



## OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY  
18TH JUDICIAL DISTRICT  
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

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TO: Sheriff Tony Spurlock, Douglas County Sheriff's Office  
FROM: Brian Sugioka, Chief Deputy District Attorney, 18<sup>th</sup> Judicial District Attorney's Office  
DATE: 12/5/18

RE: DCSO case 18-92906, ACSO case 18-16891. Officer-involved shooting on August 31, 2018.

Dear Sheriffs Spurlock,

Consistent with the requirements of section 20-1-114 of the Colorado Revised Statutes, I have completed my review of the officer-involved shooting that occurred on August 31, 2018 on Highway 85 southbound near the intersection with Delva Road. Investigator Kristin McCauley of the Arapahoe County Sheriff's Office is the lead investigator. The investigation concerned the fatal shooting of Paul Edward Askins, [REDACTED], by Douglas County Sheriff's Deputies Gage Walpole, Larry Arguello, and Joe Pollack. I have been asked to review the conduct of Deputies Walpole, Arguello, and Pollack to determine if the deputies acted in compliance with the law. For the reasons set forth below, it is my opinion that the deputies acted in accordance with the laws governing use of force in self-defense and defense of others, and use of force by law enforcement, and that no criminal charges against any of the deputies involved are warranted.

### MATERIALS REVIEWED

I have reviewed videotaped interviews of all three deputies. I have also reviewed reports by law enforcement personnel from the Arapahoe and Douglas County Sheriff's Offices. These reports summarize the observations and actions of both law enforcement and lay-witnesses, as well as the physical evidence. I have reviewed photographs of the scene and the body-worn camera (BWC) footage of Deputies Walpole and Arguello. Deputy Pollack did not have a body-worn camera. I personally toured the scene several hours after the shooting, prior to the removal of any physical evidence. I have also reviewed the autopsy report of Mr. Askins. The investigation in this case was comprehensive, and I have sufficient information on which to render an opinion.

### FACTUAL SUMMARY

This summary is drawn from all of the materials I have reviewed. Any significant conflicts or disagreements in the evidence are noted. I have included information gathered after the fact about Mr. Askins to provide context for his actions and decisions in this case. However it should be noted that none of this information was known to the deputies at the time of the shooting.

On August 31, 2018 at approximately 1640 hours (4:40 p.m.), Deputies Arguello and Walpole were driving southbound on Highway 85 in a marked Douglas County Sheriff's Office (DCSO) patrol vehicle. Arguello and Walpole were riding together because Walpole was on his last day of field training, and Arguello was his field training officer.

Walpole graduated from the police academy in December 2016, after which he had worked in the Douglas County jail as a Detentions Deputy until June, 2018 when he began the field training program for patrol. Walpole was also a former member of the U.S. Marine Corps.

Deputy Arguello was a 20-year veteran of the Douglas County Sheriff's Office. He has held positions in the Douglas County jail, court services, and patrol. Arguello has been a member of the Douglas County SWAT team since 2004.

As Walpole and Arguello passed the intersection with Delva road, a black pickup truck entered the highway from a private driveway located on the west side of Hwy 85. The truck pulled out in front of the Deputies, requiring Deputy Walpole, who was driving, to slam on his brakes in order to avoid striking the black truck. The truck then swerved into the right lane, almost colliding with a vehicle that was in that lane.

Walpole and Arguello initiated a traffic stop due to the traffic violation. The vehicle in the right lane, which had almost been struck by the black truck, happened to be driven by an off-duty DCSO Deputy, Cassandra Stauffer. Stauffer later confirmed the initial sequence of events, and observed in her rear-view mirror the marked patrol vehicle occupied by Walpole and Arguello initiate a traffic stop on the black truck. Stauffer did not stop as she was off-duty and had no reason to believe the traffic stop would be out of the ordinary.

The black truck pulled over promptly when Walpole activated his emergency lights. Walpole stopped his patrol vehicle approximately 30 feet behind the black truck, with his red and blue lights remaining activated. Walpole approached the vehicle from the passenger side, and through the rear passenger side window asked for the driver's license, registration, and insurance. The driver eventually supplied those items, although she had to look up her insurance on her phone. There were four people in the truck, which had four doors and an extended cab. The driver was identified as [REDACTED]. The front seat passenger was later identified as [REDACTED]. The rear driver's side passenger was later identified as [REDACTED], and the rear passenger side passenger was later identified as the decedent Askins.

Very shortly after the stop was initiated, Deputy Joe Pollack arrived and pulled in behind Walpole and Arguello's patrol vehicle. Pollack had been traveling southbound on 85 and overheard on his radio about the traffic stop being initiated. He decided to pull over to see if the other deputies needed assistance, as he was only a minute or two behind the location of the stop. Pollack was a Detective with DCSO, and was on duty but in plainclothes. He did have a DCSO badge in a lanyard around his neck. Pollack was a 16 year veteran of DCSO, and had previously been a Detective with the New York City Police Department for 20 years.

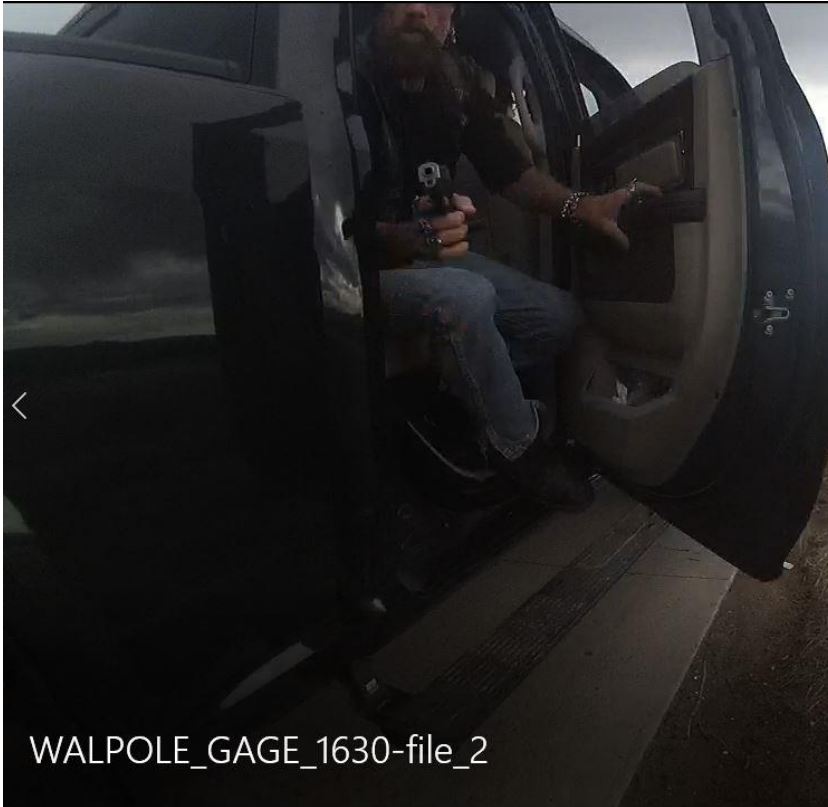
Walpole returned to his patrol vehicle to conduct a clearance of the driver, [REDACTED], using his Mobile Data Terminal (MDT). [REDACTED] came back as the restrained party in a restraining

order, with a male being the protected party. The deputies became suspicious that the rear passenger side passenger, Askins, might be the protected party based on the gender and age of the individual on the restraining order. Walpole reapproached the vehicle and requested identifying information from Askins. Askins gave a name and DOB, but hesitated and stumbled when providing that information. Walpole conversed for a moment with the driver and other passengers, then again asked Askins his name and DOB, and received a different answer. Walpole returned to his vehicle and entered the given name and DOB into his MDT. The name and DOB came back with no record found, which added to Walpole's suspicion that this individual might be the protected party. Walpole reapproached the vehicle, and was given a third variation on the name and DOB, which also came back with no record.

At that point Walpole, Arguello and Pollack had a conversation at their patrol vehicle about how to proceed. It should be noted that the bulk of Walpole and Arguello's conversations at their patrol vehicle were not captured on the BWC audio, as the BWC was muted during officer-to-officer communications. However the nature of the communications between the deputies is described in their interviews and other reports. Walpole and Arguello determined they had a basis to arrest Askins for false reporting, for providing false identifying information. At that point approximately 28 minutes had elapsed since the contact began.

Walpole reapproached the truck, again from the passenger side rear, with the intention of ordering Askins out of the vehicle and placing him under arrest. Arguello was behind Walpole, and Pollack approached the driver's side. None of the deputies had their weapons drawn. As Walpole reapproached the vehicle, Arguello can be heard cautioning him to "be careful".

Walpole arrived back at the truck and took up a position approximately 2-3 feet behind the rear passenger side door, at an approximate 45 degree angle to the truck body. Arguello took up a position approximately five feet behind Walpole, also on the passenger side. Pollack had taken up a position on the driver's side, approximately even with the driver's side rear door, from which he could observe the occupants. As Walpole approached, Askins could be seen poking his head partially out of the window and looking around, appearing to take note of the fact that Arguello was trailing Walpole. It is unknown if Askins at that moment registered the presence of Pollack on the other side of the truck. Walpole ordered Askins to step out of the vehicle. Askins stated something to the effect of "oh hell" in response. Askins then held up what appeared to be the head of a cane, and asked for a second. Askins appeared to lean forward as if reaching for something on the floor of the truck. Moments later, Askins quickly opened the rear door and began to exit. As he did so, he began to bring a silver colored semi-automatic pistol to bear, bringing it up in his right hand as the door opened. The below still image from Deputy Walpole's BWC captures that moment:



Walpole immediately noticed the weapon being brought to bear, and backed away quickly from the vehicle while bringing his own weapon up to a firing position. There was a slope away from the truck leading towards a drainage ditch on that side, and Walpole fell backward, losing his footing and falling to a seated position. Walpole recalled yelling out the word “gun”, as he was falling backward, but body camera footage revealed him yelling “don’t move, don’t move”.

Askins completely exited the vehicle and began to point the gun at Walpole. Walpole began firing his weapon, a 9mm pistol, at Askins from a seated position, from a distance of approximately 10 feet. An examination of Walpole’s firearm after the shooting revealed that he had fired 10 rounds.

From his position behind Walpole, Arguello was also able to see the weapon being brought to bear by Askins. The following image from Arguello’s bodycam captures his view, with Deputy Walpole in the foreground:



Arguello saw Walpole fall backward and believed he had been shot by Askins. Arguello retreated a few feet backward and to the left, such that he had partial cover from the right rear portion of the truck's tailgate, and began shooting at Askins with his .45 caliber pistol. Arguello emptied his weapon and reloaded with a new magazine, however he did not fire after reloading. An examination of Arguello's firearm and discarded magazine revealed he had fire 8 rounds.

Pollack was at the driver's side rear door, and was in the process of opening the back door in order to have a better view of the occupants. He saw Askins quickly exit the vehicle on the passenger side, and saw the gun in his hand. Pollack immediately heard gunshots. Based on how quickly the gunshots began, he believed Askins was shooting at Walpole and/or Arguello. Pollack fired his own weapon, a .45 caliber pistol, once from the driver's side, across the passenger seat, at Askins who could still be observed within the frame of the door. Pollack did not fire again after the first shot.

As previously mentioned, Pollack did not have a body-worn camera. However, the following image from Arguello's BWC captures the location of Pollack as well as Walpole immediately after the suspect had brought the gun to bear, at the approximate time that Pollack would have fired. Pollack is at the driver's side rear door, and Walpole is on the ground to the right of the picture, having fallen backward as described earlier. The suspect's hand with the gun can be seen at the right rear door, and is circled in red:



Within 2 seconds of the door opening, shots can be heard. It is not possible to discern from the body-cameras which deputy fired first, although it is apparent that Pollack and Walpole fired shortly before Arguello. From the first shot to the last, approximately 7 seconds elapsed. Askins remained standing with the gun in his hand until just before the last shot is fired, approximately 6 seconds after the first shot. Once Askins was down and did not appear to be moving, no additional shots were fired.

Once the shooting stopped and Askins appeared to no longer be a threat, the other three occupants of the vehicle were placed at gunpoint and eventually removed from the vehicle. All three were uninjured but visibly distressed. Once the other occupants of the vehicle were detained and the deputies checked each other for injuries, Deputy Pollack checked Askins for a pulse, and quickly determined he was deceased.

All three of the remaining truck occupants were subsequently interviewed, and denied any advance knowledge of Askins' intentions. They also all denied seeing him reaching for or holding the gun prior to him opening the rear door and bringing the gun to bear on the deputies.

An autopsy of Askins revealed he had been shot 8 times, by both 9 mm and .45 caliber bullets. 5 bullets were recovered from the decedent's body, three of which were 9mm rounds and two of which were .45 rounds. Since Walpole was the only one of the three deputies with a 9mm pistol, it can be stated with certainty that he hit the decedent at least three times. Both Pollack and Arguello had .45 caliber pistols. As of the date of this report, no ballistic analysis has been done to determine which of the recovered .45 bullets were fired from which of those deputies guns. However I do not consider that information to be necessary to the determinations I am called on to make in this letter.

A search of the truck revealed a number of bullet impacts consistent with the angles and locations from which Walpole and Arguello were shooting. Based on the absence of a bullet impact consistent with the direction Pollack was shooting, it is likely that the bullet from Pollack either struck Askins or came to rest some distance away from the shooting location.

Another pistol and ammunition was found in a case in the back seat, but was clearly not involved in the shooting incident. Also of note was a small wallet found in the driver's side front foot well. Based on the contents of the wallet it appeared to belong to Askins. In a clear pocket on the outside of the wallet, there was a handwritten note stating on the front "When you kill me call these numbers", followed by phone numbers for several of Askins associates. It is unknown when that note was written and at what point it made its way to the front driver's foot well.

An examination of the gun that had been in Askins' hand, a .40 caliber Smith and Wesson, indicated it was functional and loaded, but had not been fired. The gun was found to be stolen.

Subsequent interviews with Askins' friends and family indicated that he had recently expressed to them that he was "tired of being here" and had made comments about suicide. Askins had an extensive criminal history and had been in prison several times, most recently having been released in 2012. Askins also had two felony warrants for his arrest at the time of the shooting, one for \$100,000 and another with "no bond". Askins' felony history is summarized as follows:

1977- Texas conviction for Burglary, Use of a Prohibited Weapon, and Escape from the county jail. Sentenced to 5 years prison.

1981- Texas conviction for Negligent Homicide. Sentenced to probation which was successfully completed.

1985- Texas conviction for Burglary. Sentenced to 5 years prison.

1987- Federal conviction for Credit Card Fraud. Sentenced to 10 years prison.

2000- Texas convictions for Assault with a Deadly Weapon, Felon in Possession of a Firearm, and Forgery. Sentenced to 10 years prison.

2000- Federal conviction for Felon in Possession of Ammunition and Career Criminal. Sentenced to 13.5 years prison. Released on parole December, 2012.

March, 2018- Charged by the El Paso County Colorado District Attorney with Possession of a Schedule I/II controlled substance, Felony Menacing, and Possession of a Weapon by a Previous Offender. Failed to appear May 22, 2018 and a warrant was issued with no bond. This warrant was active at the time of the shooting in this case.

April, 2018- Charged by the El Paso County Colorado District Attorney with Burglary, Pawnbroker Act violations, Theft, and Unlawful Sexual Contact. A warrant was issued

in the amount of \$100,000. This warrant was active at the time of the shooting in this case.

### ANALYSIS

The two statutes at issue in this case are 18-1-704 C.R.S., concerning use of physical force in self-defense or defense of another, and 18-1-707 C.R.S. concerning use of deadly physical force by a peace officer in making an arrest.

As relevant to this case, 18-1-704(2) C.R.S. allows a person to use deadly physical force against another if (1) the actor reasonably believes a lesser degree of force is inadequate, AND (2) the actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury. 18-1-707 C.R.S. allows a peace officer to use deadly physical force to effect an arrest when he reasonably believes it is necessary to either defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The body-worn camera footage from Deputies Arguello and Walpole clearly demonstrate that Askins exited the vehicle in a sudden fashion and pointed a firearm directly at Walpole and Arguello, and that Walpole and Arguello could see the weapon being brought to bear on them. Walpole and Arguello reasonably concluded that Askins was about to shoot either or both of them. Thus, Walpole and Arguello's decisions to shoot were justified as acts of self-defense and defense of others.

Deputy Pollack articulates in his interview that he could see Askins and the gun in the frame of the door, and that it appeared Askins was bringing the gun to bear on Walpole and Arguello. Further, he was able to see and hear Walpole and Arguello firing upon Askins after Askins exited with the gun. Based on Deputy Pollack's location he would have been in position to make those observations. Although Askins never pointed the gun at Pollack, Pollack reasonably concluded that Askins was about to shoot at Walpole and/or Arguello, or had in fact already done so. Thus, Pollack's decision to fire was also justified.

It is true that in the course of firing at Askins the deputies were also firing towards, or in Pollack's case across, the truck, and thus potentially endangering the other occupants. However, given the immediate, obvious deadly threat they faced, they had no reasonable alternative other than to open fire from their respective locations.

The fact that Askins did not fire his weapon does not impact the legal conclusion regarding the deputies' use of force. Askins exited the car abruptly with a gun in his hand and pointed it at two of the deputies. Under the circumstances, they were not required to wait until Askins actually fired before using deadly force to defend themselves and each other. Further, given the speed with which the shooting started after Askins exited the vehicle and pointed his pistol, and the fact there were three deputies from three distinct vantage points all shooting at Askins, it was reasonable for each of the deputies to believe Askins was shooting.



## CONCLUSION

This incident was thoroughly investigated by law enforcement, and I have sufficient information to render an opinion as to the legality of the actions of Deputies Walpole, Arguello, and Pollack. The deputies reasonably believed they, and each other, were in imminent danger of being killed or receiving great bodily injury from Paul Askins at the time they shot and killed Askins. They also were entitled to use deadly force to effect an arrest of Askins once Askins brought the gun to bear on them. Thus, the actions of the deputies were legally justified and no charges are warranted.

Sincerely,

A handwritten signature in blue ink that reads "Brian Sugioka #30856". The signature is written in a cursive style.

Brian Sugioka  
Chief Deputy District Attorney  
18<sup>th</sup> Judicial District