

# DISTRICT ATTORNEY

*Brittney B. Lewton*



# 13<sup>TH</sup> JUDICIAL DISTRICT

Counties of Kit Carson, Logan,  
Morgan, Phillips, Sedgwick,  
Washington & Yuma

## OFFICER INVOLVED SHOOTING MORGAN COUNTY JUNE 14-15, 2019

### Materials Reviewed:

- Complete set of reports (case file) submitted by the investigating agency in this case: the Colorado Bureau of Investigations (CBI)
- Recorded interview of Brush Police Department Officer Dustin Quick
- Recorded interview of Brush Police Department Officer Aaron Arndt
- Recorded interview of Morgan County Sheriff's Office Deputy Tyler Price
- Recorded interview of Fabian San Miguel
- Bodycam audio/video of law enforcement involved
- Photographs of scene and officer equipment
- Hand-drawn diagrams of the scene from the officers involved
- Training records of the officers involved

### Witnesses:

- CBI Agents: Matthew Sailor, Kirby Lewis, Travis Kupka, Etick Bryant, Stephanie Olofson, Larry Brown
- Morgan County Sheriff's Office: David Martin, Jon Holt, Shauna Barbee, Kelvin Bernhardt, Kevin Bruntz, Tyler Price, Jesus Ramirez
- Brush Police Department: Derek Bos, Dustin Quick, Aaron Arndt
- Lay Witnesses: Brooks Massey, Jennifer San Miguel, Linda Dermont, Paige Ritter, Ruben Montez, Christina Middleton, Jessica Latowski
- Defendant: Fabian San Miguel

### Synopsis of Events:

On June 14, 2019 at approximately 9:30 PM, officers were dispatched to 17332 Highway 71 in Morgan County in reference to a stolen vehicle. Upon arrival of law enforcement and during the course of the initial investigation, a gunshot was fired at approximately 9:45 PM by Fabian San Miguel. Repeated loud, verbal commands were given by law enforcement officers in an attempt to cause Mr. San Miguel to surrender. After several minutes of clear commands being ignored, and in response to Mr. San Miguel shouting "suicide by cop", law enforcement officers involved returned fire including less-lethal beanbag rounds towards the vehicle. Fabian San Miguel was taken into custody and was found in possession of an AR-15 style rifle with a drum magazine. The incident occurred in a semi-residential area with at least one other citizen present.

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## Applicable Law:

§ 18-1-707(2), C.R.S.  
§ 16-2.5-301, C.R.S.  
§ 20-1-114(1), C.R.S.

## Issue Presented:

At issue are the actions of Morgan County Sheriff's Office Deputy Tyler Price and Brush Police Department Officers Dustin Quick and Aaron Arndt in relation to their use of deadly force upon Fabian San Miguel. The question to be answered is: Were these law enforcement officers, all armed, sworn peace officers, justified in using deadly force against the person of a wanted felon who had used a firearm during initial contact, prior to any use of force by the officers?

In answering this question, a review of C.R.S 18-1-707(2), C.R.S. must occur. The quoted statute provides in pertinent part:

A peace officer is justified in using deadly physical force upon another person...only 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; or (II) Is attempting to escape by the use of a deadly weapon; or (III) otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

This statute sets forth the standard by which we must measure the actions of Deputy Price, Officer Quick and Officer Arndt in answering the above question.

## Outline of Relevant Facts:

The facts outlined in all of the materials reviewed establish beyond a reasonable doubt that on June 14, 2019, Fabian San Miguel was a convicted felon with convictions for Burglary of a Dwelling in 2001, a class three felony, Attempt to Commit Escape in 2010, a class five felony, Possession of Methamphetamine in 2012, then a class four felony, and Burglary of a Dwelling in 2012, a class three felony. On that same date, Mr. San Miguel was wanted on a bench warrant for failure to appear in court in Logan County District Court case 19CR47 on charges including Possession with Intent to Distribute Methamphetamine, a level one drug felony. From that case,

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a Mandatory Protection Order had issued which prohibited Mr. San Miguel from, among other things, possessing or controlling a firearm.

On the June 14, 2019, Deputies Tyler Price and Jesus Ramirez of the Morgan County Sheriff's Office received a call from dispatch that Mr. San Miguel may be at the 17000 block of Highway 71 in Morgan County. Dispatch further advised that Mr. San Miguel may be in a stolen vehicle and that he further may be armed with an AR-15 and sawed-off shotgun. At the time of the call, Deputy Price knew that Mr. San Miguel was a convicted felon who was known to carry a firearm. Deputy Price informed Deputy Ramirez of this information during the response to the call. Given this information, Deputy Price responded to the residence with his agency issued AR-15 drawn with a round chambered.

The following facts come from the interviews of officers involved and is confirmed from review of the body cam footage. It is important to note that the events occurred after dusk, and as such, while the audio on the body cam is quite clear, the video is incredibly dark. Deputy Price made contact at the residence with a female identified as Jennifer San Miguel; the wife of Fabian San Miguel. In the midst of this conversation, Deputy Price heard a noise similar to leaves crunching and/or twigs breaking from the rear of the residence. Deputy Price then attempts to investigate the sound as he believed someone was attempting to flee the residence. While utilizing his flashlight, a gunshot is heard coming from the vicinity of the fleeing individual at 9:45 PM.<sup>1</sup> While it is unclear who fired this shot, it can safely be presumed that Mr. San Miguel fired the shot, as it is clear that the shot did not come from any of the officers and there is no evidence to suggest that there was another individual, armed, in the area. Deputy Price then retreats to his patrol vehicle, communicates via his radio that shots have been fired, and awaits backup.

Deputy Price then issues loud, verbal commands for Mr. San Miguel to come out with his hands up. After backup arrives in the form of Brush Police Department Officers Quick and Arndt, Deputy Price re-contacts Jennifer San Miguel who informs Deputy Price that the individual who was in the rear of the house is indeed Fabian San Miguel and confirms that he is armed with firearms. During this contact, another shot can be heard at 9:52 PM.<sup>2</sup> Again, while it is unclear who fired this shot, it can safely be presumed that Mr. San Miguel fired the shot, as it is clear that the shot did not come from any of the officers and there is no evidence to suggest that there was another individual, armed, in the area.

At this point it is important to note that Deputy Price and Officer Quick both serve together on the SWAT (Special Weapons And Tactics) team together. While the officers were attempting to locate Mr. San Miguel, an unknown vehicle turned its headlights on to the East of the Officers Quick and Arndt. Upon seeing the headlights, Officers Quick and Arndt positioned themselves

<sup>1</sup> Timestamp from Deputy Price's bodycam.

<sup>2</sup> Timestamp from Deputy Price's bodycam.

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behind their patrol vehicle and looking towards the suspect vehicle. The officers then issue loud, verbal commands for the suspect to turn off the vehicle and step out of the vehicle. The suspect then makes an unclear statement that is interpreted that there is a kid in the junkyard or that the suspect had a kid with him.<sup>3</sup> While trying to ascertain the next steps to take, the vehicle accelerates at a high rate of speed and makes contact with an obstruction in the area, causing the vehicle to become high-centered. It is unclear whether or not the vehicle is inoperable as the headlights remain lit.

All officers issue several loud, verbal commands to get out of the car, and to show the officers his hands. One officer shouts "you fucking move and I will shoot you". The suspect then shouts back "suicide by cop". Officer Quick then indicates that he is going to utilize "less-lethal" force by means of a bean-bag shotgun. Officer Quick loudly and verbally announces "bean bag, bean bag, bean bag" before firing a bean bag round at the passenger side window of the suspect vehicle. The entire sequence between the crashing of the vehicle through the deployment of the bean bag is approximately four minutes. Officer Quick shot a second bean bag round shortly after the initial round was fired.

Additional commands are given by the officers for the suspect to show them his hands. An officer can be heard asking if the suspect is behind the vehicle. Officer Quick can be heard state "he's got a gun", to which Officer Quick then exchanges the bean-bag shotgun for his agency issued AR-15. Approximately five seconds after this statement is made, an exchange of gunfire ensues. Given the limitations of audio on bodycams, it is difficult to discern who fired the first shots in the exchange. However, when interviewed each of the three officers involved confirm that the first shots were fired by the suspect (based upon the sound of gunshots as well as observed muzzle flash) and that the officers then subsequently returned fire. This explanation is supported by the bodycam audio and video despite the inherent limitations.

After the exchange of gunfire ceased, the suspect fired back at the officers, to which the officers returned fire again. From there, a standoff ensued while various officers attempted to encourage the suspect to surrender himself. An armored vehicle arrived with a negotiator to further attempt to encourage the suspect to surrender. After approximately five hours, the standoff concluded with the uninjured suspect in custody. The suspect was positively identified as Fabian San Miguel.

All three officers, when interviewed, gave an account consistent with the bodycam evidence as described above. Further, all three officers indicated that they were in fear for their safety, as well as the safety of the community at large when the officers returned fire in this case. Officer Arndt stated that he feared that if he had not fired, Mr. San Miguel would have entered the

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<sup>3</sup> There was a junkyard in the vicinity of the residence where the officers responded.

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nearby residence and created a hostage situation. Officer Arndt further stated that after hearing the initial shot fired from the suspect, that he believed there was a good chance he could die that night. Officer Quick similarly feared that the situation could escalate into a hostage situation had the suspect fled to the nearby residence, and further felt that the suspect would have used the firearm to effectuate his escape. Deputy Price also expressed fear for his life by the suspect shooting at him.

While the suspect in this case, Mr. San Miguel, was interviewed, his account is inconsistent at best. The investigating agents caught Mr. San Miguel in a lie several times throughout the course of the interview and noted that large portions of his account were not supported by the physical evidence at the scene. It is also important to note that Mr. San Miguel suffered no direct injuries from the discharge of the firearms in this case, but may have experienced pain as a result of Mr. San Miguel's own conduct. Further, Mr. San Miguel did state that he was attempting to kill himself and announced to law enforcement his intention to die via "suicide by cop".

Finally, the physical evidence discovered on scene was corroborative of accounts of the officers. The suspect vehicle had a broken passenger window where the initial bean bag was shot. Several bullet holes were observed on the suspect vehicle. Additionally, two fired cartridge cases were found near the suspect vehicle as were two fired bean bag rounds. Near the Brush Police Department vehicles, where both Officers Quick and Arndt were positioned, were found fifteen fired cartridge cases, as well as one unfired bean bag round. The casings found near the suspect vehicle were not consistent with the ammunition utilized by the officers involved in this case and support the notion that the suspect fired those shot. There was a bullet hole in the driver's side door indicating that the shot came from the suspect, as no officer was positioned to make the shot enter that door at that trajectory. Ultimately, the physical evidence discovered at the scene supports the account of the officers and contradicts the suspect's statements that he did not fire at officers.

### **Analysis of Facts and Law:**

Returning now to the statutory standard in measuring the use of deadly force by a peace officer in these circumstances, the statute speaks in terms of "reasonable belief". Thus, the standard to be utilized in judging the officers' behavior in this circumstance is an objective one.

Further, in measuring "reasonableness", the totality of the circumstances test applies, and information the officer was subjectively aware of regarding the suspect is relevant in determining whether the officers' actions were reasonable.

In the circumstances described by all the witnesses to the event, in consideration of the bodycam audio and visual evidence as well as the physical evidence collected on scene, Deputy Price and

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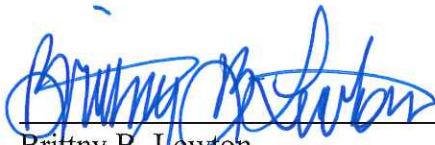
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Officers Arndt and Quick had a reasonable belief that the use of deadly force was necessary to defend themselves and the citizens in the immediate vicinity from what they reasonably believed to be the use or imminent use of deadly physical force, to wit: the suspect shooting at or near law enforcement officers in a quasi-residential area. Further, these officers had a reasonable belief that such force was necessary to effect an arrest of a person whom they reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon and was attempting to escape by the use of a deadly weapon. Finally, given the officers' knowledge of Mr. San Miguel's criminal record, prior history with firearms, and the suspect's actions involving the firing of shots, the officers had a reasonable belief that the suspect was likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

**Conclusion:**

As a result, the use of deadly force by Deputy Tyler Price, Officer Aaron Arndt and Officer Dustin Quick was clearly justified in the circumstances described above. As such, there is no basis in law for the filing of criminal charges against Deputy Tyler Price, Officer Aaron Arndt nor Officer Dustin Quick for this officer involved shooting.

  
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DATE: 10/11/19

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