



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

July 13, 2016

Chief Nicholas Metz
Aurora Police Department
15151 E. Alameda Parkway
Aurora, Colorado 80012

Sheriff Jeff Shrader
Jefferson County Sheriff's Office
100 Jefferson County Pkwy.
Golden, CO 80419

Re: Officer Involved Shooting Involving Deputy Jose Ramon Marquez
APD Case number 2016 - 3633

Chief Metz and Sheriff Shrader:

I am a Chief Deputy District Attorney with the 18th Judicial District. I have been asked to review the Officer-Involved Shooting occurring in Aurora on January 26, 2016 involving off-duty Jefferson County Deputy Sheriff Jose Ramon Marquez. After reviewing the police reports and materials associated with the case and speaking with the filing detective, I have now completed my review of this incident.

STATUTORY BASIS FOR THIS REPORT

C.R.S. § 20-1-114 provides:

- (1) 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 web site or, if it does not have a web site, make it publicly available upon request.
- (2) If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's

investigation. If no true bill is returned, the grand jury may issue a report pursuant to section 16-5-205.5, C.R.S.

(3) All disclosures required by this section remain subject to the criminal justice records act.

This report is provided to your agencies, and will at some point be publically released, pursuant to this statutory provision.

EXECUTIVE SUMMARY

On January 26, 2016, Jefferson County Deputy Sheriff Jose Ramon Marquez, while off duty, was attacked by two individuals armed with handguns. These individuals drew their weapons on Deputy Marquez, who proceeded to draw his weapon. The individuals opened fire, shooting Deputy Marquez three times. Deputy Marquez returned fire, shooting one of the assailants, Jahlil Meshesha, in the leg. The other assailant fled and has not been apprehended or conclusively identified. Meshesha is facing criminal charges for his actions on January 26, 2016.

For the reasons set forth below, it is my opinion that Deputy Jose Ramon Marquez acted completely in accordance with Colorado law governing use of force in self-defense, and that his actions in firing his weapon and shooting Meshesha in the leg were thus lawful.

FACTUAL BACKGROUND

On January 26, 2016 off-duty Deputy Jose Marquez (hereinafter "Deputy Marquez") was visiting his girlfriend at her apartment in Aurora, Colorado.¹

Deputy Marquez left the apartment to get something out of his car, which was parked on the east side of the parking lot. Deputy Marquez got out of his car and began to walk south through the parking lot toward the apartment. The Deputy was confronted by two males dressed entirely in black, who appeared from between two cars south of his location. Deputy Marquez was shot first, and returned fire from his weapon striking one of the suspects in the leg. Deputy Marquez was shot multiple times and the two suspects ran from the scene.

After being shot, Deputy Marquez was found lying on the ground by several witnesses who attempted to render aid and call 911 for police and other emergency assistance. Deputy Marquez was contacted by APD Officer Adam Roberts. Deputy Marquez informed Officer Roberts that he thought he was going to be robbed, the assailants were wearing masks and shot first. Deputy Marquez told Officer Roberts that he was 90% certain he shot one of the suspects in the leg, and then Deputy Marquez lost consciousness. Witnesses on scene confirmed the information provided by Deputy Marquez. There was

¹ Because this document will eventually be posted on the Internet pursuant to statute, the exact apartment location is not specified, due to potential security considerations otherwise created by publicly identifying the address or approximate address of a person connected with a law enforcement officer. For similar reasons, non-law enforcement witnesses are identified by initials only.

some confusion about the assailants' direction of travel. Several witnesses described seeing a SUV traveling south in the parking lot, and possibly a suspect jumping the fence to the east and fleeing the area.

Deputy Marquez was transported to The Medical Center of Aurora by ambulance. His injuries included two penetrating gunshot wounds to the abdomen, a gunshot wound to the right shoulder, fractured ribs, and damage to his intestines, colon, and liver.

During the initial response to the shooting of Deputy Marquez, at 7:26 p.m., another 911 call was received by the Aurora Police Department the Aurora Public Safety Communications Department from a male who said that he had been shot in the leg. The reporting party gave the location of East Mexico Avenue and South Laredo Street, later to be determined to be East Montana Place and South Laredo Street in Aurora, Colorado.

APD Officer William Hummel arrived at the South Laredo location and found a male entirely in dark clothing suffering from what appeared to be a gunshot wound to the right leg. Officer Hummel noted the male was screaming that he had been shot.

There was a black Chevrolet Equinox nearby on the street. A witness indicated that he saw the male with the gunshot wound getting out of the car and walking away. This Chevrolet was later determined to be stolen out of Glendale on January 25th, 2016. The Equinox was located approximately 1.5 miles away from the location where Deputy Marquez was shot. The 911 call received at approximately 7:26 p.m. was approximately 7 minutes after the original 911 call involving Deputy Marquez. This second 911 call came from a male later confirmed to be Jahlil Meshesha.

APD Officer Nicholas Muldoon arrived on the South Laredo scene and contacted a witness identified as R.W. Mr. W was parked in a van on South Laredo Street. Mr. W said that he arrived shortly before the police and observed a male walk away from the car-- Chevrolet Equinox--parked in front of his van. The male who walked away from the van was later identified as Jahlil Meshesha.

APD Officer Ken Forrest conducted a general search of the area and located two black gloves and a .40 caliber XDM Springfield handgun in the backyard of a nearby house. Officer Forrest observed one glove was in a juniper tree and the other was on the ground below. A short distance away, Officer Forrest located the handgun. Officer Forrest contacted the homeowner, who was identified as S.G. Mr. G. allowed Officer Forrest to check his back yard. Mr. G confirmed he had no knowledge of the pistol or glove in his backyard.

On the front passenger seat of the Chevrolet Equinox in plain view, Officer Forrest also observed a dark colored facial mask, described as consistent with being used to cover the lower face.

WITNESS STATEMENTS

Other than Deputy Marquez and the two assailants, there were no eyewitnesses to the actual discharge of firearms.

Ms. E.G.

Ms. E.G. was driving a light colored Chrysler Pacifica in the parking lot where Deputy Marquez was shot when she observed two males with masks covering their faces. These masks covered the mouth and nose allowing only the circle for eyes and mouth to be uncovered. The two males were walking in the parking lot, when she drove past them and heard an unknown number of gunshots. Ms. G. could not identify the males. She drove around the block and returned to where Deputy Marquez was lying on the ground. Ms. G. said that she called 911 from her cell phone. Ms. G. said that several people surrounded Deputy Marquez to render aid and she remained in her car until the police arrived.

The vehicle that Ms. G. was driving was consistent with reports of a vehicle seen leaving the area shortly after the shooting.

Mr. C.C.

C.C., the adult son of R.R., who is the girlfriend of Deputy Marquez, was also contacted on scene. Detective Craig Appel later interviewed Mr. C., who said that he was at the apartment with his mother Ms. R., his little sister M., and Deputy Marquez. Mr. C. originally thought it was about 7:30 p.m. when Deputy Marquez walked outside to get an item he needed for dinner. Mr. C. then realized he had missed a "facetime" video call from a friend at approximately 7:00 p.m. and walked outside to make a call.

Mr. C. said that he walked out to the steps leading up to the apartment as Deputy Marquez was walking into the parking lot, when Mr. C. heard approximately five gunshots. Mr. C. said that he saw Deputy Marquez falling to the ground in the area near the end of the carport spaces that are on the west side of the parking lot.

Mr. C. observed two subjects fleeing eastward from where Deputy Marquez was lying on the ground. Mr. C. described the first fleeing subject as a young male, tall, average build, with a dark cloth mask on his face, and in dark clothing. Mr. C. didn't see anything in the suspect's hands.

Mr. C. described the second subject as having a "shiny" gun in his hand, and as being a tall, thin, young male, similar in clothing description of subject #1, also wearing a black cloth mask. Mr. C. stated that subject #1 appeared to be younger than subject #2.

Mr. C. said that, after seeing Deputy Marquez fall to the ground, he returned to the apartment, grabbed a pistol from Ms. R.'s room, and ran downstairs to where Deputy Marquez was lying. Mr. C. described Deputy Marquez lying on his back with his legs in the air. Mr. C. noted the two young males had jumped the fence to the east and were running toward the baseball fields located in that direction. Mr. C. observed the injuries

to Deputy Marquez, noting that Deputy Marquez had gunshot wounds to his stomach and shoulder. Deputy Marquez's gun was lying on the pavement. Mr. C. described how some of the gunshots sounded "different", and thinks Deputy Marquez got off two shots because he carries a "big" pistol.

Mr. C. said that, when he first ran down to Deputy Marquez, the Deputy was pointing with his finger in a southeast direction and that is where Mr. C saw the subjects running. Mr. C. said that his sister M. ran down stairs carrying a cell phone trying to speak with police dispatch. Mr. C. said that he took the phone from M. and handed her the pistol he had been holding to be put back in the apartment. Mr. C. said he noted an African-American female in a car stopped in the parking lot. He heard the lady say: "He had been shot." Mr. C. said that he did not see the lady in the car the first time he was outside of the apartment. Mr. C. also heard the lady say she was calling the cops and she also saw two people in masks running from the scene.

Mr. C. stated that he did not think that the lady had anything to do with the shooting. (This African-American female was subsequently identified as Ms. E.G.). Mr. C. said that earlier in the night he had noticed a vehicle, possibly white in color, with two males parked in a carport. This parking spot is on the east side and south of the steps leading to his apartment. Mr. C. described seeing a faint light from the vehicle interior similar to a light from a cellphone. Mr. C. said that the police arrived fairly quickly to the scene. Mr. C. stated that he believes his mother's ex-husband, David had something to do with the shooting, and could have paid gang members to "hit" us.

It should be noted that there is no independent information or sources to confirm this shooting had anything to do with an ongoing investigation involving David R. The investigation involving David R. is separate investigation to include the allegation of sexual assault. The report is under Aurora Police Department criminal case 2016-1765.

Ms. R.R.

Another witness from the shooting was Ms. R. Ms. R. said that she has been dating Deputy Marquez. Ms. R. stated that she received a call from Deputy Marquez earlier in the day, and he told her that he would bring over groceries and cook for her and the family. Ms. R. said she was depressed because she had recently lost her job.

Ms. R. said, and confirmed on her cellphone, that Deputy Marquez called her at 5:46 p.m. when he arrived in the parking lot to bring up the groceries. Ms. R. described Deputy Marquez's clothing as a green t-shirt and blue jeans. Ms. R. said that Deputy Marquez does not drink, however she was drinking beer. Ms. R. said that Deputy Marquez forgot something in his car, and walked outside to retrieve it. Ms. R. said that she walked out to the balcony to smoke a cigarette while Deputy Marquez walked outside to his car. Ms. R. said she then heard approximately six to eight gunshots coming from the parking lot. Ms. R. said she did not hear any voices coming from the parking lot while she was out on the balcony.

Ms. R. said that she started to run outside, but her son Mr. C. stopped her and told her to stay in the apartment. Ms. R. learned from her son Mr. C. that Deputy Marquez was shot and asked her where her pistol was. Ms. R. confirmed that Mr. C. grabbed the pistol from the apartment and ran back to where Deputy Marquez was in the parking lot. Ms. R. ran out to the parking lot with her cell phone and saw Deputy Marquez on the ground as police were arriving. Ms. R. said that she overheard Deputy Marquez say "I'm ok, I'm ok, she is my girlfriend". Ms. R. said that she did see at least one gunshot wound on Deputy Marquez.

DEPUTY JOSE MARQUEZ'S STATEMENTS

Deputy Marquez was interviewed two times during the course of the police investigation. On January 28th, 2016, Detectives Fredericksen and Ingui interviewed Deputy Marquez while he was in ICU at The Medical Center of Aurora. They also interviewed Deputy Marquez on February 8, 2016, at the Aurora Police Department.

Deputy Marquez underwent an additional surgery for injuries to his liver as a result of the gunshot wounds. Deputy Marquez remained intubated until the morning of January 28th, 2016. Throughout the medical treatment process, Deputy Marquez was medicated for pain and treatment, and was not interviewed until the afternoon of January 28, 2016. Detectives Fredericksen and Ingui interviewed Deputy Marquez in his ICU hospital room. Deputy Marquez was described as being lucid and understanding all of the initial questions asked prior to the interview. Deputy Marquez was made aware the investigation was going to be treated as an Officer Involved Shooting (OIS). Deputy Marquez confirmed that he was not a member of any legal defense/representation union. Deputy Marquez confirmed that he did not wish to have an attorney present for this interview and agreed to speak with the Detectives.

January 28, 2016 Statement

Deputy Marquez stated the following about his background: He is a Deputy Sheriff with Jefferson County Civil Unit. He has been a Deputy with JCSO for almost 11 years (hired 4-18-2005). Prior to JCSO, he was a Summit County Sheriff Office Deputy for almost 10 years, and a Frisco Police Department Officer for almost one year. He was on the SWAT Team while with SCSO, and received specialized training via the Denver Police Department SWAT School. He last served on SWAT in 2001. Prior to his law enforcement career, he served eight years in the United States Army Reserve as a Combat Engineer and Supply Sergeant. He is right-handed, but can shoot from both sides, with both hands.

Deputy Marquez provided the following information about the date of the incident: On January 26, 2016, he worked and then left his office at about 4:15 p.m. He went to his house, in Lakewood and changed into civilian clothes, and drove toward his girlfriend Ms. R.'s apartment. He and Ms. R. have been dating about three months. He said that he normally goes to the apartment in civilian clothes, and has only been there once in his JCSO uniform, on January 13, 2016. The only car he has driven to her apartment has been his blue 2007 Chevy Cobalt. He is the only registered owner of his car. He

arrived at Ms. R.'s at about 5:45p.m. Some daylight remained when he arrived. He was armed with his duty weapon, a silver and black XDM .45 ACP. He has owned that handgun for three or four years, and has qualified with it. He had no other guns on his person. He carried his pistol in an open-top manufacturer's holster, on his right side. His pistol was fully loaded, with thirteen rounds in the magazine and one round in the chamber. His ammunition was duty-issued hollow-point ammunition. He had an extra magazine in his car, but did not have it on his person, as he "wasn't ready for a fight." His pistol was concealed under his jacket. He had no visible Police badge, as his badge was in his wallet. Deputy Marques said that he is farsighted, and wears Oakley Crosslink vision glasses. He was wearing them during this incident.

Deputy Marquez said that he first parked his car to the east of the building, north of a concrete pad. He went inside Ms. R.'s apartment for about an hour, and cooked dinner. Then, about 6:20p.m. or 6:30p.m., he went back outside to retrieve an item from his car. He got the item and put it in his pants pocket. He began to walk to the southwest, toward the apartment buildings. As he was walking to the south, in the parking lot, he saw two males approaching him from the south. They were walking to the north in the parking lot, to the east of Deputy Marquez. That was the first time he saw the two males.

The first male was wearing something over his face – either a mask, bandana, or part of his hoodie. The male already had his face covered when Deputy Marquez first saw him. The first male said, "Hello brother," as he approached Deputy Marquez. He was about 20-25 feet away from his car when the first male said, "Hello brother." Deputy Marquez had not yet made it to the sidewalk on the west side of the parking lot. He could only see the eyes and nose of the male. He could not see the male's mouth or jaw. Deputy Marquez said: "Right away I knew something was up, cause he had a, a, a facemask."

Deputy Marquez described the first male as follows: About 17-21 years old, 5'7"-5'9", 155 pounds, wearing all dark clothing. Deputy Marquez knew he was a male as he could see around the eyes, and from the top lip to the nose on the male's face, but could not comment on the tone of the male's skin. He described the second male as follows: About 17-21 years old, same height and weight as the first male, wearing all dark clothing, possibly blue jeans. Deputy Marquez believed this male was also wearing a mask, but could not be sure, as he was focused on the first male. The second male was about 12 inches to the left of the first male, as they both approached from the south. This second male never said anything to Deputy Marquez.

No one else was outside during this incident, besides the two males. As they passed each other, Deputy Marquez said that the first male "turned on me" and said, "Give it up." At that time he knew something "bad" was about to happen, and he thought, "Oh shit, we're getting into a shootout," and he turned to face the first male. He took the phrase, "Give it up" to mean, "He's trying to kill me." Asked if he thought it could mean he was about to get robbed, Deputy Marquez said that was possible, but he had no idea at that point, because, "At that point, I'm fighting for my life."

The first male then pulled out a black handgun and racked the slide as if to chamber a round or press-check the gun. That was the first time he saw a gun in the first male's hands. Deputy Marquez again thought, "Oh shit. We're going to fight." When the first male said, "Give it up," Deputy Marquez began to draw his weapon. As he did so, the first male fired a round at him, striking Deputy Marquez in either the right shoulder or the abdomen – he could not remember where he was first hit. He said that he saw the muzzle flash from the gun. He said: "At this point I told myself, 'Shit, I'm going to die'." He was in fear for his life. However, despite being hit, he could still lift his hand to fire. He said to himself, "I'm not dying today. Not today. Any other day, maybe. It's not my time yet." He also thought, "Fuck you, and you're not taking me down." He also told himself, "You're the bad guy. I'm the good guy."

Deputy Marquez said that he drew his weapon and started shooting. He believed he fired two rounds. He was standing in place, in a shooter's stance, as he was firing. He fired in a northeast direction. The first male continued firing, hitting Deputy Marquez in the shoulder, and left and right sides of his abdomen. (He also suffered a broken rib on the right side, but was unclear if that was a result of a gunshot or not.)

Deputy Marquez said: "He kept shooting at me, like he was going to kill me." The first male "shot about four rounds toward me." The first male was standing still as he fired. The first male fired in a west or northwest direction. Deputy Marquez and the males were about 25 feet apart when they were shooting at each other. He thought he hit one of the males (unknown which one) in the leg. Asked how he knew that, he said his friend of 20 years, David Lynes, a Cherry Hills Village Police Department Officer, told him that after the fact. Deputy Marquez felt, in his mind, that he hit one of the suspects, but was not sure where, and did not see either male flinch as if they had been hit.

Deputy Marquez fell to the ground, and put his hand on his wounds, but resolved that it was not a good day to die. Some civilians came to him, including an African-American female who said, "I saw them shoot you." He had no other information on this woman, other than to say she called 911 on her phone. Two white males also came to his aid. He told these civilians he was a Jeffco Sheriff's Deputy, Badge #1712, that his ID was in his wallet, and that his name was Marquez. He later told three responding Aurora Police Department Officers that he was a Deputy. He never lost consciousness.

Deputy Marquez said that the two males fled to the north, in the parking lot. Asked if he would recognize the first male again, Deputy Marquez shook his head no and said, "It happened so quickly." Asked if he would recognize the second male again, he said no.

Deputy Marquez confirmed that he was not robbed, and they did not take anything from him. Asked if at any time he told the suspects he was a Police Officer, Deputy Marquez said, "No, I didn't have time to even announce myself. At, at that point I'm just fighting for my life." He has received no threats from anyone, and has had no recent issues with anyone, personally or professionally, that might be linked to this shooting. He had no road rage incidents, and had never seen the two males before. Personally, Ms. R. has been having problems with her ex-husband, David R., who sent her a suspicious package recently, but Deputy Marquez had no evidence that was linked to this shooting. And

professionally, the only possible JCSO-related party he could think of that might have something against him was a suspect named Antonio Garcia who went to prison on March 28, 2015 for a stolen gun, but Garcia was still in prison to his knowledge. Deputy Marquez believed the incident could have been a robbery, or “it could be a hit,” but again had no evidence to support it being a hit. Deputy Marquez was unsure of his exact wounds, but said he had had two surgeries, and had right shoulder and abdominal wounds, along with a broken rib on his right side. His left forearm had bruising, but he said that was related to IV therapy.

February 8, 2016 Statement

Detectives Fredericksen and Ingui re-interviewed Deputy Marquez February 8th, 2016 at the Aurora Police. Prior to the interview a bullet count was conducted on the gun that Deputy Marquez fired on the 26th of January 2016. The gun had been in Aurora Police Department Crime Laboratory in a secured locker.

The firearm was identified as a Springfield Armory, XDM serial number of MG505244. The bullet count confirmed a total of 10 rounds remaining in the firearm, 9 in the magazine and 1 in the chamber. The firearm has a capacity of 14, 13 +1. The ammunition was identified as Speer 45 auto, and was issued to Deputy Marquez by the Jefferson County Sheriff’s Office. Deputy Marquez confirmed this was the only gun he had on his person the 26th of January 2016, and the only gun he fired that night.

Deputy Marquez recalled the previous interview at the hospital and stated that, since the previous conversation, he had some clarity in his memories.

Deputy Marquez said he had been cooking for approximately about an hour somewhere between 6 p.m. and 7 p.m. Deputy Marquez said that he walked out of the apartment to get drill bits from his car. Deputy Marquez said the car was facing the eastside of the building, and he did not talk to anyone when he was outside, several people were leaving in their cars.

Deputy Marquez said that the drill bits were in the center console (cup holders) and he had to unlock the car with a key and there are no interior lights in the car. Deputy Marquez entered the driver’s side of the vehicle and “a little voice inside my head told me I needed to move my vehicle.” Deputy Marquez said that it was dark outside with very few lights and very little ambient light. Deputy Marquez said that he moved the vehicle to a nearby parking space.

Deputy Marquez said that he got out of his car, and noticed two males walking towards him and something told him to move to the other side of the street. Deputy Marquez said that one of the males said ‘What’s up brother?’ and he replied “What’s up brother?” Deputy Marquez said that he continued to walk south and something told him to turn around as he saw the males pulling something over their face, possibly a bandanna or mask. Deputy Marquez said that the male in the front was slightly shorter possibly 2 inches shorter, and the one who talked to him was the male in front. Deputy Marquez said that both males appeared to him to be African-American. Deputy Marquez said that

he never made it to the sidewalk and he thought when seeing those masks he was in for a battle. Deputy Marquez turned around because of the bandanna and the male on the left said “give them up” and he thought it should have been “stick them up”. Deputy Marquez said he noticed the one male had a gun, and he started to draw his weapon, and he knew the other male had a gun also. Deputy Marquez said he was about twelve feet away from both males. Deputy Marquez described the male jacking one into the chamber and the male shot him in the shoulder and the battle started.

Deputy Marquez said the male who did the talking is the male who shot first, and he saw two different muzzle flashes coming from two different guns. Deputy Marquez said only one person did the talking. Deputy Marquez said he could only guess in reference to the shots fired. Deputy Marquez believed that they had shot four (4) times and when they ran away they shot four (4) more times as they ran off east. Deputy Marquez said he thought he had only shot two (2) times, and when the males ran off they were shooting at him not aiming. Deputy Marquez then collapsed but did not lose consciousness.

Deputy Marquez said that he did not see where they ran, and he was thinking about managing his ammunition in case they came back. A male came to help him (he later met the male named Steve). The male (Steve) took his weapon away from him, because he didn't know who Deputy Marquez was and if he was a bad guy or good guy. Deputy Marquez stated he told the male (Steve) that he was a deputy sheriff and gave him his badge number. Deputy Marquez said that he told him he needed help and was screaming. Deputy Marquez was sure people could hear him saying he was a deputy sheriff. Deputy Marquez said that he applied pressure to his wound, and the male (Steve) and another older male described as having a beard and ball cap on his head also came to assist. Deputy Marquez said it was a couple of minutes before the police showed up on scene. Deputy Marquez said that he later met the officers who initially responded to the scene and assisted him. Deputy Marquez said that he told the officers the description of the suspects and direction of travel. Deputy Marquez described the suspects as two African-American males, between 16 and 20, wearing dark clothing, including hoodies.

Deputy Marquez said he was transported to the hospital due to his injuries. He underwent two surgeries. Deputy Marquez said that he was shot once in the right shoulder and once in the abdomen causing damage. The initial surgery was to stabilize him and the second surgery was to fix his injuries. Later on in the interview Deputy Marquez said that Doctor Snyder told him he had 8 holes, from surgery and entry and exit wounds, and that he had been shot in the right shoulder, broke rib #5, lost 40% of his colon, damaged his liver, and has a partially collapsed right lung.

Deputy Marquez said that the first male was twenty (20) to twenty-five (25) away from him and he noticed the male adjusting the cover on his face. Deputy Marquez said it was a covering, could have been a ski mask or a bandanna.

Deputy Marquez said that he was shooting in a north direction at the suspects and the shooters were shooting south at him. Deputy Marquez said that he is trained to shoot and move and to stand and shoot. Deputy Marquez is right-handed, and could have shot

and moved versus standing and shooting. Deputy Marquez said that he stayed in the fight after he was shot.

Deputy Marquez said that he drew his weapon when he saw the suspect's weapon, and then he was shot. Deputy Marquez said that he saw the second gun and knew there were two guns. Deputy Marquez said that it happened so fast he did not have time to identify himself as a deputy sheriff. Deputy Marquez said that he had to fight for his life, and his badge was in his wallet. Deputy Marquez wears glasses all of the time, and is nearsighted. Deputy Marquez described the ages of the suspects as 18-21 years of age, 5'7"—5'9" and the second suspect was 5'9"-5'11" maybe an inch to two inches taller than the first male.

Deputy Marquez said that one male was on the left and the other on the right approximately twelve (12') inches apart from each other. Deputy Marquez was concentrating on the muzzle flashes, right then left, left then right, and described the shooting as an exchange between all three of them.

Deputy Marquez said that he is required to qualify twice a year with his handgun and also is required to attend two firearm-training sessions during the year. Deputy Marquez said that he recently practiced shooting at the Firing Line shooting range in Aurora. Deputy Marquez said that his undershirt was tucked into his pants and all he had to do was sweep the jacket open/away and he could access the firearm.

Deputy Marquez said that the suspects had masks that covered their faces from chin to his nose, and were wearing hoodies to cover the top of their heads. Deputy Marquez said that he was not sure where their hands were when he first encountered the two males. Deputy Marquez said that he did not remember where the gun was produced from and he was certain the first male was right handed, and possibly the second male. The first male who spoke was 16-21 years of age, less than 150lbs, 5'7"-5'9", and a dark skinned male. The second male was taller and was also dark skinned, 16-21 years of age and difference in height of an inch to two.

Deputy Marquez said that he saw muzzle flashes from both guns; he focused on the first gun. Deputy Marquez said that during the first interview he was on narcotics, and he has nightmares about the shooting. Deputy Marquez said that that he had to concentrate on the two threats and manage his ammunition. Deputy Marquez did not know if he hit his targets; he was shooting at the muzzle flashes. Deputy Marquez again stated he was fighting for his life, and he thought he was going to die.

STATEMENTS BY JAHLIL MESHESHA

Jahlil Meshesha invoked his *Miranda* rights and did not make a statement.

EVIDENCE COLLECTED AT THE SCENE

APD collected firearms related evidence from the scene. APD collected 12 expended .40 caliber shell casings, in two groups fairly close together. They also collected one fired

bullet. They also collected four .45 caliber shell casings, which was the caliber of Deputy Marquez's gun.

As previously stated, APD also recovered a .40 caliber Springfield Armory handgun associated with Jahlil Meshesha. Per APD firearms analyst Alan Hammond, this gun was a match for three of the .40 caliber shell casings found at the scene. Police also recovered a .45 projectile from Meshesha's clothing, specifically his pants, which was a match for Deputy Marquez's gun.

MESHESHA'S GUN

The weapon associated with Meshesha was examined. Of note, it was determined that one of the shots that Deputy Marquez fired from his .45 caliber handgun actually hit Meshesha's .40 caliber handgun and traveled down the barrel, colliding with a cartridge that was in the chamber of the gun. Detective Ingui described this as a "one in a billion thing" in a personal conversation with the undersigned. This collision rendered the .40 caliber pistol temporarily inoperable. Thus, we can conclude that Meshesha fired three shots before this happened, based on the shell casings found at the scene, and that he was pointing his gun at Deputy Marquez when Deputy Marquez fired the shot that hit the gun, otherwise the shot from Deputy Marquez would not have gone down the barrel. Here is a photograph showing the results of this collision.



APPLICABLE STATUE RELATING TO USE OF FORCE

C.R.S. § 18-1-704 provides, in pertinent part:

(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.

(3) Notwithstanding the provisions of subsection (1) of this section, a person is not justified in using physical force if:

(a) With intent to cause bodily injury or death to another person, he provokes the use of unlawful physical force by that other person; or

(b) He is the initial aggressor; except that his use of physical force upon another person under the circumstances is justifiable if he withdraws from the encounter and effectively communicates to the other person his intent to do so, but the latter nevertheless continues or threatens the use of unlawful physical force; or

(c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

APPLICATION OF FACTS, LAW, AND FINAL CONCLUSION

I have reached the following conclusions: (1) Deputy Marquez was confronted with two armed individuals who drew their weapons; (2) This fact alone would be sufficient for Deputy Marquez to draw and use his weapon to defend himself; (3) The evidence also suggests that one or both of the assailants fired first, which would also provide justification for Deputy Marquez to use his firearm to defend himself; (4) Incontrovertible physical evidence shows that Meshesha had his gun pointed directly at Deputy Marquez when Deputy Marquez fired one of his shots, which rendered Meshesha's gun inoperable.

I therefore conclude that Deputy Marquez reasonably believed that his life was in danger and acted reasonably in shooting Meshesha, and that he used an appropriate level of physical force. I further find that Deputy Marquez's actions were justified and he did not violate Colorado law.

Sincerely,

Rich Orman

Richard H. Orman
Chief Deputy District Attorney

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