

November 22, 2005

**OFFICER INVOLVED SHOOTING REPORT  
RE: SGT. PAT RIGDON/ SUSPECT NICKOLOUS ACEVEDO**

**FACTUAL SUMMARY**

On the evening November 3rd, 2005, the Colorado Springs Police Department Tactical Enforcement Unit responded to assist other officers in the apprehension of suspect **Nickolous Acevedo**. **Acevedo** was wanted in connection with an Attempted Murder of a Sheriff's Deputy and Burglary of a Dwelling on October 17<sup>th</sup>, 2005, in El Paso County. After a short but highly dangerous car chase in which **Acevedo** attempted to elude officers, **Acevedo** exited the car in the 1200 block of North Corona Avenue and further attempted to escape on foot.

**Sergeant Pat Rigdon** with TEU ultimately confronted **Acevedo** near the corner of Corona and Buena Ventura Avenues in Colorado Springs. During that confrontation, **Acevedo** was armed with a handgun held to his own head and refused **Sgt. Rigdon's** commands to drop the weapon and surrender. After **Acevedo** lowered the weapon from his own head and began to point the weapon at the officer, **Sgt. Rigdon** fired his MP5 weapon two times at **Acevedo**. **Acevedo** did not fall and maintained control of the weapon. **Sgt. Rigdon** believes that he fired a third round before **Acevedo** fell to the ground; the weapon fell next to him. On the ground, **Sgt. Rigdon** observed **Acevedo** patting the ground near the weapon in what he believed to be an attempt to regain control of the weapon. **Sgt. Rigdon** fired another round at **Acevedo** and the "patting", or reaching motions stopped.

Medical arrived on scene almost immediately to assist **Acevedo**, but he was pronounced dead from his injuries shortly thereafter. An autopsy revealed that **Acevedo** had sustained three gunshot wounds; two to his chest and one to his left leg.

The 4<sup>th</sup> Judicial District Attorney's Critical Incident Team was activated immediately on November 3<sup>rd</sup> and conducted the investigation in association with Detectives from the Colorado Springs Police Department. I was assigned to review the case and determine whether criminal charges should be filed against **Sgt. Pat Rigdon** for causing the death of **Nickolous Acevedo**.

That investigation and legal analysis of the shooting of **Nickolous Acevedo** has been completed, and on behalf of the 4<sup>th</sup> Judicial District Attorney's Office, I conclude that under Colorado law, **Sgt. Pat Rigdon** was justified in using deadly force against **Nickolous Acevedo**.

## MATERIALS REVIEWED

Investigators from the 4<sup>th</sup> Judicial District Attorney's Office Critical Incident Team as well as detectives from the Colorado Springs Police Department interviewed numerous witnesses, obtained written statements, collected physical evidence, conducted forensic tests on evidence and photo documented the scene.

All reports of the investigators and the results of physical testing were submitted to me for review, and will be contained and preserved for law enforcement and public view.

## INVESTIGATION PRIOR TO NOVEMBER 3<sup>rd</sup>, 2005

### Burglary at 950 Lindstrom

On October 17th, 2005, at approximately 1:30 p.m. deputies from the El Paso County Sheriff's Office were dispatched to 950 Lindstrom Drive on a report from a neighbor that there was a burglary in progress at that address. Sheriff's Deputies **Steve Gaenzle** and **Paul Smith** responded within minutes and found the burglars, later identified as **Nickolous Acevedo** and **Keith Brooks**, still inside the home, actively engaged in the crime. During the deputies' attempts to apprehend the suspects, one of the suspects fired a shot at the deputies through a garage door, narrowly missing both **Gaenzle** and **Smith**.

Within moments of the shot having been fired at **Gaenzle** and **Smith**, one of the suspects, later identified as **Keith Brooks**, was seen running from the home in the backyard carrying a dark colored handgun. **Deputy Gaenzle** fired a single shot at **Keith Brooks**, hitting him in the buttocks as he climbed the backyard fence to escape. **Keith Brooks** was apprehended on October 20<sup>th</sup>, 2005, and is currently facing charges of Attempted First Degree Murder, Burglary and Possession of a Weapon by a Previous Offender. **Nickolous Acevedo** escaped from the scene at 950 Lindstrom, and was not recontacted by police until November 3<sup>rd</sup>, 2005.

**Mr. Timothy Lee McElroy** resides at 975 Lindstrom. On the day of the burglary, **Mr. McElroy** observed the two burglars as they entered 950 Lindstrom. He reported to officers that he had returned home from lunch between 12:30 and 1:00 p.m.. He further reported that as he approached his own home he observed a 1990's model Ford SUV with two male occupants inside. He observed the occupants exit the vehicle. He described the occupants as follows: the passenger was a Hispanic or light skinned African American male, approximately 6 feet tall wearing a long sleeve t-shirt with blue sleeves, a blue bandanna, and baggy blue jeans. He described the driver of the vehicle as a white male, 5'9" to 5'10" tall with a thin build and wearing a tan hooded jacket and baggy dark pants. **Mr. McElroy** estimated that both men were in their early 20's.

### Evidence Collected at 950 Lindstrom

The scene at 950 Lindstrom was processed by Investigators from the 4<sup>th</sup> Judicial District Attorney's Office as well as El Paso County Sheriff's detectives. The entire scene was photo and video documented and physical evidence was recovered. Investigators discovered the following relevant items on October 17th:

- (a) A **bullet hole** through the garage door entering the home, consistent with the descriptions of **Deputies Gaenzle** and **Smith** having been fired upon by the burglars
- (b) A **bullet strike hole** in the garage wall consistent with a shot through the door
- (c) A **.9mm Luger shell casing** inside the home, located on the carpet just outside of the kitchen area

- (d) Numerous **items in the home** out of place and "rifled through"
- (e) a trail of **blood droplets** leading in general fashion from the backyard of 950 Lindstrom to the approximate location of the Ford vehicle in which the suspects left the scene.
- (f) A **.40 caliber shell casing** in the backyard consistent with the caliber of **Deputy Gaenzle's** weapon as well as his approximate location at the time he fired his duty weapon.

#### **Witness Information About Acevedo and Brooks Between October 17<sup>th</sup>, 2005 and November 3, 2005**

Between October 17<sup>th</sup> and October 18<sup>th</sup>, detectives from EPSO were contacted by an informant, later identified as **Amanda Hall**, who stated that a friend of hers had told her that two men by the name of **Keith Brooks** and **Nick Acevedo** (a.k.a. "Ace") had bragged about the shooting at 950 Lindstrom. Further investigation by detectives revealed that **Nickolous Acevedo**, AKA "Ace" had several prior criminal charges and was currently wanted on three outstanding arrest warrants. **Keith Brooks** was found to be an active parolee. When presented with a photographic lineup containing a photograph of **Nickolous Acevedo**, the reporting neighbor at the scene positively identified **Nickolous Acevedo** as one of the individuals he saw enter the home at 950 Lindstrom.

On October 18<sup>th</sup>, 2005, members of the El Paso County Sheriff's Office Major Crimes Unit obtained a warrant for the arrest of **Nickolous Acevedo** for the crimes of Burglary and Attempted Murder in the First Degree.

On October 19<sup>th</sup>, 2005, **Detective Mike Simler** from the federal office of Alcohol, Tobacco and Firearms spoke to **Keith Brooks** on the phone in an attempt to get him to turn himself in. **Mr. Brooks** stated at that time that he did not fire upon the officers, but that it was **Acevedo** who had fired the gun at **Deputies Gaenzle and Smith** at 950 Lindstrom.

On October 20<sup>th</sup>, 2005 EPSO detectives responded to the Fountain Inn Hotel in Fountain, Colorado where hotel staff had discovered blood and other materials in a room consistent with someone who had been seriously injured. The room had been rented by a female witness subsequently interviewed by the police. Previously mentioned witness **Amanda Hall** informed police that she had rented the room for **Brooks and Acevedo** on October 17<sup>th</sup>, and was aware that **Mr. Brooks** had been shot in the buttocks. **Mr. Brooks** stated to **Amanda Hall** that he and "Ace" were in the middle of robbing a house when the police came and kicked in the door. **Mr. Brooks** further told her that he (Brooks) had started shooting and they began to run and jump over the fence when he (Brooks) was shot in the buttocks.

On October 20<sup>th</sup>, 2005, detectives received information from a male witness, **Daniel Mileto**, who had also assisted **Brooks and Acevedo** after the shooting. This witness stated that **Keith Brooks** said that during the burglary that he (Brooks) had fired at the deputy with a handgun that he had. This witness had not known **Brooks** to carry a handgun before, but did observe that **Nickolous Acevedo** had a stainless steel handgun in his front waistband.

From this witness, Detectives also gained information about the whereabouts of **Keith Brooks**. **Mr. Brooks** was taken into custody by Sheriff's Deputies on October 20<sup>th</sup>, 2005 at approximately 8:30 p.m. and was transported to Memorial Hospital.

After waiving his Miranda rights, **Keith Brooks** stated to **Detective Cliff Porter** that both he and **Acevedo** were armed. During later questioning, **Brooks** admitted that he had been involved in the burglary at 950 Lindstrom and was shot while fleeing the scene. **Brooks** stated that it was **Acevedo** who

shot at the deputy while he (Brooks) was actively burglarizing the bedroom. At that time **Brooks** denied having a gun at the scene.

### **Attempts to Apprehend Nickolous Acevedo**

Between October 17<sup>th</sup>, 2005 and November 3<sup>rd</sup>, 2005, members of the El Paso County Sheriff's Office Major Crimes Unit and Crime Reduction Unit (CRU) along with members of CSPD, Metro VNI and the Bureau of Alcohol, Tobacco and Firearms Gun Interdiction Unit, were actively engaged in attempting to locate and apprehend **Nickolous Acevedo**. Two times prior to November 3<sup>rd</sup>, 2005, members of the CSPD Tactical Enforcement Unit ("TEU") were activated when law enforcement had received information about **Acevedo's** whereabouts.

Investigative reports then indicate that in the afternoon of November 3<sup>rd</sup>, 2005, members of the EPSO CRU received information from a jail inmate about **Acevedo's** possible whereabouts. Between 4:30 and 5:30 p.m., the CRU deputies along with members of the ATF Gun Intervention Unit and the Metro Vice Narcotics and Intelligence Unit set up surveillance at 1218 Weber Street in Colorado Springs. Shortly thereafter, officers sighted **Acevedo** outside of the residence attempting to start a small vehicle. Surveillance immediately notified the Colorado Springs Tactical Response Unit to assemble and assist in his apprehension.

### **STATEMENT OF SGT. PAT RIGDON**

**Sergeant Pat Rigdon** was interviewed by **Charles Garcia**, an Investigator with the Fourth Judicial District Attorney's Office on November 4<sup>th</sup>, 2005. Also present (among others) were **Deputy District Attorney Paul Sanford** and Attorney for **Sgt. Rigdon, Mr. Richard Radabaugh**.

**Sgt. Pat Rigdon** has been with the Colorado Springs Police Department for ten years and was formerly employed in Wyoming as a police officer for four years. **Sgt. Rigdon** attended a Wyoming Police Academy and a Colorado Springs Police Academy where he was trained in conducting felony vehicle stops. **Sgt. Rigdon** said he started training with the Colorado Springs Police Department Tactical Enforcement Unit in December of 2004, where he learned vehicle assault tactics. **Sgt. Rigdon** has estimated that he has conducted a thousand traffic stops during the course of his career, including twenty patrol "felony" stops and twenty five to thirty vehicle take downs this year with the Tactical Enforcement Unit.

**Sgt. Rigdon** stated that on November 3<sup>rd</sup>, 2005, at approximately 7:25 p.m. he received a call from **Sgt. Spitzmiller** who informed him that they were almost 100% certain that they had **Nickolous Acevedo** identified at 1218 N. Weber Street in Colorado Springs. **Sgt. Spitzmiller** also informed him that surveillance units described **Acevedo** as paranoid, using binoculars and engaging in counter surveillance activities. **Sgt. Rigdon** ordered the tactical team activated and directed them to stage at 800 N. Tejon Street.

A total of fourteen tactical officers including **Sgt. Rigdon** were activated for the team deployment. **Sgt. Rigdon** and **CSPD Officer Smook** were the first tactical officers to arrive in the staging area. He (**Sgt. Rigdon**) deployed as the driver of his vehicle, with **Officer Smook, Officer Arseneau** and **Officer McPike** also present in the vehicle. A total of three SUV vehicles deployed, with teams of four tactical officers assigned to each vehicle.

**Sgt. Rigdon** reported that he and his team had been called out two times before that night following tips that **Acevedo** may be in a certain area. During the first call out, **Sgt. Rigdon** said that he and his team



received a photograph of **Acevedo** and the background information regarding the El Paso County Sheriff's Office investigation. **Sgt. Rigdon** indicated that he and his team were informed that **Acevedo** was a suspect in an incident where El Paso County Sheriff's Deputies had been fired at, and that he (**Acevedo**) made statements to either witnesses or Confidential Informants that he, **Acevedo**, was not going to be taken alive. The information relayed to members of the TEU during briefings was that **Acevedo** was presumed to be armed and dangerous.

Initially, the surveillance team at 1812 Weber identified a Mazda pickup truck leaving the home on Weber as possibly containing the suspect **Acevedo**. At approximately 7:50 p.m. TEU team **Rigdon**, **Smook**, **Arseneau** and **McPike** contacted the driver of the Mazda near Weber and Jackson Streets lot without incident, and confirmed he was not **Acevedo**. **Sgt. Rigdon** and his group returned to the neighborhood of the 1600 Block of North Weber, and faced their vehicle south.

Surveillance officers next identified a small black vehicle leaving 1218 N. Weber and reported that three people were inside. At that time, surveillance teams were not one hundred percent certain, but believed **Acevedo** was one the individuals inside the car. Surveillance units then advised that the subject vehicle went northbound in the alley from the surveillance address towards San Miguel Street, then east on San Miguel.

**Sgt. Rigdon** reported that he saw the black car drive to the stop sign at Weber for eastbound San Miguel. **Sgt. Rigdon** said the right turn signal for the black vehicle was on and the driver sat at the light for an extended period of time. **Sgt. Rigdon** said the vehicle driver ultimately went east on San Miguel through the intersection. **Sgt. Rigdon** could not see into the vehicle at that time.

**Sgt. Rigdon** pulled back out on to Weber and turned east behind the subject vehicle with no emergency lights activated. **Rigdon** observed that the driver of the suspect vehicle almost ran a light at San Miguel and Wahsatch and then turned a hard right onto Wahsatch and headed south. **Sgt. Rigdon** followed and saw that the suspect's vehicle was traveling southbound in the right through lane on Wahsatch before stopping for the red light on Uintah. At this point the police vehicle was immediately behind the suspect vehicle. **Sgt. Rigdon** was able to see the driver, who was wearing a ball cap, a black male in the front passenger seat and a female in the rear seat.

Both the driver and the passenger were looking in the side view mirrors at this time, while the female passenger slipped down in the back seat. This indicated to officers that the occupants had recognized law enforcement behind them. The light turned green, at which point the driver of the suspect vehicle initially pulled forward and then made a hard right turn onto westbound Uintah. **Sgt. Rigdon** followed as the suspect vehicle traveled westbound in the right lane of Uintah through a green light at the intersection with Weber. **Sgt. Rigdon** reported that at this time he considered that the suspect vehicle might turn north into the alley behind 1218 N. Weber and was concerned that the subject may attempt to return to a residence and create a hostage situation.

**Sgt. Rigdon** further stated that the suspect's vehicle went past the alley, and made a quick maneuver into the left lane of Uintah at Nevada without using a signal. This would have forced him, **Sgt. Rigdon**, to pull up along side the subject vehicle at the intersection with Nevada. **Sgt. Rigdon** stayed back in the right lane one and a half to two car lengths behind the subject vehicle instead.

After the light, the vehicle made an abrupt lane change, placing it in the right through lane at Uintah.

**Sgt. Rigdon** then informed his team that they would attempt to stop the vehicle, and that they would deploy a distraction (flash bang) device when it was stopped. His decision was based on the evasive maneuvers he had witnessed up to that point.

**Sgt. Rigdon** activated his sirens when the subject accelerated north on Tejon. He called out on the radio that the suspect vehicle was not stopping and tried to communicate positions and locations. The suspect vehicle continued northbound at San Miguel at approximately sixty miles an hour and turned hard right on Columbia in such a manner that **Sgt. Rigdon** said he was surprised the subject vehicle did not roll over.

**Sgt. Rigdon** estimated that the subject vehicle was going fifty five to sixty miles an hour and slowed somewhat before executing the right turn. As the subject vehicle traveled eastbound on Colombia approaching Nevada, it rapidly accelerated again approaching fifty five miles an hour. The vehicle then sped through the intersection at Weber causing sparks to come from the vehicle as it passed through the dips at either side of the intersection. The suspect's vehicle then sped east through the intersection at Wahsatch. About the car chase **Sgt. Rigdon** believed that the suspect's actions without question placed other members of the community in serious danger, and that if there had been a collision with another vehicle there likely would have been a fatality.

The suspect vehicle then abruptly slowed and pulled over to the south near Butch's Garage at the northwest corner of Corona and Columbia. **Sgt. Rigdon** saw the driver of the vehicle abandon the vehicle and begin to run in a northwesterly direction towards Butch's Garage. **Sgt. Rigdon** exited his vehicle and ran north on the sidewalk on Corona, intending to cut off the suspect at the next street.

Within minutes, **Sgt. Rigdon** contacted **Acevedo** as **Acevedo** climbed over a fence from a yard of the house at the end of the street. **Sgt. Rigdon** illuminated **Acevedo** with his laser and flashlight and screamed at the top of his lungs, "Police, get down on the ground, get down on the ground." **Acevedo** did not comply; and instead started to run to the east while **Sgt. Rigdon** ran in a straight line towards him with his MP5 at a firing position. It was at this time that **Sgt. Rigdon** saw that the subject had a shiny item consistent with a handgun in his right hand as he ran. **Sgt. Rigdon** then shouted, "Drop that gun! Get down on the ground! Get down on the ground!" **Sgt. Rigdon** believes he yelled the commands four or five times from the point subject bounded over the fence to the point where he stopped by the northeast corner of the house.

After **Acevedo** stopped, he turned, holding a shiny object in his hand near his head. At this time, **Sgt. Rigdon** reports that he could see clearly that the object in **Acevedo's** hand was a firearm. **Sgt. Rigdon** stopped closing the distance at approximately twenty feet from the subject and maintained cover on the subject with his MP5. **Sgt. Rigdon** obtained a standard shooting platform while the subject stood and faced him, still holding the firearm to his own head. **Sgt. Rigdon** stated that the subject was not responding to commands or saying anything that gave him, **Sgt. Rigdon**, any indication that he intended to comply with the commands. **Acevedo** stood there with the handgun held to his own head for several seconds while **Sgt. Rigdon** shouted commands at him. **Sgt. Rigdon** reports that he stated, "Drop the gun! Drop the gun!" several times. Once again, **Acevedo** did not respond to the commands in any way.

**Sgt. Rigdon** stated that he felt fearful for his own life when the suspect was holding the gun to his own head during the encounter. **Sgt. Rigdon** pointed out that it would have only taken a fraction of a second for the suspect to take the gun from his own head and extend it in his direction to fire a shot.

**Sgt. Rigdon** said the subject next quickly and unexpectedly started to bring the gun away from his own head towards the Officer. **Sgt. Rigdon** said he believed the subject was going to draw down on him and fire a round and was immediately fearful that he would suffer death or serious bodily injury. **Sgt. Rigdon** further reported that he elected to not give the subject an opportunity to level the gun entirely in his direction because it was his belief that the subject intended to aim the gun at him. **Sgt. Rigdon** fired two rounds in rapid succession.

**Sgt. Rigdon** described that the subject did not immediately fall to the ground, but stood there with the gun in his hand with his hands up and out to his sides, approximately shoulder height. **Sgt. Rigdon** said he paused and believed he again yelled, "Drop the gun, drop the gun!" or words to that effect. **Sgt. Rigdon** believed that the subject could still extend his right hand and fire in his direction and described that the subject continued to ignore verbal commands. **Sgt. Rigdon** believes that he then fired a third round, whereupon the subject fell to the ground and dropped the firearm.

The suspect fell in a position where his right hand remained in close proximity to the firearm. **Sgt. Rigdon** described that the suspect was patting the ground around the gun, and that it was not immediately clear to him if the subject was having a nervous reaction to the circumstances or if he was consciously trying to re-acquire the handgun. **Sgt. Rigdon** said it looked like the subject was trying to re-obtain the gun, so he shouted at the subject, "Get your hands out to your side!" If the subject had done so there would have been enough distance between him and the suspect to hold a position of advantage until a cover officer arrived. **Sgt. Rigdon** said the subject did not comply and continued to pat the ground. **Sgt. Rigdon** said that because the subject continued to pat the ground and not comply with commands, he fired what he believed to be a fourth round at the suspect from approximately the same firing position as the first rounds.

Within moments, Tactical **Officer Smook** arrived on scene and told him, **Sgt. Rigdon**, to cover the subject from the head. **Sgt. Rigdon** said there was still some movement in the suspect while **Rigdon** moved around to the head and **Officer Smook** secured the suspect's firearm. **Officer McPike** then arrived and moved in on the suspect's feet, rolling him over and handcuffing him while calling for medical attention. **Sgt. Rigdon** remained on scene until escorted from the scene by members of CSPD command.

#### STATEMENT OF TEU OFFICER CHRIS ARSENEAU

TEU Officer **Chris Arseneau** was interviewed independently from **Sgt. Rigdon** by District Attorney Investigator **Tom Dickinson** shortly after the shooting.

**Officer Arseneau** confirmed that he received a TEU page at 7:28 p.m. and arrived at the staging area shortly thereafter. His TEU team that night included **Sgt. Rigdon**, **Officer McPike**, **Officer Smook** and himself.

After reaching the staging area and dividing into teams, TEU officers received information from the surveillance units that a small black car was leaving the residence and was believed to contain **Nickolous Acevedo**. **Arseneau** reported that his team immediately saw the vehicle and began to follow. He noticed that a light skinned male was driving the vehicle, a black male was in the front passenger seat and a white female was in the back seat. After following the male for a few blocks, the male driver began looking back at the TEU vehicle and was then seen engaging his seat belt. At that time, the TEU officers decided to attempt a traffic stop.

TEU Officer **Arseneau** confirmed that emergency overhead equipment was initiated to effect the stop, but the target vehicle did not stop. **Officer Arseneau** also describes a short but highly dangerous car chase through the neighborhood. **Arseneau** stated that the vehicle failed to stop for several stop signs in the neighborhood and that due to its high speed the vehicle went airborne after hitting dips in the roadway. The vehicle came to an abrupt stop at the intersection of Corona Avenue and Columbia Avenue. The driver immediately exited the vehicle and fled northbound on foot.

Carrying his H&K MP5 weapon, **Arseneau** ran northbound on Corona behind the male driver and **Sgt. Rigdon**. **Officer Smook** at first accompanied him, but then stopped near a local business to search the parked vehicles for the suspect. **Arseneau** continued northbound on Corona until he came to the last two houses on the block. He began to search the yard in between the two houses when he saw the suspect from about 20 feet away running directly at him from the east. **Officer Arseneau** engaged **Acevedo** with his weapon, illuminating the suspect with a stock tactical flashlight and sighting laser. **Acevedo** appeared to look down at his chest at the laser sighting and then turned and ran in the opposite direction. **Acevedo** ran west between the two houses and then turned north around the corner of the last home. At this point, **Officer Arseneau** reported that he lost sight of the suspect. When **Arseneau** contacted **Acevedo**, he did not observe a weapon.

As **Officer Arseneau** followed **Acevedo** around the house, he heard **Sgt. Rigdon** yelling something, and then heard three gunshots. **Officer Arseneau** then rounded the corner back towards the front of the house, and saw **Sgt. Rigdon** "covering" the suspect. As the suspect lay on the ground, **Sgt. Rigdon** was yelling, "Let me see your hands!" About one foot away from the suspect, **Arseneau** saw a handgun lying on the ground. **Arseneau** observed the suspect roll away from the gun and onto his stomach. **Officer Smook** then arrived on scene and removed the handgun from the suspect's reach, while **Officer McPike**, also arriving on scene, handcuffed the suspect. **Arseneau** stated that medical arrived on scene approximately one minute later and began to render aid.

#### STATEMENTS OF OFFICERS MCPIKE and SMOOK

**Officers McPike** and **Smook** were also interviewed by members of the District Attorney's Office Critical Incident Team shortly after the shooting. Both **McPike** and **Smook** report events almost entirely consistent with those reported by **Sgt. Rigdon** and **Officer Arseneau** regarding the events leading up to the shooting. Neither **McPike** nor **Smook** were direct eyewitness to the shooting; both having come upon the scene immediately thereafter. However both Officers, as well as other officers, report hearing the gunshots.

#### PHYSICAL EVIDENCE AT THE SCENE

The scene on Corona Avenue was processed by Investigators from the 4<sup>th</sup> Judicial District Attorney's Office in conjunction with Colorado Springs Police Department detectives and the Metro Crime Lab. The entire scene was photo and video documented and physical evidence was recovered. Investigators discovered the following relevant items on October 20<sup>th</sup> :

- (a) a .9mm Luger handgun near the body of Nickolous Acevedo
- (b) 3 (three) spent shell casings consistent with the MP5 weapon admittedly fired by Sgt. Pat Rigdon

#### SUBSEQUENT INVESTIGATION

Within days of the shooting, an agent of the Colorado Bureau of Investigations examined the .9 mm firearm **Acevedo** possessed on November 3, 2005, and which was found near his body. This gun was compared to the shell casing found at 950 Lindstrom and was forensically determined to be the weapon that had fired the round through the door at **Deputies Gaenzle** and **Smith** at 950 Lindstrom.



## APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... when he reasonably believes that it is necessary
- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
  - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
    - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

Under Colorado law, the operative question in this case is whether, at the instant he fired the shots that killed **Nickolous Acevedo**, **Sgt. Pat Rigdon** reasonably believed that he or another person in the community was in imminent danger of bodily injury or death by **Nickolous Acevedo** or whether **Sgt. Pat Rigdon** reasonably believed that deadly force was necessary to effect the arrest of a person he reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon. The question presented for determining criminal culpability of **Sgt. Rigdon** is **not** whether, in fact, **Nickolous Acevedo** actually intended to injure or kill **Sgt. Rigdon** as opposed to himself. Therefore it is of no consequence for purposes of determining criminal liability whether **Acevedo** did or would have formed the intent to kill or maim **Sgt. Rigdon**. It is also of no consequence that **Acevedo** did not fire his weapon at the officer on November 3<sup>rd</sup>, 2005. **The operative question for this discussion is simply whether Sgt. Rigdon, at the time that he fired his weapon, had a "reasonable belief" that deadly force was necessary to defend himself or a third person or to effect an arrest of a person he reasonably believed had committed or attempted to commit a felony with a deadly weapon.**

## CONCLUSION

Based upon all of the facts developed in this investigation, I conclude that the evidence supports that **Sgt. Rigdon** did, in fact, believe that as **Nickolous Acevedo** lowered the weapon from his own head towards **Sgt. Rigdon**, **Acevedo** presented an imminent danger to the life and safety of the officer; and that **Sgt. Rigdon** believed that deadly force was necessary to effect the arrest of **Nickolous Acevedo**, a suspect he believed had used or attempted to use a deadly weapon during the commission of a felony.

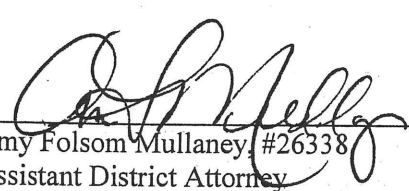
I further conclude that based on the evidence gleaned from the investigation, these beliefs were reasonable. Prior to the confrontation with **Acevedo** on November 3<sup>rd</sup>, 2005, **Acevedo** was known to law enforcement and to **Sgt. Rigdon** to have participated in a violent crime with a deadly weapon. Law enforcement, including **Sgt. Rigdon**, was aware that **Acevedo** was and likely continued to be armed with a handgun, and that he was a suspect in an Attempted Murder of a sheriff's deputy. When **Sgt. Rigdon** and his TEU team attempted to conduct a traffic stop on the vehicle **Acevedo** was driving, **Acevedo** initiated a highly dangerous chase through a city neighborhood without regard for the safety of citizens in the area. After the vehicle came to a stop, **Acevedo** still attempted to escape. When confronted by TEU Officer **Arseneau** moments before **Sgt. Rigdon**, **Acevedo** ignored commands to stop and surrender. Finally, when confronted by **Sgt. Rigdon**, **Acevedo** refused commands to drop the weapon and surrender peacefully, and instead began to bring his weapon into a position which would have allowed him to fire directly at **Sgt. Rigdon**. Even after having been shot **Acevedo** not only ignored verbal commands, but responded as though he intended to maintain control over the weapon. At these moments in time, when an officer reasonably believes that his life and safety are threatened with immediate danger, a Colorado

peace officer may use deadly force to defend himself until that threat is eliminated. Based on the facts and circumstances revealed by the investigation, **Sgt. Pat Rigdon** did just that.

Therefore, it is my opinion that **Sgt. Pat Rigdon's** use of deadly force against **Nickolous Acevedo** was justified under Colorado law.

Date

Nov 22, 2005

  
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Amy Folsom Mullaney, #26338  
Assistant District Attorney