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DISTRICT ATTORNEY'S REPORT

June 23, 2021

OFFICER INVOLVED SHOOTING: DELTA COUNTY SHERIFF'S
OFFICE RE: PAIGE PIERCE

MONTROSE COUNTY SHERIFF'S OFFICE CASE NUMBER S21-04791

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SUMMARY

On April 9, 2021, Deputy Nolan Davis of the Delta County Sheriff's Office attempted to contact a 2003 white Honda Accord without any license plates driven by Paige Pierce (Schmidt). Paige attempted to elude Davis in a pursuit that traveled east on CO-92, north and south on Hidden Springs Road, east on CO-92, and south on a private drive associated with High County Gardens. The pursuit ended when Paige was fatally shot by Davis as she attempted to drive between his patrol vehicle and a white truck where he was standing.

Sheriff Mark Taylor of the Delta County Sheriff's Office requested the Seventh Judicial District Critical Incident Investigation Team (CIIT) to respond to investigate. The purpose of the CIIT is to assist in the investigation of incidents where any law enforcement officer within the Seventh Judicial District uses deadly force, or attempts to use deadly force, against a human being during the commission of the officer's duties. The CIIT consists of certified law enforcement personnel who are designated by the Chiefs of Police, Sheriffs, and the District Attorney in all participating law enforcement agencies within the Seventh Judicial District. Deputy Travis Thompson of the Montrose County Sheriff's Office and Investigator Mark Trimble of the Montrose Police Department were appointed as co-lead investigators for this incident. Investigators from the Colorado Bureau of Investigations (CBI), the Colorado State Patrol (CSP), the Montrose County Sheriff's Office (MCSO), the Montrose Police Department (MPD), the Delta Police Department (DPD), the District Attorney's Office (DAO), the Mountain Village Police Department (MVPD), and the Ridgeway Marshall's Office (RMO) all participated in this investigation. The Delta County Sheriff's Office had no role.

After the CIIT completed their investigation, it was given to the DAO for review of whether criminal charges should be filed against Deputy Nolan Davis for the death of Paige Pierce (Schmidt). District Attorney Seth D. Ryan reviewed all the evidence collected by the CIIT. Evidence included technical scene analysis by the CSP, photographs of the scene and subjects, interviews with involved law enforcement officers, interviews with eyewitnesses, medical reports, scene reenactments, dispatch

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recordings, computer modeling, body camera videos, video surveillance, motor vehicle records, and criminal justice records. ***The purpose of this report is to inform the public about the District Attorney's review of the evidence and the associated legal analysis and ultimate decision about whether the District Attorney's Office can meet its required burden of proof to file criminal charges against Deputy Nolan Davis.***

SUMMARY OF EVIDENCE

Initiation of Pursuit:

On April 9, 2021, Deputy Nolan Davis was on day two of a ten hour a day/four days per week patrol rotation. He had been working this rotation for approximately two weeks. He started his shift at 6:00 a.m. and picked up S.D. at 7:30 a.m. for a pre-approved citizen ride along. S.D. was present in Davis' patrol vehicle during this incident.

According to Davis and S.D., they were traveling west on CO-92 approaching Payne Siding Road when he spotted a white Honda Accord without any license plates traveling east. According to Davis he observed that the Honda was the last car in a line of four cars and was "tailgating" the car in front of it. According to Davis and S.D., he did a U-turn and started following the Honda eastbound on CO-92. According to Davis he assumed that the driver saw him turn around, because it started passing the line of cars in front of it. According to Davis he had not yet activated his overhead lights.

According to Davis and S.D., as he followed the Honda, it started traveling at a high rate of speed and was passing another line of cars in a no passing zone. S.D. estimated the vehicle was traveling over 100 miles per hour because they were traveling over 100 miles per hour. Davis' body camera shows that his patrol vehicle has a miles per hour indicator mounted on the top of his dashboard which was visible to S.D. According to Davis, he activated his overhead lights but not his sirens. At this same time DMEA employees H.T. and C.Z. were traveling east on CO-92 with H.T. driving. H.T. observed a white sedan pass them on a double yellow line just west of a bridge going over some railroad tracks. Both H.T. and C.Z. estimated that the sedan was traveling between 80 and 100 miles per hour. A few seconds later they

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observed a “cop” following the sedan and H.T. pulled over to let it pass. It should be noted that C.Z.’s sister’s husband is the brother of Davis’ wife. According to C.Z. he did not know that Davis was the deputy following the sedan.

At this same time, the Colorado Department of Transportation was conducting road maintenance on CO-92 just east of the bridge over some railroad tracks and west of Hidden Springs Road. W.W. was working as a “flagger” at this location. He just released his traffic and was walking up the shoulder when he observed a white car traveling eastbound at a high rate of speed on the shoulder where he was walking and headed straight towards him. He started waving his arms in the air to get the car to stop. The car came within 30 to 40 yards from him before cutting into the westbound lane of traffic between two westbound cars and turned north on Hidden Springs Road. The car turned in front of a car traveling west, forcing it off the road. W.W. believed that the white car turned onto Hidden Springs Road because it could not continue east on CO-90 due to traffic congestion associated with the road maintenance. W.W. observed a police car behind the white car, and he directed it north up Hidden Springs Road.

Pursuit on Hidden Springs Road:

According to Davis, as he approached the road maintenance area, he saw dust on Hidden Springs Road and a “flagger” pointing him in that direction. At approximately 11:27 Davis informed dispatch that he was following a vehicle on Hidden Springs Road that failed to yield to him, that he knew it was a dead-end road, and he was going to see if the driver was going to “bailout” on him. At approximately 11:28 Davis informed dispatch he was following a “little white sedan” with no plates that had traveled to the top of the mesa on Andy’s Road to K-40 Road and down the backside. At 11:29 Davis notified dispatch that the car was near a private residence. According to S.D. after the car reached the top of the mesa and traveled down the back side, it drove on a “knob” where there was no road behind a house and managed to get around them. Witness R.B. who lives on Lampshire Road observed the pursuit go behind another house located on Lampshire Road. At approximately 11:29 Davis notified dispatch that the car “got around” him and was headed back towards CO-92. According to S.D. the white car was traveling so fast that they could not keep up with it. At this same time, Davis requested Sergeant Shaklee to deploy “stop sticks” to stop the vehicle on CO-92. “Stop sticks” are a law enforcement tool consisting of a strip

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of spikes used to deflate the tires of a moving vehicle and which can be quickly pulled off the road thereafter. Unlike how they are depicted in the movies, when the target vehicle hits the “stop sticks” it does not result in an explosive deflation of the tires, rather the tires loose air pressure over a relatively quick but not instantaneous period.

Witness K.S. was visiting her daughter on Andy Road. She heard the pursuit and went onto the porch to see what was happening. She saw a car being pursued by a police car travel north on Hidden Springs Road and turn left on Lampshire Road until they were out of her sight. She described the car moving very fast and that the police car was quite a way behind. She knew that Lampshire has no outlet and a few minutes later observed them traveling back. As the car turned south on Hidden Springs, she observed it spin out, facing east across the road. She saw the police car stop behind the car and block the road. She thought the car’s chassis was stuck on a ridge off the east side of the road but the driver “floored it” and headed south again. Although she said it was hard to see the remainder of the pursuit because of the dust, she thought the car hit the police car to get around it.

At this same time DMEA employees H.T. and C.Z. observed dust traveling up Hidden Springs Road and decided to follow the pursuit to see if the deputy needed any help. By the time H.T. turned, he lost sight of the pursuit. As he was traveling north, he saw the white car come back down Hidden Springs and come “face to face” with his truck. As he pulled over, the white car drove past him and into the bank of the road so hard that he thought it had rolled. The crash caused a large cloud of dust, and he observed the police car drive past him. C.Z. looked behind them and thought the car crashed into the side of a hill. He saw the car drive off the opposite end of the road and attempt to get back on. H.T. drove up Hidden Springs Road and turned around. At this point he observed the white car traveling east on CO-92. He observed a “spike strip” get thrown into the road but the car continued heading east.

Crash on Hidden Springs Road:

According to Davis, as he was pursuing the white Honda back down Hidden Springs, he noticed a DMEA truck that appeared to have been run off the road with the white car “crashed out”. At approximately 11:33, Davis notified dispatch that the car “wrecked out.” According to Davis, he drove his truck towards the car and stopped. According to Davis, as he was getting out of his vehicle, the car drove

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off the side of the road and continued “off road” back towards CO-92. According to Davis, he saw this as an opportunity to put his vehicle between the car and the highway. According to Davis, he drove south down Hidden Springs with the car paralleling him off-road. According to Davis the white car abruptly turned towards him, and he thought the driver intended to ram the side of his vehicle. According to Davis he slammed on his brakes to avoid a collision which allowed the car to drive in front of him toward CO-92. According to S.D., as the white car started driving back onto the road, she thought it was going to hit the patrol vehicle. At this point Davis activated his body camera.

CIIT investigators were able to locate the place on Hidden Springs Road where Paige’s vehicle crashed, traveled off road on the east side of Hidden Springs, and then back onto the road. They observed debris consisting of the car’s front bumper and other broken parts approximately 250 yards from where Hidden Springs Road makes an abrupt turn southeast. The debris was located on a hillside on the west side of Hidden Springs. **Exhibit 1** is a picture of the debris found by investigators. A CSP accident reconstruction investigator estimated that Paige’s vehicle was traveling approximately 40 miles per hour before impact with the hillside.



Exhibit 1 – Debris on Hidden Springs Road

Investigators discovered tire tracks leading south to the discovered debris. **Exhibit 2** is a picture of the tire tracks.

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Exhibit 2 – Tracks Leading to Debris

Investigators also discovered tire tracks leading from the debris heading south off the east side of Hidden Springs Road and then merging back onto the road. ***Exhibit 3*** is a picture of those tire tracks.

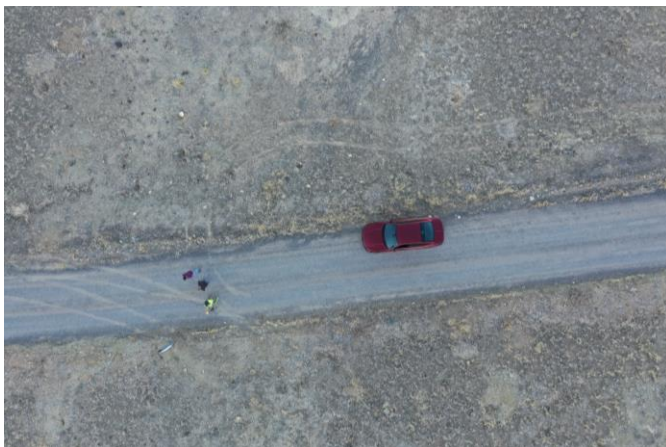


Exhibit 3 – Tracks Leading from Debris Heading South off the East Side of Hidden Springs

Investigators followed these tracks south for approximately 178 feet until they merged back onto the actual roadway. ***Exhibit 4*** is a picture of the tracks traveling south off the east side of Hidden Springs before merging back onto the roadway.

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Exhibit 4 – Tracks Traveling South off the East Side of Hidden Springs and Merging Back onto the Road

Based on the evidence collected and observed on Hidden Springs Road. A CSP accident reconstruction investigator determined that Paige lost control of her car and it rotated counterclockwise while traveling around the sweeping left curve. She steered to correct the loss of control and overcorrected causing her car to change rotational direction. It rotated clockwise as it exited the sweeping curve and its rear tires traveled off the left side of the road while rotating. It returned to the road and traveled across and off the right side of the road as it rotated. It struck an embankment on the right roadside with its left front. The impact caused the vehicle to rotate at a faster pace clockwise and at this point it faced the opposite direction of its original travel (approximately 180 degrees of rotation). Paige drove away from the crash area, traveled across the road, off the left side, and traveled parallel to the road for approximately 178 feet before it returned to the road and continued south on Hidden Springs. Based on this sequence of events, the investigator created an animation depicting the crash.

Davis' body camera started at time stamp 11:32:10, however, the audio portion of the recording did not start until 11:32:40. According to Davis, as Paige traveled off-road on the east side of Hidden Springs, he attempted to get in front to prevent her from going back onto CO-92. According to Davis and S.D., as she merged back onto the road, it appeared she intended to ram the side of his patrol truck, forcing him to hit his brakes and veer right to avoid a collision. When the body camera footage started, it appeared that Davis was turning his steering wheel right. At 11:33 Davis notified dispatch that the vehicle

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tried to ram him and was back on the road heading towards CO-92. At 11:33:30 on the body camera, Davis activated his sirens.

Pursuit Back on CO-92:

At 11:33:48 Davis notified dispatch that he was back on CO-92 heading towards Hotchkiss. It should be noted that Hotchkiss is east on CO-92 from Hidden Springs Road. At 11:34:00 Davis asked his supervising sergeant, via his radio, whether he should continue the pursuit. At 11:34:05 on the body camera, Davis exclaimed that the car hit the "stop sticks."

Sergeant Gates Shaklee was Davis' supervising officer at the time of this incident. He was driving to Hotchkiss when he heard Davis report the pursuit to dispatch, so he turned around headed west on CO-92. As he was driving, he heard Davis ask if he could deploy "stop sticks" on CO-92 to disable the vehicle. As he continued westbound, he heard Davis report that the car was back on the highway and headed east. Shaklee stopped his vehicle on the north shoulder of CO-92 and grabbed his "stop sticks" from the back seat of his patrol truck. By the time he did this, Paige's vehicle was quickly approaching. Accordingly, he did not have time to deploy them as designed, rather as he ran across the road, he threw them into the east bound lane. Paige drove over them with her two driver side tires and continued east. He observed Davis slow down so that he (Shaklee) could retrieve them, and then Davis continued the pursuit. Although Shaklee could not pinpoint the exact location, he deployed the "stop sticks," CIIT investigators found some remnants about a half mile or less from the intersection of CO-92 and Hidden Springs Road.

At 11:34:09 on the body camera, dispatch told Davis to "terminate." It should be noted that this is 4 seconds after the approximate time that Paige hit the "stop sticks."

Pursuit on High County Garden's Driveway and Shooting:

At 11:34:23 S.D. indicated that the car turned off CO-92 and at 11:34:30, Davis informed Shaklee that Paige went off the highway and was driving by the "green houses." It should be noted that the driveway Paige turned into is associated with High County Gardens located at 29428 CO-92, Hotchkiss, Colorado and is a dead-end drive. At 11:34:48 on the body camera, Davis simultaneously stopped his patrol truck and got out. As he stopped, his body camera shows that there was a white pickup truck immediately to his left. **Exhibit 5** is a screen shot of the body camera footage at 11:34:48.

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Exhibit 5 – Screenshot of Body Camera at 11:34:48

According to Davis, as he stepped out of his patrol truck, he lost sight of the Honda. According to Davis he saw a white Dodge pickup driving north and two people running through a yard toward a house. According to Davis he remembered stopping next to the Dodge pickup. According to Davis, he thought Paige may have slowed down at the back of the circle drive looking for a way out and possibly stopping to flee on foot.

At 11:34:49 on the body camera, as Davis exited his truck, the recording shows a white sedan approaching him through his driver side window. ***Exhibit 6*** is a screen shot of the body camera footage at 11:34:49 showing Paige's driving towards Davis.



Exhibit 6 – Screenshot of Body Camera at 11:34:49

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At this same time, Davis drew his gun. At 11:34:50, as he got out of his truck, he briefly turned towards S.D., who can be seen holding her hands up in the air. **Exhibit 7** is a screen shot of the body camera at 11:34:50.



Exhibit 7 – Screenshot of Body Camera at 11:34:50

According to S.D., as Davis stopped, she observed Paige driving towards him and she expected to hear “metal on metal” because she thought Paige was going to hit their truck as she went between the two vehicles. As Davis’ door was closing, the front of Paige’s car was even with the back of the white pickup to the left of Davis as it approached him. **Exhibits 8 and 9** are screen shots of the body camera as Davis was closing his door.



Exhibit 8 – Screenshot of Body Camera at 11:34:50 Showing Paige Approaching Davis

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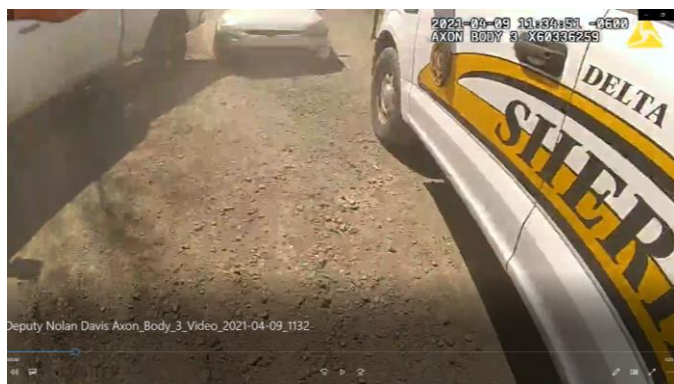


Exhibit 9 – Screenshot of Body Camera at 11:34:51 Showing Paige Approaching Davis

At this time, Davis yelled “stop” and fired his gun at Paige. CIIT investigators determined that Davis fired eight rounds at Paige’s car as it drove toward and past him. According to Davis as he got out of his truck, he perceived that Paige “gunned” the vehicle straight at him. According to Davis he didn’t have enough room to move forward, and he felt like he was trapped. According to Davis “the second she gunned that car, man I thought, I’m about to die.” According to Davis he perceived that the car was coming at him faster than he could run and when he “heard her floor it” he “felt like he could almost reach out and touch the vehicle when [he] started shooting.” According to Davis he started shooting as he ran backwards. According to Davis he continued shooting as the car moved beside him because he felt like she could turn the wheel and smash him against the side of his vehicle. Davis estimated that he fired five shots. The body camera shows Davis shooting at the vehicle until it crashed into a cistern at 11:34:53.

At the same time the pursuit was heading down the driveway near High County Gardens, T.C. and her three daughters were in their backyard. She saw a white car speeding down their driveway heading south but did not see who was driving the car because it was going so fast and creating a lot of dust. She saw that it had front end damage. She ushered her kids inside the house and at the same time saw a truck with lights on it traveling down the driveway. Shortly thereafter she heard three to four gunshots.

At the same time the pursuit was heading down the driveway near High County Gardens, M.D. was leaving his residence. He was heading north on his driveway when he saw a white car “barreling

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down the driveway” heading south. As it passed him its “breaks locked up” skidding and kicking up dust and “somehow it shot the gap between him and the trees in the front yard,” passing his truck on the right. As the car went by him, he saw a deputy traveling south on his driveway. He pulled forward and to the right as the deputy skidded to a stop parallel to his vehicle and exited his vehicle with his gun drawn. In his mirror, M.D. saw the white car approaching “going for broke” and traveling between his truck and the deputy’s truck. The deputy started moving back while yelling stop. The deputy did not start shooting until the car was between the trucks and M.D. estimated the deputy fired between five and six shots. The car continued forward and to the right and stopped when it hit a cistern. After the shooting stopped, M.D. backed his truck away to the south entrance of his driveway. M.D. estimated that the car was traveling over 25 miles per hour and was less than 15 feet from the deputy when he started shooting. M.D. perceived that “she was moving as fast as that little car could go in that 150 feet of takeoff.”

While M.D. was leaving, J.D. was outside. He heard a car coming down the driveway and he looked up and saw it pull into the driveway “going really fast and kind of out of control.” He saw her go in between his M.D.’s truck and the trees planted in their driveway “barely missing the trees and [M.D.’s] truck.” He saw the car make a three-point turn at the end of their driveway. He saw an officer pull up, get out of his truck, and stand in the driveway telling her to stop. She looked like she was about to hit him and that is when J.D. heard the officer start firing his gun. He observed that the car went really close to the officer after he started firing the shots. He perceived that she was going so fast that she was losing traction on the gravel and “sliding all over the place.” He remembered hearing the officer fire two or three shots.

CSP accident reconstruction investigators responded to the scene of the shooting. As they walked from CO-92 up the driveway they observed “over-defected” (low inflation) tire marks along the east side of the driveway. The marks were consistent with deflated driver side tires. **Exhibit 10** is a picture of the “over-defected” driver side tire marks they observed.

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Exhibit 10 – Over-Defected Driver Side Tire Marks

Investigators used a TOPCON GPS system to document the precise locations of multiple ground control points as well as the location of visible and critical pieces of evidence, including but not limited to the distinctive tiremarks made by Paige's deflated driver's side tires. They used Davis' body camera footage and surveillance footage from a nearby greenhouse to estimate the locations and speed of Paige's car during the incident. They were able to determine the trajectory of Paige's car after she made the three-point turn in the driveway, drove toward Davis, and crashed into the cistern, by not only observing the distinctive tiremarks, but by also tracking the marks from Paige's car at the cistern to where it turned around in the driveway and headed north.

Based on their recreation, they determined that as Paige was traveling south on the driveway she swerved to the left to avoid a northbound white pickup (M.D.'s truck). She turned the car around in the driveway approximately 548 feet south of CO-92 with Davis approximately 12 seconds behind her. ***Exhibit 11*** is a picture of Paige's driver side tire marks as she drove south between M.D.'s truck and the trees in the driveway.

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Driver's Side
Marks as Paige
Drove between
M.D.'s Truck
and the Trees

Exhibit 11 – Tire Marks going between M.D.'s Truck and the Trees

From the body camera footage, the accelerating car was at or close to the southernmost tree on the east side of the driveway when the Davis opened the door to exit his vehicle. Investigators measured a distance of 38.8 feet between the area of that tree and the front axle of Davis' vehicle. The green cones in **Exhibit 12** show the approximate location of Paige's vehicle as it was seen in the body camera footage screenshot depicted in **Exhibit 6**.



Approx.
Location of
Paige as seen
in Exhibit 6

38.8

Exhibit 12 – Approx. location of Paige as depicted in Exhibit 5

Using 29.376016 frames per second on the TLC video player and 54 frames from the time the car was in view as Davis exited his vehicle to the time the front tire of the car and the front tire of Davis'

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vehicle were next to each other, shows the actual time the car traveled to that point was 1.8 seconds. Using a speed of 15 miles per hour and a distance of 38.8 feet, they calculated an average velocity for the car of 21.99 feet per second. This means to travel across 38.8 feet, it would have taken the car 1.7644 seconds. As the car passed by the front left tire of Davis' vehicle, the outside left tire mark came within 18 inches of the left front tire of his vehicle. This was the tire mark only and not the side overhang of either vehicle including the mirrors. As the car passed Davis' vehicle, it continued to accelerate to a speed of more than 15 miles per hour. The car eventually struck an above-ground concrete holding tank causing the solid concrete lid to become dislodged. **Exhibit 13** is a picture of the trajectory of Paige's vehicle with the yellow cones showing the trajectory of her driverside tires as she approached Davis' truck, and the orange cones showing the trajectory as the front of her vehicle passed the front of Davis' vehicle.



Exhibit 13 – Trajectory of Paige's vehicle.

Exhibit 14 is a diagram created by CSP accident reconstruction investigators with the green line depicting Paige's southern route into the driveway, the purple line depicting her car backing up at the end of the driveway, and the yellow line depicting her trajectory towards Davis.

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Exhibit 14 – CSP Diagram of Trajectory of Paige’s vehicle.

Investigators noted that Paige’s trajectory was straight as she approached Davis. In reviewing the body camera footage as well as the accident reconstruction report, a reasonable inference can be made that Paige did not start steering away from Davis until he starting firing his gun. It should also be noted that it may have been possible for Paige to drive on the east side of the trees in the driveway, thereby avoiding having to drive between Davis’ and M.D.’s trucks, and circumnavigating both trucks all together. CIIT investigators conducted a controlled re-creation of this incident. At a distance of 38.8 feet (the distance in ***Exhibit 6*** that Paige was as seen through Davis’ driverside window) and traveling 15 miles per hour on similar road conditions, investigators were able to stop a full car car length before where Davis’ vehicle would have been. CSP accident reconstruction investigators calculated that Paige would have to have been traveling at 27 miles per hour to stop at Davis’ position when he first exited his vehicle. It is clear from the body camera, the accident reconstruction, and the re-creation that Paige did not attempt to stop when Davis opened his door and exited his vehicle.

An autopsy was performed by Dean Havlik, M.D. of The Pathology Group, P.C. The autopsy revealed that Paige had three gunshot wounds in an unknown sequence. One wound had an entrance on the top of Paige’s head and perforated her skull and brain. This caused brain injuries including bleeding around the brain and skull fractures. Pictures taken by CBI investigators at the scene show this as a large jagged wound on the top of her head with what appears to be protruding tissue. According to Dr. Havlik, this wound was instantly fatal and immediate resuscitation efforts would not have been likely to succeed. Another gunshot wound entered the left aspect of her neck, perforated the soft tissues of her face and

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exited her left cheek with no injury to the major vessels of her neck. Another gunshot wound had a partially tangential entrance on the left aspect of her neck, perforated her left lung, and penetrated the soft tissues of her left internal chest wall.

LEGAL ANALYSIS

Burden of Proof and Affirmative Defenses:

In Colorado, every crime is based on laws contained in Title 18 of the Colorado Revised Statutes. Criminal statutes have specific requirements, called elements, for what constitutes a crime. All prosecuting attorneys are required to prove each and every element of a crime beyond a reasonable doubt to the unanimous agreement of all jurors. Reasonable doubt is a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves. In addition to being required to prove every element beyond a reasonable doubt, the prosecution is also required to disprove all affirmative defenses beyond a reasonable doubt. An affirmative defense is a defense that if successfully raised, excuses the suspect from criminal liability. Criminal defendants are offered great latitude in raising an affirmative defense if there is sufficient evidence to support it. Self defense is an affirmative defense and ***requires the prosecution to disprove:***

1. He reasonably believed a lesser degree of force was inadequate, and
2. He used that deadly physical force in order to defend himself from what he reasonably believed to be the use or imminent use of unlawful physical force by that other person, and
3. He had a reasonable ground to believe, and did believe, that he was in imminent danger of being killed or of receiving great bodily injury.

Additionally, a police officer is justified in using deadly force if:

1. He has an objectively reasonable belief that a lesser degree of force is inadequate, and
2. The officer has objectively reasonable grounds to believe, and does believe, that he is in imminent danger of being killed or of receiving serious bodily injury.

Element - Reasonable belief that a lesser degree of force was inadequate:

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Davis' body camera shows that from the first time Paige was seen driving toward Davis at 11:34:49 to the time when he yelled stop and started firing his gun at 11:34:50, only one second elapsed. CSP investigators determined that at the speed she was going it took her 1.8 seconds to travel that distance. The accident reconstruction and re-creation showed that at the speed she was traveling and at the time she should have seen Davis exit his truck, she could have stopped before reaching him. Instead, the body camera footage shows that she continued to move toward him unabated until he started firing his gun.

Under the affirmative defense, Davis' reasonable belief is relevant. Davis described that Paige "gunned" the vehicle straight at him, he didn't have enough room to move forward, and he felt like he was trapped. According to Davis "the second she gunned that car, man I thought, I'm about to die" and he perceived that the car was coming at him faster than he could run. Davis stated that when he "heard her floor it" he "felt like he could almost reach out and touch the vehicle when [he] started shooting." According to Davis he started shooting as he ran backwards and continued shooting as the car moved beside him because he felt like she could turn then wheel and smash him against the side of his vehicle.

These observations were **objectively reasonable** based on the corroborating observations of M.D. and J.D. M.D. described the white car "going for broke" and traveling between his truck and the deputy's truck. He saw Davis move back while yelling stop and did not start shooting until the car was between the trucks. He estimated that the car was traveling over 25 miles per hour and was less than 15 feet from Davis when he started shooting. J.D. saw Davis pull up, get out of his truck, and stand in the driveway yelling at Paige to stop. She looked like she was about to hit him and that is when he heard Davis start firing his gun. He observed that the car went really close to the officer after he started firing the shots. He perceived that she was going so fast that she was losing traction on the gravel and "sliding all over the place."

The accident reconstruction shows that the outside of Paige's front drivers side tires came within 18 inches of Davis patrol truck. The reconstruction along with a review of the body camera shows that her trajectory was straight towards Davis and moved away from him at about the same time he started firing his gun.

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The evidence supports that as Davis was getting out of his vehicle, Paige attempted to drive unimpeded and at a relatively high speed between Davis and M.D.'s truck, directly at Davis, and only veering away from him as he opened fire. Given this evidence we cannot disprove that Davis had an objectively reasonable belief that a lesser degree of force was inadequate.

Element - Reasonable Belief of Imminent Use of Physical Force and Imminent Danger of Being Killed or of Receiving Great Bodily Injury:

As stated above the evidence shows that as Davis was getting out of his vehicle, Paige attempted to drive unimpeded and at a relatively high speed between Davis and M.D.'s truck, directly at Davis, and only veering away from him as he opened fire. Additionally, overhead maps and pictures of the location shows that Paige may have been able to drive around both trucks on the east side of the trees in the driveway, thereby circumnavigating Davis. As discussed above, from the time that the body camera showed Paige driving at Davis through his driver's side window, to the time he yelled stop and opened fire, only 1.8 seconds elapsed. Given this evidence we cannot disprove that Davis had a reasonable belief that Paige was using and/or was about to use physical force against him and that he reasonably believed that he was in imminent danger of being killed or of receiving great bodily injury.

Conclusion

The evidence supports that as Davis was getting out of his vehicle, Paige attempted to drive unimpeded and at a relatively high speed between Davis and M.D.'s truck, directly at Davis, and only veering away from him as he opened fire. The evidence supports that from the time he opened his door and got out of his truck, Paige traveled 38.8 feet in 1.8 seconds and that she could have stopped her vehicle before reaching him. Given the evidence, the People cannot disprove beyond a reasonable doubt that Davis was acting in Self-Defense, and the District Attorney cannot file criminal charges against Deputy Nolan Davis.