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November 3, 2017

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LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: *Officer-Involved Shooting on September 14, 2016, by Austin Police Department Officers Brett Fritz #7539 and Bernardo Ramirez #2460 causing death to Morgan Crocker (DOB 03/09/1982)*

Dear Chief Manley:

The Office of the Travis County District Attorney has reviewed the Austin Police Department Special Investigation Unit (APD SIU) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Austin Police Department Officers Brett Fritz and Bernardo Ramirez fired shots from their handguns which therefore resulted in the death of Morgan Crocker. This letter is to inform you of my decision to decline prosecution of criminal charges against Officers Fritz and Ramirez. My decision does not limit or address administrative action by the Austin Police Department, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney's Office has reviewed the investigation of the Austin Police Department into this incident pursuant to the officer-involved shooting protocol that is attached and posted on the District Attorney official website. A copy of this letter will also be posted on the District Attorney official website.¹

Based upon the evidence available and the applicable Texas law,² I am convinced that a jury following the law would not convict Officers Brett Fritz and Bernardo Ramirez, because the evidence proves the use of force to be justified under Texas law. The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

¹ <https://www.traviscountytexas.gov/district-attorney/cru>.

² In arriving at this conclusion, we have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing that provision, and the United States Supreme Court case authority governing law enforcement use of force.

I. OVERVIEW

We are issuing this letter declining criminal prosecution of Austin Police Department (“APD”) Officer Fritz and Officer Ramirez pursuant to my Office’s published policies and procedures governing our review and prosecution of cases involving officer involved shootings. These policies and procedures are accessible on my Office’s website and available for public inspection.³ In reaching our decision, we have reviewed evidence gathered during the Austin Police Department’s Special Investigations Unit’s investigation into the officer involved shooting incident in which both officers were involved. We have also considered forensic reports completed by the Austin Police Department’s Firearm and Toolmark Section and the Travis County Medical Examiner, as well as investigative services provided by other law enforcement agencies. We have relied on these investigative materials to give us a clear and credible account of the facts and circumstances leading up to and surrounding Officer Fritz’s and Officer Ramirez’s shooting of Mr. Crocker in the early morning hours of September 15, 2016. It is on these facts and circumstances that we have concluded that the credible evidence establishes that a reasonable jury would not find beyond a reasonable doubt that each officers’ use of deadly-force was not reasonable but rather was justified and, therefore, that a criminal prosecution is not warranted.

We will first discuss the established investigative facts surrounding Mr. Crocker’s death followed by a summary of the forensic analyses and tests conducted during the investigation of his death. Finally, we will discuss the legal analysis that leads us to conclude that Officer Fritz’s and Officer Ramirez’s use of deadly force in shooting Mr. Crocker is not criminal and therefore not subject to criminal prosecution.

II. INVESTIGATION FACTS

A. INITIAL DISPATCH FOR SUSPICIOUS PERSON

On September 14, 2016, at approximately 10:26 p.m., Austin/Travis County Emergency Communications Center (“911”) received a suspicious person call from a person visiting the Sedona Springs Apartments complex, in Austin, Texas. The caller reported that as he entered the complex he saw an individual who was acting suspiciously and possibly burglarizing cars in the complex’s parking lot. The caller informed 911 call takers that as he entered the complex he saw a white male duck behind a gray car that then walk past him, pulling behind him a wheeled suitcase towards the complex’s front gate. The caller described the man as a white male with a shaved head, of thin build and wearing shorts. The caller further informed call takers that the man was behaving oddly: the man walked to the complex’s gate and then returned to the caller asking, “What do you do?” The man then asked the caller if he had a “slim Jim,” a lock smith tool used to enter vehicles without a key. The caller reported that the man then walked towards the complex’s front gate. The caller then got into his girlfriend’s car, drove around the complex, and eventually found the man at the rear of the complex. However, by this time the man had removed his shirt but was still pulling the roller suitcase behind him. The caller then drove to the front of the complex where he met with responding Austin Police Department officers and told them where he had last seen the man. APD officers went to the rear of the complex but were unable to locate the man.

A little less than an hour and a half after the initial call, while sitting on the porch of his friend’s apartment, the caller again saw the same individual walking in the complex. The caller placed a second 911 call and got into his car in an attempt to follow the man and maintain visual surveillance of his

³ <https://www.traviscountytexas.gov/district-attorney/cru>.

movements throughout the complex until police arrived. The caller told call takers that he had seen police officers respond to his earlier call but that when they arrived the man ran from them. The caller noted that at the time of his second call, the man was initially not wearing a shirt or shoes, but that he later put his shirt back on. The caller reported that he saw the man looking into cars parked in the apartment complex's parking lot as he walked. The caller reported that the man was then walking towards the complex's leasing office and publicly-accessible bathrooms. At the time of the second call, the caller reported that the man was walking in front of the complex's building 5. While speaking with 911 call takers, the caller saw police officers arrive at the complex and make initial contact with the man. The caller reported to the call taker that the officers had arrived and had "got him."

B. ARRIVAL OF POLICE OFFICERS AND INITIAL CONTACT

APD Officer Brett Fritz (APD # 7539) was the first of four APD officers that would eventually respond to the apartment complex. Based on the radio dispatch transmissions, Officer Fritz knew the description and location of the man reported by the caller. Officer Fritz entered the complex's front gates and proceeded to the general area where the caller reported seeing the man. As soon as he entered the complex, Officer Fritz then noticed a man, later identified as Morgan Wayne Crocker matching the description provided by the initial caller in the general location the caller had reported.

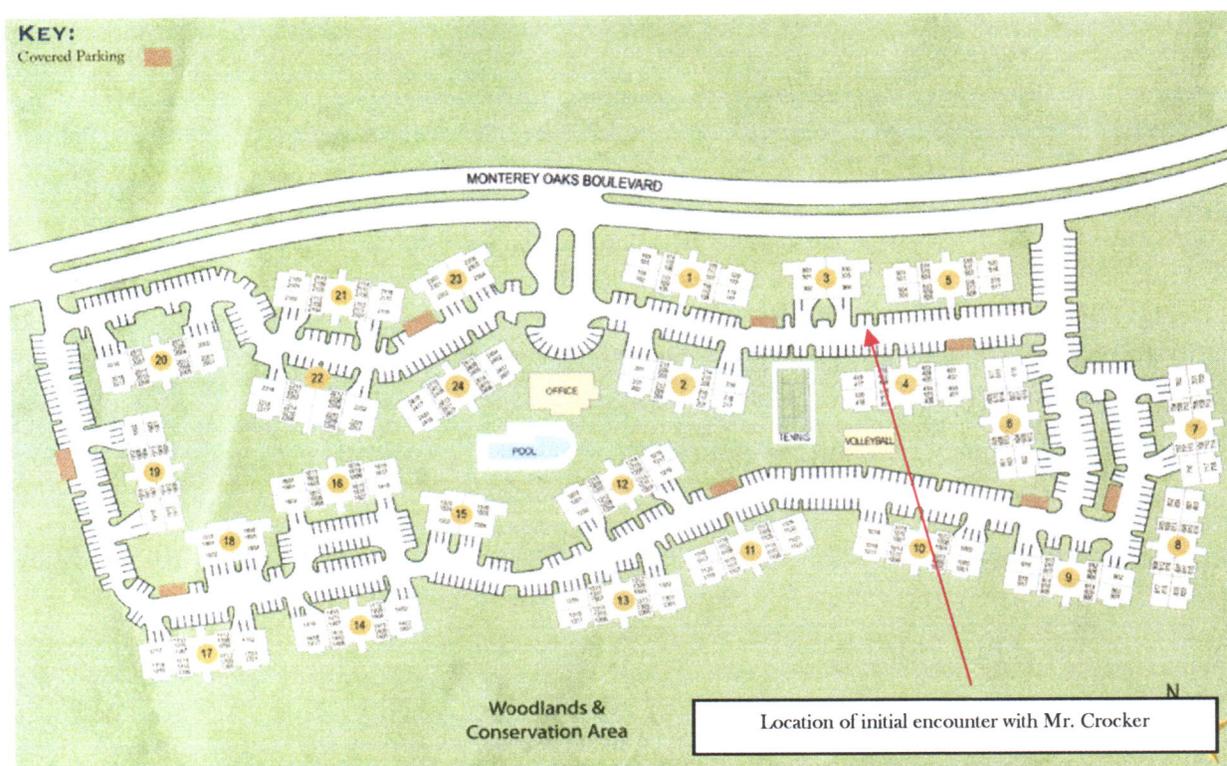


Figure 1—Location at which Officer Fritz first contacted Mr. Crocker.

Officer Fritz also noticed that Mr. Crocker had what he described as a "lot of things with him," some of which were lying on a grassy area near the parking lot where he first saw Mr. Crocker standing. When Mr. Crocker saw Officer Fritz he was picking up a dark object from the ground, on which several items lay. Upon seeing Officer Fritz, Mr. Crocker immediately turned his back to him and walked behind a nearby white SUV. Officer Fritz reported that Mr. Crocker behaved as if he were attempting to conceal something behind the SUV.



Figure 2--Location at which APD Officer Fritz first encountered Mr. Crocker between apartment buildings 3 and 5.

Believing Mr. Crocker might have committed, or was about to commit burglary of a vehicle,⁴ Officer Fritz decided to detain Mr. Crocker to further investigate his suspicions. Dispatch records indicate that Officer Fritz was “out on one” at approximately 11:59 p.m. When Officer Fritz exited his patrol vehicle to make initial contact, he directed Mr. Crocker to “come here.” Instead, Mr. Crocker ran from him. At approximately 12:01 a.m., Officer Fritz radioed that he’s “got one running from me.” Officer Fritz left his patrol car and pursued Mr. Crocker following him northward through a grassy breezeway separating the apartment’s buildings 3 and 5 and then behind building 5. As Mr. Crocker ran, Officer Fritz observed Mr. Crocker throwing items along his path. Upon reaching building 5, Mr. Crocker ran southward through the building’s center breezeway towards the building’s front, crossing a parking lot and continued running between another set of apartment buildings. Mr. Crocker ran between buildings 4 and 6 towards the southernmost end of the apartment complex. Mr. Crocker continued to throw items along the way as he ran from Officer Fritz.

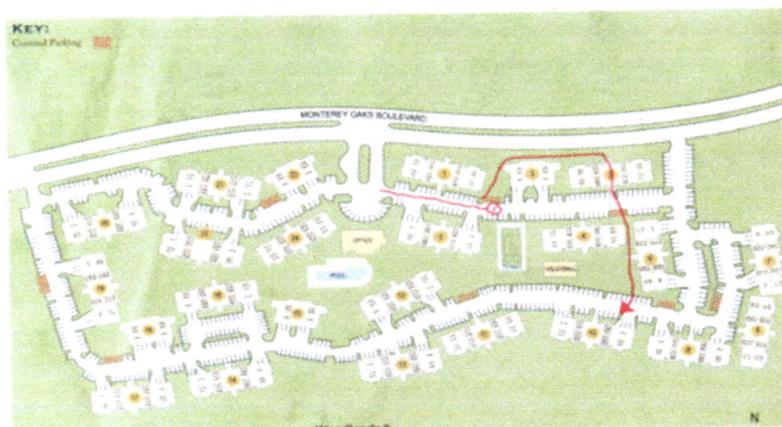


Figure 3--Path of Mr. Crocker's flight and Officer Fritz's pursuit and location at which Officer Fritz deployed his CEW for a second time and at which Mr. Crocker fell.

C. INITIAL DETENTION AND USE OF TASER: CEW (CONDUCTED ELECTRICAL WEAPON/TASER)

⁴ TEX. PEN. CODE § 30.04.

The first instance of force used against Mr. Crocker involved Officer Fritz's use of his Conducted Electrical Weapon ("CEW" commonly referred to as a "Taser") on Mr. Crocker to detain him so that he could investigate the suspicious call to which he had responded.⁵ Downloaded records which track CEW usage indicate that Officer Fritz deployed the weapon a total of five times.

The investigative facts and circumstances leading to Officer Fritz's use of the CEW are not in dispute. During his foot pursuit, Officer Fritz decided to deploy his CEW to momentarily incapacitate Mr. Crocker long enough to detain him. With Officer Fritz in pursuit, Mr. Crocker ran to the southernmost portion of the apartment complex. Once he was in effective range for successful use of the CEW⁶ Officer Fritz deployed the weapon striking Mr. Crocker in his left buttock. However, only one of the CEW's two conductive prongs necessary for proper functioning of the weapon attached precluding successful use of the weapon. Mr. Crocker turned to Officer Fritz and yelled something to him that he was unable to understand. However, Mr. Crocker continued to run from Officer Fritz. By this time, a civilian witness had noticed the commotion and was watching the incident unfold. This initial CEW deployment occurred somewhere in the parking lot fronting buildings 6 and 10. *See Fig. 3, above.* Records indicate that this initial deployment occurred at approximately 12:01 a.m.

Because the initial CEW deployment only partially attached, Officer Fritz decided to deploy his CEW a second time. After reloading the CEW with a new cartridge, Officer Fritz deployed it for a second time. This deployment occurred approximately 13 seconds after the first. The second deployment made full contact with Mr. Crocker, striking him in his right lower back and causing him to fall in the parking lot in front of buildings 6 and 10. *See Fig. 3, above.* At approximately 12:00:55, Officer Fritz radioed that he had "got one tased" and reported that his location as "near" building 10.⁷

Once he had fallen in the parking lot, Mr. Crocker again attempted to get up and continue running from Officer Fritz but he was unable to do so, taking only a few steps before falling again in the parking lot. However, Mr. Crocker had managed to get up and walk to a grassy area abutting the parking lot in front of Building 10. Officer Fritz continued to direct Mr. Crocker to stop evading. When he fell in the grassy area, his back was to Officer Fritz, a position he maintained while up on his left arm for support. From this position, Mr. Crocker continued to move around on the ground, and refuse to comply with Officer Fritz's commands directing him to show his hands and allow himself to be taken into custody. Officer Fritz issued several commands to Mr. Crocker directing him to show his hands so that he could be detained. However, Mr. Crocker refused to obey Officer Fritz.

Officer Fritz maintained his CEW and flashlight trained on Mr. Crocker. By this time, APD Officers Tandy Perkins (APD # 7094) and Michael Castillo (APD # 7051), both of whom were working together as a two-man SWAT unit and assigned to patrol backfill that evening, had arrived at the scene. Both officers had heard the earlier suspicious person call to the apartment complex and were familiar with the description of the suspect and the circumstances giving rise to the call. Officers Perkins and Castillo responded to the second call and while in route heard Officer Fritz radio that he was engaged in a foot

⁵ A TASER or CEW operates by momentarily incapacitating a person for a five-second period referred to as a "cycle," within which time officers hope to detain the individual they are attempting to arrest or detain.

⁶ This would be the last radio transmission from officers on the scene until the "shots fired" call was transmitted at approximately 12:02:55 a.m.

⁷ Computer generated records that track the deployment of the CEW or Taser assigned to Officer Fritz indicated an initial deployment at 12:01 a.m. within 2 minutes of his arrival.

pursuit of his suspect. When they arrived at the complex, at approximately 12:00 a.m., the officers went to building 10 where Mr. Crocker had fallen after being tased by Officer Fritz. Like Officer Fritz, neither Officer Perkins nor Officer Castillo could see Mr. Crocker's right hand which was completely obscured. Both officers heard Officer Fritz giving commands to Mr. Crocker to show his hands. Officer Perkins and Officer Castillo also began to issue commands for Mr. Crocker to roll over and put his arms to his sides. Within minutes, Officer Bernardo Ramirez (APD # 2460) also arrived; he was the fourth and final officer to arrive on the scene prior to the shooting. Officer Ramirez also walked over to join Officers Fritz, Castillo, and Perkins who had formed a loose, semi-circle around the prone Mr. Crocker while they continued to give Mr. Crocker commands to show his hands and warn him that he would again be tased if he did not comply.⁸ By this time, all four officers were within feet of Mr. Crocker who continued to refuse to comply with the officers' directives. Instead, Mr. Crocker maintained his position of his back to the four officers, leaned on his left arm for support, and kept his right hand out of the officers' view. In his initial statement, Officer Fritz stated that he could see that Mr. Crocker was moving his hands as if he were reaching for something at his waist as he was lying on the ground. A civilian witness living in Building 9 heard the commotion, went to his balcony, and saw the officers surrounding and yelling commands at Mr. Crocker. The civilian witness then began video recording the incident with his cellular telephone.⁹



Figure 4—A Still video shot provided by civilian witness showing the area at which Mr. Crocker fell after Officer Fritz's 2nd TASER deployment.

⁸ Computerized records that track the CEW's deployment indicate that Officer Fritz deployed his CEW a total of 3 additional charges after he loaded his second cartridge with which he successfully tased Mr. Crocker causing him to fall to the ground.



Figure 5—APD Officers Fritz, Ramirez, Tandy and Castillo standing near suspect moments before he fired his weapon.

D. USE OF DEADLY FORCE: MR. CROCKER SHOOTS AT OFFICERS AND OFFICERS RETURN FIRE

Computerized records that track police radio traffic indicate that the first “shots fired” radio transmission occurred at 12:02:41 a.m. All of the officers present at the scene—Officers Fritz, Ramirez, Castillo, and Perkins, and a civilian eyewitness describe the same circumstances and series of events leading to Mr. Crocker’s shooting. The video recording corroborates the officers’ reports of the events leading up Mr. Crocker’s shooting.¹⁰

While issuing commands to Mr. Crocker, Officer Fritz kept his flashlight and CEW trained on the Mr. Crocker who sat on the ground, leaning on his right arm, with his back to the officers. Officer Castillo took lethal cover while Officer Perkins was putting his gloves on preparing to be the “hands on” officer because Officer Fritz only had non-lethal coverage at this point and the officers could not see Mr. Crocker’s hands. Officers Castillo and Perkins approached Officer Fritz and Mr. Crocker from the north. Officer Castillo was going to provide lethal coverage for Officer Castillo who was going to attempt to take Mr. Crocker in custody “hands on.” Officer Perkins began directing Mr. Crocker to roll over and place his hands to his side. Officer Crocker warned Mr. Crocker that if he did not comply he would be, “tased again.” Meanwhile, Officer Ramirez exited his patrol car and approached the grassy area where Mr. Crocker was laying from the north, walking between two parked cars. Mr. Crocker continued to move around on the ground and did not comply with the officers’ commands. Mr. Crocker’s hands remained out of view, and Officer Perkins reported seeing Mr. Crocker reach for something in his waist area.

The moments preceding the shooting were reported by each of the officers present and corroborate one another in all pertinent respects: as Mr. Crocker was lying on his right side, he suddenly rolled over to his left, faced the officers, quickly raised a black object (recognized as a pistol by three officers) pointing it directly at Officer Fritz, and began firing. Officer Fritz ran to his left to the other side of Mr. Crocker and began returning fire at Mr. Crocker. Between Officer and Mr. Crocker was a cluster of

¹⁰ The civilian’s cellular telephone video recording of the shooting is the only video recording of the shooting incident. Because none of the APD patrol vehicles were positioned to have captured the shooting, none of the officers’ DMAV videos captured footage of the shooting itself.

utility boxes that sustained gunshot damage from Officer Fritz's pistol. Officer Perkins saw Mr. Crocker rotate his body in his and Officer Castillo's direction; both officers retreated and took cover. At the time of the shooting, Officer Ramirez was positioned between two cars in the parking lot and after taking cover, returned fire at Mr. Crocker.



Figure 6--Utility boxes which Mr. Crocker was facing at time of shooting.

Pursuant to policy, each of the officers present at the time of the shooting were interviewed concerning the facts and circumstances of the shooting. During his interview with SIU investigators, Officer Fritz described his recollections:

...we were workin' on gettin' ourselves to a point where we felt comfortable sending in, you know, a hands on guy to - to - to get him cuffed up. Before that could happen the suspect rolled onto his side. He had what - what looked to me at the time to be a black semi-automatic pistol. He looked me in the eye, I saw a muzzle flash, I heard a pop, I - again I was just Taser in hand at that time. I threw my Taser down and drew my - drew my service weapon and returned fire.

Officer Ramirez, then positioned behind the cars just south of the grassy area where Mr. Crocker was laying described the same series of events occurring:

Um, and I walk up there when they're talkin' to him and I hear a, um, ya know, "Show us your hands, you're gonna get tased again." I see the guy moving and, um, I see him kinda lift up his body 'cause he's kind of facing with his head to the west and his, um, see his body right up - like rise up. I could see somethin' black in his hand, I don't know what it is. And then suddenly I hear pop - pop - pop. And then so back up draw my gun, and I shoot and - and it's over really quick.

Officer Castillo, who had been maintaining lethal cover on Mr. Crocker and issuing commands, described the events leading up to the shooting as well:

I remember kinda seeing it in slo-mo, uh, him rolling over. And, uh, it's my belief that because I was giving him loud verbal commands that he was turning to the sound of my voice. Um, so essentially I, like, projected my location, uh, so it's my belief that he was turning towards me, uh, to try to guess where I was at since he was coming up blind. So, I saw him roll and basically what I remember is I seeing - I remember seeing the - the barrel of a gun just - and again like I said I'm seein' it slo-mo. I see it comin' and just turning towards me, like, comin' up to my face. And so, uh, for me y- uh, I basically, uh, had two choices. I could either stand there or potentially

be, uh, a bullet sponge. Um, at that point I think my subconscious took over, um, because he - bottom line is he had the drop on me. Um, when he turned and started to - to - to roll and I saw the barrel comin' up to my face, um, I was - I was kinda, like, at a low ready. As soon as that - as soon as he started turning, um, like I said, like, my subconscious - I - I made the decision to get cover and then get a position of advantage to that way - that - that way I'm more mobile and I can, uh, potentially engage if need be. Uh, I didn't visually see, um, his muzzle flash because at that point in time I had already turned my body, uh, away to my right to get cover. But I do remember as I turned and I saw the muzzle comin' up I remember hearing the pop - pop - pop - pop.

Officer Perkins recalled that—

As we approached, I gave the suspect verbal commands to roll over and to put his arms to his side. The suspect failed to comply. I could also hear Officer Fritz tell the suspect "if he didn't comply, he would be Tased again." Shortly after this, the suspect produced a black pistol, pointed it at Officer Fritz and fired several shots. I believe he fired 2-3 times. After the shots were fired, the suspect rotated his body in the direction of Officer Castillo and I.

Officers Fritz and Ramirez were the only officers to return fire: Officer Fritz fired 15 return shots at Mr. Crocker from his position now to the east of the cluster of utility boxes behind which Mr. Crocker had initially been lying. Officer Ramirez fired 3 return shots from the position to which he retreated after Mr. Crocker began firing at Officer Fritz behind a silver car in the parking lot. Neither Officer Perkins nor Officer Castillo returned fire. Records indicate that Officer Fritz put out a "shots fired" radio transmission 12:02 a.m., less than a minute after he made his initial radio transmission that he was pursuing a fleeing Mr. Crocker.

The civilian's cellular telephone video recording captures the entirety of the shooting event. There are no significant discrepancies between the officers' reports of the events leading up to the shooting and what is depicted in the video recording.

After the officers had returned gun fire at Mr. Crocker, they all noticed that Mr. Crocker was no longer lying on the grassy area from which he initially began shooting at them. Rather, they each noticed that Mr. Crocker was now lying prone, face down, oriented northward, and between a blue Subaru and silver Toyota parked in the parking lot, several feet away from his original position:

and then I remember to the point where - where he was layin' on the ground and at that time he was on the asphalt between two cars in the parking lot. He was face down, I believe he had his left arm kind of outstretched, uh, in front of him and his right arm, which is the one that was holdin' the firearm was - well he was laying on top of it.

Officer Fritz did not see Mr. Crocker get up and move to the area between the two cars and was unsure of how Mr. Crocker ended up there.

Um, at some point he had to have completely gotten up because he - he went from being on his side in the grass to we- to when he turned with a w- with the firearm, fired the shot that I saw and heard. Um, and then I remember to the point where - where he was layin' on the ground and at that time he was on the asphalt between two cars in the parking lot. He was face down, I believe he had his left arm kind of outstretched, uh, in front of him and his right arm, which is

the one that was holdin' the firearm was - well he was laying on top of it. It was up underneath him.

Similarly, Officer Castillo did not see Mr. Crocker get up and move towards the two vehicles where he eventually fell:

So by the time I stood up, uh, and got back to my feet I was in a better position. Uh, I could see guys off to my left but I couldn't see the suspect anymore. Uh, it was my understanding that he was somewhere in the cars, um, and I could still hear people giving commands.

However, both Officer Perkins and Officer Ramirez recalled seeing Mr. Crocker get up from the grassy area at some point and walk or run to the location at which he eventually fell between two cars. During his Special Investigations Unit ("SIU") interview, Officer Ramirez reported that he saw—

[Mr. Crocker] get up and he starts runnin' toward me. And then he falls. Or I guess not runnin' towards me but toward my - in my direction. And he falls between the two cars.

Officer Perkins also described seeing "the suspect running toward 2 cars" between which he eventually fell. None of the officer were able to see Mr. Crocker's right hand or the pistol he had earlier used to fire upon them, and believed he was still in possession of it.

Crime scene processors later identified what appeared to be human blood on one of the utility boxes near which Mr. Crocker was initially lying when he began firing at the officers. The crime scene processors also identified what appeared to be human blood on the gray car near which he eventually fell. Both observations tend to corroborate the officers' reports of having seen Mr. Crocker get up and walk or stumble to the location at which he eventually fell.

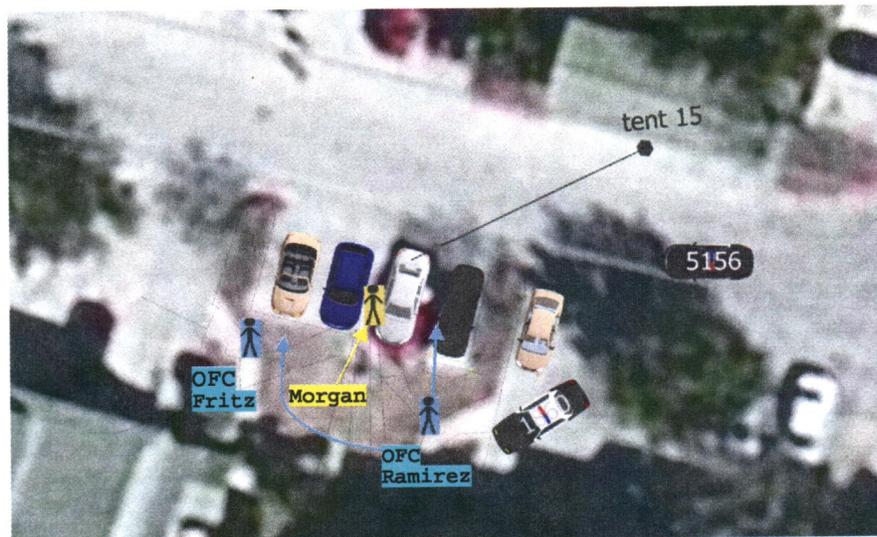


Figure 7--Area between the blue car and silver car to which Mr. Crocker walked to and fell after being shot.

Figure 8--Approximate locations of Officer Fritz, Officer Ramirez, and Mr. Crocker immediately after the shooting incident.



Figure 9--Apparent blood on one of cars between which Mr. Crocker eventually fell.



Figure 10--Apparent blood on one of utility/cable boxes near which Mr. Crocker was laying when he first began firing at officers and by which he passed before falling between two cars in the complex's parking lot.

E. LAW ENFORCEMENT EFFORTS TO SECURE MR. CROCKER AND ADMINISTER MEDICAL ASSISTANCE

From their vantage point the officers maintained lethal cover on Mr. Crocker, who was then lying between the two cars face down. The officers could still see Mr. Crocker breathing but could not see his hands or locate the pistol. Radio transmissions reflect the officers' observations immediately following the shooting: a 12:02 a.m. transmission indicates that the suspect still had the gun; in a 12:04 a.m. transmission the officers indicate that they cannot see Mr. Crocker's right hand; in a 12:06 a.m. transmission officers indicated that Mr. Crocker was not responding to their commands; and, a 12:09:39 a.m. transmission indicated that officers could observe that Mr. Crocker was still moving.

In addition to seeking to secure the weapon and take him into custody, officers sought to administer needed medical attention to Mr. Crocker because the officers could see blood on the ground in the area

in which he was lying.¹¹ The officers began to issue additional commands for Mr. Crocker to show them his hands. The officers did not see Mr. Crocker attempting to comply with their commands.¹² Officers then undertook several different approaches to secure the weapon and take Mr. Crocker into custody.

Officer Castillo employed less than lethal force by shooting Mr. Crocker with a bean bag munition, a pain compliance tool. Officer Castillo reported that he fired two (2) such shots and described the events leading to the decision to use the bean bag munition:

[M]y target area was, uh, I guess, like, his - his lower - lower thigh slash butt cheek, um, which was, uh, what was facing us. I impacted him one time. Uh, when the first impact hit the - the subject moved, uh, which indicated to me that he was - he was still able to potentially control his body movements. So he moved his shoulder. Um, soon as the first impact hit we gave him commands -- again noncompliant. Uh, could see that he was moving and I put that on the radio. Um, and we were tellin' him put his hands at his side, "Crawl to us. We need - we need to get you medical." Uh, so based on the fact that he - he had a reaction to the - to the impact, uh, the decision was made to impact him once more. I impacted him once more and it was almost an identical reaction. He moved. He - he moved his left shoulder and commands were again given, uh, for him to put his arms out to the side, "Crawl to us. We need to separate from the weapon." Uh, after two, um, realized that, um, based on the totality of the circumstances we probably weren't gonna be able to get him to crawl back to us and - and obviously we were running outta time, um, because I could see a significant amount of blood coming from underneath him.

At approximately 12:09 a.m., officers indicated that Mr. Crocker was still moving and not complying with officer's commands. The officers then decided to attempt to gain compliance by deploying a K9 unit.¹³ Incident reports indicated that officers deployed the K9 was deployed twice at approximately 12:15, again with no compliance. Finally, officers decided to approach Mr. Crocker under the shield cover and manually remove him from between the two cars and secure the weapon. Officer Castillo, who was part of this team described it:

Moved up. Uh, I had to kinda slide to my right. Originally the corporal that was there had, uh, he was goin' combat shield so he had his pistol out. Um, I asked him to go dedicated shield, holster his weapon, and just go with the shield so that I could tuck in and have a little bit more coverage from where - where, uh, I was at 'cause with his arm out in order for me to get my muzzle past him I had to be further out. So he holstered, went dedicated shield, uh, moved up, kinda flared out to the right so I was kinda leanin' over the car and, uh, I had lethal cover on him again. Couldn't see his right hand. Um, uh, at that point, uh, I'm assuming what - what these gu- I never heard a - a - a taser go off. Um, but I reme- but I remember them seein' - seein' him get drug. As he was getting pulled out from in between the cars, uh, as I was providing lethal cover I heard and saw the - the weapon come out from under him and it remained behind the tire of the car. Um, and so that's what, uh, I was - I told 'em - I was like, "The w," I was like, "The, uh, the - the," I don't remember exa- I'd have to look back at the video exactly what I said. But

¹¹ Entries to the detailed incident report indicate that officers radioed for medical assistance at 12:03.

¹² Officer Perkins reported that he thought he heard Mr. Crocker "[make] the comment 'I can't.'"

I was like, "The - the gun's right here. Uh, start - start doin' medical." So they separated him. Uh, I didn't wanna leave the gun uncovered.

Mr. Crocker's pistol was recovered just north of one of the vehicle's right front tire:



Figure 11--Pistol found beneath Mr. Crocker.

Officers Perkins with the help of officers on the scene pulled Mr. Crocker back on to the grassy area, placed him in handcuffs, and immediately began administering first aid. An incident detail report entry indicates that EMS is cleared to enter the apartment complex at approximately 12:17 a.m. Mr. Crocker is in custody. Officer Castillo then began to administer medical care to the handcuffed Mr. Crocker by applying tourniquets to his obvious gunshot wounds:

So as I went up I opened my medical bag, uh, started pullin' everything out. Um, Tandy at that point, uh, was already assessing the subject's injuries. Uh, I remember hearing him calling out so that everybody knew, um, they all did a great job, uh, what they had, what we needed, um, they were sayin' gun - gunshot wound to the ribs, uh, gunshot wound in the leg. Uh, so I grabbed a couple tourniquets, went around to his left leg, started applyin' a tourniquet high, got that one cinched down, called for another tourniquet, and Keith gave me another tourniquet off his belt. Put - put a second tourniquet on his leg. And, uh, while I was doin' that I think Tandy was workin' on his arm and - and, uh, Keith had put an occlusive dressing on his chest.

At 12:20 a.m. an incident detail entry indicated that Mr. Crocker was breathing and had eye movement. However, EMS records indicated that Mr. Crocker was unresponsive to stimuli and that his breathing had become agonal. The officers drag him back onto the grassy area, and began to administer first aid to him. By 12:29 a.m., an incident detail entry indicated that EMS was transporting Mr. Crocker to the hospital.

A civilian resident captured the entirety of the shooting incident with his cell phone and is the only eyewitness to the shooting incident. This civilian gave a copy of his recording and it is being released and made public as part of the release of this declination letter.

F. EVIDENCE PROCESSED AT THE SHOOTING SCENE

Crime scene technicians processed the shooting scene to recover evidence associated with the incident. The evidence recovered at the crime scene corroborates the reports of Officers Castillo, Ramirez, and Fritz, as well as the reports by the initial civilian 911 caller and witness to the shooting.

The location at which Officer Fritz first encountered Mr. Crocker and the personal belongings he reported seeing on the ground, as well as the white SUV he reported Mr. Crocker attempted to hide behind were corroborated by evidence recovered at the scene:



Figure 12--Honda Accord with door open, near location at which Officer Fritz initially encountered Mr. Crocker.



Figure 13--White SUV Officer Fritz reported seeing Mr. Crocker attempt to hide behind and from which pursuit began, and personal belongings located near where Mr. Crocker first observed.

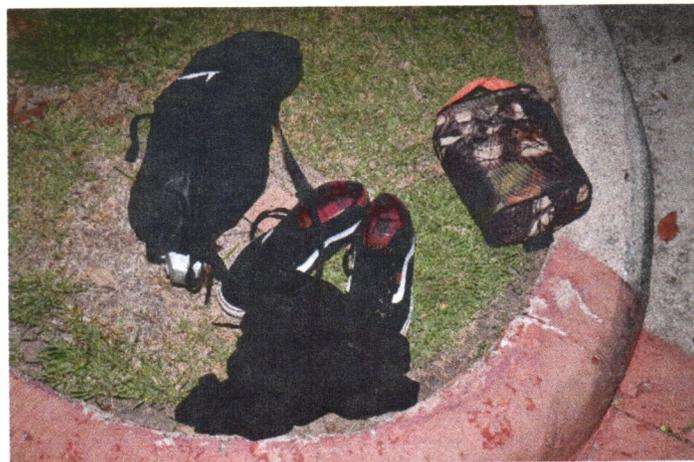


Figure 14--Personal belongings including personal clothing, assorted tools, and a handwritten note.

The handwritten note found with the personal belongings appeared to be addressed generally with specific instructions concerning disposal of the author's personal belongings, although nothing located in the belongings has been positively identified with Mr. Crocker.



Figure 15--Handwritten note recovered with personal belongings on grass.

Various items were recovered along the path of pursuit consistent with Officer Fritz's report that he could see Mr. Crocker throwing items as he chased him through the complex:



Figure 16--Backpack with wheels found between buildings 3 and 5 on Mr. Crocker's pursuit path.



Figure 17--Shirt discarded by Mr. Crocker while in flight behind building 5.



Figure 18--Gun holster found behind building 5.



Figure 19--Gun holster, close-up.

In front of building 6, crime scene processors recovered a cell phone as well as a single glove:



Crime scene processors search of the apartment complex led them to the location of several personal items in the men's restroom adjacent to the complex's leasing office consistent with the initial caller's description of watching Mr. Croker walking towards the leasing office pulling a suitcase with rollers,

and carrying various personal items, including a USB battery pack that had been plugged in to an electrical socket, and various personal writings:

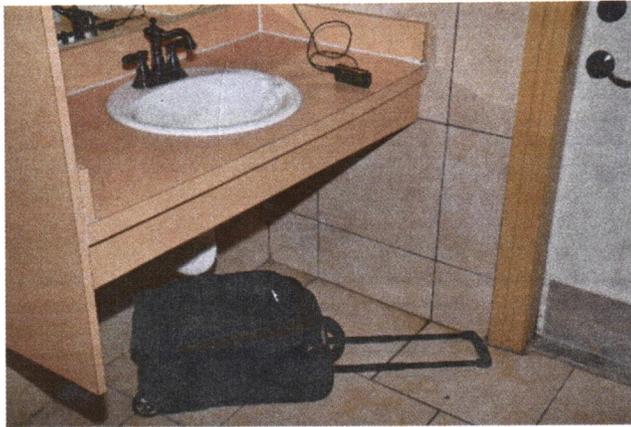


Figure 20--Items belonging to Mr. Crocker located inside of men's restroom near complex leasing office.

Medical examiners also recovered several key items from the personal belongings inside of Mr. Crocker's short pockets including notes alluding to suicide, similar to the one recovered among the personal items where Officer Fritz first located Mr. Crocker.

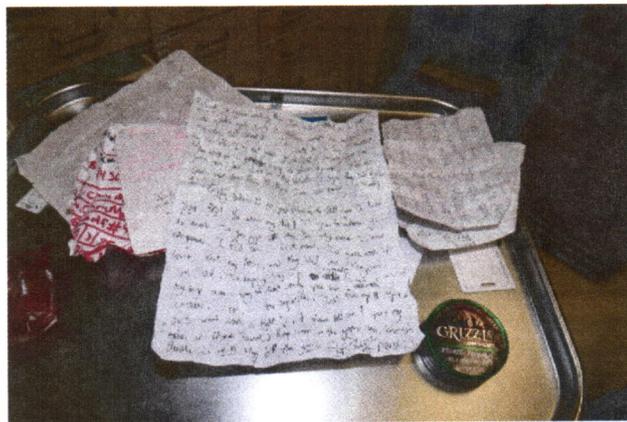
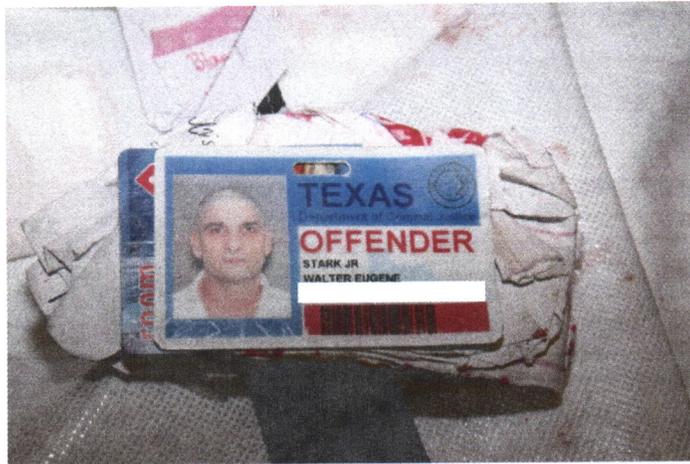


Figure 21--Handwritten note recovered from Mr. Crocker's pockets at Medical Examiner's office.



Among the items recovered from Mr. Crocker's pockets was a plastic baggie containing a white powdery substance, which subsequently tested positive for amphetamine and methamphetamine:



Figure 24--Plastic bag containing a white powdery substance recovered from Mr. Crocker's pockets at Medical Examiner's Office.

Crime scene processors identified, recovered, and documented key evidentiary items throughout the apartment complex which provide corroboration to the facts and circumstances leading up to the shooting provided by both law enforcement and civilian witnesses.

In addition to these items, crime scene processors identified, documented, and recovered other key firearm related evidentiary items that provide significant information regarding the facts and circumstances of Mr. Crocker's use of deadly force against the officers and their use of deadly force in response. We will now focus on those pieces of firearm-related evidence recovered at the shooting scene.

Fired cartridge cases were recovered from two general locations: first, in the grassy area in which Mr. Crocker began shooting at officers, to the east of where Mr. Crocker was lying and, second, just north of the grassy area behind a car that was parked in the parking lot near where Mr. Crocker was lying.



Figure 25--Location of two (2) .40 caliber cartridge cases, later determined as having been fired from Officer Ramirez's pistol.



Figure 26--Location of one (1) .40 caliber fired shell casing, later determined as having been fired from Officer Ramirez's pistol.



Figure 27--Location at which thirteen .40 caliber fired cartridge cases were recovered. These casings were later determined as having been fired from Officer Fritz's pistol.

I. FORENSIC ANALYSES AND POST-MORTEM MEDICAL EXAMINATION

The investigation of the facts and circumstances of Mr. Crocker's death included the results of the medical examination performed on Mr. Crocker following his death and a forensic analyses of the ballistics-related evidence recovered during the medical examination and from the scene of the shooting. The results of these examinations and analyses provide key details of the facts and circumstances of the shooting of Mr. Crocker and corroborate key details of the shooting as reported by both APD officers directly involved in the shooting as well the civilian who witnessed the shooting. We will discuss those aspects of the medical examination and forensic analyses relevant to our discussion here including (1) the gun-shot related injuries observed during the medical examination, (2) the gun-shot related evidence recovered during the medical examination, (3) a toxicology test performed on Mr. Crocker, (4) a toxicology analysis performed on the white powdery substance contained in the plastic bag recovered from Mr. Crocker's pocket, (5) the fired rounds and casings recovered from the shooting scene, and (6) the various defects to fixed objects identified at the shooting scene.

1. Medical Examination

The medical examiner identified a total of twelve (12) total gun-related wounds to Mr. Crocker: the medical examiner documented six (6) perforating gunshot wounds¹⁴ and several penetrating fragment wounds—most likely the fragments of rounds that had struck another object prior to striking Mr. Crocker.

Each of Mr. Crocker's entrance wounds were located on his left side with the exception of a single gunshot wound to Mr. Crocker's right chest. From his head down, Mr. Crocker sustained perforating gunshot entry wounds to (1) the right side of his chest, (2-3) two to the left side of his arm, (4), one to his left knee, and (5) one to his left thigh. The perforating gunshot wound to Mr. Crocker's left arm exited his left arm and re-entered his back accounting for a total of six (6) entrance wounds.

When possible, medical examiners performed trajectory analyses on Mr. Crocker's wounds and determined that all of the gunshot wounds indicated a wound path of left to right with the exception of the perforating gunshot wound to Mr. Crocker's left arm.

During the medical examination, examiners recovered multiple gunshot related objects including multiple bullet fragments from the subcutaneous tissue and musculature of Mr. Crocker's neck, a single bullet fragment from the musculature of his right chest, and several lead bullet and jacket fragments from the musculature of his left arm and back.

A toxicological analysis of a sample of Mr. Crocker's postmortem blood revealed the presence of methamphetamine at 1.0 mg/L, amphetamine at 0.13 mg/L, and ethanol (alcohol) at 0.07%.

2. Tool Mark and Ballistic Forensic Analyses¹⁵

The investigation included a forensic analysis of the various firearm related evidence observed and recorded at the shooting scene, as well as an analysis of the firearms and (where possible) unfired ammunition used by Officer Fritz, Officer Ramirez, and Mr. Crocker. These analyses provide us with critical information concerning (1) the number of shots that were fired during the shooting incident, (2) identity of which of the various pistols seized are the likely source (and, consequently, who is responsible

¹⁴ A "perforating gunshot" wound is one associated with an entrance wound and an exit wound. A penetrating gunshot wound is one associated with a bullet entering the body and remaining inside. Here, each of Mr. Crocker's five perforating gunshot wounds are associated with a corresponding exit wound for a total of ten observed injuries related to perforating gunshot wounds.

¹⁵ This summary is based on the Austin Police Department's ("APD") Firearm and Toolmark Section's Laboratory Report No. L1610970 dated 11/04/2016.

for firing of the various shots fired during the shooting incident) of fired cartridge cases recovered at the scene and, where possible, bullets and fragments of bullets recovered from the shooting scene and Mr. Crocker during the post-mortem medical examination; (3) the relative and general locations of Officers Fritz and Ramirez, and Mr. Crocker at the time each discharged their weapons; and (4) where possible, likely trajectory and path of travel of the various shots that were fired. With this information we are able to better evaluate officer and civilian reports of the facts and circumstances of the shooting incident, and learn important information that may not be fully explained in witness reports and statements.

As indicated above, crime scene processors identified and recovered various items of evidentiary value related to Officer Fritz's, Officer Ramirez's, and Mr. Crocker's discharge of the pistols in which each were in possession. These include the pistols and live cartridges obtained from Officers Fritz and Ramirez following the shooting, the 9 mm pistol recovered from Mr. Crocker, various bullets or projectiles and bullet fragments recovered from the shooting scene and from Mr. Crocker during his post-mortem medical examination. Additionally, crime scene processors documented and photographed various bullet impact structural defects to apartment building and vehicles parked in the parking lot, in front of buildings 9 and 10.

Immediately following the shooting, investigators took custody of both Officer Fritz's and Officer Ramirez's pistols and inspected both for operability and in order to perform what we will call a shot accounting or inventory, *i.e.*, an attempt to determine the number of shots that are likely to have been fired from each respective weapon. This inventory or accounting is determined by comparing both officers' reports of the number of unfired, live rounds each had prior to the shooting with the number of live rounds remaining as determined by an inspection of the pistol, its magazine, and any spare magazine each officer had in their possession at the time of the shooting. A similar analysis was not possible with respect to the 9 mm pistol recovered from Mr. Crocker because there is no means of performing a pre-shooting inventory of the number of live rounds he possessed prior to the shooting. However, the six fired cartridge cases recovered from the general area in which Mr. Crocker was lying when he began shooting at the officer were examined and microscopically compared to known cartridge cases and were positively identified as having been fired from Mr. Crocker's pistol. The shot accounting or inventory performed here indicate that there were a total of eighteen shots fired by APD officers. The three cartridge cases recovered from the area indicated in *Figure 23-24*, above, were examined and microscopically compared to cartridge cases known to have been fired from Officer Ramirez's pistol; these three shooting scene cartridge cases were positively identified as having been fired from Officer Ramirez's pistol. The fifteen cartridge cases recovered from the area indicated in *Figure 25*, above, were examined and microscopically compared to cartridge cases known to have been fired from Officer Fritz's pistol; these fifteen shooting scene cartridge cases were positively identified as having been fired from Officer Fritz's. In sum, Officer Fritz fired a total of fifteen shots while Officer Ramirez fired a total of three shots.¹⁶

At the shooting scene, crime scene processors recovered a total of sixteen (16) fired cartridge cases. Firearms examiners conducted a microscopic examination of the fired cartridge cases recovered from the shooting scene and compared them with known fired cartridges fired from each of the three recovered

¹⁶ Officer Fritz reported that he began his shift with a total of 46 unfired rounds prior to the shooting: his pistol's magazine contained 15 live rounds with a live round in the chamber along with an additional magazine containing 15 live rounds. A post-shooting inspection indicated that Officer Fritz's pistol contained one (1) a live round in the chamber, an empty magazine and one (1) magazine containing fifteen live rounds for a total of 31 live rounds. Officer Ramirez also started his shift with 46 unfired rounds; a post-shooting inspection of Officer Ramirez's pistol and ammunition indicated he had a total of 43 live rounds remaining.

pistols. This comparison allows examiners to determine whether particular fired cartridge cases had been fired from one of the three pistols investigators recovered, Officers Fritz's and Ramirez's pistols and Mr. Crocker's pistol. Of the recovered fired cartridges, thirteen were identified as having been fired from Officer Fritz's pistol; two of Officer Fritz's fired cartridges were not recovered. Three fired cartridge cases have been identified as having been fired from Officer Ramirez's pistol, consistent with the shooting inventory of Officer Ramirez having fired a total of three shots.

A review of the photographs depicting the shooting scene locations at which the various cartridge cases were recovered indicate that these locations are consistent with Officer Fritz's and Officer Ramirez's post-shooting report of their respective general locations at the time of the shooting incident. *See Figs. 22-25, above.* In addition to the cartridge cases recovered, a total of thirteen (13) projectiles and/or fragments were recovered: seven (7) projectiles and/or fragments were obtained from the shooting scene and (6) six were obtained during the post-mortem examination of Mr. Crocker. Firearm and tool mark analysts also microscopically examined the projectiles and fragments recovered during the investigation and made the following determinations:

- of the seven projectiles and fragments recovered at the shooting scene, all seven were positively identified as having been fired from Officer Fritz's pistol
- of the six projectiles and fragments recovered during the post-mortem examination, only one was suitable for comparisons and it was positively identified as having been fired from Officer Fritz's pistol

No projectiles were recovered at the shooting scene or during Mr. Crocker's post-mortem examination that have been identified as having been fired from Officer Ramirez's pistol.

Trajectory analyses provided critical confirmatory information as to the officers' reports of their respective general locations at the time that they returned fire at Mr. Crocker. In part, the trajectory analyses indicated that—

- Officer Fritz was positioned north of the cable boxes, depicted above at *Figure 6, above*, firing towards the south, aiming downwards
- Officer Ramirez was positioned east of the cable boxes firing towards the west, aiming downward

Firearms analysts also determined that the defects observed on the cable boxes depicted in *Figure 29, below*, were fired from a weapon whose origin was consistent with Officer Fritz's reported location.



Figure 28--Gunshot defects to cluster of utility/cable boxes impacted by shots fired determined to have been fired from Officer Fritz's weapon, indicating Officer Fritz firing of his pistol from east to west where Mr. Crocker had been lying on the other side of the cable/utility boxes.

Similarly, firearms examiners determined that the gunshot defects observed on the Toyota's hood were fired from a weapon whose origin was consistent with Officer Ramirez's reported location.



Figure 29--Gunshot defects to hood of vehicle determined to have been caused by shots fired by Officer Ramirez, indicating that he was then firing from south to north where Mr. Crocker was then lying.

APD investigators ran a trace of Mr. Crocker's pistol through eTrace in an attempt to identify its owner and movement and determined that it had been reported as stolen on May 10, 2016 by the Cedar Park Police Department.¹⁷ The report indicated that the pistol had been stolen in a burglary of a vehicle.

II. LEGAL ANALYSIS

Our ultimate responsibility is to determine whether the investigative facts, when considered in the context of Texas law governing the use of deadly force, warrant our presentation of those facts to a Travis County grand jury for possible indictment. This question requires a determination of whether we believe that the credible evidence is sufficient to establish beyond a reasonable doubt that Officer Fritz's and Officer Ramirez's use of deadly force in shooting of Mr. Crocker is justified under Chapter 9 of the

¹⁷ "eTrace" is an internet-based firearm database that allows participating law enforcement agencies to track the movement of a firearm from its manufacturing to initial purchase.

Texas Penal Code which governs the use of deadly force under Texas law.¹⁸ In the specific legal terms that govern our decision, we must determine whether each officer's conduct was reasonable, *i.e.*, whether each officer reasonably believed that the use of deadly force was immediately necessary to protect themselves, their fellow officers, or a member of the public, or was immediately necessary to detain or arrest Mr. Crocker. We must make the same legal determination for each officer's cases.

There are several considerations that frame our analysis. First, the analysis requires us to consider each officer's conduct independently to determine whether the facts justify each officer's use of force on its own terms. Second, in the instant case there are instances of use of non-deadly force that precede and follow Officers Fritz's and Ramirez's use of deadly force in shooting Mr. Crocker.¹⁹ For purposes of thoroughness in our analysis, we must assess each of these instances for reasonableness. Third, because Mr. Crocker himself used deadly force against the officer, in addition to considering the reasonableness of Officer Fritz's and Officer Ramirez's use of lethal force in shooting him, our analysis must also consider whether Mr. Crocker's use of force itself was reasonable and therefore justified because Texas Penal Code chapter 9 permits a citizen to use reasonable force against a peace officer's unreasonable uses of force under limited circumstances.

Having considered the totality of circumstances as they existed at the time that Officers Fritz and Ramirez began shooting at Mr. Crocker, based on the credible investigative facts established here, we conclude that Officer Fritz and Officer Ramirez's use of deadly force is justified under governing law for self-defense, defense of their fellow officers and members of the public living in the complex at which the shooting occurred, and in order to detain and arrest of Mr. Crocker for offenses committed within the officers presence and view.

A. GOVERNING LAW

The use of force by a police officer is a "seizure" subject to the Fourth Amendment's requirement that its use be "reasonable".²⁰ The reasonableness standard requires an assessment of "not only on when [the officer used the force], but on how [the officer] carried out."²¹ Our inquiry is an objective one: we must evaluate the credible facts established by the investigation to determine whether an instance of an officer's particular use of force was objectively reasonable, viewing the facts and circumstances then existing from a reasonable officer's perspective of those circumstances at the time the force is used, and not with additional facts determined in hindsight after the benefit of a post-shooting investigation.²² The "reasonableness" inquiry requires that we consider a number of factors including the severity of the crime forming the basis for the officer-citizen contact, whether the person is actively resisting arrest, evading or fleeing from an arrest, and whether the person poses an immediate threat to safety of the

¹⁸ Chapter 9 of the Texas Penal Code contains three provisions under which an officer may use deadly force: TEX. PEN. CODE § 9.32 (deadly force in self-defense), TEX. PEN. CODE § 9.33 (deadly force in defense of third person), TEX. PEN. CODE § 9.51 (use of force to make arrest or search).

¹⁹ As set forth in the factual discussion, Officers Fritz, Ramirez, and Castillo between them applied several non-deadly force tactics: deployment of a CEW, non-lethal bean bag, and canine before finally taking Mr. Crocker into custody employing hands-on reaction team tactics

²⁰ *Tennessee v. Garner*, 471 U.S. 1, 7 (1985); *Graham v. Connor*, 490 U.S. 386 (1989).

²¹ *Graham v. Connor*, 490 U.S. at 397.

²² *Graham v. Connor*, 490 U.S. at 397.

officers or others.²³ In practical terms, the fundamental question is whether an officer's belief that the use of deadly force was immediately necessary to prevent his/her own or another's death or serious bodily injury, or that it was immediately necessary to affect an arrest or search, was reasonable on the facts and circumstances then existing and on which he or she acted.²⁴

However, on the facts presented here, our analysis will not be complete with only a review of the officer's use of force against Mr. Crocker. Because Mr. Crocker himself used deadly force, our analysis must also include an assessment of whether his use of deadly force was reasonable because Texas law provides a person with a limited right to use force—including in some circumstances deadly—in defending themselves from an officer's excessive use of force prior to the person offering any resistance.²⁵

Both analyses—that of the officer's use of deadly force and that of Mr. Crocker's use of deadly force—are framed by the Supreme Court's reasonableness requirement governing the use of deadly force. Chapter 9 of the Texas Penal Code governs the use of deadly force by both peace officers and private persons and incorporates the prevailing federal standard of reasonableness. Specifically, we consider whether Officer Fritz's and Officer Ramirez's use of deadly force was justified under (1) Texas Penal Code § 9.32 to protect themselves, (2) Texas Penal Code § 9.33 to protect others, including their fellow officers and the public generally, and (3) Texas Penal Code § 9.51 to arrest Mr. Crocker. Concomitantly, we address Mr. Crocker's use of deadly force under Texas Penal Code § 9.31 (c) providing a limited right to use force against an officer's use of unnecessary force prior to offering resistance. Additionally, we will address Officers Fritz's use of non-deadly force prior to the shooting incident leading to Mr. Crocker's death.

We will address each officer's use of force separately and incorporate an analysis of Mr. Crocker's use of force below.

1. Officer Fritz's Use of Non-Deadly Force against Mr. Crocker: Use of TASER

The first instance of force we must consider is whether Officer Fritz's deployment of a conducted electrical weapon ("CEW") in an attempt to momentarily incapacitate Mr. Crocker and stop the fleeing Mr. Crocker was justified as a reasonable use of non-deadly force.²⁶ Austin Police Department records that track the number of times an officer's CEW is employed indicate that Officer Crocker used the

²³ *Id.* at 396.

²⁴ *Tennessee v. Garner*, 471 U.S. 1.

²⁵ TEX. PEN. CODE § 9.51 (c).

²⁶ A CEW, commonly referred to as a "Taser," is a conducted electrical weapon in widespread use throughout law enforcement agencies in the United States. The weapon is considered a non-lethal weapon and issued by departments for the purpose of gaining compliance. APD considers and issues CEWs as control device intended to "control violent or potentially violent subjects" *See* AUSTIN POLICE DEPARTMENT POLICY MANUAL 208.1. A CEW operates by delivering an electrical current that has the effect of disrupting normal muscular function and otherwise momentarily incapacitate the subject long enough to permit officers to gain control over the suspect. The particular CEW issued by APD has two capabilities: an incapacitation and a pain compliance capability. The weapon operates by means of discharging a two-pronged electrode which attaches to the person and remains connected to the weapon by means of a conductive wire through which the officer can deploy an electrical current that is designed to incapacitate the subject for several seconds. In the instant case, if an initial cartridge does not attach completely, it must be reloaded with a second cartridge and redeployed as Officer Fritz reported having done and as confirmed by the medical examiner's office.

weapon five (5) times in the course of approximately 25 seconds prior to Mr. Crocker's shooting him.²⁷ The facts indicate that Mr. Crocker began running almost immediately upon Officer Fritz's exiting his patrol car when he first made contact with Mr. Crocker. Although Mr. Crocker's flight did not constitute active resistance²⁸ to Officer Fritz's attempt to detain him, his flight was also not a "seizure" because he did not submit to Officer Fritz's show of authority.²⁹ However, Officer Fritz subsequently stopped Mr. Crocker's flight by deploying his CEW and I must evaluate this initial deployment to determine whether Officer Fritz was justified in using his CEW to detain the fleeing Mr. Crocker. That determination depends upon whether Officer Fritz had reasonable suspicion to detain Mr. Crocker to investigate his possible involvement in burglary of motor vehicles, the call about which Officer Fritz was responding to when he first made contact Mr. Crocker.

The facts leading to the initial contact are not in dispute. Officer Fritz's initial contact with Mr. Crocker was in response to a suspicious person, possible burglary of vehicle in progress call to the Sedona Springs apartment complex. Officer Fritz was aware that there had been an earlier call approximately one and a half-hour earlier regarding a suspicious person at the apartment complex. Based on the information provided in call text transcripts and radio traffic records, Officer Fritz was aware of the reported location of the suspect in the apartment complex as well as a description of the suspect. The earlier report indicated that the suspect was seen walking in the parking lot, carrying several bags with him, and looking into cars parked in the complex's parking lot. Upon arrival at the complex, Officer Fritz reported that he saw Mr. Crocker, who fit the broadcasted description of the suspect and shirtless as reported, in the exact location reported, and in possession of a large number of items as reported. Officer Fritz stated that Mr. Crocker was behaving oddly: when Officer Fritz first saw Mr. Crocker, he was picking up a dark object from the ground and, as soon as Mr. Crocker saw Officer Fritz's patrol vehicle, he quickly turned away, and attempted to walk behind an SUV parked in the parking lot. Upon exiting his vehicle, when Officer Fritz directed Mr. Crocker to "come here," Mr. Crocker began running, and Officer Fritz, who was in in full uniform, began to chase Mr. Crocker giving him commands to stop running. While Mr. Crocker was running, Officer Fritz saw Mr. Crocker throwing various items as he ran.

Officer Crocker had reasonable suspicion that warranted his detention of Mr. Crocker on at least three (3) independent legal bases and therefore could use reasonable force in order to detain him. First, on the facts and circumstances of which Officer Fritz was aware when he encountered Mr. Crocker—both from the radio traffic, text calls and updates, and information observed on the scene—I conclude that Officer Fritz had sufficient, articulable facts to warrant a reasonable conclusion that Mr. Crocker had been or might have been in the commission of a Burglary of a Vehicle, a class A misdemeanor, or

²⁷ Records reflect that Officer Fritz deployed his CEW at approximately 12:00 a.m., and then again thirteen seconds later, followed by a third deployment six seconds later and a fourth deployment at six seconds later; records reflect that it was again employed after the shooting approximately two and one half minutes after the fourth, in an attempt to gain compliance after the shooting incident when Mr. Crocker was lying between the vehicles and officers were attempting to get him to show his hands so that they could secure the weapon and take him into custody.

²⁸ *Accord Leos v. State*, 880 S.W.3d 180 (Tex. App.—14th Dist. 1994) (crawling away from an officer attempting to make an arrest is not resisting arrest).

²⁹ *California v. Hodari D.*, 499 U.S. 621, 1991) (a "seizure" occurs when an officer restrains a citizen by either physical force or by a show of authority to which the person submits); *see also Johnson v. State*, 912 S.W.2d 22 (Tex. Crim. App. 1995) (plurality opinion) (the U.S. Supreme Court's *Hodari D.* standard is the appropriate standard for purposes of defining a "seizure" under article I, section 9, of the Texas Constitution).

any other offenses Mr. Crocker may have been engaged in.³⁰ Second, because Officer Fritz had reasonable suspicion to lawfully detain Mr. Crocker to investigate whether he had committed or was about to commit an offense, Officer Fritz had probable cause to support Mr. Crocker's arrest for his flight under Texas Penal Code § 38.04, Evading Arrest or Detention, which authorizes the arrest of any person who "intentionally flees from a person he knows is a peace officer...attempting lawfully to arrest or detain him." Because Officer Fritz witnessed Mr. Crocker's flight from him, he was authorized to make a warrantless arrest of Mr. Crocker.³¹ Finally, on the established investigative facts, Officer Fritz's observations combined with the information he was aware of, may have been sufficient to support probable cause to believe that Mr. Crocker was found in a "suspicious place" and "under circumstances which reasonably show that he had threatened or was about to commit some offense against the laws."³² On either of these bases, viewing the totality of the circumstances, Officer Fritz had "reasonable suspicion, based on objective facts," that Mr. Crocker had committed, or was about to commit, a crime,³³ and therefore subject, at the least, to detention.³⁴ Consequently, Officer Fritz was justified in using reasonable, non-deadly force in order to detain and arrest Mr. Crocker.

Texas Penal Code § 9.51 (a) governs a peace officer's authority to use non-deadly force for a legitimate law enforcement purpose. This section provides in part:

(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

- (1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and
- (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

On the investigative facts credibly established here, Officer Fritz was justified in using his CEW to terminate Mr. Crocker's flight. Because Mr. Crocker's initial attempt to deploy his CEW did not result in a successful attachment of the weapon's tongs, Officer Fritz was justified in placing a second cartridge in his Taser and again deploying his CEW a second time because Mr. Crocker continued to flee from Officer Fritz. Officer Fritz's second CEW deployment was successful and Mr. Crocker fell to the ground.

³⁰ TEX. PEN. CODE § 30.04.

³¹ TEX. CODE CRIM. PROC. art. 14.01 (a): "A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

³² TEX. CODE CRIM. PROC. art. 14.03 (a) (1). "... [T]he statute appears to permit an anticipatory arrest for an offense which the suspect has not yet begun committing but is "about to commit" or which the suspect "threaten[s] to commit." DIX & DAWSON § 9.62, 40. *Hoag v. State*, 728 S.W.2d 375, 379-80 (Tex. Crim. App. 1987). See *Johnson v. State*, (although few places if any are inherently suspicious, the facts available to the officers and inferences from those facts "may arouse justifiable suspicion." 722 S.W. 2d 417, 421 (Tex. Crim. App. 1986).

³³ *Brown v. State*, 4434 U.S. 47, 51 (1979).

³⁴ *Terry v. Ohio*, 392 U.S. 1 (1968); *Bait v. State*, 455 S.W.2d 305, 307-08 (Tex. Crim. App. 1970). Accord, *Balentine v. State*, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002) (investigatory stop reasonable where specific articulable facts led "to conclude that [the suspect] was or would soon be engaged in criminal activity).

However, Mr. Crocker attempted to indicate that he would not allow Officer Fritz to detain or arrest him. Instead, Mr. Crocker attempted to remove the CEW prongs, attempted to get up and continue running, and refused to comply with Officer Fritz's directives to show his hands and allow himself to be taken into custody.

TEX. PEN. CODE § 3.02 provides, in part, that "[t]he issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense." That section goes on to provide that "[i]f the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted. Here, based on the established investigative facts, we believe that sufficient admissible evidence exists that raises the issue of whether Officer Fritz's use of non-deadly force in deploying his CEW was justified pursuant to the law enforcement justification defense set forth in Texas Penal Code § 9.51 (a), and that the defense would be properly submitted to a jury. We further conclude that Officer Crocker's use of non-deadly force in deploying his CEW in order to detain or arrest Mr. Crocker meets the "reasonableness" standard under existing law. Finally, based on the established and credible investigative facts established here, we do not believe that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that Officer Fritz's use of force was not justified.

2. Officer Fritz's Use of Deadly Force in Shooting Mr. Crocker

Officer Fritz's second CEW deployment resulted in Mr. Crocker's falling to the grassy area in front of building 9 by which time backup officers Castillo, Perkins and Ramirez had arrived. Mr. Crocker was then lying with his back, with his hands out of the officers' view beneath him, to the officers now surrounding him in a semi-circle. The officers could see Mr. Crocker reaching beneath him, attempting to stand up, and continuing to attempt to remove the CEW's prongs. Mr. Crocker continued to refuse the officer's directives to show his hands or otherwise comply. Instead, Officer Fritz, Officer Ramirez, and Officer Castillo report that Mr. Crocker did not comply with the directives to show them his hands but rather continued to move around on the ground despite officers' attempts to gain compliance.

Each of the four officers are consistent in their report of what took place next. Each of the officers report seeing Mr. Crocker quickly roll or lift to his side suddenly holding a black object in his right hands began firing at the officers, Officer Fritz who was then only feet away. Under these circumstances, Mr. Crocker's use of deadly force posed an imminent threat justifying both Officers Fritz's and Ramirez's reasonable conclusion that the use of deadly force was immediately necessary.

As mentioned earlier, a threshold question exists whether Mr. Crocker was justified in deploying deadly force against Officers Fritz and Ramirez after Officer Fritz deployed his CEW because Texas Penal Code § 9.51 provides citizens a limited right of a citizen's self-defense against a peace officer's excessive use of force under some circumstances. In pertinent part, that section provides that "[t]he use of force to resist an arrest or search is justified:

The use of force to resist an arrest or search is justified:

- (1) if, before, the actor offers any resistance, the peace officer...uses or attempts to use greater force than necessary to make the arrest or search; and

- (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's...use or attempted use of greater force than necessary.

We conclude that, on the credible established investigative facts established here, neither Officers Fritz nor Officer Ramirez used greater force than was then necessary to arrest Mr. Crocker prior to his opening fire at them, and that the credible evidence would not be sufficient to convince a rational trier of fact beyond a reasonable doubt that the use of force was not justified. The use of the CEW is a compliance tool in widespread use throughout the country and is an accepted compliance tool designed to momentarily disable and disorient an individual giving officers sufficient time to detain or arrest an otherwise non-compliant or resisting suspect. Officers did not deploy the CEW in a way that would cause undue or excessive pain and otherwise deployed the tool appropriate to the circumstances. The fact that Mr. Crocker continued to remove the prongs and continued to resist commands to submit to their show of authority precludes any reasonable conclusion on Mr. Crocker's part that the use of deadly force against them was immediately necessary to protect himself from their use of greater force than was necessary to subdue him simply because their force was not the use of force greater than necessary.

Moreover, assuming for the sake of argument that the use of the CEW was greater force than was necessary, Mr. Crocker's firing of a pistol at the officer's was not reasonable in degree. We conclude that Mr. Crocker did not have any basis for the use of force against officers at the time that he fired upon them. Consequently, the only remaining question is whether Officers Fritz and Ramirez's use of deadly force is justified in response to Mr. Crocker having opened fire upon them.

Having determined that Mr. Crocker did not have sufficient justification to use deadly force, and indeed, any force against the officers at the time that he opened fire upon them, we conclude that the officers were justified in using lethal force against Mr. Crocker the instant he fired upon them on three separate and independent grounds: (1) an officer's authority to use deadly force to effectuate a legitimate law enforcement purpose provided in Penal Code § 9.51; (2) the officer's general right to use lethal force in self-defense in Penal Code § 9.32; and (3) the officers' general authority to use lethal force in defense of third persons provided in § 9.31, including their fellow officers and the public in general. We will address each separately.

1. Texas Penal Code § 9.51 (c)—Law Enforcement Authority to Use Deadly Force for Legitimate Law Enforcement Purpose

Texas Penal Code § 9.51 (c) provides that "a peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest" under the following circumstances:

- he reasonably believes the arrest or search is lawful
- before using force, he manifests his purpose to arrest and identifies himself as a peace officer unless he reasonably believes his purpose and identify are already known

- he reasonably believes the conduct for which the arrest is authorized included the use or attempted use of deadly force or that there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed³⁵

On the investigative facts established, Officers Fritz and Ramirez's use of deadly force meets all of the conditions set forth in § 9.51 (c): for the reasons that permitted the use of non-deadly force set forth above, Officer Fritz and Ramirez each could have reasonably concluded that their arrest of Mr. Crocker for evading arrest or detention was lawful. However, once Mr. Crocker opened fire on them while they were attempting to place him in custody provided sufficient probable cause for both officers to conclude that Mr. Crocker was engaged in the felony offenses of Attempted Capital Murder³⁶ and Aggravated Assault on a Public Servant,³⁷ both first degree felony offenses. Under these circumstances, Officers Fritz's and Ramirez's use of deadly force was reasonable under existing legal standards.

We conclude that the investigative facts provide sufficient, legally admissible evidence that raise the issue of whether Officer Fritz's and Officer Ramirez's use of deadly force was justified pursuant to the law enforcement justification defense set forth in Texas Penal Code § 9.51 (a), and that the defense would be properly submitted to a jury. We further conclude that Officer Crocker's use of deadly force in returning fire at Mr. Crocker in order to detain or arrest Mr. Crocker meets the "reasonableness" standard under existing law. Finally, based on the established and credible investigative facts established here, we do not believe that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that Officer Fritz's and Officer Ramirez's use of deadly force under these circumstances was not justified in order to detain or arrest Mr. Crocker.

2. Use of Deadly Force in Self-Defense and Defense of Third Persons

There is an additional ground on which each Officer Fritz's and Officer Ramirez's use of lethal force in shooting Mr. Crocker is justified beyond the Law Enforcement justification contained in § 9.51's authorization under limited circumstances to use deadly force to effectuate a legitimate law enforcement purposes. Officers Fritz and Officer Ramirez each enjoy a general right to use deadly force to protect themselves and third persons under certain circumstances. On the totality of credible investigative facts established here, we conclude that both Officers Fritz and Ramirez were justified in using deadly force in response to the deadly force Mr. Crocker used against them.

Section 9.33 of the Penal Code permits all citizens, including law enforcement officers, the right to use deadly force in self-defense. However, in order to use deadly force, a person must first be entitled to use non-deadly force as contemplated by § 9.31 (a) which provides, in part:

[A] person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

³⁵ Tex. Pen. § 9.51 (c) which incorporates subsection (a).

³⁶ TEX. PEN. CODE § 19.03. The intentional killing of a peace officer establishes the *corpus delicti* of Capital Murder in Texas, an offense punishable by death. Under Penal Code § 15.01 (a), an attempted capital murder is defined as one in which a person acting with "specific intent to commit an offense...does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended." An attempted offense is punished one category lower than the offense attempted which, in this case, would be a first-degree felony. TEX. PEN. CODE § 15.01 (d).

³⁷ TEX. PEN. CODE § 19.0322.02 (b) (2) (A).

That section goes on to provide in relevant part that “[t]he actor's belief that the force was immediately necessary ... is presumed to be reasonable if the actor ... was committing or attempting to commit ...murder...,” did not provoke the person against whom the force was used; and was not otherwise engaged in criminal activity ...”³⁸ On the investigative facts, both Officers Fritz and Ramirez are presumed to have acted reasonably in using force in response to Mr. Crocker’s display of force in shooting at them. Whether they were entitled to use deadly force is controlled by § 9.32 of the Penal Code governing the use of deadly force; that section provides that, in addition to satisfying the requirements of 9.32 set forth above, “when and to the degree the actor reasonably believes the deadly force is immediately necessary:

- (A) to protect the actor against the other's use or attempted use of unlawful deadly force;
- or
- (B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Like § 9.31, Texas Penal Code § 9.32 also contains a presumption of reasonableness of the conclusion that deadly force was immediately necessary when the facts establish that the actor was committing or attempting to commit murder. On the established investigative facts here we conclude that Mr. Crocker was attempting to use unlawful deadly force against them, and was attempting to commit murder³⁹ and, as a consequence, that the presumption that they acted reasonably in returning fire upon Mr. Crocker is sustained. We further conclude that the credible investigative facts establish that each officer’s returning fire at Mr. Crocker to have been reasonable on the credible investigative facts and justified under governing law. We believe that sufficient, admissible evidence exists that raises the justification of use of deadly force in self-defense provided in Texas Penal Code § 9.32, and that the issue would be properly submitted to a jury. We further conclude that based on the established and credible investigative facts established here, we do not believe that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that Officer Fritz’s and Officer Ramirez’s use of deadly force in self-defense under these circumstances was not justified.

Finally, we conclude that Officers Fritz and Ramirez were justified in using deadly force against Mr. Crocker by returning fire at him based on Texas Penal Code § 9.33 which permits a person to use deadly force against another in defense of a third person. That section provides in relevant part:

A person is justified in using force or deadly force against another to protect a third person if:

- (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and
- (2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

³⁸ Penal Code § 9.31 contains several other limitations not relevant to the present inquiry.

³⁹ Relevant to the facts here, Texas Penal Code § 19.02 defines murder as “intentionally or knowingly causes the death of an individual,” “intending to cause serious bodily injury and committing an act clearly dangerous to human life that causes the death of an individual,”

The credible investigative facts establish that at the time the officers returned fire, it was approximately 11:50 p.m. on a weeknight in an apartment complex which at the time appeared fully occupied: cars were parked in many of the lots. It was reasonable to assume that many tenants were then present in their apartments. The credible investigative facts establish that Mr. Crocker was lying on a grassy portion of a walkway separating buildings 9 and 10. Mr. Crocker fired northwest in the general direction of building 9. In addition, Officers Castillo and Perkins were on the scene and also subject to having been injured. Under these circumstances as established by the credible investigative facts, we conclude that Officers Fritz and Ramirez's use of deadly force in returning fire at Mr. Crocker was also justified under section 9.34 of the Texas Penal Code authorizing the use of deadly force in defense of a third person. We believe that sufficient, admissible evidence exists that raises the justification of use of deadly force in self-defense provided in Texas Penal Code § 9.34, and that the issue would be properly submitted to a jury. We further conclude that based on the established and credible investigative facts established here, we do not believe that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that Officer Fritz's and Officer Ramirez's use of deadly force under these circumstances in defense of the public at large was not justified.

III. CONCLUSION

We have concluded that Officer Fritz's and Officer Ramirez's use of deadly force is justified under existing legal standards governing the use of non-deadly and deadly force. We have also concluded that sufficient credible and admissible evidence exists that would properly raise the issue before a trier of fact requiring that we prove beyond a reasonable doubt that each officers' use of force was not justified; we do not believe that sufficient evidence exists to convince a rational trier of fact beyond a reasonable doubt that each officers' use of force was not justified. For these reasons, in keeping with our ethical responsibilities we are declining to present these cases to the grand jury for possible indictment.

We have released a public/press packet that includes videos, witness statements, officer statements, forensic reports, photos, and an autopsy report. This decision will be posted on my Office's website and will be accessible under *Morgan Crocker* and the date of the incident, September 14, 2016.⁴⁰

Very truly yours,


Margaret Moore

⁴⁰<https://www.traviscountytx.gov/district-attorney/cru>.