.

Flores would have clearly known that the Officers were law enforcement. They arrived in police cars, were wearing police uniforms and had identified themselves as police officers. Further, he fled to avoid being arrested for his recent crime spree.

All of the officers reasonably believed when they fired their weapons that they or others 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 Officers Perkins, Clifford, English, and Kantor were justified in using deadly force against Flores. The use of such force was reasonable based on Flores' shooting at officers and all other attendant circumstances.

CONCLUSION

Under C.R.S. § 18-1-707, the actions of Officers Perkins, Clifford, English, and Kantor were justified and authorized by law to defend and protect themselves and others from the lawless and threatening actions of Ernesto Flores. 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 large, stylized initial "M".

Michael J. Rourke
District Attorney



Officer Involved Shooting

April 29, 2023

Subject: Ernesto Flores

23DA00095

Investigator Dan Boyle

23G006492 (GPD incident number)

23W002795 (WCSO CIRT number)

3A230681 (CSP CIRT number)

ER23-1092 (Erie PD CIRT number)

23-02879 (Windsor PD CIRT number)

SUMMARY

Ernesto Flores, whose moniker was “Fader” was wanted by law enforcement for several felonies being investigated. Greeley Police Department (GPD) officers were advised during briefings that Flores was dangerous and that he had been involved in multiple firearm-related crimes. Greeley officers were also cognizant that he often evaded law enforcement when police attempted to contact him.

During the briefing on April 29, 2023, GPD officers were informed that Flores may be located at 1802 27th Street. They also learned the agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives were pinging Flores’ cell phone and he may be driving a red Dodge Durango. Officers discussed tactics to approach to this residence because at a recent SWAT call there the suspects were able to flee to the south.

Between 1000 and 1100 hours, officers received information that Flores’ cell phone pinged at 1802 27th Street. As they were responding, they confirmed a red Dodge Durango was backed into the driveway. With this information, responding officers coordinated their response, and planned to secure the home then call the SWAT team.

Officer Perkins and Officer Kantor responded to the front of the residence and the other officers would respond to the parking lot south of the residence.

As Officer Perkins pulled into the driveway, he saw Flores run towards the back door of the residence. Flores pulled a gun with an extended magazine from his waistband. Flores shot at the officers from the door and from rooms inside the house. After the exchanges of gunfire, Flores walked out the back door with another male. Flores fled from the officers running southbound. Officers fired upon Flores as he attempted to escape, and he was later pronounced dead on scene.

The 19th Judicial District Critical Incident Response Team (CIRT) was notified, and an investigation was conducted.

FLORES RECENT HISTORY

Greeley Police Case # 23G004572: On 03/31/2023 Greeley Officers contacted Flores passed out in a black Ford Explorer parked blocking a residential driveway. When officers opened the driver side car door, a silver revolver was located and removed. When ordered to exit the vehicle, Flores started the car and reached to the area the firearm was located. He then resisted the officers attempt to remove him from the vehicle. Flores was able to flee the scene in the vehicle and struck a patrol car as he left.

Evans Police Case # 23EP00861: On 04/27/2023 a shooting occurred at 2921 Anchor Drive. The suspect was driving a black Ford Explorer and fired multiple rounds at the residence. The main suspect in the case was Ernesto Flores. Call detail records recovered by parole officers placed Flores at or near the scene during the time of the shooting.

Greeley Call for Service #20230429-00362: On 04/29/2023 at 10:09 a.m. Greeley Officers received a call for service at Alberto's Express on West 10th Street in Greeley. It was reported that a male in a red Dodge Durango pulled a gun on the reporting party and then fled the scene. A license plate number was obtained, and the plate matched to the red Dodge Durango located at 1802 27th street belonging to Flores.

DISPATCH TIMELINE

(Call ID #: 20230429-00427)

11:37:00: GPD units arrive at 1802 27th Street; Officer Perkins advised that Flores is running into the house, and he has a gun.

11:37:06: Officer Perkins announced shots fired as five shots were heard in the background.

11:37:22: Officer Kantor called out on the radio shots fired, they need more units, and Code 5.

11:39:32: Officer Perkins advised Flores was coming out of the house through the back door.

11:39:41: Officer Perkins exclaimed that Flores was running eastward.

11:39:52: Officer Kantor advised dispatch that shots were fired, and one suspect was down.

INVESTIGATION AND INTERVIEWS

Officer Perkins

Officer Perkins was interviewed 04/29/2023. He was on duty and in full uniform when the attempt to arrest Flores was made at 1802 27th Street.

Officer Perkins described that he knew Flores and his criminal history. He was also aware of the locations Flores frequented. Officer Perkins knew Flores was associated with a red Dodge Durango and took an unmarked patrol vehicle that day to attempt to locate Flores. Officer Perkins was advised of an updated phone ping location. The phone ping showed Flores at the address consistently for several pings.

Officer Perkins said that he drove the unmarked Tahoe into the driveway with activated police lights to “clog up the driveway” so the suspects were unable to flee in their vehicles. He wanted to force people back into the house, which they would “lockdown” and call in SWAT. Officer Perkins said that he could see the Durango directly in front of him with one male standing

outside of it. He knew this person was not Flores. Shortly thereafter, this male and Flores, who he identified by his neck tattoos, ran into the backyard.

Officer Perkins stated that as the two males were running, Flores started shooting at the officers. Officer Perkins took cover behind the Durango. He yelled at Officer Kantor to move to the front of the residence. Officer Perkins recognized that shots were being fired “from somewhere” and that it’s “not us” (police). He explained shots were being fired out of a “window or something.”

Officer Perkins said that he maintained his position behind the Durango watching the back door. He said that Flores would peek out of the door, shoot, then move back inside. He stated that while Flores was shooting from the backyard and the doorway, he was in fear that Flores was going to kill him. He believed that Flores was specifically targeting him, so he returned gunfire to defend himself and others from Flores.

Officer Perkins heard a male voice from the back door saying that they were coming out. Officer Kantor moved alongside Officer Perkins as they both began to yell orders to get on the ground. Officer Perkins said that Flores was the first out of the doorway with nothing in his hands. Flores walked towards the backyard at the same time the other male from the Durango exited the residence. Both males did not have anything in their hands and were not making any sudden movements, but Officer Perkins noticed that Flores began making “little side steps” in what he believed was the start of Flores preparing to run.

Officer Perkins stated Flores ran to the back of the detached garage and out of his sight. Officer Kantor chased Flores while Officer Perkins remained with the other male. Officer Perkins aired on the radio that Flores was running and then heard the rifle shots from presumably Officer Kantor. Officer Perkins did not see the shooting of Flores, as he was worried about maintaining control of the other male, later identified as Juan Soto-Gallegos.

Officer Perkins fired five rounds on scene from his agency issued pistol.

Officer Clifford

Officer Clifford was interviewed 04/29/2023. He was on duty and in full uniform when the attempt to arrest Flores was made at 1802 27th Street.

Officer Clifford arrived and saw a male who he positively identified as Flores by facial and neck tattoos near a detached shed and the Durango. He said he wasn't sure exactly where Flores came from but as Flores looked at him, he saw Flores raise his shirt and draw a black handgun with extended magazine from his waistband.

He said Flores went into the house and began shooting. He could hear the rounds Flores was firing "cracking" over his head and could feel the air as they passed by him. Officer Clifford had moved to a vehicle where he could watch the front of the house and remained in that position.

From that location he was able to see a front window break out as Flores continued to shoot. He said he fired at Flores inside the house.

He heard Officer Kantor call out to Officer Perkins. Hearing no response from Officer Perkins, he feared Officer Perkins may be dead. He said Officer Kantor moved forward to see Officer Perkins, but Flores continued to shoot at them. Officer Clifford said he eventually saw Officer Perkins and he took a position off the corner of the house and held that position until SWAT arrived.

Officer Clifford fired five rounds from his duty pistol.

Officer English

Officer English was interviewed 04/29/2023. She was on duty and in full uniform when the attempt to arrest Flores was made at 1802 27th Street.

She was assigned the southern perimeter. Almost immediately upon arriving on scene, she heard over the radio, "shots fired!" and then gunfire. She and Officer Baker positioned themselves behind their patrol vehicle and attempted to determine where the shots were coming from but could not see the source or impacts of rounds. She heard officers on the radio saying, "shots fired!", "it's Fader!", and "he's got a gun and shooting at us!"

She retrieved her patrol rifle from the patrol car and took up a position on the driver's side door, facing the property and fence. The gunfire stopped, and then she saw an officer chasing someone wearing a black hat commanding the person to stop. The person continued running south to fence line, before veering east toward the southeast corner of the fenced property.

She saw the right side of the man's face and body as he attempted to climb over the fence. She saw tattoos on the side of the face and recognized the man as "Fader." She fired rounds at him, aiming at "center mass." Officer English shot, based on the prior information she had regarding Fader, as well as the radio traffic she heard from officers identifying Fader as being armed and shooting at the officers. Officer English heard Officer Kantor say over the radio, "shots fired, suspect down. I've got a suspect behind the garage. "

Officer English fired four rounds from her patrol rifle.

Officer Kantor

Officer Kantor was interviewed 04/29/2023. He was on duty and in full uniform when the attempt to arrest Flores was made at 1802 27th Street.

As Officer Kantor arrived on scene and exited his patrol vehicle, he heard Officer Perkins say, "he's running" and the suspect was armed. Immediately after this, the gunshots started. Officer Kantor drew his sidearm and took cover with Officer Perkins.

Officer Kantor saw Flores with a firearm leaning out the back door shooting at him. He fired two rounds back at the suspect. When the suspect ducked back inside the house, he retrieved his department issued SWAT rifle.

While retrieving his rifle, Officer Kantor heard Officer Clifford say he had just been shot at from the front of the house. He stayed with Officer Clifford for a short time and yelled back to Officer Perkins to check on him. Officer Perkins appeared to be "pinned down."

Officer Perkins requested him to help apprehend the suspect, so Officer Kantor went to the front of Officer Perkins' car as Flores came out of the house with another male. He said that Flores' hands were on his waist band, and it appeared that they were going to run south. He gave Flores verbal commands to stop but he did not.

He said Flores ran to the south behind the south side of the garage. Officer Kantor chased Flores, and when he reached the back corner of the garage, he slowed down. As he was clearing the corner, he heard gunshots coming from the direction of where Flores had run and believed Flores was shooting at him. As he cleared the corner, he saw Flores trying to jump the fence. He thought, "I'm going to die if I don't shoot him first." He also thought "it was either going to be me or him, and he already shot at me, and my partners." He then engaged Flores with his rifle.

Officer Kantor shot 2 rounds from his duty pistol and 6 rounds from his patrol rifle during the entirety of this incident.

All the officers' Body Worn Cameras (BWC) were reviewed by CIRT investigators and are consistent with their interviews.

WITNESS STATEMENTS

Alize Shay-Leyba

Alize Shay-Leyba was inside the house when the shooting started. She observed Flores running into the house covering his head. She stated she could see the red and blue lights reflecting in the vehicles when she looked out the window. Alize stated she ran to the basement with Eric Maestas and Flores came to her and handed her a black pistol with a brown grip and an extended magazine. She stated she didn't know what to do with the gun, so she placed it on the air duct in the basement laundry room. This, along with another firearm, was recovered during a search of the residence.

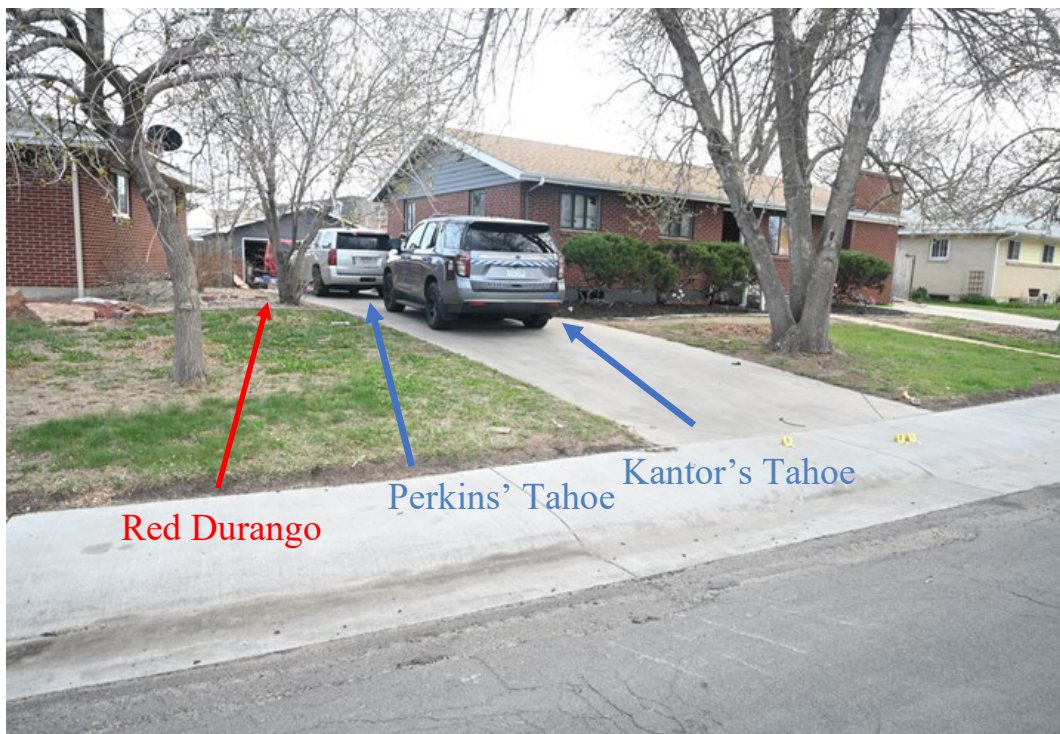
Juan Soto-Gallegos

Juan claimed to have been in the house at 1802 27th street when the incident took place. He observed the red Durango arrive and asked if it was Flores. He said shortly after, several other vehicles pulled up and he heard three gun shots. He said he laid on the floor and then went

downstairs with Alize. Juan said he heard footsteps upstairs and heard one gun shot go out the front of the house. He said Flores came downstairs in a panic and Juan decided to walk out with his hands up. Flores asked him to go in front as he was worried the cops were going to shoot him. Juan came out with his hands up and Flores walked behind him. He told Flores he was going to lie down and comply. When he did, Flores took off running behind the garage.

CRIME SCENE

CIRT investigators processed the scene and collected evidence. They located numerous spent shell casings from Flores as well as the officers. They located the handgun and extended magazine used by Flores above an air duct in the basement and another handgun.



Overall front view of 1802 27th Street



Backyard view of 1802 7th Street



WEAPON USED BY



30 round extended magazine, 16 shell casings were recovered on scene



Additional handgun located during search warrant.

Alize hid the gun used by Flores on top of an air duct.





View looking northeast towards the garage from a neighbor.



Axon_Body_3_Video_2023-04-29_1137_X60A5614L

Flores running

Axon Body 3 Video 2023-04-29_1137_X60A5614L



Kantor's body cam view as Flores is attempting to jump the fence before being shot.

Autopsy

Ernesto Flores
(AKA FADER)



Toxicology/Autopsy Results

Amphetamine 220 ng/mL

Methamphetamine 1800 ng/mL

Blood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior.

Flores was shot six times:

- Four rounds in the abdominal area.
- One round entered the left side of his neck and traveled downward fracturing multiple ribs, piercing the left lung and the left atrium of the heart.
- One round entered the back of the head causing multiple skull fractures and brain hemorrhages.