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**DISTRICT ATTORNEY**



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TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE

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This letter is notification to the Critical Incident Response Team (CIRT), and the involved parties, Officers Thomas Wihera, and Thomas Nelson, and Deputies Jason Bailey and Shaver Hansen of the decision not to file charges against them in the matter of the officer-involved shooting of Steve Alire, DOB 09/2/1968, on March 17, 2020. Mr. Alire was killed during the shooting, thus no charges will be filed against him.

On March 17, 2020, the Grand Junction Police Department (GJPD) responded to the Orchard Mesa Middle School (OMMS) in response to a 911 call from Bryson Thomas and a 911 call from Noah Quintana-Stewart at approximately 7:13 PM. Thomas and Stewart reported a male, who identified himself as Steve Alire, verbally confronted, through a fence, a group of males who were playing basketball at the OMMS courts. Alire reportedly also brandished a knife as he stood on the other side of the fence. After Alire pushed the fence and the fence hit Stewart's face causing minor injuries, Alire walked back in the direction of his house.

Later Alire returned to the end of his driveway carrying what the males in the basketball court referred to as a "black rifle" or an "AR rifle." Alire laid down on the ground and pointed the rifle at the males on the basketball court. The males on the basketball court ran away. The incident described by Thomas, Stewart and others, to responding GJPD officers is consistent with the overall actions of persons seen on the video obtained from OMMS security cameras. The video of the incident does not contain audio and due to the distance between the OMMS camera and the incident, it does not clearly show if Alire had a knife while at the fence or a rifle at the end of his driveway.

Due to the suspect, Steve Alire, reportedly being armed with a rifle, two GJPD patrol vehicles responded and parked on 27 3/8 Road at the end of the long driveway leading to Steve Alire's residence at 312 3/4 27 3/8 Road for protective cover. Based on measurements using the FARO scans taken of the scene, the distance from the two GJPD patrol vehicles to the porch stair

steps leading into Alire's residence is approximately 187 feet. The FARO scans are on the portable drive.

The GJPD requested assistance from the Mesa County Sheriff's Office (MCSO) so they would have enough officers to establish a perimeter. The officers and deputies positioned in the immediate area of the two cover patrol vehicles included, but was not limited to, GJPD Sgt. Jeff Davis, Officers Thomas Nelson, Thomas Wihera, Andrew Martinez, and MCSO Deputies Jason Bailey, Shaver Hansen and William Surber. Sgt. Davis was responsible for communicating with Alire. Between 7:28 PM to 8:03 PM, Sgt. Davis made four phone calls to Alire's cell phone but Alire didn't answer the calls. At approximately 8:15 PM, Sgt. Davis began using the PA (Public Address) system on his patrol vehicle to "loud hail" to Alire. Sgt. Davis' commands primarily consisted of repeatedly asking Alire to keep his hands up and walk to the officers at the patrol cars at the end of his driveway.

Of the officers located at the two cover patrol vehicles, only Officer Tom Nelson's bodycam recording #2 occasionally captures unobscured video of Alire in the driveway and ultimately captures Alire for approximately 23 seconds leading up to and including the gunshots.

### **Officer Interviews**

Officer Wihera reported that Alire was not following instructions being given to him over the loudspeaker. One of the times Alire exited his house, he was armed with an AR-15 style rifle. As Alire walked toward the driveway, Officer Wihera saw Alire throw the gun to the ground. Officer Wihera said the suspect was yelling, "Fuck you – I'm not coming to you – It's just a pellet gun." Alire returned to inside his house. When Alire came out of his house again, he walked to the gun, reached down, grabbed the gun by the barrel and threw it further down the driveway. Alire returned to inside his house for a third time. When Alire came outside again he had a cellphone in his hand as if he was filming the police. Alire walked towards the rifle and started to reach down for the rifle. Sgt. Davis gave commands not to reach for the rifle. Alire picked up the rifle and started to bring it up towards Officer Wihera. Officer Wihera feared Alire was going to shoot him or other police officers. Officer Wihera shot at Alire.

Officer Nelson reported that Alire would come out to his driveway but was not being cooperative to the verbal commands to keep his hands up and walk towards the police. Officer Nelson could hear Alire yelling but couldn't understand what he was saying. Officer Nelson estimated the distance between him and Alire was about seventy yards. Sgt. Davis continued to give Alire commands to stay where they could see him and put his hands up but Alire walked into his house. When Alire came out of his house, Officer Nelson could see what looked like a black long gun or shotgun. Alire walked down the driveway and threw the gun westbound down the driveway. Alire returned to his house but came out again. Alire picked up the gun he had thrown down earlier and threw it another 10 to 20 feet down the driveway. At one point, Officer Nelson heard Alire say something to the effect, "do you want me to load it" or "do you want me to load it again". Alire told the police to talk to him like a man or like a human so Sgt. Davis stopped using the loudspeaker. For a third time, Alire walked towards the rifle he had thrown on the ground. Sgt. Davis gave him commands not to reach for the rifle. According to Officer

Nelson, it is obvious that Alire was not intent on throwing the gun again. Alire picked up the rifle and started raising it in the direction of Officer Nelson. Officer Nelson believed Alire was going to shoot him. Officer Nelson feared for himself and bystanders and made the decision to use his AR15 to shoot at Alire.

Officer Martinez reported the suspect (hereafter referred to as Alire) was not obeying any of the commands given by Sgt. Davis. Alire was yelling back at the police but they could not understand what he was saying. When Alire came out of his house it looked like he had an "AR-style" rifle in one of his hands. Alire held the rifle over his head in one hand and walked toward the police. Alire then threw the rifle on the ground.

Alire walked into his house multiple times. One time, Alire came out of his house, walked over to the rifle, picked it up and threw it up in the air and the rifle fell to the ground. Officer Martinez was armed with a less-lethal, 40 mm weapon, in the event Alire came into range of his using the less-lethal 40 mm weapon. Alire never came into range of Officer Martinez using the less-lethal firearm. Alire was acting erratic, not listening to commands, and appeared to set a camera on a post. Alire walked over to the gun lying on the ground and Sgt. Davis gave commands not to pick up the gun. Alire yelled, "Do you want me to put the magazine in the gun?" Commands were given to Alire not to touch the gun. At this point, Alire reached down, picked up the gun and "shots ring out." According to Officer Martinez, he does not recall Alire pointing the gun at the officers and cannot say Alire definitively pointed the gun.

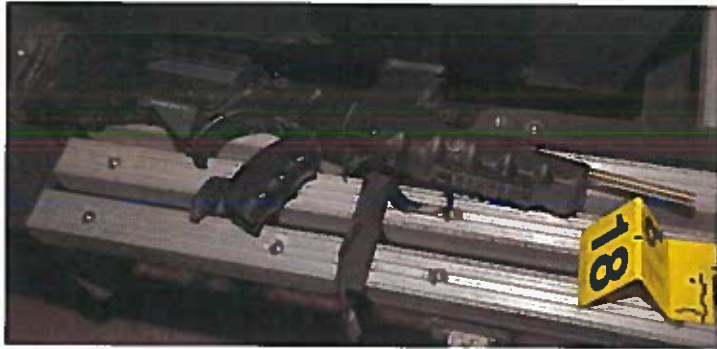
Deputy Bailey reported he saw the suspect (hereafter referred to as Alire) come down the steps of the porch holding what appeared to be an AR15 in his right hand. Deputy Bailey estimated the distance between his position and where Alire exited his house was approximately 50 yards. Alire got about 40 yards from the police and threw the gun to the ground in the driveway. Alire was yelling but Deputy Bailey couldn't understand what was being said. Alire went back into his house. Sgt. Davis continued the "loud hails." Alire eventually came out of his house, walked down the driveway, and stood over the gun he had thrown to the ground. Alire kicked the gun a couple of times. At one point, Alire picked up the rifle with one hand and threw it closer to the officers' positions. Alire lifted his shirt to show he didn't have anything on him. Alire went back inside his house. The next time Alire came out of his house, he was holding a cellphone. Alire set the cellphone up as if he was recording the police. According to Deputy Bailey, Alire was not complying with commands but at one point walked past the rifle on the ground and Deputy Bailey thought Alire was going to comply with the commands. Alire then walked back towards the gun, stood over the gun, and reached for the gun. Alire grabbed the gun differently than he had previously. Specifically, Alire bent at the knees, went at the gun faster and more aggressively, and grabbed the gun with both hands. Deputy Bailey felt threatened for his life and the lives of the other officers and made the decision to fire at Alire.

Deputy Hansen reported when he saw the suspect (hereafter referred to as Alire) come into view towards the end of his driveway, Alire was verbally aggressive. Deputy Hansen could not make out everything Alire was saying to the police. Alire was commanded to put his hands up and walk to the police. Alire would put his hands up but he wouldn't walk to the police. Alire wandered around his property and Deputy Hansen lost sight of him a few times. Alire wanted the police to meet him halfway down the driveway. Alire started to take his shirt off and take things

out of his pocket but then Alire went back inside his house. Alire went in and came out of his house more than once. At one point, Alire exited his house with a rifle. The rifle was pointed muzzle up. Alire threw the gun down in the driveway in the direction of the police. At one point, Alire said, "you're going to have to kill me." Alire picked up the gun and threw it forward again towards the officers. Deputy Hansen was alarmed at how quickly Alire had grabbed and thrown the gun. Alire went back inside his residence. When Alire came out again, Alire walked up to the gun and kicked the gun several times. According to Deputy Hansen, Alire was handling what he believed to be a cellphone, and then observed Alire walk back to the gun, reach down, and grab the gun. This was when Deputy Hansen fired at Alire. When officers approached Alire, Deputy Hansen retrieved Alire's gun and placed it on the rear of the Bearcat. During his interview, Deputy Hansen stated "The gap was even smaller now. And if he grabbed it again as far as I'm concerned he had - he was going to shoot all of us and had that potential to do so. And my only option at that point in time was, uh, I'm - I'm not gonna allow him to shoot us. Excuse me. I'm not gonna allow him to shoot us." When specifically asked if thought there were any other options, he stated "Uh, no ma'am. For multiple reason, um, I mean the distance, uh, you know, uh, before it got to that point, um, obviously we had a 40 millimeter. Um, uh, the distance where that is effective was far further than it could've been. Uh, we did not have any less-lethal options. Let's say if somethin' would've took place back here, there were no - there were no less lethal options to be able to reach him... ."

Deputy Surber estimated the distance between the patrol vehicles to the front door of the suspect's (hereafter referred to as Alire) house was seventy-five yards. Deputy Surber was assigned to be the "hands-on" officer in the event Alire came out of the house and surrendered himself. When Alire came out of the house, Alire was "saying stuff" but Deputy Surber could not hear what he was saying. Deputy Surber was looking through the window of the patrol vehicle he was using for concealment. Deputy Surber saw Alire lift his shirt up and throw the gun down in the driveway. Alire went in and out of his house numerous times. At one point, Alire walked up and kicked the gun. Alire sat a cellphone on the fence and then approached the gun in the driveway. The police told Alire to stay away from the gun. Deputy Surber noticed Alire bend down and touch the gun. Deputy Surber's FTO, Deputy Hansen, and other officers started moving as Alire touched the gun. Deputy Surber took his eyes off Alire, took one-step, and heard gunshots from both sides of his position.

Based on round counts of Officers Nelson and Wihera, and Deputies Bailey and Hansen's rifles, a total of 16 rounds of ammunition were fired. The rifle Deputy Hansen collected from the driveway by Alire's body and the piece of rifle recovered from the driveway closer to Alire's house are depicted below:



Using the FARO scans taken of the scene, the distance from the area of the two cover patrol vehicles to where the piece of the rifle was recovered is approximately 160 feet.

CBI Laboratory firearms examination of the rifle and rifle piece, indicate it is an “airsoft gun” and the piece “appears to be the muzzle portion of an airsoft rifle.” CBI Forensic Scientist Chad Smith’s report states, “It is not a firearm; therefore, no further testing was performed.”

On October 8, 2019, the below photograph was taken with Steve Alire’s cellphone:



The black AR-style rifle depicted in this photograph is consistent with the rifle described by witnesses at OMMS on March 17, 2020, when Steve Alire reportedly felony menaced males on the basketball court and GJPD officers responded to the school to investigate the incident. The rifle depicted is also consistent with the rifle (Item DY18 and DY22) collected from the driveway of Steve Alire’s residence during the processing of the scene on March 17, 2020. The red curtain and bed depicted in the photo are consistent with the red curtain and bed placement in Ben Alire’s bedroom at 312 ¾ 27 3/8 Road, Grand Junction.

### **Autopsy Results**

Forensic Pathologist, Dr. Lingamfelter’s autopsy report indicates the manner of Steve Alire’s death is “Homicide,” and the cause of Alire’s death was “a result of multiple gunshot

wounds. The bullets collectively, and most notably, perforated the heart, pulmonary trunk, lungs, liver, stomach, diaphragm, right kidney, and the left brachial artery, resulting in massive blood loss and his subsequent death.”

Steve Alire’s toxicology results are:

Ethanol/vitreous (308 mg/dL) Ethanol/chest cavity blood (233 mg/dL)  
Methamphetamine/chest cavity blood (35 ng/mL) Amphetamine/chest cavity blood (Present, less than 20 ng/mL).

### **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). There is no special exception or permission under this statutory justification for law enforcement officers to utilize deadly force, although the nature of the job puts them in situations more likely to present the decision process of using appropriate and justifiable use of force at varying levels.

Here, two officers, and two deputies fired their work issued AR15’s. Their use of deadly physical force against Mr. Alire, as described above, was authorized under the theory of self-defense. In Colorado, deadly physical force used in self-defense has two equally important components. The first is a subjective component requiring that the actor himself, here Officers Wihera and Nelson, and Deputies Bailey and Hansen, actually believed that they and the others they were with were in imminent danger of death or great bodily injury, and that deadly force was required. The second component is an objective component; that the actor’s actual belief was also a reasonable belief.

According to each of their interviews, they described the following, respectively:

Wihera- When Mr. Alire picked up the rifle and started to bring it up towards Officer Wihera, Officer Wihera feared Alire was going to shoot him or other police officers. Officer Wihera shot Alire.

Nelson- Mr. Alire picked up the rifle and started raising it towards his (Nelson’s) location. Officer Nelson believed Alire was going to shoot him. Officer Nelson feared for himself and bystanders and made the decision to use his AR15 to shoot Alire.

Bailey- Mr. Alire grabbed the gun differently than he had previously. Specifically, Mr. Alire bent at the knees, went at the gun faster and more aggressively, and grabbed the gun with both hands. Deputy Bailey felt threatened for his life and the lives of the other officers and made the decision to shoot.

Hansen- And my only option at that point in time was, uh, I’m - I’m not gonna allow him to shoot us. ... there were no less lethal options to be able to reach him... .

This subjective belief is also evident from the reactions each had, which is contained in the body-worn camera footage. Commands were being yelled to Mr. Alire and he continued to partially comply, in coming forward, but kept moving the weapon forward with him so that it was in front of him and accessible as he advanced. The officers and deputies did not fire as long as Mr. Alire was merely kicking the weapon forward, however, as soon as he modified his behavior and quickly tried to grab the weapon and level it towards them, they all reacted simultaneously.

Turning now to the objective reasonableness of this belief, it is readily apparent that any jury would conclude that it is reasonable that a person believes that they are in imminent danger of being killed by another when the other produces what objectively looks like a AR style rifle, upon contact, and then despite being ordered to stay away from it at gunpoint, continues to keep it accessible and then quickly tries to grab it and level it at the officers. This coupled with the statement described by Deputy Hansen that "you are going to have to kill me."

Finally, it is appropriate to consider whether the deputies and officers have specialized training that would allow them to make decisions more calmly, or otherwise be able to assess threats properly, without mental distortion due to stress. In the present instance, the investigation revealed that the training and experience for each is extensive. It is described for each respectively:

Wihera- Field training officer, member of SWAT team.

Nelson- Field training officer, defensive tactics instructor.

Bailey- Field training officer, Use of force instructor, firearms instructor, and member of the SWAT team, and did two tours in Iraq as a member of the United States Marine Corps.

Hansen- Field training officer, firearms instructor, and member of the SWAT team.

In summary, the officers and deputies were responding to a call after a report of a man pointing an AR style rifle at citizens, they responded to find an armed individual, they all clearly saw the weapon, made repeated attempts to negotiate a peaceful surrender, and they all saw Mr. Alire pick up the weapon after he was continually kicking it forward to advance it closer to them as he was advancing. This added to the fact that they all responded concurrently and similarly to the threat, and that their recount is corroborated by the body-worn camera footage leads me to the conclusion that the actions of Officers Wihera and Nelson, and Deputies Bailey and Hansen fall squarely within the use of deadly force in self-defense or defense of others justification. Accordingly, this matter is not appropriate for criminal prosecution.

Respectfully,



Daniel P. Rubinstein  
District Attorney