



**OFFICE OF THE
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-8994

MARGARET MOORE
DISTRICT ATTORNEY

MINDY MONTFORD
FIRST ASSISTANT

February 12, 2020

Sheriff Sally Hernandez
5555 Airport Boulevard
Austin, Texas 78751

LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: *Officer-Involved Shooting on November 8, 2018, by Travis County Sheriff Deputies Luis Garcia, Curtis Kelly, Stanley Dalley, and Thomas Gray.*

Dear Sheriff Hernandez:

The Office of the Travis County District Attorney (“TCDA”) has reviewed the Travis County Sheriff’s Office’s (“TCSO”) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Travis County Sheriff Deputies Luis Garcia, Curtis Kelly, Stanley Dalley and Thomas Gray fired shots from their duty weapon in the direction of a vehicle being driven by civilian Frank Ryan Soliz. Frank Soliz was not struck and surrendered to the authorities’ hours after the standoff. Frank Soliz was charged and convicted with Aggravated Assault against Public Servant, Unauthorized Use of Vehicle and Evading Arrest Detention with a Vehicle. This letter is to inform you of my decision to decline prosecution of criminal charges against all deputies. The decision does not limit or address administrative action by the Travis County Sheriff’s Office, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

Based upon the evidence available and the applicable Texas law,¹ I am convinced that a jury following the law would not convict Deputies Luis Garcia, Curtis Kelly, Stanley Dalley, and Thomas Gray because the evidence establishes that the use of force was justified under Texas law.

¹In arriving at this conclusion, I 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 those provisions, and the United States Supreme Court case authority governing law enforcement use of force. (See applicable Texas Statutes cited herein.)

The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

I. FACTS AND CIRCUMSTANCES LEADING TO THE STAND-OFF WITH FRANK RYAN SOLIZ

Critical to our analysis is the determination of the facts and circumstances leading to and surrounding a shooting incident. In determining these, we review and rely on the entire investigative file compiled by TCSO and arrive at what we believe is a comprehensive understanding of those facts and circumstances.²

Specifically, our narration of the facts and circumstances of this shooting is based on our review of supplements and the written and audio statements made by the officers directly involved in this incident, as well as other officers who were witnesses. Our narration of these facts and circumstances is also based on a review of the statements of those witnesses, audio and video recordings, police radio traffic recordings, and evidence recovered and developed at the scene. Below, we set forth the facts and circumstances surrounding this shooting incident based on our review of the evidence and information developed in the TCSO investigation.

A. Initial Interaction between Pflugerville Police and Frank Soliz

On November 8, 2018, Pflugerville Police Officer Alex Grana responded to the 200 block of West Wilbarger Street, after a citizen called police about a suspicious vehicle in the area. Officer Grana located the vehicle in question, a white Ford F-150, seeing someone sleeping in the driver's seat as he drove past. When Officer Grana ran the plate, it came back as stolen from Bell County.³

Officer Grana backed up out of sight and called for assistance from other officers, and when they arrived they placed "stop sticks" in front of the vehicle's rear passenger tire in case the driver tried to flee when they woke him up. Those in place, the officers announced themselves as police and called for the driver to show his hands. Instead, he started the vehicle and drove away.⁴

² This letter will refer to various items reports and information gathered in the TCSO investigation, and these items will be released in redacted form in a press release available simultaneously with the public dissemination of this declination letter.

³ See Pflugerville Police Incident Report # 18111537.

⁴ *Id.*



Figure 1 – Dash-cam still showing Pflugerville Police Officers moments before hailing Frank Soliz as he slept in the stolen Ford F-150.

Officers immediately pursued the Ford, which ran through multiple stops signs and red lights.⁵



Figures 2 & 3 – Dash-cam stills showing the Ford racing through a red light and a stop sign.

Officer Grana noted that even with that one deflated tire, the truck hit speeds of 80 miles per hour, in a thirty mile an hour zone, and passed through stop signs at up to 60 miles per hour.⁶ In his report, Officer Grana laid out the Ford's route:

South on N. Railroad Avenue from W. Wilbarger St.
 East on E. Oxford Drive
 North on Geyser Avenue
 West on E. Noton to W. Noton
 North on 11th Street
 West on W. Pfluger Street

The suspect then cut through the east parking lot of Pflugerville High School where he turned east bound on W. Pecan Street and continued to take the following route:

South on Cameron Road (Towards SH130)
 Southeast on Gregg Manor Road

⁵ *Id.*

⁶ *Id.*

The pursuit was eventually terminated because the subject turned onto SH-130 toll road and began driving south in the northbound lanes. At that time, the Ford's last known location was provided to surrounding law enforcement agencies, and their assistance was requested.⁷

B. TCSO Deputies Successfully Locate Suspect

After receiving information about the truck and the pursuit from Pflugerville Police, TCSO deputies began looking for the vehicle, since it was now in their jurisdiction.⁸ During his search, Deputy Garcia asked a man picking up trash if he'd seen the truck. The man said he had, and that it had lost a tire all the way down to the rim. While they were talking, Deputy Garcia noticed grooves in the road consistent with a wheel rim cutting into its surface. He followed those in his vehicle from Parmer Lane, east on Blue Bluff Road, and onto a dirt road that lead to a water treatment plant.⁹

At about that time, other police units had responded to the area to back up Deputy Garcia who, at 9:58 AM, spotted the Ford F-150 parked on the gravel road, with the back doors and driver's door open. There was a male at the back left door.



Figure 4 – Dash-cam still showing the Ford as located by Deputy Garcia.

⁷ *Id.*

⁸ See Incident Memorandum of Deputy Luis Garcia (“Garcia Memo”), dated 11/18/18.

⁹ *Id.*

He was a slim male subject that had the door pushed up against his back, so it was difficult to see his hands, because of how he was standing, and the dark tinted windows of the truck. I saw two duffel bags on the ground, near the back left passenger, when we pulled up to him. I believed he was collecting his belongings to leave on foot and leave the truck abandoned where it was currently parked. I immediately stopped my vehicle, turned on my overhead lights, exited my vehicle and drew my weapon, for a procedural, "Felony Take Down." A Manor Police unit came up on my back left side and we both gave commands for the subject to exit the vehicle.

Instead of obeying commands, the suspect got back into the vehicle and Deputy Garcia was unable to see him through the tinted windows, but worried he might have a weapon. The vehicle then started moving south on the gravel roadway, and the back wheel was starting to break up and was throwing rocks into the air, such that Deputy Garcia had to back off. At that point Deputy Garcia was concerned for any members of the public who might find themselves in harm's way, as he believed the suspect was at the stage where he was willing to do anything to get away.¹⁰

C. Continued Evasion and Confrontation with Deputies

The truck continued and entered the property around the water treatment plant, which was fenced in. The entrance taken by the Ford was the only ingress and egress point so Deputy Garcia called for other units to block it. That was done by the TSCO Estray Unit,¹¹ a marked Chevrolet 3500 dually that was occupied by three deputies: Curtis Kelly, Stanley Dalley, and Thomas Gray. They had blocked it with their vehicle facing into the property, with the truck partially inside and the back outside. The three deputies were out of the vehicle, deputies Dalley and Kelly on the right side of it on the grass, and Deputy Gray to the left of the truck beside the driver's door. Deputy Garcia followed the Ford F-150 as it drove in a wide circle, eventually heading back toward the only, and now-blocked, exit.

¹⁰ *Id.*

¹¹ "Estray" means livestock, stray exotic livestock, stray bison, or stray exotic fowl as defined by Chapter 142 of the Texas Agricultural Code. "Estray Deputy Sheriff" means a TCSO Deputy (as defined by the Travis County Sheriff's Office H.R. job description) assigned to the Estray Unit.



Figure 5 – Dash-cam still showing the Ford (left) as it drove toward the gateway blocked by the Estray Unit.

The suspect drove the Ford into the front of the Estray Unit, and its dash-cam also captured what happened.



Figures 6 & 7 – Dash-cam stills showing the Ford (left) as it drove toward the gateway blocked by the Estray Unit, and as then crashed into that unit.

The Ford then reversed and hit the front of Deputy Garcia’s vehicle; Deputy Garcia put it in park and exited, drawing his weapon, thinking: “I was about to have to protect the lives of the three deputies that were without any cover, or had to get away to safety in time, before possibly being run over.”¹²

¹² See Garcia Memo, at p.4.

D. Shooting by Deputies Garcia, Kelly, Dalley, and Gray

(i) Statement of Deputy Luis Garcia

Deputy Garcia described in his memo what happened after the Ford F-150 reversed into his vehicle:¹³

The F150 then

turned its front wheels towards where Deputy Kelly and Deputy Dalley were standing. The vehicle then accelerated towards them. I believed the driver was going to run over Deputy Dalley and Deputy Kelley. I discharged my handgun at the driver of the F150 to protect Deputy Kelley and Deputy Dalley from being run over. I believe I fired my handgun about 2-3 times. I then saw the truck turn its front wheels back to the right and towards a possible way out. I then stopped firing my weapon; because I believed that Deputy Kelley and Deputy Dalley were no longer in immediate danger.

Deputy Garcia advised his dispatcher that he'd fired his weapon, and then watched as the Ford forced itself past the Estray Unit to exit the facility. Deputy Gray moved his vehicle and Deputy Garcia again pursued the fleeing Ford. When he caught up to it, the Ford had stopped at a bend in the road with a DPS trooper's vehicle facing it.¹⁴

(ii) Statement of Deputy Stanley Dalley

Deputy Dalley was in the back seat of the Estray Unit, and they were in the vicinity when the call came out about the pursuit of the Ford F-150. Their vehicle was the last in the line of vehicles chasing toward the water treatment plant. He said Deputy Kelly decided to block the entrance to the plant once the Ford had gone in.¹⁵

He said: "I saw the guy in the F-150 turned, and was coming back at us. We exited the vehicle, Tommy [Gray] to the left, myself and Kelly to the right. I was a little further out than Kelly because I was behind him.... We all had our guns out but couldn't shoot because of all the people behind."

The suspect hit the Estray Unit head on and then backed up into Deputy Garcia's marked unit. "He turned and came at Kelly and I... we're still moving sideways and as the guy comes up Kelly takes his gun out and shoots the front left tire." He said he could hear the air escaping.

At that time they were still inside the fence with the truck to their left, and as the Ford went past he saw the truck "going at Tommy [Gray]," so Deputy Dalley shot toward the driver, afraid for his colleague's life.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Audio Recorded Interview of Stanley Dalley ("Dalley Interview").



Figure 8 – Dash-cam still showing the position of the deputies’ moments before the Ford reversed into Deputy Garcia’s vehicle.

(iii) Statement of Deputy Curtis Kelly

Deputy Kelly also gave a recorded interview after the incident. He said he heard about the pursuit terminating on SH-130, and that he and the others were intending to assist.¹⁶ They checked the area the vehicle was last seen and heard Deputy Garcia say he’d found the cut marks in the road from the shredded tire and wheel rim.

Deputy Kelly described the convoy of vehicles that followed the Ford into the water treatment plant, and how their vehicle blocked the gateway exit. He said as the Ford circled and headed toward them, the deputies all exited their vehicle (Kelly was in the front passenger seat) and he heard the Ford’s engine rev higher as the subject sped up toward them.¹⁷

Because of the convoy behind the Ford, even though Kelly had drawn his gun he did not have a clear line of sight to shoot. He described the impact with the Estray Unit, with Garcia’s vehicle, and how because of the Ford’s tinted windows he couldn’t see inside.

“He hits Luis with the truck, so that put his front tire right here even with me. He’s got dark tinted windows on the truck, I couldn’t see him, it’s lucky he didn’t shoot me.... So I shoot front tire out on the driver’s side.”¹⁸ He said he shot just one time.

¹⁶ See Audio Recorded Interview of Curtis Kelly (“Kelly Interview”).

¹⁷ *Id.*

¹⁸ *Id.*

Deputy Kelly said at some point someone had shot into the truck, but was unsure who it was because his focus was on what he was doing. “When I shot that tire, he shot down the side of the truck, raked down the side of the truck.”¹⁹

(iv) Statement of Deputy Thomas Gray

Deputy Gray also gave a recorded interview. He was the driver of the Estray Unit, and gave substantially the same account as the other two deputies riding with him.²⁰ He said: “We stop at the gate, see the truck coming towards us, I get out of the truck, Deputy Dalley and Deputy Kelly get of the truck. I’ve got my gun at, yelling at him... and he’s continuing to come at us, so when I realized he wasn’t going to stop – and I thought he was going to go through the chain link fence to the left side of my truck – so I go to move out of the way, I go to get behind my truck.”

After the Ford hit the Estray Unit and then Deputy Garcia’s vehicle, Deputy Gray thought the suspect was trapped but then realized he was going to try and squeeze between the gatepost and the large Chevrolet. “It’s coming at me at that point, so I retreat... and I hear shots being fired. As he gets to my truck, he’s running down the side of my truck hitting it... as he clears my truck I see his right front tire is inflated so I’m gonna try to shoot that tire out, and I did shoot that tire out.” Deputy Gray said he thought he fired thirteen times.²¹ He said his intention was to disable the vehicle.



Figure 9 – Dash-cam still showing the position of the deputies as the Ford pushed past the Estray Unit.

He then got back in his truck and moved it so the vehicles inside the fence could exit and follow the Ford, and by the time he joined that pursuit the Ford had stopped and was surrounded.

¹⁹ *Id.*

²⁰ See Audio Recorded Interview of Thomas Gray (“Gray Interview”).

²¹ *Id.*

D. Conclusion of Incident

After the Ford F-150 came to a halt roughly 100 yards from the entrance to the water treatment facility, and from where shots had been fired, the vehicle was blocked off and surrounded by police.



Figure 10 – drone image showing the Ford F-150 surrounded by police vehicles.

A TCSO SWAT Team surrounded the vehicle and engaged in a protracted negotiation with the driver, who was identified as Frank Ryan Soliz, date of birth 4/12/93. During that stand-off, Mr. Soliz repeatedly asked to be allowed to walk away from the scene and was also seen putting a handgun to his own head (see Figure 11, below.)



Figure 11 – drone still showing the driver of the Ford F-150 holding what police believed to be, and later was proven to be, a firearm.

Mr. Soliz remained in the vehicle from that time, approximately 10 AM, until about 6:15 PM when members of TCSO's Crisis Negotiation Team persuaded him to peacefully surrender. He was medically evaluated, found to be uninjured, and placed under arrest.

II. POST-INCIDENT INVESTIGATION

A. Statements of Witnesses

Although the analysis as to the legality of the discharge of the weapons of Deputies Garcia, Kelly, Dalley, and Gray depends on the facts and circumstances as they knew them at the time they fired, it is instructive to show the scene through the eyes of the other people who were there. Additionally, non-subject officers on scene and other eye-witnesses can either corroborate (or otherwise) statements from subject officers.

(i) Sergeant Adam Crews

Adam Crews is a sergeant with the Manor Police Department. He joined the search for the Ford F-150 and was in the vehicle behind Deputy Garcia when the subject was first seen on Blue Bluff Road. Sgt. Crews detailed his involvement and observations in his police report.²²

He wrote that at that initial encounter, the subject ignored commands from police to exit the truck, even though the officers there had him at gunpoint, instead climbing from the back seat of the Ford into the driver's seat, and driving away. Sgt. Crews said they followed him and, after circling through the water treatment plant, "[t]he suspect appeared to be accelerating and hit the TCSO truck head on. The suspect then backed up and drove toward the Deputies who had exited the truck. The deputies discharged their firearms in self-defense and the suspect drove past them."²³

He said that the vehicle came to a halt about 100 yards away, when it was met head-on by more law enforcement vehicles. At that time, Sgt. Crews exited his vehicle, drew his weapon, pointed it at the suspect, and gave him commands to exit his vehicle, which he ignored. "The suspect then placed a semi-automatic handgun to his head and was threatening to shoot himself." Sgt. Crews said the officers on scene held their positions until they were relieved by TCSO SWAT team members.

(ii) Officer Adrienne Stone

Adrienne Stone is a patrol officer with the Manor Police Department. She also joined the search for the Ford F-150 and was in the vehicle behind Sgt. Crews when the subject was first seen on Blue Bluff Road. Officer Stone detailed her involvement and observations in her police report.²⁴

She also noted that the subject ignored commands at gunpoint and tried to flee the scene in the Ford. And she said in her report that, in her opinion, the shots fired by the deputies were fired in self-defense. She was present when the Ford came to a final halt, and saw the subject, Frank Soliz, pointing a firearm at his own head.²⁵

²² See Manor Police Department Incident Report #18-01365, at p.3.

²³ *Id.*

²⁴ See Manor Police Department Incident Report #18-01365, at p.4.

²⁵ *Id.*

B. Crime Scene Unit

After Mr. Soliz surrendered, the TCSO Crime Scene Unit documented the scene with photographs and collected evidence. Crime Scene Specialists (“CSS”) Shannon Shafer, Lanae Donovan, and Ashley Garza responded to the scene at 1:30 PM and were briefed by detectives. CSS Shafer took photographs of the subject officers, collected samples from them, and collected their weapons. Later, after Mr. Soliz had surrendered, all three CSS went to where the Ford F-150 was parked and first photographed it, and then the entire scene.



Figure 12 – showing the front passenger side tire shot at and hit by Deputy Gray several times.

The CSS noted in their reports finding a handgun on the dashboard and two long guns inside the vehicle (see Figure 13, below).



Figure 13 – showing the three guns seized by TCSO from the vehicle driven by Mr. Soliz.

CSS Shafer and Garza then collected various items of evidence from the Ford:

- SD9: Glock Model 21 45 caliber pistol SN: KKW895 with magazine at approximately 1954 hours
- SD9a: One "WINCHESTER 45 Auto" live cartridge from the chamber at approximately 1954 hours
- SD9b: Six "WINCHESTER 45 Auto" live cartridges from the magazine at approximately 1954 hours
- SD9c: Dark medium length hair from end of barrel at approximately 1952 hours

The pair next walked the route the Ford had taken, photographing the debris in the roadway, then looking for and marking items of evidentiary value with numbered tents. They then collected those items:

- SD10-SD21: Twelve "Speer 40 S&W" fired cartridge cases from the ground north of the gate and east of the roadway at approximately 2232 hours
- SD22: Vehicle debris - plastic pieces from roadway north of gate at approximately 2234 hours
- SD23: Vehicle debris - plastic pieces from area at the gate at approximately 2238 hours
- SD24-SD37: Fourteen "Speer 40 S&W" fired cartridge cases from ground south of gate and west of the roadway at approximately 2236 hours
- SD38: Vehicle debris - plastic pieces and grill pieces from roadway south of gate at approximately 2239 hours
- SD39-SD41: Three "Speer 40 S&W" fired cartridge cases from south of the gate and east of the roadway at approximately 2241 hours
- SD42: Projectile from the roadway north of the gate at approximately 2229 hours

The following day, CSS Shafer and Garza returned to look for more evidence, and located two more fired cartridge casings, marked as SD43 and SD44. They also photographed the Ford F-150 once it had been safely towed and put into police storage.



Figure 14 – showing the front of the impounded Ford F-150.

The CSS Unit also made note of, and photographed, the defects in the Ford that came from bullets fired by the four deputies.



Figures 15 & 16 – showing some of the defects in the impounded Ford F-150.



Figures 17 & 18 – showing defects inside the impounded Ford F-150.

Crime Scene Specialists additionally photographed what was left of the rear driver's side wheel (that had been the subject of the deflation devices, see Figure 19, below), and used direction rods to show the trajectory of bullets that entered the vehicle (see Figure 20, below).



Figure 19 – showing the rear driver's side wheel.



Figure 20 – showing the CSS Unit's direction rods, demonstrating the bullets' trajectory.

C. TCSO's Highway Enforcement And Traffic Unit

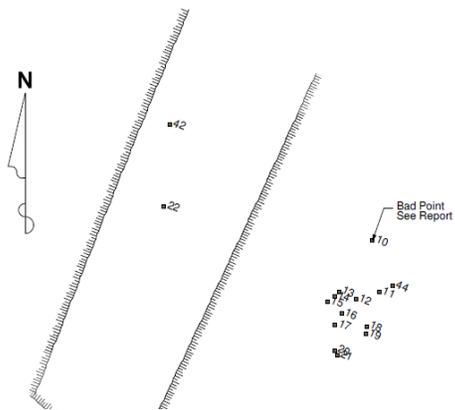
Detectives investigating the incident worked with TCSO's Highway Enforcement and Traffic ("HEAT") Unit to create visual representations of the scene. This included identifying the locations of the tented evidence.



Figures 21 & 22 – showing the HEAT Unit's maps of the scene.

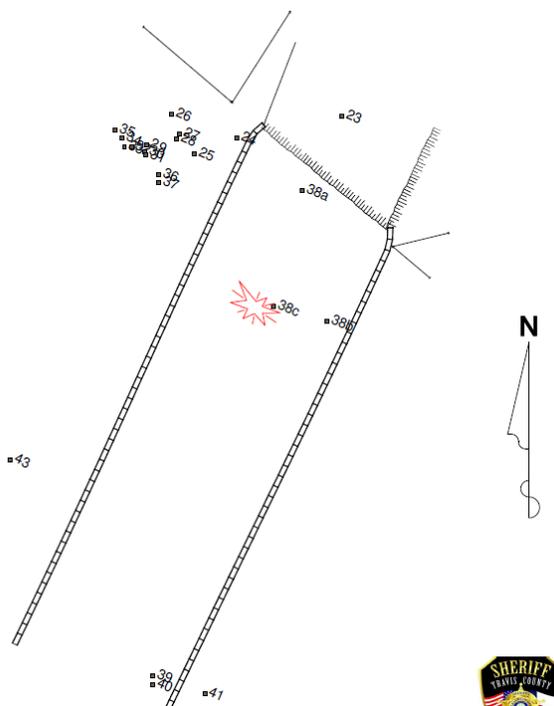
To give a clear picture of precisely where the shell casings and other evidence lay, the HEAT unit also created close-up diagrams, and when placed beside CSS photos (see Figures 23 through 29, below) they show precisely where the shell casings were located.

East Detail Map

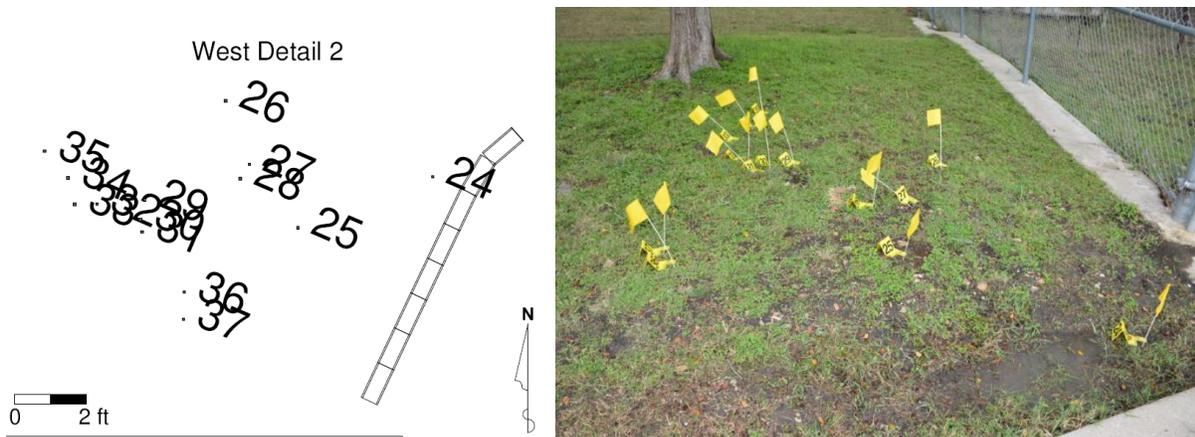


Figures 23 & 24 – CSS photo showing casing locations from shots fired by Deputy Gray.

West Detail Map



Figures 25 & 26 – CSS photo showing casing locations from shots fired by Deputies Dalley and Kelly.



Figures 27 & 28 – closer up CSS photo showing casing locations from shots fired by Deputies Dalley and Kelly.

D. Timeline of Events

TIME	EVENT
9:17 AM	Pflugerville Police Department (PPD) receive a citizen report of a suspicious vehicle. The caller describes it as a white Ford F-150, with the front seat reclined and someone possibly sleeping inside.
9:25 AM	PPD officers respond, identify the truck as stolen, and place ‘stop-sticks’ under rear driver’s side tire in anticipation of the subject fleeing.
9:30 AM	Subject flees, with PPD in pursuit.
9:37 AM	PPD notify Travis County Sheriff’s Office of pursuit and request assistance.
9:40 AM	Pursuit terminated when subject starts driving north on southbound lanes of SH-130.
9:56 AM	TCSO deputies spot the groove in the road, and follow it to Blue Bluff Lane.
9:58 AM	TCSO deputies come upon the Ford on a dirt track leading to water plant.
10:00:03 AM	Subject drives Ford into the water treatment facility.
10:00:47 AM	TCSO deputies report shots fired.
10:01 AM	Subject surrounded by law enforcement and stand-off begins.
6:16 PM	Subject surrenders to police and is taken into custody.

E. Ballistics, Firearm and Tool-mark Evidence

No firearm or tool-mark comparisons were conducted in this case on the weapons found in the truck. However, because Mr. Soliz did not discharge any of his firearms, and because the shooting itself was captured by DMAV, I do not believe the results of any testing (or lack thereof) would affect, impact, or alter my conclusions in this case regarding the central legal issue I must resolve, specifically the reasonableness of the four deputies' use of force.

Testing was carried out by the Texas Department of Public Safety ("DPWS") on the guns fired by the deputies.²⁶ The report notes that all four firearms submitted were operational with no malfunctions detected. Additionally:²⁷

- One shell casing was determined to have been fired by Deputy Kelly's pistol;
- Fourteen shell casings were determined to have been fired by Deputy Dalley's pistol;
- Thirteen shell casings were determined to have been fired by Deputy Gray's pistol;
- Three shell casings were determined to have been fired by Deputy Garcia's pistol;
- Of the bullet fragments located:
 - One was unsuitable for comparison;
 - One was determined to have been fired by Deputy Garcia's pistol;
 - One was eliminated from being fired by Deputy Kelly's pistol but was unsuitable for further comparison.

IV. LEGAL ANALYSIS: REASONABLENESS OF USE OF DEADLY FORCE BY DEPUTIES GARCIA, KELLY, DALLEY, AND GRAY

Texas law defines "deadly force" as "force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury."²⁸ In this case, two of the officers fired only at the tires of the vehicle being driven by the subject, Frank Ryan Soliz, and arguably could only be potentially liable under the deadly conduct statute.²⁹ However, the same defenses would apply to that statute as for the one analyzed below (aggravated assault with a deadly weapon). Therefore, this letter looks only at that higher charge.

The use of deadly force without legal justification would constitute a criminal offense for which prosecution is warranted. In the case of an officer's use of deadly force, to constitute a prosecutable offense would require us to conclude that there are no legal justifications applicable to the

²⁶ See DPS Garland Laboratory Report #AUS-1811-25916 ("Firearms Report").

²⁷ *Id.*

²⁸ TEXAS PENAL CODE §9.01 (3).

²⁹ TEX. PEN. CODE §22.05: (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:

(1) one or more individuals; or

(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

(c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded

(e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

investigative facts. Here, whether or not the officers' use of deadly force was reasonable depends on whether the investigative facts support the conclusion that a reasonable juror would determine that their use of such force was justified in self-defense, defense of a third person, and/or to effect a legitimate law enforcement purpose. For the reasons outlined below, we conclude that a reasonable juror following the law would find the use of force (by all four deputies) to be justified.

A. Law Governing Use of Deadly Force

The Fourth Amendment and Texas statutory law govern our analysis of the reasonableness of Deputies Garcia, Kelly, Dalley, and Gray's use of deadly force in Mr. Soliz's shooting death. Under the Fourth Amendment, a law enforcement officer's shooting of a person constitutes a "seizure" and, as a consequence, is subject to the amendment's requirement that it be reasonable³⁰ as that term has been construed by the United States Supreme Court.³¹ The Supreme Court has directed that the inquiry is essentially one of objective reasonableness: the question is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."³²

In conducting our analysis, we are to evaluate the officers' use of force based on the facts and circumstances then existing on the scene and determine "judged from the perspective of a reasonable officer on the scene," whether a reasonable officer would have used deadly force based on the facts and circumstances viewed from the perspective of the acting officer at the time the force was used.³³ This inquiry must make "allowance for the fact that police officers are often forced to make split-second judgments" and should not be based on the benefit of "the 20/20 vision of hindsight."³⁴ In the context of the law enforcement use of deadly force, the basic requirement is that the use of deadly force be limited to situations in which it was immediately necessary.³⁵

Texas law incorporates the Fourth Amendment's reasonableness standard in several statutes applicable to the facts and circumstances of this shooting. Those statutes allow the use of deadly force in self-defense, in defense of third persons, and in order to effect a legitimate law enforcement purpose.³⁶

B. Texas Law Governing the Use of Deadly Force: Chapter 9 and the Reasonableness Standard

Chapter 9 of the Texas Penal Code provides three basic circumstances under which a law enforcement officer's use of deadly force is justified: in self-defense, in defense of a third person, or to effect a legitimate law enforcement purpose such as an arrest or search.

³⁰ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." U.S. CONST. AMEND. IV.

³¹ U.S. CONST. AMEND. IV.

³² *Graham v. Connor*, 490 U.S. 386, 396 (1989).

³³ *Id.* at 396-97.

³⁴ Our inquiry must consider whether a reasonable officer in the circumstances that these deputies encountered would have reasonably concluded they themselves or a colleague were in imminent danger from the vehicle that Mr. Soliz was driving.

³⁵ *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

³⁶ TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

1. Use of Deadly Force in Self-Defense: Texas Penal Code § 9.32

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, law enforcement or not. It states:

- (a) A person is justified in using deadly force against another:
 - (1) if the actor would be justified in using force against the other; and
 - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
 - 1. to protect the actor against the other's use or attempted use of unlawful deadly force; or
 - 2. to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Section 9.32 expressly predicates the authority to use deadly force on the condition that the actor first have been authorized to use non-deadly force under Section 9.31, which governs the use of non-deadly force. That section, which sets forth the basic reasonableness standard discussed earlier, provides that:

- (a) ... [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.

Only if the actor first satisfies Section 9.32's requirements controlling the use of deadly force can he or she be justified in the use of deadly force.

2. Use of Deadly Force in Defense of a Third Person: Texas Penal Code § 9.33

The use of deadly force to protect a third person calls for what might be best described as a surrogate analysis: the use of deadly force in defense of a third person is authorized only if the actor is justified in the use of deadly force to defend him or herself. As with Section 9.32, this justification is applicable to all persons, whether law enforcement or not. That section provides:

- (a) 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.

3. Use of Deadly Force to Effect a Legitimate Law Enforcement Purpose: Texas Penal Code 9.51

The final justification applicable to the facts established here is found in Section 9.51, which governs all uses of force by a law enforcement officer while in the discharge of his or her duties. It is applicable only to law enforcement officers' use of force. Section 9.51 provides:

- (a) A peace officer...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..., if:
- (1) the actor reasonably believes the arrest or search is lawful...; 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 or cannot be reasonably made known to the person to be arrested.

C. Analysis: The Facts and Circumstances of the Deputies Use of Deadly Force

The deputies' conduct in discharging their weapons³⁷ must be evaluated in terms of reasonableness under the above-cited statutes. We have concluded that on the facts established here that the deputies' use of deadly force in this incident shooting was not unreasonable under the applicable statutes.

1. The Deputies' Use of Deadly Force in Defense of a Third Person

The facts and circumstances known to the deputies at the time they discharged their duty weapons must be considered.

The investigation established that at the time of their encounter with Mr. Soliz, all four deputies were aware that:

- The initial incident involved an individual disobeying police commands and evading in a motor vehicle at high speed and over considerable distance, a third-degree felony;
- The subject at the wheel had already placed the lives of citizens at risk by speeding through stop signs and red lights;
- The vehicle being driven by the subject was stolen;

³⁷ Even though the officers' shots did not strike Mr. Soliz, the discharge of their weapons in his direction alone constitutes a use of deadly force and is otherwise a criminal offense if not statutorily justified. The threat of force is justified when the use of force is justified. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force. TEX. PEN. CODE § 9.04. Here, it is evident that these officers discharged their weapons and as such there was an actual use of force. *See e.g.*, TEX. PEN. CODE § 22.02 Aggravated Assault (use of a deadly weapon during the course of an assault). An "assault" occurs whenever a person "intentionally or knowingly threatens another with imminent bodily injury..." TEX. PEN. CODE § 22.01. As a use of deadly force, the discharge of a weapon is justified only if reasonableness requirements are met, as contemplated by the various justifications for use of deadly force contained in chapter 9 of the Penal Code.

- The subject had driven the wrong way on SH-130, placing the lives of more innocent civilians at risk;
- The subject had rammed two police vehicles, of which was occupied, placing at least one deputy in danger, which constituted the crime of aggravated assault against a peace officer, a first degree felony;
- The subject had steered recklessly in the direction of another deputy (a second instance of aggravated assault against a peace officer);
- The subject was again attempting to flee.

As noted earlier, Texas Penal Code § 9.33 regulates the use of force in defense of a third person. That section provides that “[a] person is justified in using force or deadly force against another to protect a third person if...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...the actor reasonably believes that his intervention is immediately necessary to protect the third person.”

I conclude that the investigative facts establish that the circumstances of which all four deputies were aware of when they discharged their weapons are sufficient to satisfy the provisions of § 9.31, thus allowing them to use non-deadly force to defend themselves as a prerequisite to their use of deadly force.³⁸

As noted above, the deputies were faced with circumstances in which the danger to them was evident and imminent: they were on foot and unprotected, confronting a subject driving a large vehicle at them, and the subject had showed complete disregard for the safety of others (having already committed several violent crimes behind the wheel). And under these facts or circumstances, Mr. Soliz’s actions were not lawful threats of use of force.

For the same reasons and under these circumstances, I further conclude that the provisions of § 9.32 authorizing all four deputies’ use of deadly force in discharging their weapons at the vehicle being driven by Mr. Soliz are also unquestionably established.³⁹

Finally, I conclude that under these circumstances, it would have been reasonable for Deputies Kelly, Dalley, Gray, and Garcia to assume that the lives of their colleagues and members of the public were and would be in imminent jeopardy. Therefore, with the prerequisites of §§9.31 and 9.32 satisfied, I must conclude that under § 9.33 (defense of third person) all four deputies were

³⁸ Under the circumstances then existing and with which the deputies were confronted, the deputies’ belief that the use of deadly force was immediately necessary is *presumptively* reasonable under Texas Penal Code § 9.32. Specifically, subsection (b) of section 9.32 provides that “[t]he actor’s belief...that the deadly force was immediately necessary...is presumed to be reasonable if the actor...knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit” murder.

³⁹ Here, all of the non-exhaustive list of factors the Supreme Court noted in *Tennessee v. Garner*, the leading case on governing the reasonableness inquiry into a law enforcement officer’s use of deadly force are present: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Tennessee v. Garner*, 471 U.S. at 10-12. Mr. Soliz’s conduct involved the reasonably apparent danger of his commission of a violent felony after evincing an intent to flee from officers in a stolen vehicle rather than submit to an arrest.

justified in using deadly force in discharging their duty weapons at Mr. Soliz, and that a reasonable jury following the law would also so conclude.

2. The Officers' Use of Deadly Force to Effect a Legitimate Law Enforcement Purpose

Additionally, for the reasons that justified the deputies' use of deadly force to defend themselves and others, it is also reasonable for them to have concluded that Mr. Soliz was then engaged in the commission, imminent commission, and attempted commission of violent criminal offenses. Under Texas law, a peace officer is authorized to arrest any person for any offense committed within his or her presence or view without a warrant.⁴⁰

Based on their observations, the deputies had probable cause to believe, and were authorized to make Mr. Soliz's warrantless arrest for offenses committed within their presence or view, or direct knowledge from other officers, including Aggravated Assault with a Deadly Weapon,⁴¹ Aggravated Assault on a Public Servant,⁴² and Evading in a Motor Vehicle.⁴³ In other words, the facts and circumstances of which the deputies were aware at the time they discharged their weapons would have satisfied the probable cause standards that would have allowed them to have taken Mr. Soliz into custody and placed him under formal arrest for those offenses.

Specifically, we conclude that all four deputies formed the reasonable belief that their use of deadly force was "immediately necessary to make or assist in making" Mr. Soliz's arrest. And under these circumstances, it was reasonable for the deputies to believe that the warrantless arrest of Mr. Soliz was lawful.⁴⁴

For the reasons that justified Mr. Soliz's warrantless arrest, the facts and circumstances then existing also supported the deputies' beliefs that the use of deadly force to make his arrest was immediately necessary because they also reasonably concluded that Mr. Soliz posed a "substantial risk" that he "would cause death or serious bodily injury" to other law enforcement on scene if they attempted to arrest or detain him (and civilians, should he manage to flee). Under these circumstances, we conclude that the use of deadly force by all four deputies to effect Mr. Soliz's arrest was justified under Texas Penal Code § 9.51 (a).

For these reasons, the use of deadly force by all four deputies in this shooting was an objectively reasonable use of deadly force under Texas law, and a reasonable jury following the law would so conclude.

In summary, I therefore conclude that all four deputies were justified in exhibiting deadly force on the grounds of: (1) defense of third persons under § 9.33, and (2) in order to effect an arrest for an offense under § 9.51.

⁴⁰ TEX. CODE CRIM. PROC. art. 14.01.

⁴¹ TEX. PEN. CODE § 22.02.

⁴² TEX. PEN. CODE § 22.02 (b) (2).

⁴³ TEX. PEN. CODE § 38.04.

⁴⁴ There is no need to consider section 9.51 (a)'s third requirement because the identity of all four deputies was reasonably known to Mr. Soliz under the circumstances; they were in full uniform, had chased him in police vehicles with lights and sirens on, and Mr. Soliz had previously been addressed by police officers and told to surrender.

CONCLUSION

For the reasons stated above, we have concluded that the filing of criminal charges against Deputies Kelly, Dalley, Garcia, and Gray is not supportable under Texas criminal law standards because the use of deadly force by these deputies in this incident was justified under the circumstances. Consequently, charges will not be filed. We are closing our review and will take no further action in this matter.

We have released a public/press packet that includes videos, officer statements, forensic reports, and photos. We have also attached the items and legal citations mentioned in the analysis. This decision will be posted on our Office's website and will be accessible under "Frank Soliz" and the date of the incident, November 8, 2018.⁴⁵

Very truly yours,



Margaret Moore

⁴⁵ <https://www.traviscountytx.gov/district-attorney/office-divisions/civil-rights/cru>