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August 23, 2024

RE: District Attorney Opinion Letter – July 21, 2024 Officer Involved Shooting near Grandview Cemetery, Fort Collins, Colorado: LCSO #24-6869 (Lead Agency), LPD #24-5625, FCPS #24-9981, WPD #24-4558, CSUPD 24-1243

Chief Jeff Swoboda,

The District Attorney's Office has been asked to review the shooting of Clayton Pierce on July 21, 2024, in the area of the Grandview Cemetery, Fort Collins, Colorado to determine whether Fort Collins Police Services personnel violated any Colorado criminal statutes with respect to the shooting.

I. EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in greater detail below, I conclude that Officer Peter Nolan, Sergeant Brian Mallory, Officer August Barber and Officer Cole Giandomenico were legally justified in their use of force, including deadly force, to defend themselves, other officers and the public at large from the threat posed by Clayton Pierce on July 21, 2024. Having concluded that Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico were legally justified in their use of deadly force, no criminal charges will be filed against them or any other peace officer.

II. THE STATUTORY FRAMEWORK FOR OFFICER INVOLVED SHOOTING INVESTIGATIONS

C.R.S. 16-2.5-301 governs investigations into peace officer-involved shooting. It provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from agencies within the jurisdiction who are members of the district's Critical Incident

Response Team (CIRT). Specifically, the Larimer County Sheriff's Office was the lead agency, and they were aided by other agencies, including, the Loveland Police Department, Colorado State University Police Department, Windsor Police Department, Fort Collins Police Services (in a capacity limited by CIRT protocol), and the District Attorney's Office.

C.R.S. 20-1-114 provides:

The District Attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to Section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the District Attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The District Attorney shall post the written report on its website or, if it does not have a Website, make it publicly available upon request.

This document constitutes a report of the District Attorney's findings and includes the basis of the decision not to charge any involved peace officer with any criminal conduct.

III. MATERIALS REVIEWED

I have been provided materials produced during the CIRT investigation into the shooting of Clayton Pierce. The information I have considered includes:

- The body worn camera footage of the involved peace officers
- Reports/Summaries of the CIRT investigators
- Recorded interviews of involved peace officers
- Computer aided dispatch report, audio recordings of 911 phone calls and audio recordings of police radio traffic
- Photographic and video evidence, including but not limited to comprehensive scene documentation, and ring doorbell footage
- Physical evidence (e.g., firearms, ballistics, etc.)
- Maps and scans depicting the geographical area in which the events took place
- Police reports
- Toxicology report provided by the Coroner

IV. APPLICABLE LAW

The District Attorney's review of this event is guided by the Colorado Statutes pertaining to the use of force by peace officers, including self-defense. Officer Peter Nolan, Sergeant Brian Mallory, Officer August Barber and Officer Cole Giandomenico and all other persons referred to as "peace officers" or "officers" in this letter, are "peace officers" per statute. *See*, C.R.S. 16-2.5-101 through 103.

By using their service weapons and shooting at Clayton Pierce, Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico used force, and thus their conduct implicates Colorado's peace officer use of force and self-defense statutes. As they caused the death of Clayton Pierce, the deadly force provision of the statute also applies.

Pursuant to C.R.S. §18-1-901(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. Therefore, the deadly force statutory language below is relevant to my conclusions regarding this event.

C.R.S. § 18-1-707 (Use of force by peace officers-definitions), states in relevant part:

- (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 injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical 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 persons 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 of death or serious bodily injury 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 a 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. § 18-1-704, Colorado's general self-defense statute, states in relevant part:

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

Under Colorado law, for a person to act legally to defend himself or others requires the presence of "both reasonable belief and actual belief" on behalf of the actor. *See Sanchez v. People*, 820 P.2d 1103, 1108 (Colo. 1991). The law requires the fact finder to "weigh all relevant circumstances to determine whether a person asserting the defense of self-defense has acted as a reasonable person would act in similar circumstances." *Id.*

V. SUMMARY OF LEGAL STANDARD AS APPLIED TO TIDS EVENT

Distilling the legal authority down to an applicable standard to apply to this event, we must determine:

- 1) Whether officers reasonably believed that the use of physical force - and degree of force employed - was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Clayton Pierce?
- 2) Whether nonviolent means would have been ineffective in preventing an imminent threat of injury to officers or another person in this situation?
- 3) Whether officer's use of deadly physical force was used to apprehend a person who was suspected of more than a minor or nonviolent offense?

Additionally, the law requires us to ask:

- 4) Did officer identify themselves as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it: a) would have unduly placed him or his fellow officers at risk of injury, or b) would have created a risk of death or injury to other persons?
- 5) Did officers ensure that assistance and medical aid were rendered to Pierce as soon as was practicable after the shooting?
- 6) Did officers ensure that Pierce's identified relatives or next of kin were notified as soon as practicable?

*Note, while deadly force was used, the following statutory question (#7 below) will not be addressed as the evidence does not support that officers used deadly force to arrest Pierce, but instead used deadly force to defend their own lives and the lives of public from the threat posed by Pierce.

- 7) Whether all other means of apprehension - less than deadly force - were unreasonable given the circumstances, and (a) The arrest was for a felony involving conduct including the use or threatened use of deadly physical force; (b) The suspect posed an immediate threat of death or serious bodily injury to the peace officer or another person, and (c) The force employed did not create a substantial risk of injury to other persons.

VI. SUMMARY OF RELEVANT FACTS

Overview based on officer interviews, and review of reports, photos, and evidence

On July 21, 2024 at approximately 12:41 pm, Fort Collins Police Service's 911 Dispatch received a call from citizen that had witnessed a single rollover motor vehicle crash at the intersection of West Mountain Avenue and North Bryan Avenue in Fort Collins. She explained there was a single male occupant, later identified as Clayton Pierce, DOB 09/09/1981 and two dogs in the vehicle. She described the crash as a full side to side roll over and was near the car communicating with Pierce to convey what the 911 dispatcher was explaining to her, namely that emergency services were enroute and that he should stay in the car. She noted that he was injured, bleeding from a head wound presumably sustained in the crash and seemed to be fading in and out of consciousness. Another bystander went around to the passenger side of the vehicle.

While the caller was talking to the dispatcher, Pierce got out of the now disabled vehicle and retrieved what would later be identified as an AR-Style Firearm with no serial number (commonly referred to as a "ghost gun") capable of shooting .223 caliber rounds and carrying a 30-round capacity magazine which contained 16 cartridges once ultimately collected. The gun was equipped with a binary trigger which means the gun fires once when the trigger is pulled and again as the trigger is released. Lab testing confirmed the weapon successfully test fired in this mode, which was activated when the gun was retrieved.

Pierce was also later found to have a second loaded firearm. The second firearm was another firearm with no serial number (another "ghost gun") which shot 9mm rounds and had one 17 cartridge capacity magazine (with 15 cartridges in it when collected).

The citizen ran to her nearby home as Pierce exited the vehicle with the rifle (and unbeknownst to her, the handgun). She did not see him point the rifle at anyone during the time she was observing him.

At approximately 12:42 pm, dispatchers assigned various officers to report to the scene while other officers self-assigned themselves to the call. Officer Peter Nolan was the first to arrive on scene at 12:44 pm. He arrived in his patrol vehicle with obvious Fort Collins Police Services markings and with lights and sirens activated and was aware through dispatch the driver had armed himself.

Witnesses on the scene approached him as he arrived and gave additional information about Pierce. They told Nolan that Pierce said “fuck this” before getting the “AR-15” style firearm and a bottle of alcohol from the vehicle and walking away from the crash. Officer Nolan retrieved his own agency issued rifle from the locked box in the rear of his patrol vehicle, and began walking in the same direction as Pierce.

At 12:45 pm FCPS Sgt. Bryan Mallory arrives at the crash site in his agency assigned, unmarked vehicle with his interior red and blue lights activated. Both Sgt. Mallory and Officer Nolan observe Pierce walking westbound on Mountain Avenue wearing a black shirt and blue jeans, carrying a black rifle and an alcohol bottle. Sgt. Mallory pick up Officer Nolan to approach together. Sgt Mallory begins driving westbound on Mountain towards Pierce. Both officers recalled their safety concerns for the many people in the area which included several people in the cemetery as well as the many people out on the adjacent golf course and in nearby City Park at that time. The entire North side of the street is also lined with residential homes.

Mallory stopped the vehicle at Mountain and Frey at 12:46:49 pm. Both Sgt Mallory and Officer Nolan quickly exit the vehicle. At the time of their exit, they both observed Pierce changing direction. He began walking eastbound on Mountain back towards the officers. He raised the rifle, aimed it at them and yelled the following which was picked up by a neighborhood Ring camera: “Get back Motherfuckers, I ain’t playing bud, back the fuck up.”

As Sgt. Mallory and Officer Nolan moved quickly to the rear of Sgt. Mallory’s patrol vehicle to take cover, Pierce took a position behind a tree while still aiming at both officers. Officer Nolan went to the passenger side of the rear of the vehicle and took a kneeling position. Sgt. Mallory retrieved his rifle from the rear locked box of his patrol vehicle. He took a position on the passenger side of the vehicle as well, standing slightly above and behind where Officer Nolan was kneeling. Based on the body worn camera videos, Officer Nolan discharged his rifle once at Pierce. Quickly, a rapid succession of five gunshots were exchanged: Pierce fired his rifle three times and Sgt. Mallory fired his rifle twice. Pierce then fired two additional shots, the first of which struck Officer Nolan in the right arm, just below the elbow. Pierce fired two additional rounds at Sgt. Mallory and Officer Nolan before retreating to the west

After Officer Nolan was shot, he and Sgt Mallory moved further back behind the vehicle for more coverage and protection. Sgt Mallory aired out over the radio that Pierce had shot at officers and that Officer Nolan was hit. Additional officers began arriving at the scene, and at that point Mallory coordinated for Officer Nolan to be extracted from the area. Another officer drove his patrol vehicle near their location and Sgt. Mallory shielded Officer Nolan with his own body while ensuring Nolan was placed into the patrol vehicle and driven away. Officer Nolan was transported to a nearby hospital and treated for his injuries. Sgt Mallory stayed on scene and aired that Pierce had run from behind the tree he had been using for cover towards the cemetery. Sgt. Mallory requested an Armored Rescue Vehicle (ARV) to rapidly respond.

Officer August Barber responded to the scene by pulling into the cemetery from Taft Hill Road. Similarly, Officer Cole Giandomenico drove behind Officer Barber on Taft Hill Road. He followed Officer Barber and they both entered the cemetery in their patrol vehicles. The information about Pierce shooting at officers, striking one and moving on foot into the cemetery had been aired out

and heard by both officers. Both officers exited their patrol vehicles with their agency issued rifles in the southwestern area of the cemetery and began moving east.

Both officers observed people in the golf course and in the cemetery. Officer Barber yelled to a group of golfers to clear the area as there was an active shooter. A woman pushing a baby stroller on the cemetery path was also told to exit the area. Further into the cemetery, they observed Pierce walking south with his rifle in his hands towards the golf course.

Officers approached Pierce from the west. Officer Barber took a position against a tree approximately 304 feet away from Pierce. Officer Giandomenico positioned himself behind a headstone approximately 417 feet away from Pierce. Each officer was able to clearly see the rifle in Pierce's hands. Officer Barber then observed Pierce raise his rifle, bring it up to his shoulder and cheek as if aiming back towards the area he had just walked from. Officer Barber, believing that Pierce was about to shoot at someone to the north, presumably Sgt. Mallory and the other law enforcement staged in that direction, fired his rifle four times at Pierce.

Officer Giandomenico observed Pierce walking with a rifle in a low ready position with his left hand on the foregrip and his right hand on the trigger grip. He heard Officer Barber discharge his rifle and observed Pierce turn his body so that the red dot on Officer Giandomenico's rifle was directly on Pierce's chest. Officer Giandomenico discharged his rifle one time. Both Officer Barber and Officer Giandomenico observed Pierce immediately fall to the ground but could not see if he was still attempting to engage officers.

Eventually, the armored vehicle arrived near the east entrance to the cemetery. Sgt. Mallory and a team of officers rode in that vehicle and made contact with Pierce and gave verbal commands for his surrender. When Pierce did not respond, officers approached him, handcuffed him and began to render aid until Pierce was transported to a hospital where he was pronounced dead. Pierce was found with two firearms on his person: an AR-15 style rifle and a 9 mm pistol, neither of which had serial numbers or identifying information, and both of which were sent to the lab for testing and were found to be capable of firing.

An autopsy was conducted by the Larimer County Coroner's office. The autopsy revealed that Pierce had two gunshot wounds, but the examination could not attribute which officer caused them. One shot entered Pierce's right inner forearm 10 cm below the elbow and exited the outer portion of his forearm. The second gunshot entered the upper left chest area and travelled through the left lung severing the pulmonary artery and spinal cord.

The toxicology report for Pierce determined that he had a blood alcohol concentration (BAC) of .130 g/100ml, 670 ng/ml of methamphetamine in his system, as well as .76 ng/ml of Delta-9 THC, and 8.2 mcg/ml of Gabpentin. The alcohol in Pierce's blood would be well over twice the legal limit to operate a motor vehicle of .05 g/100ml. Combined with the effects of methamphetamine, Pierce would have been significantly impaired.

Several witnesses and officers observed Pierce to be carrying an alcohol bottle in his hands initially. Officers found a bottle of Evan Williams bourbon that had blood on it as well as the words "his last day" written on it.

Interview – Officer Peter Nolan

On the date of the incident, Officer Peter Nolan participated in a recorded interview regarding his contact with Pierce. The call was initially aired on the radio as a motor vehicle accident that involved extrication. He was close to the incident location, North Bryan Avenue and West Mountain Avenue, so he self-assigned himself to the incident and responded from West Mulberry Street and South Shields Street. As he approached the scene additional information was being aired on the radio. He hears reports that the driver of the crashed vehicle had left the area on foot after grabbing a rifle from the crashed car.

When he pulled up to the scene, Officer Nolan saw a heavily damaged car and described it as a “very bad accident.” A male and female ran up to his vehicle and informed him that the driver of the crashed vehicle ran westbound on West Mountain Avenue with a rifle. With the new information of the male driver having a rifle, Officer Nolan stepped out of his vehicle and retrieved his rifle from the vault in his trunk. While loading his rifle, Officer Nolan aired on the radio an update of the male driver running westbound on West Mountain Avenue. With his rifle slung across his chest, he approached the motor vehicle accident and confirmed that there were no other persons inside the vehicle. Looking towards the West, and he saw a single white male in the grass-covered center median. The male was moving westbound with what looked like a long gun in his hand pointed towards the ground.

Sergeant Mallory pulled his vehicle up from behind and Nolan got in the rear driver’s compartment. Sergeant Mallory began driving, and he heard Sergeant Mallory say something about the gun being pointed at them. As Sergeant Mallory parked the vehicle, Officer Nolan got out. He could hear the male yelling, but he was unable to decipher what he was saying. He began looking towards the male and saw that his rifle was pointing at him and Sergeant Mallory. Officer Nolan described what he saw, “he is now turned facing us instead of walking away and he’s not moving. He’s standing still when I get out of the passenger seat, get my rifle up, and start looking. His gun is pointed at us, his rifle, up in a manner like quickly snapping up on target for some sort of ready position and holding it like a rifle, like one hand upwards kind of on like the stock and then one kind of down as if there were holding the pistol grip.”

Officer Nolan and Sergeant Mallory repositioned to cover behind Sergeant Mallory’s vehicle. He remembered staying low to the ground as he did not want his head exposed through the windows. He moved to a position on the passenger side rear corner of the vehicle, and he raised his rifle up. Further explaining, “I pick it up, get sights on the suspect, get my red dot on his black T-shirt. I can see that he is actively pointing his gun at me...he is using a tree for tactical advantage. He had backed up and was using a tree as partial cover or support like a brace. So, he’s partially behind that. The gun is still up at me.” Officer Nolan explained at that point he believed Pierce was going to shoot at him and Mallory, likely killing or injuring them or others in the area. Officer Nolan fired one shot at the suspect. Officer Nolan heard additional popping sounds but he does not know how many. After shooting toward the suspect, he was unable to see if his bullet hit the suspect, and he did not observe the suspect after shooting due to tending to his arm injury.

Suddenly, Officer Nolan started losing feeling in his right arm, it stopped working and it was tingling. He had been shot in his right arm and saw blood dripping down his arm. He attempted to raise his rifle back up but was unable to do so. After noticing his injury, Officer Nolan heard what he believed were additional gunshots, but he could not recall the number of shots. He then hears Sergeant Mallory air on the radio that an officer has been shot and asks for a vehicle to drive up to their position to extract Officer Nolan so he can be medically treated.

Officer Travaille drove his fully marked patrol vehicle up to where Officer Nolan was located. Sergeant Mallory opened the rear passenger door, and he entered the rear passenger seat. He was transported to a waiting ambulance and then treated at an area hospital.

Interview – Sergeant Brian Mallory

A few days after the incident, Sergeant Brian Mallory participated in a recorded interview regarding his contact with Pierce. He heard over the radio about a motor vehicle accident possibly required an extraction of the occupants. Due to the seriousness of the accident, he responded to the incident location to assist. He heard Officer Nolan say on the radio that the suspect was walking west on West Mountain Avenue with a rifle. When he arrived on scene, he could see the suspect walking quickly westbound on West Mountain Avenue while holding a rifle. He noticed that there were people playing golf, and he specifically remembered people were in the cemetery.

Sergeant Mallory directs Officer Nolan to get in the rear driver's side of his unmarked patrol vehicle. He was unsure of how far away the suspect was, but it was far enough away that he felt he needed to get closer. He was not sure how far he drove his vehicle before stopping and observing the suspect turned, looking back towards the accident. Sergeant Mallory explained, “then shortly after, he kind of looks, and you could tell, he realizes, hey, there's a car there. And then, and then he realizes it's the cops. At about that time, he kind of throws one of his hands up in the air and starts to raise the rifle. So me and [Officer Nolan] bail out of our, my car, to get some cover behind it. I hit my trunk, my rear trunk hatch, open my trunk vault to get my rifle out. I remember Officer Nolan saying, ‘Hey, he's pointing that rifle at us’ and he goes to the rear passenger side of my car as I'm chambering around and dialing up my, my sights, you know, I turn them down so that the battery just stays longer. And, and I, I'm not, I'm not positive on this, but I, either the suspect shot or [Officer Nolan] shot some, there was a gunshot.”

Sergeant Mallory observed the suspect had moved from in front of the large tree to now standing behind it. “You could tell that he was using the tree for cover as well. He looks like he's trying to find us and see where we're at. So, he's looking around and right there, I'm, now, I'm worried about my life. I'm worried about Nolan's life. I'm worried about all these other people. because you know, again, it's city park. There's a million people out, there's houses right by where we're stopped. So, I lean out, I put my, I can only see about, if you kind of imagine the tree kind of cutting your face in like a half or a third, I can only see about that much of his head and his rifle.”

Sergeant Mallory raised his rifle and put the red dot from his rifle's optic on the suspect. He fired one bullet from his rifle at the suspect and quickly moved behind his vehicle for cover. He did not know if the suspect was struck by the bullet, nor did he know if the suspect had moved from his position behind the tree. Sergeant Mallory reported, “I didn't want to be standing in the same spot

that he just saw me. So I went back to the backside of my car and at some point when I'm doing that, just tons of gunfire, I would say maybe not tons, but five, five to seven rounds are, are coming inbound to us, and I remember during this time, a couple of things distinctly, I remember looking to my left and seeing some people playing golf, and they're watching us, and I remember motioning to them, like, hey, get outta here. Then as I looked back, they were running.”

Officer Nolan stated, “Hey, I think I got hit, my arm's not, my arm's messed up.” Sergeant Mallory looked down at Officer Nolan’s arm and “started getting worried; where did that round go? Did it travel up his arm and into his body cavity? I know they do that. So I'm starting to worry about [Officer Nolan].” He directed Officer Nolan to put a tourniquet on, simultaneously airing on the radio that he needed a rapid deployment of SWAT and that he needed an armored vehicle.

A marked patrol vehicle drove up to their location and Sergeant Mallory stepped out from behind cover, placing himself between the threat and the officer who is moving behind him so that if shots are fired to protect the moving officer. Officer Nolan was extracted from the area as additional officers arrived on scene.

Sergeant Mallory started to coordinate a perimeter on the radio, all the while still looking for the suspect. He heard on the radio, Officer Barber and Officer Giandomenico had arrived somewhere on the south side of the cemetery. Sergeant Mallory heard one of the two officers air that they saw the suspect and shortly after hearing what he believed to be six to eight gunshots and then hearing on the radio that the suspect was down.

The armored vehicle arrived on scene and Sergeant Mallory organized the officers he had with him. They rode the armored vehicle into the cemetery to where the suspect was located on the ground. The group of officers moved up to the suspect’s location and placed him into custody. Officers rendered aid to the suspect.

Interview – Officer August Barber

On the date of the incident, Officer August Barber participated in a recorded interview regarding his contact with Pierce. He remembered hearing dispatch air that there was a motor vehicle crash near West Mountain Avenue and North Bryan Avenue. The motor vehicle accident was a rollover crash requiring possible extraction. Because the crash had occurred in his area of responsibility, he self-assigned and drove toward the location of the incident. There was information aired that the driver had gotten out of the vehicle, grabbed a rifle, and was running away from the car crash.

He remembered hearing Sergeant Mallory coordinating responding units and attempting to shut down certain areas to contain the incident. At some point, Sergeant Mallory aired “Code 6” on the radio. Officer Barber explained that the term “Code 6” means that any available unit should respond to the Officer in need of emergency assistance. He remembered hearing something in Sergeant Mallory’s voice, “I could hear in his voice that something was very, that was very wrong, which then he then articulated that they were being shot at and that an officer had been hit.”

Officer Barber approached the scene from Taft Hill Road, passed the golf course, and then drove over the curb to enter the cemetery from the southwest corner. He followed the dirt cemetery road

along the golf course's edge. He recalled seeing multiple people on the golf course, so he yelled to the golfers to clear the area as there was a shooter in the area. While driving down the dirt cemetery road, he remembered seeing a female pushing a stroller in the middle of the cemetery. Officer Barber slowed down and told that female to leave the area.

Officer Barber stopped his vehicle, and he remembered Officer Giandomenico getting out of his car and asking about where the suspect was. Officer Barber saw a male to the northeast of where he had parked. He estimated the male was approximately one hundred or more yards away, and the male was walking southbound through the cemetery. As he moved into position, he was able to confirm that the male was carrying a rifle. Officer Barber closed the distance to the male and took cover.

Officer Barber stated, “well, about that time he was walking south, I saw him, like look back, raise his rifle, like back towards the north raised his rifle and he brought it up to his shoulder and up to his cheek as if he was using the sight of that rifle. At that point, I believed that he, by the way he brought that rifle up to his face and the way he was holding it, that he was about to engage somebody. I then leaned up against the tree, and I discharged my firearm at him.” Officer Barber continued, “as I was shooting, I could see on the first couple, on the first one or two shots, I remember seeing his body flinching as in like I was hitting him. I believe I shot 3, 4, 5 rounds as he brought that rifle up and I shot bam, bam, bam, bam. He was flinching away from me, turned away and he turned towards the south again. And it looked like he took maybe two or three steps before he collapsed behind some gravestones out of my sight.”

Officer Barber observed fellow officers approach in an armored vehicle and make contact with the male suspect. He and Officer Giandomenico approached the male's location and were promptly told to stand aside and await further instruction.

Interview – Officer Cole Giandomenico

Officer Cole Giandomenico participated in a recorded interview regarding his contact with Pierce. Officer Giandomenico described being dispatched to the intersection of South Bryan Avenue and West Mountain Avenue for a suspected single-vehicle rollover that could have required the extraction of an individual trapped in the vehicle. While responding to the scene, he remembered additional information being aired on the radio that the driver had exited the vehicle and armed himself with a firearm.

While still en route, Officer Giandomenico explained that he remembered Sergeant Mallory called a “Code 6.” He knew “Code 6” is one of those things where if you say it, it's serious, and every single person, other agencies will come. Sergeant Mallory aired that shots were fired and that an officer had been shot. Updated information reported that the suspect began walking westbound into the cemetery, which was directly next to the incident location.

Officer Giandomenico explained that he turned northbound onto South Taft Hill Road, and as he approached West Prospect Road, he observed another Officer Barber's vehicle pull out in front of him, traveling in the same direction. As Officer Barber passed the golf course, he drove over the curb into the cemetery, and Officer Giandomenico followed behind him. He recalled seeing a

group of four people standing on the golf course near the cemetery. Officer Giandomenico described parking his vehicle next to Officer Barber's vehicle, which would place them between their idea of where the suspect was and the golfers on the golf course.

Officer Giandomenico explained that as he parked his vehicle, he removed his patrol rifle and stepped out of his vehicle at the same time as Officer Barber. They began moving eastbound and encountered a female who was walking with a baby stroller in the cemetery. They observed a male in the distance who was walking southbound through the cemetery. They moved closer, "as we continued to walk east, it became very clear that this was the suspect, and we both identified him as the suspect involved." He remembered that the suspect was wearing a black shirt and he was a white male, and he was able to see that the male was carrying a rifle.

Officer Giandomenico and Officer Barber continued to walk eastbound, utilizing the headstones as cover. He did not believe the suspect knew they were there. He described his observations of the suspect as, "we were approaching, I was making observations of him and seeing that he had a black AR-style semi-automatic rifle in his hands, kind of at a low ready position. Or we would maybe describe it as like a safety circle, both hands on the rifle, left hand on the foregrip, right hand on the trigger grip. He was just walking south. We, Officer Barber and I, split a little bit. He was to my left. I can't remember exactly where he was or where he was posted on, but I braced my rifle on a gravestone and took a knee and to kind of a lower profile brace shooting position. I looked through my eyes and observed him through my reticle. I kept both eyes open so I was able to see him fairly clearly. He was continuing to walk southbound. I remember specifically being fairly alarmed with the way that he was walking."

Officer Giandomenico had to pause during the interview and take a deep breath and continued on to describe, "I remember being fairly alarmed with the way that he was walking, understanding that he had just been in a gunfight. He had just shot an officer, clearly identifiable officers understanding that, he had exchanged rounds with them. He was fleeing from that incident, and he was, he was, he wasn't running. He wasn't he wasn't hiding. He wasn't in a position to where he looked like he was trying to give up. He was just walking calmly, confidently. It seemed the only, like, just like seeing him walking that way. It just, it was very, it was very alarming and like concerning the way that he was walking. He was, he was not trying to get away. Like the way that it was, he was scanning, he was kind of just looking around. The way that I described it. And the way that I thought about it when I was looking at him was, it was like he was hunting. Like he was, he was just calmly, like he, he knew what he was doing."

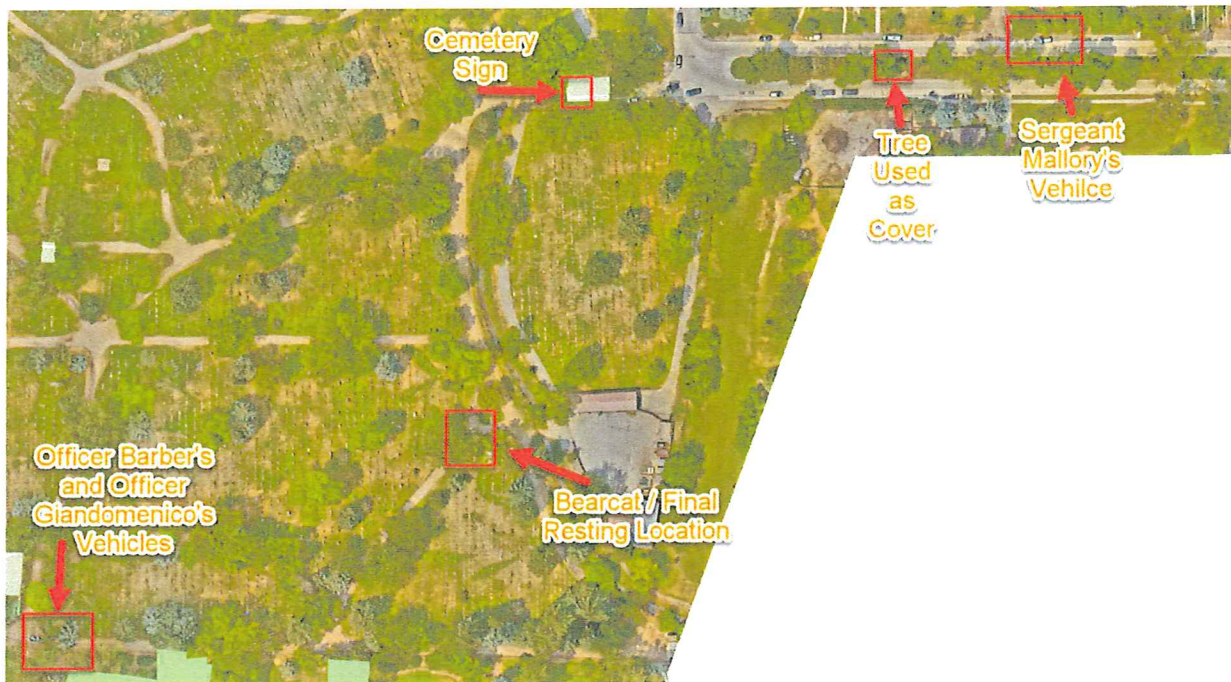
Officer Giandomenico reported that he was looking through the red dot on his rifle, and he could see that the backdrop behind the suspect was clear. He recalls hearing Officer Barber discharge his rifle; he was not sure how many gunshots he heard. Officer Giandomenico describes looking through the red dot on his rifle and seeing the suspect turn or pivot his body so that he was facing at the officers. Officer Giandomenico stated that he discharged his rifle a single time, and he watched the suspect as he fell to the ground, falling behind a group of headstones out of sight. After seeing the suspect fall, Officer Giandomenico reported he did not hear any other gunshots.

Officer Giandomenico stated that after seeing the suspect fall, he believed that the suspect sustained a serious gunshot wound. He aired something similar to "the suspect is down" on the

radio. Officer Giandomenico helped guide the armored vehicle into the cemetery and to the suspect's location. After hearing that the contact team had located the suspect, he and the others moved around to where the suspect's location. He remembered seeing other officers rendering aid to the suspect. After moving to where the suspect was located, Officer Giandomenico was asked to stand aside before being transported to the Fort Collins Police Services building for processing.

Evidence collection/processing

The CIRT team processed a vast scene spanning from the intersection of Shield Avenue and West Mountain Avenue throughout most of the Grandview Cemetery.



Overview of Crime Scene

Working from east to west, Pierce's vehicle was located at the intersection West Mountain Avenue and North Bryan Avenue. The evidence showed that the vehicle had struck a concrete barrier shearing off the driver's side front tire. The vehicle had rolled and scatted some of the contents of the vehicle out on the road.



Vehicle as Positioned When Officers Arrived on Scene

East of the vehicle, Sergeant Mallory's and nearby vehicles were processed for evidence. Of the seven shots Pierce fired, five of the bullet impacts were located:

1. One bullet struck the windshield of Sergeant Mallory's vehicle travelling through the windshield, through the headrest of the driver's seat, through the headrest of the rear driver's side seat, and into the back of the vehicle;
2. One bullet struck the hood and windshield of Sergeant Mallory's vehicle but did not pass through the vehicle
3. One bullet hit the passenger headlight of Sergeant Mallory's vehicle;
4. One bullet struck the driver's door window of a nearby truck parked in the driveway of a residence;
5. One bullet struck Officer Nolan in the right arm.

Based on the location of discharged casings, Pierce was approximately 209 feet away from Officer Nolan when he shot.

Evidence collected in Grandview cemetery also showed Pierce likely fired two additional rounds from his final location. While no officers observed Pierce firing from that location, two shell casings matching those fired from his rifle were found there. It is possible he fired while officers lacked visual on him or that he fired simultaneously to officers firing.



Windshield of Sergeant Mallory's Vehicle

It is important to note that the trajectory of the bullet that passed through the drive side part of the windshield continued through the rear seat into the trunk. Officer Nolan and Sergeant Mallory reported, and their body worn cameras confirmed, that they would have been seated on the driver side of the vehicle only minutes before Pierce opened fire. If they had remained in the vehicle, the likely result of that round would have been the serious injury or death of both officers. The three bullets that impacted the front of the car were directly in line with where the officers were taking cover behind the vehicle.

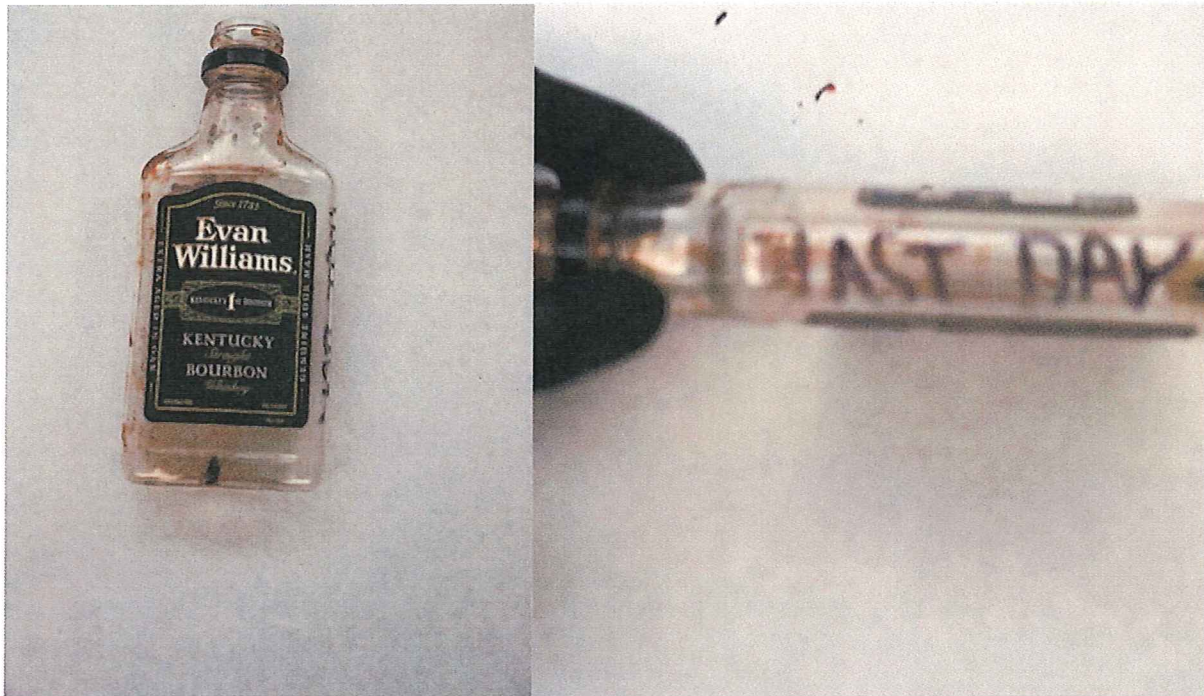


Passenger Side Headlight of Sergeant Mallory's Vehicle



Truck Parked in the Driveway at 1730 West Mountain Avenue

West of Sergeant Mallory's vehicle, crime scene investigators located a bourbon bottle with blood on the outside. The bottle matched the descriptions of eyewitnesses reporting that Pierce had been carrying a bottle of alcohol. On the front of the bottle was the word "HIS" and on the side "LAST DAY" was written.



Bourbon Bottle Located in the Median of West Mountain Avenue

A canvassing of the residences on West Mountain Avenue located a ring doorbell. Pierce is observed walking from left to right and then turning around and raising his arms in the direction of officers.

While the video quality does not specifically capture the rifle, Pierce's movement and hand positions, along with the contemporaneous evidence of Pierce shooting and the rifle found on his person later, confirm he was pointing the rifle in this video. The recording captures Pierce stating, "get back motherfuckers, I ain't playing bud, back the fuck up."



Still Shot of Ring Video

In the cemetery, crime scene investigators processed the area around where Pierce was arrested. An unserialized AR style rifle and handgun were located.



AR Style Rifle on Scene



Handgun on Scene

Distance measurements were taken from where Pierce was located and the cartridge casing from Officer Barber and Officer Giandomenico's rifles. Officer Barber engaged Pierce at a distance of three hundred and four (304) feet. Officer Giandomenico engaged at a distance of four hundred and seventeen (417) feet.



Overview of Grandview Cemetery

Review of Body Worn Camera Footage

All involved officers had their body worn camera systems activated and recording during this incident. The recordings of Officer Peter Nolan, Sergeant Brian Mallory, Officer August Barber and Officer Cole Giandomenico have all been reviewed. Officers are not allowed to view their videos prior to interviewing pursuant to CIRT policy, in order to get an independent recollection of what occurred. In this incident, it is important to acknowledge the advantages and limitations of these recordings. The videos accurately capture the movement of the officers, their impressions in real time of what is occurring and the audio of shots being fired by both Pierce and officers. However, the limitations noticeable in any case but especially in an incident involving significant distances as seen here.

In all cases, the body worn cameras are not placed at officers' eye level and do not always depict exactly what the officer sees. The cameras are located chest level and blocked by steering wheels, forearms, and rifles. When officers were located in a vehicle, the videos show the interior of the vehicle but do not capture what officers were observing out the windows. Additionally, their own body, firearms, and the objects which they took cover behind obstructed the view of the cameras as officer's rifle as they are held in a ready position or when shots were fired. The body worn camera system struggles to capture events occurring at a distance. In this case, Pierce and officers were engaged with the use of long rifles at significant distances. To the extent the recordings did capture the events, the footage was consistent with all reports of officers.



Still Shot Officer Nolan's Body Worn Camera System (12:47:19)

While difficult to see in the still images, the video from Officer Nolan's body worn camera captures debris coming off the vehicle as bullets were impacting it. In addition, the audio records the distant sound of Pierce firing his weapon at officers as they are using the vehicle for cover.



Still Shoot Officer Nolan's Body Worn Camera System (12:47:22)

The video from Officer Nolan's body worn camera also captures when his right arm was struck by a bullet. The audio from the videos establishes, between 12:47:17 pm and 12:47:22 pm (5 seconds):

- Officer Nolan discharges his rifle one (1) time
- Sergeant Malory discharges his rifle two (2) times
- Clayton Pierce discharges his rifle seven (7) times.

In the Grandview Cemetery, the audio captures Officers Barber and Giandomenico discharging their weapons, but does not capture Pierce or his actions.

- At 12:53:02 pm, Officer Barber discharges his rifle in succession four (4) times.
- At 12:53:05 pm, Officer Giandomenico discharged his rifle one (1) time.

The video of several involved officers shows that Pierce was contacted by the team in the armored vehicle approximately ten minutes later and officers immediately began rendering aid until medical personnel arrived on scene.

VII. CRIMINAL HISTORY

While it is unnecessary for the purposes of this review to outline Pierce's entire criminal history, it is important to note for purposes of potential charges in the following section that Pierce was a convicted felon. Among other convictions, Pierce has two prior convictions for Possession of a Weapon by a Previous Offender, C.R.S. 18-12-108, from 2006 and 2007 and Vehicular Eluding, C.R.S. 18-9-116.5, from 2020, which is a qualifying offense to prevent lawful ownership of firearms.

Additionally, Pierce was being actively investigated by Fort Collins Police Services as the prime suspect in a cold case homicide stemming from the murder of a Fort Collins man in 2019.

VIII. CRIMINAL CHARGES THAT WOULD HAVE BEEN BROUGHT AGAINST PIERCE

Had Clayton Pierce survived, the evidence derived from the CIRT investigation would have led to the following charges being brought against him as a result of his conduct:

1. Two counts of Attempted Murder in the First Degree, a class two felony: by engaging in conduct constituting a substantial step toward the commission of murder in the first degree, unlawfully, feloniously, after deliberation, and with the intent to cause the death of a person other than himself attempted to cause the death of another – specifically Sergeant Mallory and Officer Nolan. Further, the intended victim(s) was a peace officer engaged in the performance of his or her duties. C.R.S. 18-3-102(1)(a), 18-3-107, and 18-2-101.
2. One count of Driving Under the Influence with Three or More Priors, a class four felony: unlawfully and feloniously drove or operated a motor vehicle or vehicle while under the influence of alcohol or drugs or both. Further, the defendant had been previously convicted of a drinking and driving offense. C.R.S. 42-4-1301(1)(a)
3. One count of Prohibited Use of a Weapon, a class one misdemeanor: unlawfully had a firearm in his possession while he was under the influence of intoxicating liquor or of a controlled substance. C.R.S. 18-12-106(1)(d).
4. One count of Careless Driving, a class two traffic misdemeanor: unlawfully drove a motor vehicle or low-power scooter in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets or highways and all other attendant circumstances. C.R.S. 42-4-1402(1),(2)(a).
5. Two counts of Possession of a Weapon by a Previous Offender, a class six felony: knowingly possesses, uses, or carries upon his or her person a firearm as described in section 18-1-901(3)(h) or any other weapon that is subject to the provisions of this article subsequent to the person's conviction for a felony. C.R.S. 18-12-108.

IX. CONCLUSIONS

The CIRT investigation in this case conformed to the legal requirements of C.R.S. §16-2.5-301 and provided all the information the District Attorney's Office needed to make a thorough factual findings and a final legal determination regarding use of force.

In total, four officers – Officer Nolan, Sergeant Mallory, Officer Barber, and Officer Giandomenico – used force. Their body worn cameras were active and they individually participated in voluntary interviews. Their statements were corroborated by a review of their body

worn camera videos, physical evidence collected on scene, and other records captured during the incident. The CIRT followed up on all questions.

In applying the law – both that of Officer Use of Force C.R.S. 18-1-707 and general Self Defense and Defense of Others C.R.S. 18-1-704 – to the facts in this incident we must ask the following questions:

- 1) Whether officers reasonably believed that the use of physical force - and degree of force employed - was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Clayton Pierce?
- 2) Whether nonviolent means would have been ineffective in preventing an imminent threat of injury to officers or another person in this situation?
- 3) Did officer identify themselves as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it: a) would have unduly placed him or his fellow officers at risk of injury, or b) would have created a risk of death or injury to other persons?
- 4) Did officers ensure that assistance and medical aid were rendered to Pierce as soon as was practicable after the shooting?
- 5) Did officers ensure that Pierce's identified relatives or next of kin were notified as soon as practicable?

To avoid redundancy, questions 1 and 2 will be addressed together. Subsequently 3, 4, and 5 will be addressed independently.

(Questions 1 and 2) Did Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico have a reasonable belief that using their firearms were necessary, and that nonviolent means would be ineffective in response to Pierce's actions when he threatened used physical force?

When answering this question, it is important to recognize how quickly this incident escalated because of Pierce's actions. Officers were dispatched to a motor vehicle crash. While enroute, they received information that Pierce exited the vehicle and armed himself with a rifle. Officers observed the highly damaged vehicle, indicating reckless behavior, and were told by frightened citizens that Pierce was armed and carrying alcohol. Officer Nolan and Sergeant Mallory attempted to contact Pierce. Pierce responded to their presence by turning around, walking back toward them, raising his gun to eye level, shouting a challenge, and taking aim at the officers. Officer Nolan and Sergeant Mallory exited the vehicle only a few minutes before Pierce began firing rounds that impacted the vehicle. Evidence of shell casings shows that Pierce fired seven rounds during the initial exchange. The location of those impacts – directly in line with where the officers took cover – would lead a reasonable person to conclude that both officers would have been seriously injured

or killed but for their quick actions. The exchange of gunfire between the two officers and Pierce occurred over approximately five seconds at a distance of over 200 feet.

It is also important to note that Officer Nolan and Sergeant Mallory were not only worried for their own safety. Both officers reported, and the body worn camera videos support, that civilians were located up and down West Mountain Avenue, including pedestrians on the street, golfers on the course, families at the park, citizens at the cemetery, and residents in their homes. Pierce, highly intoxicated, was evidencing an extreme indifference to human life as he walked down the median with a rifle and bottle of bourbon. He immediately engaged officers when they arrived on scene. The actions of Officer Nolan and Sergeant Mallory took prevented Pierce from potentially shooting incident bystanders that had no way of protecting themselves.

It should be noted that neither Officer Nolan nor Sergeant Mallory caused the death of Pierce and therefore their use of force was not deadly force as defined by Colorado Law. However, in recognition of the real possibility shooting at someone can, and often does, cause death, we have analyzed their actions under that higher standard for the sake of thoroughness and clarity for the community. Our analysis shows that even under this higher standard, their actions were justified as they had the objective reasonable belief, and did believe, that they were in imminent danger of being killed or seriously injured.

After Pierce retreated into the cemetery, he did not give up the fight. Both Officer Barber and Officer Giandomenico describe additional civilians placed in harm's way by Pierces presence. There were golfers and mother pushing a stroller in the cemetery. In addition, they had heard over the radio that Officer Nolan had been shot. Once they see Pierce, he appears to be lying in wait for the officers located on West Mountain Avenue and is observed raising his rifle to firing position and aiming toward law enforcement. While neither officer witnessed Pierce fire at that time, evidence showed Pierce likely fired two additional rounds from that location in the cemetery, confirming the reasonable beliefs of those officers that Pierce remained willing to kill officers. As it is unclear which officer ultimately was responsible for Pierce's death, and therefore used deadly force under Colorado law, we have analyzed both officer's actions under that standard. The totality of circumstances show Officer Barber and Officer Giandomenico's engagement with Pierce reasonable and appropriate and non-lethal means ineffective.

While we need not reach the issues of self-defense or defense of others – affirmative defenses available to law enforcement and citizens alike – as all four officers were justified under use of force statutes, their actions would also have been defensible under those principles given the same factors outlined above.

Pierce's exact motives for his actions that day are not known. However, his level of intoxication, the fact that he had armed himself with two ghost guns, the writing of "last day" on a bottle he was carrying, the likelihood that he was responsible for a cold case homicide under investigation, and the fact he had committed several criminal offenses related to the crash by the time officers arrived on scene, all combine to provide a reasonable belief that Pierce was prepared to engage in any and all actions, up to and including killing officers, to prevent being taken into custody and may have been intentionally seeking confrontation.

(Question 3) Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico were exempt from giving the verbal warning because it would have unduly placed them or fellow officers at risk of injury or would have created a risk of death or injury to other persons.

In both encounters with Pierce, verbal warnings would have created a substantial risk of death or injury to the officers. Regarding the initial encounter, Officer Nolan and Sgt. Mallory attempted to contact Pierce under a constantly changing set of circumstances. Their initial response was to a motor vehicle crash which became an individual acting erratically with a rifle and then finally that individual engaging with the rifle before they ever had an opportunity to speak to Pierce or attempt to deescalate. As evident from the photos of Sgt. Mallory's vehicle, Pierce gave law enforcement no options to engage him safely. Given the Ring video evidence of the suspect walking toward officers, yelling threats, and raising his rifle to a firing position, it would be unreasonable to require Officer Nolan to have paused prior to addressing the threat. As the situation unfolded, Pierce did indeed demonstrate his willingness to fire upon officers, hitting Officer Nolan, even behind his protected position. When Sergeant Mallory fired next, he was addressing an active shooter and warnings would be unreasonable and ineffective. Both officers would also have been hindered by a significant distance, where Pierce could fire upon them, but verbal commands would be ineffective.

When the second group of officers fired, there had been a gap in time in the incident. However, given Pierce's demonstrated intent and follow through on attempting to kill officers, announcing their positions would have only served to make themselves targets and been unreasonably dangerous.

Therefore, Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico were exempt from giving the verbal warning because it would have unduly placed them or fellow officers at risk of injury or would have created a risk of death or injury to other persons

(Question 4) Did Officer Nolan, Sergeant Mallory, Officer Barber and Officer Giandomenico or fellow officers ensure that assistance and medical aid were rendered to Clayton Pierce as soon as was practicable.

After Pierce was shot, law enforcement used reasonable caution in approaching. Pierce had only recently been firing a rifle at officers and, while he had fallen to the ground, it was unknown whether he had the ability to continue firing. Once officers arrived safely in their armored vehicle, and rendered the scene safe, they did give appropriate aid. Their aid continued until medical personnel arrived on scene.


(Question 5) Investigating officers ensured that identified relatives or next of kin of Clayton Pierce were notified of his injuries as soon as practicable.

Pierce's relatives were notified promptly by CIRT investigators. Detectives and a victim advocate were able to contact Pierce's mother and sister. They explained what had occurred and offered them resources if needed.

The totality of the evidence presented through the CIRT investigation reveals that all four officers who fired their weapons faced a clear and immediate threat to themselves or others which justified the use of deadly force, and that deadly force was the only practicable way to address that threat pursuant to Colorado law. Further, their actions would also have been justified under Colorado law governing defense of self and others. As a result, I find that no charges can or will be brought against any law enforcement officer in this case.

This incident highlights the incredible danger presented by unserialized ghost guns in our communities and the risk they pose to law enforcement officers and citizens alike. Pierce was able to obtain or build firearms from parts that are unable to be traced and avoid the normal background screenings process – Pierce was legally prohibited from purchasing or possessing firearms due to his felony history. Nevertheless, these were fully functional, lethal firearms, that Pierce ultimately used to fire nine rounds at officers, any of which could have killed a Fort Collins Police Officer who were responding to a traffic crash in their normal course of duty and seeking to protect the community. Similarly, any errant round could have killed any of multiple citizens going about their day with family at City Park or the golf course, paying respects to loved ones at the cemetery, or even in the confines of their homes on a residential street. Despite many recent improvements in Colorado regarding firearm safety, these ghost guns, which in Pierce’s case included a powerful semi-automatic rifle modified with a binary trigger to increase its rate of fire, present an enormous community safety risk and demand action at the state and federal level to prevent more dangerous criminals from perpetrating violence upon our community. On behalf of the District Attorney’s Office and the 8th Judicial District Critical Incident Response Team, I thank the four Fort Collins Police Services Officers for their work protecting the community on July 21st and am thankful no officers or citizens were hurt.

Respectfully,



Gordon P. McLaughlin
District Attorney
8th Judicial District

8.23.24