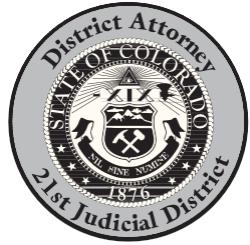


DANIEL P. RUBINSTEIN
DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE
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June 5, 2023

Detective Charles Rojo
Grand Junction Police Department
555 Ute Ave
Grand Junction, CO 81501

This letter is notification to the Critical Incident Response Team (CIRT), and the involved officer, Deputy Andrew Baca, of the decision not to file charges against him in the matter of the officer involved shooting of Rafael Lopez-Leon, DOB 07/29/75, on April 28, 2023. As will be detailed below in the findings of fact and conclusions of law, charges against the officer are not appropriate, as he was acting in self-defense and defense of others. Mr. Lopez-Leon is now deceased, but had he survived this incident he would have been charged with attempted first-degree assault.

On April 28, 2023, the 21st Judicial District Critical Incident Response Team was activated at the request of the Mesa County Sheriff's Office to investigate an officer involved shooting, which occurred on April 28, 2023 at approximately 1638 hours near 2837 North Avenue #B27. The Grand Junction Police Department (GJPD) and the 21st Judicial District Attorney's Office were represented during this CIRT investigation. From the GJPD, Detective Charles Rojo was assigned as the case agent, and Detective Bryce Raber as co-case agent for this investigation.

The following are my findings of fact, and conclusions of law:

FINDINGS OF FACT

Initial Information:

On April 28, 2023 at approximately 1616 hours, Officer Tim Long noticed a blue Nissan truck, traveling north on 28 1/4 Road with an expired license plate. The driver of the truck was later found to be Mr. Lopez-Leon. Officer Long initiated a traffic stop on Mr. Lopez-Leon using his lights and sirens in his GJPD marked patrol vehicle, while giving verbal commands to pull over on his public address system. GJPD dispatch advised Officer Long there was an associated arrest warrant for Mr. Lopez-Leon connected to the license plate. Mr. Lopez-Leon was described as a heavy Hispanic male, with an orange baseball cap on his head. Officer Long said that Mr. Lopez-Leon looked erratic, bouncing his head around, looking out his windows, looking through his mirrors, looking over his shoulder, and he did not appear to be acting in a reasonable manner.

Officer Long thought Mr. Lopez-Leon was not acting consistent with a rational or sober person. Officer Long thought Mr. Lopez-Leon could have been under the influence of drugs or alcohol due to his behavior. Mr. Lopez-Leon sped up and eluded Officer Long. Officer Long watched Mr. Lopez-Leon recklessly accelerate away, and almost crash into another vehicle with no regard for public safety. Officer Long did not pursue the vehicle per the GJPD policy regarding pursuits.

Dispatch aired the vehicle information to the Mesa County Sheriff's Office (MCSO) and advised the Colorado State Patrol. Officer Long searched law enforcement records to find a picture of Mr. Lopez-Leon, confirming the male in the truck was Mr. Lopez-Leon, and aired on the radio the same vehicle eluded law enforcement in February, 2022.

Deputy Andrew Baca was travelling on North Avenue looking for Mr. Lopez-Leon's truck, when he noticed the truck turning east on North Avenue from 28 Road. Deputy Baca made a U-turn and witnessed Mr. Lopez-Leon turn south on 28 1/4 Road from North Avenue. Deputy Baca saw Mr. Lopez-Leon turn into the trailer park located at 480 28 1/4 Road. Deputy Baca followed Mr. Lopez-Leon to 2837 North Avenue #B27, where he parked the blue Nissan truck on the east side of the trailer. Deputy Baca pulled in behind Mr. Lopez-Leon in a marked MCSO patrol vehicle with his overhead red and blue lights activated. Deputy Baca parked his vehicle approximately three feet from Mr. Lopez-Leon's truck. Deputy Baca exited his vehicle wearing an MCSO patrol uniform with MCSO markings. He gave Mr. Lopez-Leon verbal commands to stay in the vehicle, while attempting to hold Mr. Lopez-Leon at gun point until other law enforcement arrived.

Mr. Lopez-Leon disregarded Deputy Baca's commands, and he exited the truck with a metal hammer in one hand. Mr. Lopez-Leon reached into the bed of his truck and retrieved an approximately 3' long wood handle. Deputy Baca gave verbal commands to stop reaching in the bed of his truck and to "drop it, and get on the ground." Mr. Lopez-Leon walked towards Deputy Baca with the wood handle and hammer, mumbling and appearing to "look through" Deputy Baca. Deputy Baca holstered his duty weapon and retrieved his taser. The taser was not effective and, per Deputy Baca, only made Mr. Lopez-Leon angrier. Mr. Lopez-Leon advance on Deputy Baca faster while Deputy Baca retreated in an area with many trip hazards. Deputy Baca reported that he was fearful that if he tripped, he did not know what Mr. Lopez-Leon would do. Deputy Baca said Mr. Lopez-Leon was right on top of him, while Deputy Baca had one arm up and anticipated being struck by the wood handle. Deputy Baca holstered the taser and unholstered his duty weapon, firing one round at Mr. Lopez-Leon.

Mr. Lopez-Leon paused for a second before coming back at Deputy Baca. Deputy Baca reported that he did not know if the wood handle broke or if Mr. Lopez-Leon threw the handle at him when the handle flew towards Deputy Baca. Mr. Lopez-Leon still had the hammer in the other hand, while he advanced towards Deputy Baca. Deputy Baca shot Mr. Lopez-Leon four more times, airing over the radio "shots fired." This stopped Mr. Lopez-Leon, who started to bleed before stumbling and falling. Shortly after, Officers Chandon Rose and Koya Barrette arrived and rendered medical aid to Mr. Lopez-Leon. The Grand Junction Fire Department arrived and transported Mr. Lopez-Leon to St. Mary's Hospital, where he was pronounced deceased.

Video Surveillance

Deputy Baca was wearing a body worn camera when this incident occurred, but it was not activated.¹ The GJPD officers who arrived did have body worn cameras.

Video was collected from trailer #A15, which is one trailer to the west of #B27. The camera view from trailer #A15 did not show where Mr. Lopez-Leon and Deputy Baca parked near trailer #B27. It did show the road to the southwest of trailer #B27 where the last shots were fired. All time referenced was the time stamp on the camera, which were on 04/28/23. It should be noted that the video also has audio.

The video does not show the area of Mr. Lopez-Leon advancing on Deputy Baca with the wooden handle, or him throwing it at Deputy Baca. The audio, however, corroborates those actions. The video does show the handle flying across the camera view just prior to the two of them coming into camera view. When they come into view, Deputy Baca is retreating backwards. At that point, the hammer is visible in Mr. Lopez-Leon's hand. The resolution of the photo is not completely clear, but a still shot from the body-worn camera of GJPD Officer Rose shows the hammer lying on the ground next to Mr. Lopez-Leon.

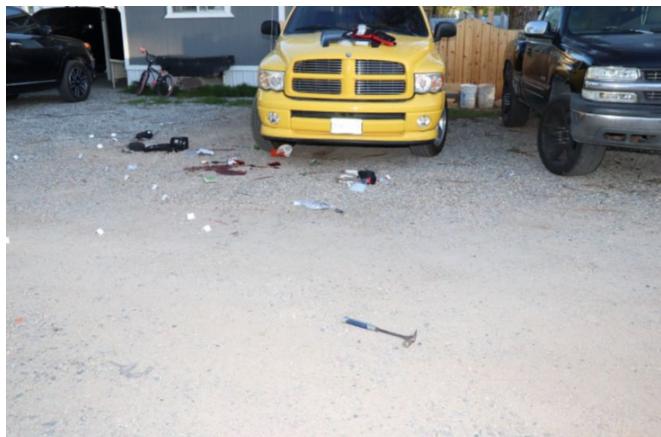


¹ Deputy Baca was transporting a prisoner to the Mesa County Jail before this incident, and put his body worn camera into sleep mode before entering the jail. It is common practice for law enforcement to place body worn cameras in sleep mode before entering law enforcement facilities. When Deputy Baca left the jail, he heard the radio traffic about Mr. Lopez-Leon eluding Officer Long. Deputy Baca decided to look for the blue Nissan. Deputy Baca found the vehicle and did not activate his body worn camera before the incident concluded.



Crime Scene

Deputy Baca retreated approximately 85 feet from Mr. Lopez-Leon before the final shots were fired. Mr. Lopez-Leon was approximately five feet from Deputy Baca when Deputy Baca stopped firing his weapon. Five cartridge casings were found on scene and were consistent with the ammunition used by Deputy Baca. A round count from Deputy Baca's duty weapon revealed he was missing five rounds. No bullets were recovered on scene. As shown below, a metal claw hammer was moved away from Mr. Lopez-Leon when officers were administering first aid and was recovered nearby.



An approximately 3' wood handle was found where Deputy Baca reported that Mr. Lopez-Leon threw it, and where it was seen on the surveillance video.



Autopsy

The autopsy revealed Mr. Lopez-Leon had five gunshot wounds to the upper torso. Three bullets were recovered from Mr. Lopez-Leon's body. A toxicology examination revealed Mr. Lopez-Leon was negative for drugs and alcohol. The cause of death was ruled gunshot wounds, and the manner of death was ruled a homicide.

Suspect Information

Rafael Lopez-Leon

Mr. Lopez-Leon had minimal criminal history, which included traffic offenses. Mr. Lopez-Leon was called into dispatch by citizens as a suspicious person. He was contacted by law enforcement throughout Grand Junction a number of times between 2015-2022, while sitting in his truck at locations he was not associated to. Officers have attempted to initiate traffic stops on Mr. Lopez-Leon prior to this incident, but Mr. Lopez-Leon eluded law enforcement.

Mr. Lopez-Leon's roommate, Miguel Madera, described Mr. Lopez-Leon as having mental health issues. Mr. Lopez-Leon was reported as having talked to himself and would make odd hand gestures. Mr. Madera tried to talk to Mr. Lopez-Leon, but Mr. Lopez-Leon did not carry on a conversation. It was reported by Mr. Madera that Mr. Lopez-Leon would often not give answers that made sense.

Detective Jose Chavira spoke with Mr. Lopez-Leon's family who reported that Mr. Lopez-Leon suffered from mental illness. Mr. Lopez-Leon's family reported that they could not afford to get Mr. Lopez-Leon the medical help and prescriptions he needed to help with his mental illness.

Non-Law-Enforcement Witnesses

Officers and detectives spoke with several witnesses in the nearby trailers and occupants of a vehicle that was driving nearby when the incident occurred. The witness statements were consistent. Each witness saw Mr. Lopez-Leon with a hammer in his hand, while advancing at Deputy Baca. Witnesses described Mr. Lopez-Leon as swinging the hammer and wood handle at Deputy Baca, while Deputy Baca retreated backwards from Mr. Lopez-Leon. Deputy Baca attempted to use his taser on Mr. Lopez-Leon before the initial gun shot. Some witnesses recalled Deputy Baca shooting the first round into the air. Several witnesses saw Mr. Lopez-Leon throw the wood handle at Deputy Baca before Deputy Baca fired more rounds at Mr. Lopez-Leon.

Law-Enforcement Officer Statements

Deputy Andrew Baca

Deputy Baca has worked for the Mesa County Sheriff's Office (MCSO) for 4 years. At the MCSO, he is a use of force instructor, and trainer in arrest control, defensive tactics, and de-escalation. Prior to the MCSO, Deputy Baca worked at Mesa County Partners for juvenile diversion for 1 year. Deputy Baca also worked at Lonestar Security for 1 year.

The following is reported by Deputy Baca: He heard the radio traffic about a blue Nissan truck that ran from officers with the GJPD. He heard that it was a Hispanic male driver who eluded officers during a traffic stop. Deputy Baca left the jail and was driving towards Clifton when he heard another officer say the truck was near 7th and Patterson. Deputy Baca decided to try and locate the truck. He followed the truck as it turned south onto 28 1/4 Road from North Avenue. Mr. Lopez-Leon went into the James Trailer Park.

Deputy Baca was wearing a marked police uniform, driving a marked patrol vehicle. Deputy Baca pulled in behind Mr. Lopez-Leon's truck with his lights activated. Mr. Lopez-Leon started to get out of his vehicle. Deputy Baca told Mr. Lopez-Leon to stay in the vehicle, while he drew his gun to do a high risk stop. Mr. Lopez-Leon came out of the vehicle with a work hammer in his hand. Deputy Baca told dispatch, "he has a hammer" and "send me additional units Code 3." While Deputy Baca got out of his car, Mr. Lopez-Leon dug in the bed of his truck with the other hand. Deputy Baca told Mr. Lopez-Leon to stay out of his vehicle and to not reach for anything. Mr. Lopez-Leon came out with a long wood handle. Deputy Baca told Mr. Lopez-Leon to "drop it" and "get on the ground."

Mr. Lopez-Leon started to walk towards Deputy Baca with both objects in his hands. Deputy Baca said that Mr. Lopez-Leon was looking right through him and mumbling things Deputy Baca could not understand. Deputy Baca begun walking backwards, putting his gun back in his holster, and pulling out his taser. The taser was not effective and made Mr. Lopez-Leon angrier. Mr. Lopez-Leon started to go towards Deputy Baca faster. Deputy Baca drew his gun and tried to create distance between himself and Mr. Lopez-Leon. Deputy Baca said Mr. Lopez-Leon was right on top of him and came at him with the wood handle and hammer. While Deputy Baca walked backwards, he avoided potholes and other trip hazards that would have caused him

to fall. Deputy Baca told Mr. Lopez-Leon to “stop, get back, drop it.” Mr. Lopez-Leon raised his hand with the wood handle, threw the wood handle, and Deputy Baca thought he was going to get hit so he fired his first shot. Mr. Lopez-Leon paused for a second before he came back at Deputy Baca. Deputy Baca said he shot Mr. Lopez-Leon three more times. Mr. Lopez-Leon did not have the wood handle in his hand, but he still had the hammer in his other hand. Mr. Lopez-Leon stood there before he stumbled around and fell to the ground.

Deputy Baca was concerned with what Mr. Lopez-Leon would have done with the hammer and wood handle in his hands. Deputy Baca did not know if he was going to get hit, or why Mr. Lopez-Leon came towards him with both objects in his hands. After Mr. Lopez-Leon went down, Officers Rose and Barrette arrived to the scene and rendered medical aid to Mr. Lopez-Leon. Deputy Baca saw a family standing in the yard, fairly close to where the incident happened. He told the family stay back and keep their kids away from the area.

Prior to the incident, Deputy Baca had just left the jail and his bodycam was in sleep mode. Deputy Baca forgot to take his bodycam out of sleep mode until the shooting was over. Deputy Baca explained that it is normal for officers to put body cameras in sleep mode when they go to the jail because cameras inside the jail can have accidental activations.

In his interview, Deputy Baca said he was scared that Mr. Lopez-Leon was going to hit him, knock him out, or take his gun. Deputy Baca described the hammer as a deadly weapon. Deputy Baca feared that he was going to get killed with the hammer.

APPLICATION OF THE LAW

Colorado law permits deadly physical force to be used if a person reasonably believes that a lesser degree of force is inadequate, and the actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. § 18-1-704(2).

In Colorado, deadly physical force used in defense of yourself or others has two equally important components. The first is a subjective component requiring that the actor himself, here Deputy Andrew Baca, actually believed that he or another was in imminent danger of death or great bodily injury, and that deadly force or an attempt at deadly force was required. The second component is an objective component; that the actor’s actual belief was also a reasonable belief.

Subjective belief of Deputy Andrew Baca

According to his interview, Deputy Baca subjectively believed that he and nearby citizens were in imminent danger of being killed or receiving great bodily injury. During his interview, he described that he believed that Mr. Lopez-Leon would kill him with the hammer, knock him out, or take his duty weapon. Deputy Baca described the hammer as a deadly weapon. Deputy Baca said that Mr. Lopez-Leon was 1 ½’ - 2’ away from him when Mr. Lopez-Leon swung the wood handle at him. Deputy Baca gave loud verbal commands throughout the encounter, such as “stop, get back, drop it.” Deputy Baca used his taser on Mr. Lopez-Leon before using lethal force. The taser made Mr. Lopez-Leon angrier. Mr. Lopez-Leon went

towards Deputy Baca faster. Deputy Baca drew his gun and tried to create distance between himself and Mr. Lopez-Leon. Deputy Baca said Mr. Lopez-Leon was right on top of him and came at him with the wood handle and hammer. Mr. Lopez-Leon raised his hand with the wood handle, threw the wood handle, and Deputy Baca thought he was going to get hit so he fired his first shot. Mr. Lopez-Leon came back at Deputy Baca with the hammer. Deputy Baca shot Mr. Lopez-Leon three more times. For all these reasons, Deputy Baca subjectively believed that he and others were in imminent danger of being killed or receiving great bodily injury, and that no lesser degree of force would have been feasible or adequate.

Objective reasonableness of the belief

Turning now to the objective reasonableness of this belief, it is readily apparent that any jury would conclude that a reasonable person would believe that this officer and nearby citizens were in imminent danger of being killed by Mr. Lopez-Leon in this situation. This situation began with an officer conducting a traffic stop on a blue Nissan truck, traveling north on 28 1/4 Road with an expired license plate. The driver of the truck was later found to be Mr. Lopez-Leon. Mr. Lopez-Leon looked erratic, bouncing his head around, looking out his windows, looking through his mirrors, looking over his shoulder, and he did not appear to be acting in a reasonable manner. Mr. Lopez-Leon sped up and eluded the officer until he was followed by another officer to 2837 North Avenue #B27. This displays an unwillingness to follow the authority of law enforcement.

The deputy conducted a high risk stop and gave Mr. Lopez-Leon verbal commands to stay in the vehicle, while attempting to hold Mr. Lopez-Leon at gun point until other law enforcement arrived. Mr. Lopez-Leon disregarded the deputy's commands and exited the truck with a metal hammer in one hand. In the other hand, Mr. Lopez-Leon retrieved from the bed of his truck a 3' long wood handle. The deputy gave verbal commands to stop reaching into the bed of his truck and to "drop it, and get on the ground." Mr. Lopez-Leon walked towards the deputy with both objects in his hands. The deputy used his taser on Mr. Lopez-Leon before using lethal force, which was not effective. This is important for two reasons, first, it was objective evidence that less-lethal force was inadequate. Second, it seemed to cause Mr. Lopez-Leon to become more aggressive, which is objective evidence that lethal force was necessary. Mr. Lopez-Leon kept advancing towards the officer in an attempt to strike the officer. Any reasonable person in that situation would believe that a person with the violent tendencies demonstrated by Mr. Lopez-Leon, who possessed a metal hammer and wood handle, posed a threat of imminent danger to kill or inflict great bodily injury.

Finally, it is appropriate to consider whether the officer has specialized training that would allow him to make decisions more calmly, or otherwise be able to assess threats properly, without mental distortion due to stress. Deputy Baca has worked for the Mesa County Sheriff's Office (MCSO) for 4 years. At MCSO, he is a use of force instructor, and a trainer in arrest control, defensive tactics, and de-escalation.

In summary, following an eluding situation where Mr. Lopez-Leon was disregarding law enforcement authority, Deputy Baca located and followed Mr. Lopez-Leon to 2837 North Avenue #B27. Deputy Baca pulled in behind Mr. Lopez-Leon in a marked MCSO patrol vehicle

with his overhead lights activated. Deputy Baca gave Mr. Lopez-Leon verbal commands to stay in the vehicle while attempting to hold Mr. Lopez-Leon at gun point until other law enforcement arrived. Mr. Lopez-Leon disregarded Deputy Baca's commands and exited the truck with a metal hammer in one hand. Mr. Lopez-Leon retrieved a wood handle from the bed of his truck. Deputy Baca gave verbal commands to stop reaching in the bed of his truck, to "drop it, and get on the ground." Mr. Lopez-Leon walked toward Deputy Baca with the wood handle and hammer. Deputy Baca retrieved and used his taser on Mr. Lopez-Leon. The less-lethal force was ineffective and incited Mr. Lopez-Leon to be more aggressive. Mr. Lopez-Leon advanced towards Deputy Baca, throwing the wood handle. Deputy Baca feared that Mr. Lopez-Leon would hit him, knock him out, or take his gun. Deputy Baca fired his weapon reasonably, believing that he, or other citizens were in imminent danger of Mr. Lopez-Leon killing or inflicting great bodily injury to them. The officer responded lawfully and appropriately in defense of themselves and others. Accordingly, it is not appropriate to file charges against this officer. As previously referenced, had Mr. Lopez-Leon survived this encounter he would have been charged with attempted first-degree assault.

Respectfully,

/s/ Daniel P. Rubinstein

Daniel P. Rubinstein
District Attorney