

District/County Court, Otero County, Colorado Court Address:	FILED IN COMBINED COURT OTERO COUNTY, COLO. NOV 14 2014
PEOPLE OF THE STATE OF COLORADO vs. Defendant: JAMES ADAM PATRICK ASHBY (01/28/1983)	
Redacted	Case Number: ▲ COURT USE ONLY ▲ 14CR017 Div.: A
AFFIDAVIT FOR ARREST WARRANT	

ATTACHMENT "A"

Your affiant is an Agent with the Colorado Bureau of Investigation responsible for investigating violent crimes as well as Officer Involved Shootings. Your affiant has gained personal knowledge of this incident through the review of official police records/reports, interviews with witnesses, review of the evidence and an interview with the involved officer.

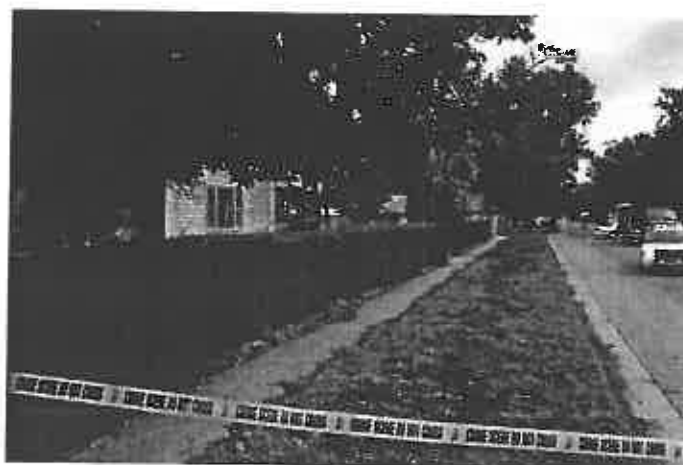
On October 12, 2014 at approximately 0200 hrs, Rocky Ford Police Officer James Adam Patrick Ashby (hereinafter referred to as "Officer Ashby") shot and killed Jack J. "Jacquez" (hereinafter referred to as "Jacquez") inside "Jacquez's" home at 400 North 3rd Street located in the City of Rocky Ford, County of Otero and State of Colorado. Due to the fact "Officer Ashby" was on duty at the time of the shooting, the Otero County Critical Incident Team, with the assistance of Investigative Agents and Crime Scene Agents with the Colorado Bureau of Investigations (hereinafter referred to as CBI), was activated for the purpose of investigation the circumstances leading up to, during and after the shooting of "Jacquez". As a result of the shoot teams' investigation, sufficient evidence was obtained to believe probable cause exists in criminally charging Officer James Adam Patrick Ashby with the murder of Jack J. "Jacquez".

"Officer Ashby" is a Colorado P.O.S.T. certified Police Officer with approximately four (4) and a half years of law enforcement experience. "Officer Ashby" began his law enforcement career with the Walsenburg Police Department in January of 2009 and worked as a Police Officer until resigning in October of 2013. On June 23, 2014 "Officer Ashby" was hired by the Rocky Ford Police Department as a Police Officer. At the time of this incident, "Officer Ashby" was working as a patrol officer from 1900-0500 with Sunday, Monday and Tuesday's off. "Officer Ashby" would state in an interview subsequent to the shooting that he began his tour of duty

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from home at 1900 ho on October 11, 2014 wearing an black Rocky Ford Police Department uniform displaying a badge of authority; wearing a black gun belt containing a right handed holster for his ("Officer Ashby's") personally owned HK USP .40 caliber semi-automatic handgun that carries 13 .40 caliber rounds in the magazine and one (1) .40 caliber round in the chamber, three (3) spare magazines loaded with 13 .40 caliber rounds, handcuffs, OC spray, flashlight and a portable police radio. In addition, "Officer Ashby" was driving a marked Rocky Ford Police Car.

At approximately 0200 hrs on October 12, 2014, "Officer Ashby" and Kyle Moore, a civilian ride along, were on routine patrol in "Officer Ashby's" marked Rocky Ford Police car traveling Westbound Swink Avenue; a two (2) lane highway for Westbound traffic, also known as Highway 50, located in the City of Rocky Ford, County of Otero and State of Colorado. While patrolling in what "Officer Ashby" believed to be the four (4) or five (5) hundred block of Swink Avenue, with no traffic, "Officer Ashby" reported his attention was drawn to an individual (later identified as Jack J. "Jacquez" and hereafter referred to as "Jacquez") dressed in a "dark lime green Celtic color jacket", blue jeans and possibly a hat, skateboarding in the middle of the right hand lane of Swink Avenue. Maneuvering his marked patrol car next to "Jacquez", "Officer Ashby" reported he yelled "Hey bro" to "Jacquez" through the open front passenger window of his patrol car in an attempt to gain "Jacquez's" attention. In response, "Officer Ashby" said "Jacquez" yelled, "Fuck you" in what "Officer Ashby" described as a "pissed off" and "dismissive" demeanor. "Officer Ashby" stated he continued to parallel "Jacquez" and yelled back to "Jacquez", "Talk to me." "Officer Ashby" said "Jacquez" ignored him ("Officer Ashby") and continued to skateboard westbound on Swink Avenue. After following/paralleling "Jacquez" for what he ("Officer Ashby") estimated to be 10 yards, "Jacquez" got off his skateboard and walked to the sidewalk on the north side of the road. Once on the sidewalk, "Officer Ashby" said "Jacquez" continued to walk westbound toward 3rd Street in what he ("Officer Ashby") described as a gate faster than a walk but slower than a jog and in an "erratic" manner passing an entrance to the yard of the home located on the northeast corner of 3rd Street and Swink Avenue. That house would later be identified as 400 N 3rd Street; "Jacquez" home. "Officer Ashby" stated he drove past "Jacquez" once "Jacquez" was on the sidewalk subsequently parking his ("Officer Ashby's") car at an angle in the right lane of Swink Avenue with the front end of the patrol car facing a northwest direction and the back end of his patrol car in a southeast direction.



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Once he parked his patrol car, "Officer Ashby" stated he got out the patrol car through the front driver's side door and stood between the open door and the patrol car watching "Jacquez". "Officer Ashby" stated he observed "Jacquez" make an abrupt U-turn as he ("Jacquez") walked toward N 3rd Street and "B-lined" eastbound toward an opening in the sidewalk that lead to the side yard of 400 N 3rd Street. Upon reaching that opening, "Officer Ashby" stated "Jacquez", turned northbound into that yard. Stating he ("Officer Ashby") had never met "Jacquez", never arrested "Jacquez", didn't know where "Jacquez" lived but, had heard of "Jacquez", "Officer Ashby" thought "Jacquez" was possibly "trespassing" into the yard of 400 N 3rd Street and maneuvered around the rear driver's side of his patrol to follow "Jacquez". Upon reaching the trunk of his patrol car at a distance "Officer Ashby" estimated to be approximately "seven (7) yards from "Jacquez", "Officer Ashby" said "Jacquez's" was positioned in a fashion in which his ("Jacquez's") back was to him ("Officer Ashby") and his ("Jacquez") left shoulder partially bladed toward "Officer Ashby" allowing "Officer Ashby" to see "Jacquez" maneuvering his ("Jacquez's") right hand into something "Jacquez" had concealed in front of him ("Jacquez"). Although lighting conditions were dark due to the time of night, "Officer Ashby" reported there was enough ambient light from street lights to see "Jacquez" movements. At that point in time, "Officer Ashby" said he thought to himself, "What is this guy going into this yard for."

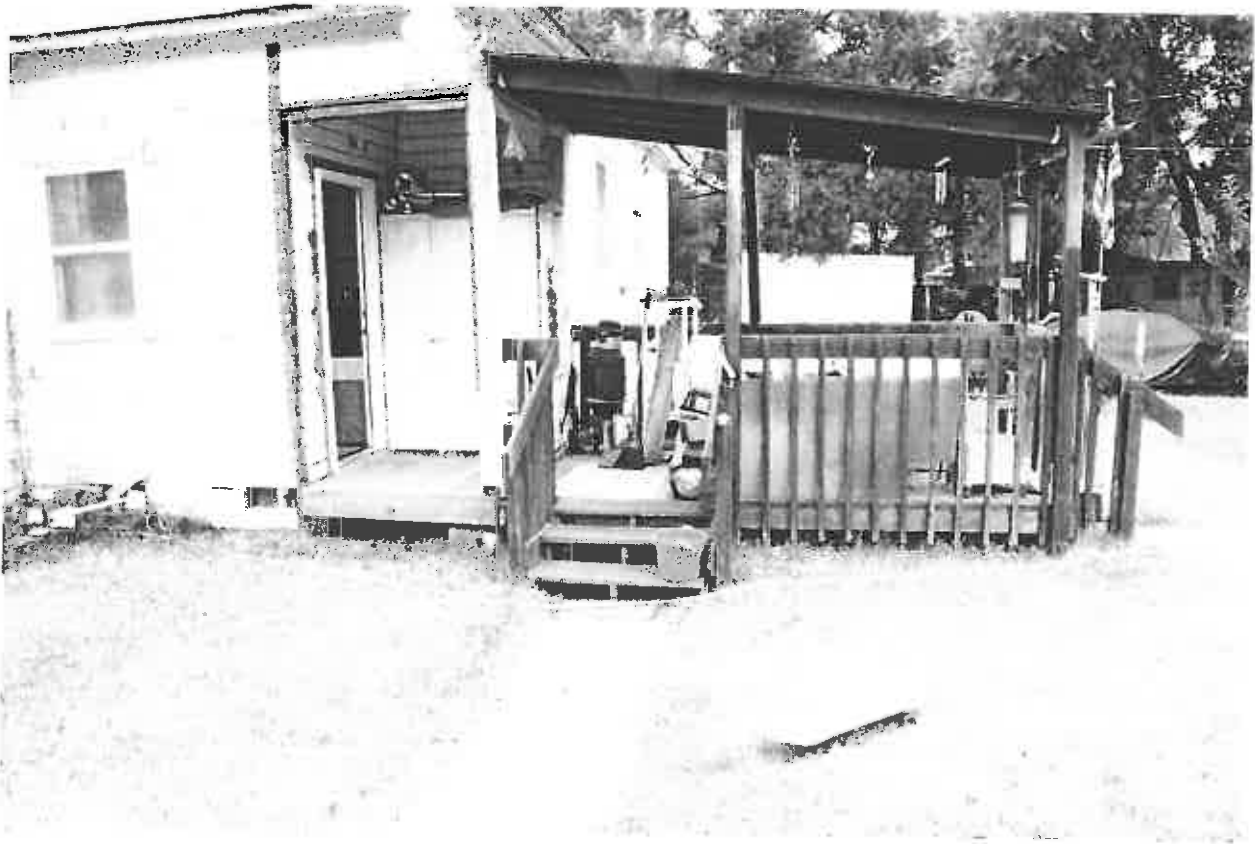


Unaware of what "Jacquez" had in front of him ("Jacquez") and unaware of why "Jacquez" was walking toward the back porch of 400 N 3rd Street, "Officer Ashby" followed "Jacquez" without identifying himself as a police officer. As "Jacquez" approached the steps of the porch, "Officer Ashby" said he ("Officer Ashby") ordered "Jacquez" to show him ("Officer Ashby") his ("Jacquez's") hands "three (3) times". "Officer Ashby" said "Jacquez" refused to comply with his ("Officer Ashby's") demand and turned around facing "Officer Ashby". At that point in time,

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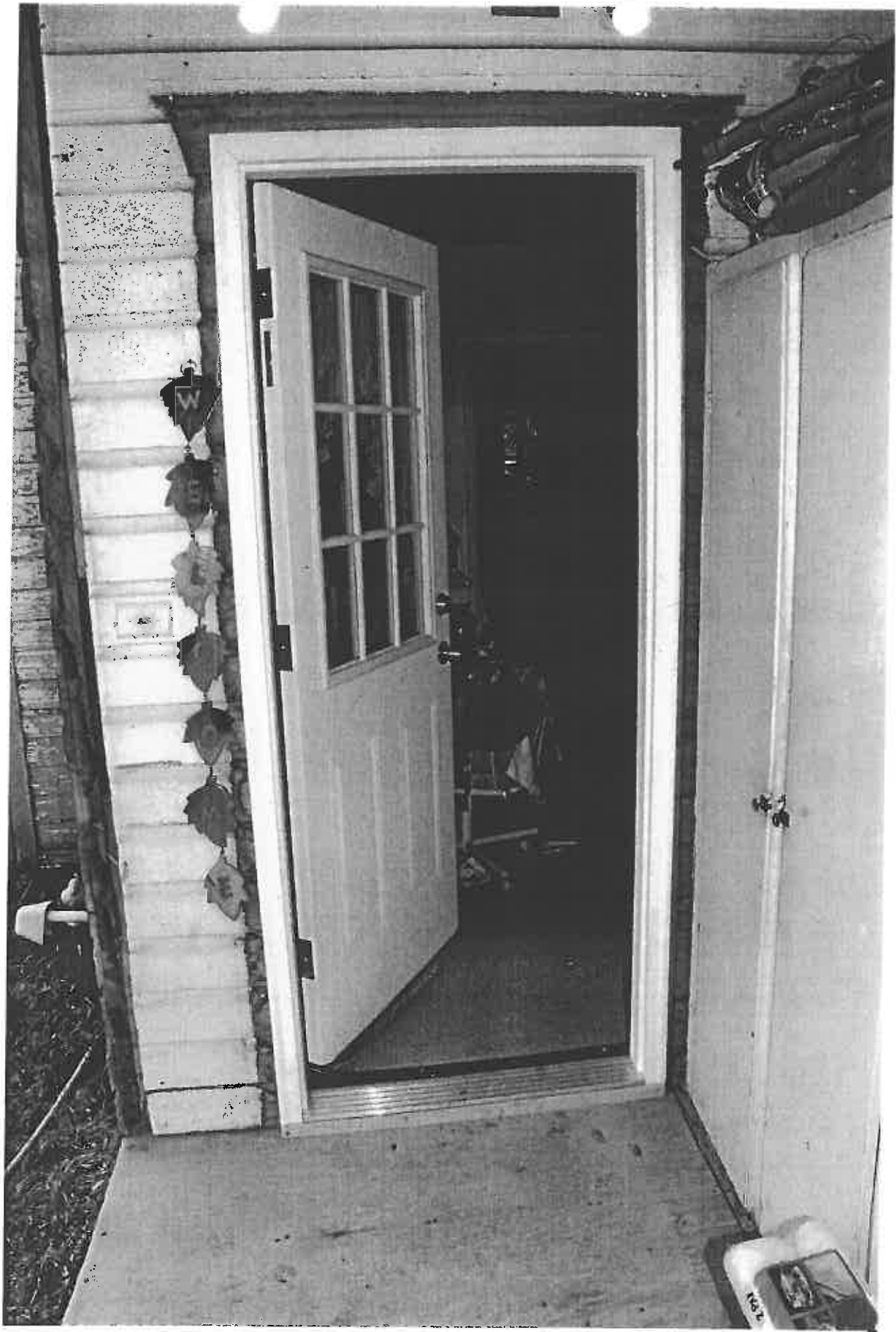
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"Officer Ashby" said he would see "Jacquez" reaching "aggressively" into a bag he ("Jacquez") held in front of him ("Jacquez") with his ("Jacquez's") right hand; could see an expression on "Jacquez's" face he ("Officer Ashby") described as "wanting to hurt you" and believed "Jacquez" was reaching for a weapon. In response, "Officer Ashby" said he drew his duty weapon with his right hand, pointed the weapon at "Jacquez" and ordered "Jacquez" to "Show me your fucking hands!" "Jacquez" continued up the porch stairs where there was a door, and, according to "Officer Ashby", with his ("Jacquez") back against the outside wall of the house, "Jacquez" began "pounding" or "kicking" the door. As "Jacquez" pounded and or kicked the door, "Officer Ashby" stated "Jacquez" removed his hand from the bag allowing "Officer Ashby" to see "Jacquez" had nothing in his hand. "Officer Ashby" holstered his duty weapon and grabbed "Jacquez" left wrist with his ("Officer Ashby's") left hand. "Officer Ashby" said the back door "Jacquez" was pounding or kicking on opened at which time "Jacquez" entered the house dragging "Officer Ashby" behind. Upon entering the house behind "Jacquez" in what "Officer Ashby" estimated to be one (1) to two (2) steps, "Officer Ashby" said he could see a "silhouette" inside the door and could hear a female voice saying "What are you doing here?" or "Why are you here?" That female was subsequently identified as "Viola" "Jacquez", Jack "Jacquez's" mother. At that time, "Officer Ashby" reported he thought "Jacquez" was breaking into the house.



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As "Jacquez" entered the house with "Officer Ashby" holding on, "Officer Ashby" said he yelled "Stop! Stop! Stop!" but "Jacquez" refused and continued into the house. "Officer Ashby" released his hold of "Jacquez", removed his Oleoresin Capsicum (hereinafter referred to as OC) spray with his left hand and sprayed OC toward the back of "Jacquez's" head. "Officer Ashby" said he was unable to see inside the kitchen due to darkness but, was able to see a female standing to his ("Officer Ashby's") right inside the kitchen. "Officer Ashby" stated when he sprayed his OC, he was standing in or about the threshold of the back door and "Jacquez" was approximately three (3) to four (4) feet from him ("Officer Ashby").

After deploying his OC, "Officer Ashby" stated he took a step back, holstered his OC at which time he ("Officer Ashby") could see "Jacquez" moving about in the kitchen in a "random way, twitchy movements." Although asked to describe what he meant by "random way" and "twitchy movements," "Officer Ashby" was unable. "Officer Ashby" then stated "Jacquez", whose back was to "Officer Ashby", grabbed a bat from an unknown location near a door way that led from the kitchen into the living room and raised the bat from his ("Jacquez's") right side to his ("Jacquez's") left side with the head of the bat raised in the air in a manner "Officer Ashby" said appeared to him as if "Jacquez" was "loading up" to strike him ("Officer Ashby") with the bat. "Officer Ashby" reported he could not see "Jacquez" due to the darkness; however he could see the bat was light in color and had the name "WILSON" stenciled on the bat in black. "Officer Ashby" yelled for "Jacquez" to "drop the bat" two (2) times but "Jacquez" refused to comply. It is at this time "Officer Ashby" said he feared "Jacquez" was going to strike him in the head with the bat; he ("Officer Ashby") feared he would not be able to draw his gun in time and that before drawing his weapon, "Officer Ashby" stated he had made the decision he was going to shoot "Jacquez". Unable to determine whether or not "Jacquez" was facing him due to darkness, "Officer Ashby" disengaged from "Jacquez" by moving back toward the back door while drawing his duty weapon. With his weapon in his right hand canted at a 45 degree angle, his weapon "breast nipple" high, his right arm flexed at the elbow, his body leaning back, "Officer Ashby" stated he fired two (2) quick shots at "Jacquez". When asked, "Officer Ashby" estimated he was approximately three (3) yards from "Jacquez" when he fired his weapon. After firing the two (2) shots, "Officer Ashby" said "Jacquez" took "a step or two (2)" forward then fell to the ground in a curled up fetal position. "Officer Ashby" said he holstered his weapon, moved out to his patrol car where he, for the first time, called out his location to dispatch announcing "shots fired." When asked to further describe and demonstrate how "Jacquez" was moving about after arming himself ("Jacquez") with the bat, "Officer Ashby" stated he couldn't recall specifically the movement or physical positioning of "Jacquez" in the doorway leading from the kitchen to the living room.

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Although "Officer Ashby" stated after firing his weapon things were "fuzzy;" he stated he yelled for Kyle Moore, his civilian rider who was still seated in the marked patrol car, to grab his trauma kit, grabbed gloves and went back inside to provide first aid to "Jacquez". When he re-entered the house, "Officer Ashby" stated lights in the house were on; "Jacquez" was on the ground in a fetal position in a door way that lead from the kitchen to the living room. "Officer Ashby" said he grabbed "Jacquez" by the feet, pulled "Jacquez" back into the kitchen at which time Rocky Ford Police Officer Timothy Moore arrived on scene and entered the house. Simultaneously to Officer Moore entering the house, "Officer Ashby" said he could not see the bat "Jacquez" was holding at the time of the shooting and yelled, "Where's the bat? Where's the bat?" According to "Officer Ashby", "Viola" "Jacquez" made a comment to the effect there is no bat at which time "Officer Ashby" yelled for Officer Moore to look for the bat. "Officer Ashby" said Officer Moore stated he did not see a bat. As "Officer Ashby" focused his attention on providing first aid to "Jacquez", he ("Officer Ashby") reported seeing "Viola" "Jacquez" "messing around" inside the bag "Jacquez" previously had his ("Jacquez") hand inside.



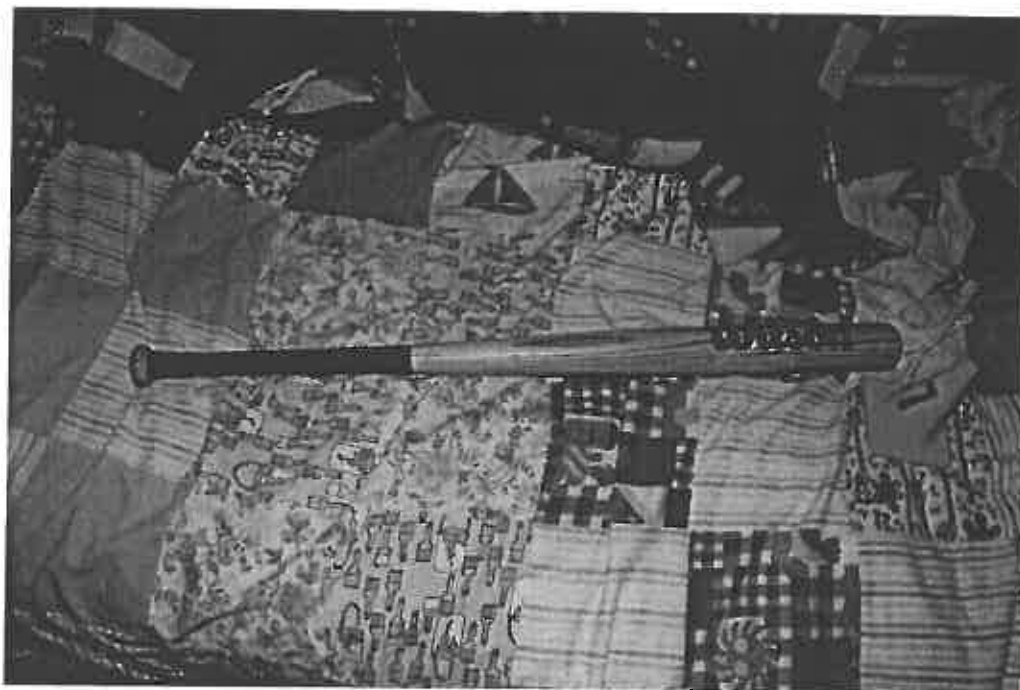
Black bag and contents



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After rolling “Jacquez” over and locating an injury to his (“Jacquez’s”) back that was bleeding, “Officer Ashby” stated he placed a compression type bandage over the wound, rolled “Jacquez” from his (“Jacquez”) stomach to his (“Jacquez”) back and began CPR. Medical professionals subsequently arrived on scene, took over first aid measures at which time “Officer Ashby” said he began looking for the bat “Jacquez” had armed himself with eventually locating that bat on “Viola” “Jacquez” bed partially covered by bed sheets. Upon locating the bat, “Officer Ashby” reported he felt he “shouldn’t be in the house” and exited.



“Viola” Bettianne “Jacquez” (hereinafter referred to as “Viola”) is Jack “Jacquez’s” mother who reported witnessing the shooting. During an interview with “Viola”, she confirmed she lived in the home at 400 N 3rd Street with “Jacquez” and Mariah Talmich (hereinafter referred to as

Talmich), "Jacquez's" pregnant girlfriend.

On October 11, 2014 at approximately at approximately 2030 hrs, "Viola" said she returned home from a wedding shower when "Jacquez" asked for a ride to Julian Lucero's house, a friend of "Jacquez's" whom he ("Jacquez") had known since the age of 13. "Viola" drove "Jacquez" to Lucero's home in the area of 12th Street in Rocky Ford. After dropping "Jacquez" off at Lucero's, "Viola" returned home and began watching television. Falling asleep in her living room, "Viola" said she was woken at approximately 2200 hrs by a phone call from "Jacquez". According to "Viola", "Jacquez" was inquiring as to the whereabouts of "Talmich" as he ("Jacquez") needed a ride home. "Viola" stated she advised "Jacquez" that she did not know where "Talmich" was and had not seen her. The conversation subsequently ended and as it did, "Viola" said she heard the toilet flush in the bathroom followed by "Talmich" exiting the bathroom. "Viola" informed "Talmich" that "Jacquez" had called looking for her ("Talmich") and wanted a ride home. After informing "Talmich" of the phone call, "Viola" said "Talmich" left to go pick up "Jacquez" and she ("Viola") retired to her ("Viola's") room located off of the dining room of the house which is next to the kitchen.

Falling asleep at what "Viola" believed to be midnight, and not hearing "Talmich" return home from picking "Jacquez" up, "Viola" said she was woken at approximately 0200 hrs by the sound of "Jacquez" requesting she ("Viola") open the back door. Responding to "Jacquez" request, "Viola" rose from her bed, walked through the living room into the kitchen at which time she could see "Jacquez" standing outside the back door looking inside the house. "Viola" said the "bright" exterior light on the porch was on and easily illuminating "Jacquez".



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As "Viola" walked into the kitchen toward the back door, she could hear "Jacquez" talking to an unknown person, but could not recall what was being said. Fearing someone was attempting to attack "Jacquez", "Viola" stated she opened the door and immediately saw a "puzzled" expression on "Jacquez" face as he ("Jacquez") began to enter the kitchen. As "Jacquez" took what "Viola" described as "one (1)" step into the kitchen from the porch, she ("Viola") could see "Jacquez" holding his skateboard with his right hand under her right arm. "Viola" continued reporting she could see the skateboard moving backward and at that time, saw an unknown individual behind "Jacquez". Simultaneously, "Viola" said she could hear an unknown male voice telling "Jacquez" something but could not understand or recall what was being said. As "Jacquez" continued to walk inside the kitchen, "Viola" said "Jacquez" was bent over at the waist toward the ground at which time he ("Jacquez") lost control of his skateboard. No longer in possession of the skateboard, "Viola" said "Jacquez" continued to move further inside the kitchen. As "Jacquez" moved deeper into the kitchen, "Viola" said he ("Jacquez") was able to stand up straight followed by the unknown individual who was what "Viola" estimated to be two (2) to three (3) steps behind "Jacquez". It was at this time that "Viola" said "Jacquez" was near the door way which leads from the kitchen into the living room when she heard what she described as two (2) loud bangs in quick succession. Simultaneously to hearing the loud bangs, "Viola" said she saw "Jacquez" fall to the ground followed by the individual behind "Jacquez" saying something she could not understand. "Viola" would go on to report that she realized the loud bangs she heard were gunshots.

Following the gunshots and following "Jacquez" falling to the floor, "Viola" said she was uncertain as to the identity of the individual who had shot her son but could discern the individual was wearing all black clothing. "Viola" continued stating after the shots were fired, she observed what she ("Viola") described as a "straight thick line" being sprayed into the kitchen. "Viola" said she thought it was a "tazer" being fired but realized it wasn't as she stated she had difficulty breathing and her eyes were "burning."

Once she realized "Jacquez" had been shot, "Viola" said she moved toward him and could see blood on his ("Jacquez") back. Stating she ("Viola") knew "Jacquez" was dead, "Viola" said she stepped around "Jacquez" into the living room and struck an unknown object with her foot. Kicking that object away and under a reclining chair, "Viola" said she eventually bent down, removed the object from under the recliner and threw it onto her bed. Although asked, "Viola" stated she did not know what the object she kicked and eventually tossed on her bed was.

Toward the end of "Viola's" interview, she confirmed a wooden bat was in the kitchen and had been for some time. "Viola" reported the last time she saw the bat it was leaning against the wall near the back door. Although asked, "Viola" could not recall when she saw the bat near the back door stating the bat was often moved to and from various locations inside the kitchen.

"Viola" stated she never heard the individual who shot "Jacquez" identify himself as a police officer; stated the individual who shot "Jacquez" was standing in the door frame of the back door, leaning inside the kitchen with his arms straight out when the shots were fired at "Jacquez". Furthermore, "Viola" stated that although no lights were on in the kitchen, there was enough light from the outside back porch light to illuminate the kitchen.

Kyle Moore, a civilian riding with "Officer Ashby" at the time of the shooting, and brother of current Rocky Ford Police Officer Timothy Moore, confirmed "Officer Ashby" was in an official black Rocky Ford Police Department uniform displaying a badge of authority and driving a marked Rocky Ford Police Department vehicle at the time of this incident. Moore said he was riding in the front passenger seat of the patrol car and "Officer Ashby" was driving.

At approximately 0200 hrs on October 12, 2014, Moore said "Officer Ashby" was on routine patrol westbound on Highway 50 (also known as Swink Avenue) when his (Moore's) attention was drawn to an unknown individual riding a skateboard, alone, down the middle right lane of Highway 50. Moore stated he first noticed the skateboard (hereinafter referred to as "Jacquez") at approximately 4th Street and Highway 50 and stated "Jacquez" was dressed in a dark colored jacket with a hood that was covering "Jacquez" head/hair; unknown colored pants and a dark colored backpack with no distinguishing characteristics.

Upon noticing "Jacquez", Moore said "Officer Ashby" maneuvered the passenger side of his (Ashby's) patrol car next to "Jacquez" left side. With the front passenger window of the patrol car rolled down, Moore said "Officer Ashby" leaned over toward the window stating, "Hey? Come here." In response, Moore said "Jacquez" made the statement/comment to the effect "I'm going home or something referring to being home." Moore said "Jacquez" stopped skateboarding, got off his skateboard and began walking toward a white house located on the northwest corner of Highway 50 and 3rd Street. According to Moore, "Officer Ashby" had maneuvered and stopped his marked patrol car in a manner in which the front of the car was angled in a northwest direction with the front end of the car stopping in/on the shoulder of the road and the tail end of the car on Highway 50.

As "Jacquez" picked his skateboard up and walked toward the house, Moore said "Officer Ashby" got out of the patrol car and stood facing the house between the open front driver's side door and the patrol car. As "Jacquez" continued walking northbound into the back yard of the white house, "Officer Ashby" followed walking behind the back end of the patrol car then northbound toward the back yard. Moore continued stating he lost sight of both "Jacquez" and "Officer Ashby" as the two (2) entered the back yard due to a large tree in the yard blocking his (Moore's) view. As Officer Ashby followed "Jacquez", Moore said he could hear "Officer Ashby" yelling, "stop" and to come towards him (Ashby).

Although Moore said he had lost sight of "Officer Ashby" and "Jacquez" once they both entered the back yard of the white house, Moore (who he remained in the patrol car with the front passenger window rolled down) could hear rapid and loud banging on an unknown door. Unable to see the door or see where either "Officer Ashby" or "Jacquez" was, Moore stated he heard "Officer Ashby" yell, "Show me your hands! Show me your hands!" In what Moore estimated to be 30 seconds to a minute after hearing "Officer Ashby" yelling for "Jacquez" to show him (Ashby) his ("Jacquez's") hands, Moore said he heard "Officer Ashby" yell, "Drop the bat! Drop the bat!" followed by one (1) to two (2) gunshots. Shortly after hearing the gunshots, Moore said he heard "Officer Ashby" announce over his (Ashby's) radio "shots fired" and the location of the incident. Prior to that announcement, Moore stated "Officer Ashby" had made no radio announcement of his location, what he was doing or who he was contacting.

Following the radio announcement, Moore said "Officer Ashby" came "jogging" out to the patrol car ordering Moore to retrieve a medical kit from the back seat of the patrol car. While Moore complied with that order, he (Moore) said "Officer Ashby" went to the trunk area of the patrol car where he (Ashby) put on protective gloves. "Officer Ashby" then returned to the house followed by Moore carrying the medical kit. Standing at the foot of the porch, Moore said he handed "Officer Ashby" the medical kit and returned to the patrol car. Moore went on to report he never entered the house, never looked inside the kitchen and did not see anything inside the house.

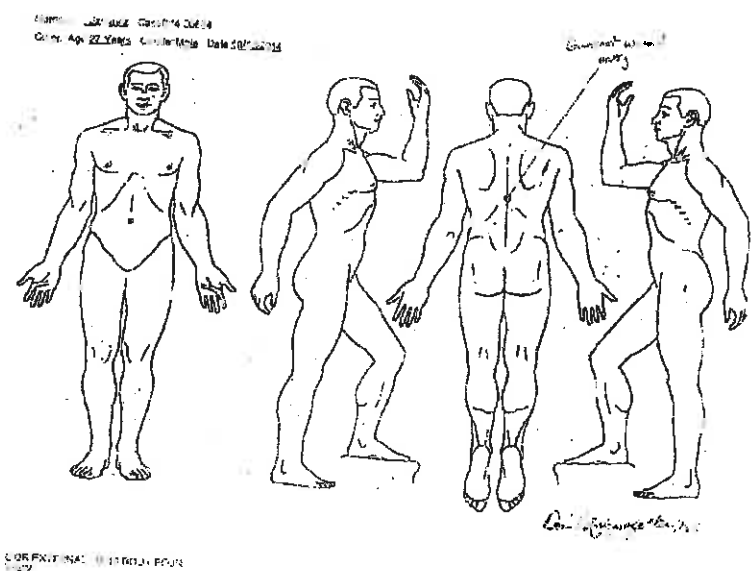
Moore would later report in a second interview on October 13, 2014, when asked if he ever heard "Jacquez" respond or say "fuck you" to "Officer Ashby" when initially contacted on the street outside his ("Jacquez's") residence. Moore said he never heard "Jacquez" say "fuck you" contradicting "Officer Ashby's" account of the initial contact, and re-iterated "Jacquez", when initially contacted, stated something to the effect "he ("Jacquez") was home or this was his ("Jacquez") house." Moore further confirmed "Jacquez" walked directly from the road to the back yard of 400 N 3rd Street never walking westbound on the sidewalk toward N 3rd Street then turning and making a "B-line" back to the entrance to the back yard of 400 N 3rd Street, again contradicting "Officer Ashby's" account of the incident. Furthermore, when asked, Moore stated he could not recall whether any lights were on outside 400 N 3rd Street.

During an interview with Mariah Talmich, she confirmed she was "Jacquez" girlfriend and is pregnant with his child. According to Mariah she was aware "Jacquez" was at Darlene's (last name unknown at the time of the interview but later identified as Darlene Romero) house visiting with Julian Romero, Darlene's brother. Julian and "Jacquez" were friends. At approximately 2230 hrs on October 11, 2014, Mariah stated she drove to Darlene's house to visit "Jacquez". Having never been to Darlene's home, Mariah did not know the exact address but stated it was on 12th Street in Rocky Ford across from a nursing home. While visiting "Jacquez", Mariah said he was fine but upset Mariah couldn't stay. Mariah reported she had to be up by 0530 hrs on October 12, 2014 to get ready for work. Mariah subsequently left Darlene's home returning to 400 N 3rd Street by approximately 2245 hrs. By 2300 hrs, Mariah said she was asleep in the bedroom she shared with "Jacquez" in the northwest corner of the house near the front door and slept until being woken at approximately 0200 hrs on October 12, 2014 when she heard "cops" yelling a "Jacquez". Mariah said she heard "Jacquez" tell the "cops" to "Leave me alone." Subsequent to that conversation, Mariah said she heard gunshots followed by seeing lights being turned on inside the house. Mariah then got out of bed, walked out of her room to see "Jacquez" on the floor. Mariah said she did not witness the shooting.

Crime scene processing of the scene was conducted by Colorado Bureau of Investigation Agent Kevin Torres. During the processing of the scene, Agent Torres measured the distance from the back door off of the porch where "Jacquez" made entry to the door way which leads from the kitchen to the living room where "Jacquez" was shot and found it to be approximately 10'6" in length. Two (2) .40 caliber expended shell casings were located/collected from the vicinity of the south kitchen wall; one (1) was located underneath the kitchen table which is west of the back door between the back door and door way leading from the kitchen to the living room while the second expended shell casing was located in a crate on the kitchen floor between the kitchen

table and door way wh. "Jacquez" was shot. One (1) expended bullet was located and collected from the door frame of the front door west of the kitchen approximately 46' from the back door "Jacquez" entered the house from. A wood bat, light in color with the name "WILSON" stenciled in black on the bat was located in "Viola's" bedroom, on the bed partially covered with a bed sheet. A small black backpack style bag with a "Batman" logo was near the located of the second shell casing previously described. On the door trim of the door frame "Jacquez" was standing in when shot was an orange colored stain suspected to be from OC spray. The trim is located on the kitchen side of the door frame and is the trim closest to the refrigerator.

On October 13, 2014, an autopsy was performed on "Jacquez" by Dr. Daniel Lingamfelter (hereinafter referred to as "Dr. Lingamfelter"), a pathologist for the El Paso County Coroner's Office. Based on that autopsy, "Dr. Lingamfelter" found "Jacquez" to be a normally developed male 68 inches tall and 151 pounds and concluded "Jacquez's cause of death was a single gunshot wound to the mid back "overlying the lower thoracic spine, located approximately 17 1/2 inches below the top of the head, approximately 48 1/2 inches above the bottom of the left heel" that traveled slightly right to left "perforating the T10 vertebral body, spinal cord, aorta, pericardium, posterior left ventricle, left lower lung, the anterior left 5th rib". No exit wound was present and the expended round was recovered from under the left nipple. "Dr. Lingamfelter" further determined the manner of death as homicide. In an interview with your affiant, "Dr. Lingamfelter" stated that as a result of the round traveling through "Jacquez's" spinal cord, "Jacquez" was immediately rendered a paraplegic. When asked, "Dr. Lingamfelter" stated if "Jacquez" was stationary at the time he was shot, he ("Dr. Lingamfelter") would have expected "Jacquez" to immediately drop to the ground. However, based on "Officer Ashby's" statement that "Jacquez" took one (1) or two (2) steps after being shot, "Dr. Lingamfelter" opined that when "Jacquez" was shot, "Jacquez" was in stride and moving forward". Furthermore, when asked by your affiant, "Dr. Lingamfelter" suggested that based on the location of the wound and the trajectory of the round, the barrel of the gun was pointed at a 90 degree angle to "Jacquez's" back.



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As previously mentioned, the shooting occurred on October 12, 2014 at approximately 0200 hrs. In an attempt to capture the lighting conditions inside the kitchen at 400 N 3rd Street at the time of the shooting, your Affiant, along with Colorado Bureau of Investigation Agents Pat Crouch and Kevin Torres returned to 400 N 3rd Street on October 13, 2014 at 0200 hrs and video recorded the lighting conditions. Your affiant, Agent Crouch and Agent Torres noted there was enough ambient light emitting from the exterior porch light on the back porch to illuminate the kitchen area through the open back kitchen door and window located on the south wall of the kitchen to allow one to see the kitchen area where this incident occurred. Furthermore, this ambient lighting is sufficient to allow one to distinguish facial features of an individual inside the kitchen area without difficulty.

On October 13, 2014, at approximately 1000 hrs, "Officer Ashby" and his attorney arrived at 400 N 3rd Street to participate in a video walk through of the events/circumstances leading up to, during and after the shooting of "Jacquez". "Officer Ashby's" participation in this walk through was voluntarily and done so with the approval of his attorney. However, "Officer Ashby's" attorney would only allow "Officer Ashby" to be video recorded from the point he (Ashby) entered the yard of 400 N 3RD Street and beyond. "Officer Ashby's" attorney refused to allow "Officer Ashby" to walk through the events from the point of stopping his (Ashby's) patrol car to the point of entering the side yard of 400 N 3rd Street.

During the video recorded walk through your affiant asked "Officer Ashby" what crime(s) had been committed at the time he (Ashby) entered the side yard and ultimately the residence at 400 N 3rd Street. "Officer Ashby" responded he believed "Jacquez" was trespassing onto the property of 400 N 3rd Street and was attempting to commit a burglary upon entering the residence of 400 N 3rd Street. However, other than "Officer Ashby's" statement, there is no physical evidence or witness statement to corroborate either a trespass or attempted burglary was committed.

During the course of this investigation your affiant requested Agent Dale Higashi (hereinafter referred to as Agent Higashi), a Colorado Bureau of Investigation Firearms Expert, forensically examine "Officer Ashby's" duty weapon for functionality. Additionally, your affiant requested "Agent Higashi" examine and determine the direction expended shell casings are ejected from the weapon when held in ones right hand at a 45 degree angle and fired. Furthermore, your affiant requested forensic examinations be conducted to in an attempt to determine the distance between the end of "Officer Ashby's" duty weapon and the back side of "Jacquez's" jacket at the time of the shooting. As a result of the previously mentioned requests, "Agent Higashi" determined "Officer Ashby's" duty weapon, and the weapon used to shoot "Jacquez", was a fully functioning weapon with no irregularities. When fired as previously described, "Agent Higashi" reported expended shell casings eject right to left from the ejection port. With regard to the distance from the end of "Officer Ashby's" duty weapon to "Jacquez" jacket, testing conducted by "Agent Higashi" the shot that was fired at "Jacquez" was done from a distance of six (6) feet or greater.

Based on information from those interviewed, to include "Officer Ashby", as well as information obtained from forensic examination/analysis of evidence collected during the investigation, a number of un-contradicted facts were discovered. Conversely, information obtained through interviews and the examination/analysis of evidence collected during this investigation contradict and fail to corroborate "Officer Ashby's" version of the circumstances surrounding the shooting. Among those factors that are irrefutable are the following:

- On October 12, 2004 at approximately 0200 hrs, Rocky Ford Police Officer James Adam Patrick Ashby was wearing a Rocky Ford Police Department uniform displaying a badge of authority and operating a marked Rocky Ford Police Department patrol car in the 400 block of Swink Avenue in the City of Rocky Ford, County of Otero, and State of Colorado.
- On October 12, 2014 at approximately 0200 hrs, Kyle Moore was a civilian riding along with "Officer Ashby".
- On October 12, 2014 at approximately 0200 hrs, Jack "Jacquez" was alone and riding his skateboard westbound on Swink Avenue in the middle of the right traffic lane.
- "Officer Ashby" attempted to contact Jack "Jacquez" as Jack "Jacquez" entered the side yard of 400 N 3rd Street located in the City of Rocky Ford, County of Otero and State of Colorado.
- Jack "Jacquez" lived at 400 N 3rd Street with "Viola" "Jacquez", his mother, and Mariah Talmich, his pregnant girlfriend.
- Jack "Jacquez" gained entry into the kitchen of 400 N 3rd Street via the rear kitchen door when "Viola" "Jacquez" opened it.
- "Officer Ashby" followed Jack "Jacquez" into the kitchen and eventually deployed OC spray at/toward Jack "Jacquez".
- "Officer Ashby", in the presence of and witnessed by "Viola" "Jacquez", fired two (2) shots from his HK USP .40 caliber semi-automatic handgun at Jack "Jacquez" as Jack "Jacquez" stood in the middle of a door way leading from the kitchen to a living room with his (Jack "Jacquez") back to "Officer Ashby".
- One (1) of the shots fired by "Officer Ashby" struck Jack "Jacquez" in the spine, approximately 47 ½ inches from the top of left heel and 17 ½ inches from the top of his head, traveling slightly right to left "perforating the T10 vertebral body, spinal cord, aorta, pericardium, posterior left ventricle, left lower lung, the anterior left 5th rib".
- The other round fired by "Officer Ashby" was recovered from the front door frame some 46 feet from the rear kitchen door.
- Toxicology results as a result of the autopsy on Jack "Jacquez" revealed Jack "Jacquez" tested positive for THC.
- Dr. Daniel Lingamfelter, a pathologist for the El Paso County Coroner's Office determined the manner of Jack "Jacquez" death as a "homicide".
- When shot, Jack "Jacquez's" back was fully exposed to "Officer Ashby" and the barrel of "Officer Ashby" duty weapon was no less than six (6) feet from the entrance wound of Jack "Jacquez."

- “Officer Ashby” never identified himself as a police officer prior to, during or after contacting/shooting Jack “Jacquez” and did not notify dispatch of the location or contact with Jack “Jacquez” until after the shooting.

Factors that contradict and fail to corroborate “Officer Ashby’s” statement of the circumstances and events leading up to and at the time of the shooting include the following:

- When “Officer Ashby” pulled up next to Jack “Jacquez” as he (“Jacquez”) was skateboarding in the road, “Officer Ashby” reported he stated to Jack “Jacquez” through the open front passenger side window of his (Ashby’s) marked patrol car, “Hey bro?” and Jack “Jacquez” responded “Fuck you!” Kyle Moore, a civilian riding with “Officer Ashby”, reported when contacted by “Officer Ashby”, Jack “Jacquez” replied, “I’m going home or something referring to being home” and not “Fuck you!” In fact, when asked if he (Kyle Moore) heard Jack “Jacquez” say “Fuck you!” Kyle Moore stated “No” and further stated he never heard Jack “Jacquez” yell/say any profanity.
- “Officer Ashby” reported Jack “Jacquez” got off his (“Jacquez”) skateboard after being contacted in the roadway, picked up his (“Jacquez”) skateboard and began walking westbound toward N 3rd Street in a manner “Officer Ashby” described as a gate faster than a walk but slower than a jog and in an “erratic” manner passing an entrance to the yard of the home located on the northeast corner of 3rd Street and Swink Avenue then made a U-turn and “B-lined” eastbound toward an opening that lead to the side yard of 400 N 3rd Street and upon reaching that opening turned northbound into that yard. During an interview with Kyle Moore on October 12, 2014, Kyle Moore stated once Jack “Jacquez” was contacted in the roadway, he (“Jacquez”) got off his skateboard and walked directly northbound into the side yard of 400 N 3rd Street.
- During the interview on October 13, 2014 with Kyle Moore, he was asked if Jack “Jacquez” every walked westbound toward N 3rd Street past the entrance to 400 N 3rd Street then turned and walked back toward/entered the entrance to 400 N 3rd Street. Kyle Moore said “No”. Kyle Moore stated Jack “Jacquez” never walked westbound toward N 3rd Street and upon getting off his (“Jacquez”) skateboard, walked immediately/directly into the side yard of 400 N 3rd Street.
- “Officer Ashby” reported as Jack “Jacquez” stood on the porch at 400 N 3rd Street, he (“Jacquez”) was pounding or kicking on the side door. “Viola” “Jacquez” reports she was awakened by the sound of Jack “Jacquez” requesting she unlock/open the door for him. No scuff marks or damage to the back door were observed during crime scene processing.
- Once the back door opened and Jack “Jacquez” entered, “Officer Ashby” reported he (Ashby) was unable to see “Jacquez” due to the darkness. Although dark, “Officer Ashby” stated he could see Jack “Jacquez” armed with a bat that was light in color and had the name “WILSON”, in black, stenciled on the bat. “Officer Ashby” further reported he (Ashby) was unable to determine whether or not Jack “Jacquez” was facing him (Ashby) once armed with the bat due to darkness. “Viola” “Jacquez” stated when she got up to open the side door for Jack “Jacquez”; she could see Jack “Jacquez” outside

on the porch due to a very bright exterior side porch light. "Viola" "Jacquez" further reported she could see Jack "Jacquez" facing the door looking inside the kitchen and could see a "puzzled" look on Jack "Jacquez" face. As for the lighting conditions inside the kitchen once Jack "Jacquez" had entered, "Viola" "Jacquez" stated it was dark however; there was plenty of light shining into the kitchen due to the bright exterior light.

- While returning to 400 N 3rd Street on October 13, 2014 at approximately 0200 hrs, your affiant, Agent Pat Crouch and Agent Kevin Torres were able to clearly see inside the kitchen from the side kitchen door Jack "Jacquez" used to enter 400 N 3rd Street and could clearly see as far as the door frame where Jack "Jacquez" was standing when shot due to ambient light shining from the exterior side porch light. Your affiant, Agent Crouch and Agent Torres had no difficulty distinguishing features inside the kitchen with the amount of ambient light shining from the exterior porch light.
- While standing three (3) to four (4) feet from Jack "Jacquez" and only able to see Jack "Jacquez" silhouette due to darkness, "Officer Ashby" reported he was able to clearly see Jack "Jacquez" arm himself ("Jacquez") with the bat and maneuver the bat from his ("Jacquez's") right side to his ("Jacquez's") left side with the head of the bat raised in the air in a manner "Officer Ashby" said appeared to him as if Jack "Jacquez" was "loading up" to strike him (ASHBY). Again, as previously mentioned, your affiant, Agent Crouch and Agent Torres had no difficulty distinguishing features inside the kitchen with the amount of ambient light shining into the kitchen from the exterior porch light.
- When asked to described the events leading up to shooting Jack "Jacquez", "Officer Ashby" stated, "If I had to give my best guess of what happened, and I can't say 100% because I couldn't see him; the way my mind would make it make sense that he ("Jacquez") reached and grabbed the bat, turned.....and as he moving....it (the bat) was banging into something". "Officer Ashby" continued stating he (Ashby) could see Jack "Jacquez" loading the bat up in a manner as if he ("Jacquez") was "going to hit me". "Officer Ashby" went on to say at that point he (Ashby) began to disengage from Jack "Jacquez"; was concerned he (Ashby) wasn't going to be able to draw his (Ashby's) weapon before being hit by the bat but, had already made the decision prior to removing his (Ashby's) weapon from its holster that he (Ashby) was going to shoot Jack "Jacquez". Although "Viola" "Jacquez" confirmed a wooden baseball bat was kept in the kitchen and the bat was moved to various areas in the kitchen, she did not know where it was located at the time of the shooting and did not see Jack "Jacquez" arm/handle/possess the bat. In addition, after learning from "Officer Ashby" that the bat was "banging into something", your affiant and Agent Torres inspected the door frame, door modeling and area around the door Jack "Jacquez" was shot and found no signs of any damage. Furthermore, Agent Torres found no signs of damage to the bat when it was collected.
- "Officer Ashby" further stated as he drew his weapon from his holster he was disengaging from Jack "Jacquez" and when he shot Jack "Jacquez" he (Ashby) did not know if he (Ashby) had a full sight picture of Jack "Jacquez".
- "Officer Ashby" estimated he was within a "foot" of the door frame of the door that Jack "Jacquez" entered the kitchen from the porch when he (Ashby) shot Jack "Jacquez" and Jack "Jacquez" was in or near the entrance of the door that leads to the living room from the kitchen.

- “Officer Ashby” stated his decision to shoot “Jacquez” was based on “Jacquez” “loading up” to strike him (“Officer Ashby”) in the head with the bat. Based on that perceived threat, “Officer Ashby” stated he made the decision to shoot “Jacquez”. Evidence from the autopsy contradicts “Officer Ashby’s” statement of “Jacquez” “loading up” to strike him in that the location of the entrance wound shows “Jacquez” back was fully exposed to “Officer Ashby” and not turned in any manner consistent with “loading up” to strike. Although it is more likely than not that “Jacquez” was in possession of a baseball bat at the time he was shot, the trajectory path of the bullet shows “Jacquez” back was fully exposed to “Officer Ashby” and not turning to either side. Thus, at the time “Officer Ashby” shot “Jacquez”, “Jacquez” was facing away from “Officer Ashby” and not an immediate threat.
- “Officer Ashby” stated after “Jacquez” was shot, he (“Jacquez”) took one (1) or two (2) steps forward then collapsed to the floor. According to Dr. Lingamfelter, “Jacquez’s” spinal cord was severed as the round passed through his spine rendering “Jacquez” a paraplegic. When asked by your affiant, Dr. Lingamfelter stated that type of injury would have prevented “Jacquez” from walking or moving his legs. Furthermore, when advised of “Officer Ashby’s” statement that “Jacquez” took one (1) or two (2) steps after being shot, Dr. Lingamfelter stated that if that were the case, then “Jacquez” was more likely than not moving forward in stride and not stationary. Based on that information, it is evident “Jacquez” was moving away from “Officer Ashby” at the time he was shot and not moving towards “Officer Ashby”. Thus, “Jacquez” was not an immediate threat to “Officer Ashby”.
- Evidence collected during this investigation, as well as statements from witnesses, show that from the time “Officer Ashby” made initial contact with “Jacquez” as he skateboarded on Swink Avenue to the time he (“Jacquez”) was shot, “Jacquez” continually attempted to disengage from “Officer Ashby” while “Officer Ashby” aggressively pursued “Jacquez”.

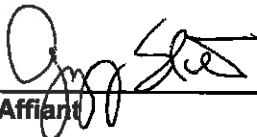
Based on the results of the investigation, your affiant contends that even though it is more likely than not that Jack “Jacquez” was in possession of a baseball bat at the time “Officer Ashby” shot and killed him (Jack “Jacquez”), physical evidence indicates Jack “Jacquez” was facing away from “Officer Ashby” at the time “Officer Ashby” shot Jack “Jacquez” and not a threat to “Officer Ashby”. By his own admission, “Officer Ashby” stated he was disengaging from Jack “Jacquez” prior to drawing his weapon thus creating distance between himself and Jack “Jacquez” prior to shooting Jack “Jacquez”. Furthermore, even though he feared he was going to be struck by the bat; concerned he (Ashby) would not be able to draw his weapon before being struck by the bat and not certain he had a good sight picture of Jack “Jacquez” prior to shooting him (“Jacquez”), “Officer Ashby” stated as he was disengaging from Jack “Jacquez” and had already formulated in his mind that he was going to shoot Jack “Jacquez” prior to drawing his weapon.

Based on the information contained in this affidavit, your affiant contends probable cause exists to believe Officer JAMES ADAM PATRICK ASHBY committed the offense of SECOND

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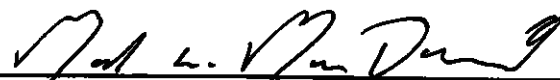
DEGREE MURDER as defined in 18-3-103 of the Colorado Revised Statute and respectfully requests the Court issue a warrant for the arrest of Rocky Ford Colorado Police Officer JAMES ADAM PATRICK ASHBY. Officer JAMES ADAM PATRICK ASHBY is described as a W/M, date of birth 01/28/1993, 6'00", 195 lbs, Red/Blue, Colorado OL# [redacted] whose work address is 203 S 9th Street, Rocky Ford, CO 81067.

Your affiant further requests the Court seal this affidavit and subsequent arrest warrant.



Affiant

Sworn to before me this 14th day of November, 2014 at time: 11:29 a.m.



JUDGE