STATE OF NEW MEXICO
First Judicial District Attorney
Santa Fe, Rio Arriba & Los Alamos Counties

Mary Carmack-Altwies
District Attorney

Santa Fe Main Office
327 Sandoval Street
PO Box 2041
Santa Fe, NM 87504-2041
Telephone: (505) 827-5000

Espanola Office
1122 Industrial Park Road
PO Box 1209
Espanola, NM 87532
Telephone: (505) 753-7131

Chief Paul Joye, Santa Fe Police Department
Agent Gabriela Rodriguez, New Mexico State Police

Re: Use of Force: Officer involved shooting – Officer David Gallegos
Deassed: Gracen Coon NMSPR 2413541 SFPD 2024-011107

Dear Agent Gabriela Rodguez:

It is the duty of a District Attorney to review officer-involved shooting cases. The First Judicial District Attorney's Office ("FJDA") reviewed all of the evidence provided by the New Mexico State Police investigation, the OMI report of the decedent Stephanie (Gracen) Coon, and conferred with experts in the field of officer-involved shootings to determine the legality of the shooting, and if not justified, whether charges should be filed against the officer who discharged his weapon. It is the opinion of the FJDA that the shooting, though tragic, was justifiable and charges should not be filed. Furthermore, the FJDA concludes that even if charges were filed, the prosecution would be unable to overcome the requirements of UJI 14-5173 to prove guilt beyond a reasonable doubt. To be sure, the SFPD Officers who responded to the scene could have potentially attempted to deescalate the situation, they could have given clearer commands or attempted to use less-lethal force before discharging the firearm. However, there is no legal requirement that Officers must have done those things prior to using lethal force. The law governing lethal force by police officers controls in this matter and this Office concludes that no criminal charges can be sustained under

these circumstances. The FJDA now considers this matter closed as criminal matter, which is the sole scope of our inquiry.

FACTUAL BACKGROUND

911 Call

At approximately 6am on September 22, 2024, Lili Gordan called 911 requesting that someone come get her husband, who was having a psychiatric "meltdown" and being "very aggressive." During this nearly thirty minute call Ms. Gordan relays Mr. Gracen Coon's whereabouts and provides information on his behavior. The first half of the call is relatively calm. Approximately twelve minutes in, Ms. Gordan relays "I feel like he is like banging his head on the wall or something." Approximately twenty minutes into the call Mr. Coon can be heard in the background for the first time. Ms. Gordan is asking him not to leave and Mr. Coon can be heard saying "I'll shoot you" for the first time while Ms. Gordan tells Mr. Coon he does not actually have a gun. At approximately twenty-one minutes into the call Ms. Gordan asks Mr. Coon "Why are you threatening to kill me?" Mr. Coon responds with "Because I have a gun and I will fucking shoot you." Dispatch encourages Ms. Gordan to separate herself from Mr. Coon and Ms. Gordan responds saying she will go lock herself in her room.

Ms. Gordan states that Mr. Coon has what Mr. Coon believes to be a gun but is in fact a lighter (this fact is not relayed to responding officers). As the call continues Mr. Coon can be heard screaming. At approximately twenty-two minutes into the call Ms. Gordan states that he (Coon) has a box cutter. She is encouraged by dispatch to try to exit the residence but states she cannot and is stuck in a corner and cannot move. Ms. Gordan sounds increasingly distressed and relays information about what Mr. Coon is wearing. She then states "Can you please just come get him. I don't know if he's gonna hurt himself or me." She then begins requesting urgent help and states

that he is kicking in the door. As Mr. Coon is heard yelling and swearing in the background, Mr. Gordan yells "Stop, stop, get away. . .don't hit me." She is screaming at the end of the call as officers arrive.

Dispatch Relays

Information provided to and from dispatch is preserved in audio recordings of each transmission as well as captured in the written Communications Event Report. This report documents the Computer Aided Dispatch (CAD) notes that document the event, the communications logs and the notes that are sent to an officer's computer screen in their units. Officers receive information over their radios from dispatch but also see the log notes as they come through on their computers while in their vehicles. These log notes are captured in page 8 of the Communications Event Report and are attached to this memorandum for reference.

At 06:15:14am on CAD, Gallegos directs dispatch to show him and Ovalle as en route to the call. Dispatch states that "meds" (i.e. paramedics) are staging near the scene, the male is conscious, breathing, having "a mental problem; a mental condition" and "he's very aggressive." At 6:19:48, the CAD notes indicate "No weapons in the home but the male was saying he was trying to get a gun." Dispatch later states "Looks like the male is back inside the home right now and he has a box cutter in his hand. We're trying to get the calling party to lock herself in a different room or out of the house." Gallegos later asks "Is he threatening self-harm or anything?" Dispatch responds at 06:21:08 "Not that I am aware of." Three seconds later at 6:21:11, dispatch relays "He is threatening to harm her." Gallegos responds over the radio acknowledging receipt of the transmission and one can hear sirens activate in the background while Gallegos drives his unit toward the scene. At 06:24:03 on the CAD, dispatch relays "male broke the door down." At

06:24:56 the CAD states "male is hitting the female." At approximately this same time, officers have exited their vehicles and are communicating with dispatch solely by radio.

Lapel Footage

Both Officer Gallegos and Officer Ovalle were wearing and operating their department-issued body worn cameras. At one minute and thirteen seconds into the lapel, Gallegos has arrived at the house and is approaching with Ovalle. He receives the radio transmission from dispatch "I think he is getting physical with her right now." As Officer Gallegos hears the information provided by the dispatcher, he and Officer Ovalle begin to run toward the house and Gallegos draws his department-issued taser. Gallegos then tells Officer Ovalle to "go lethal", a directive one officer gives another officer to provide firearm coverage while the officer activates their taser in the event of taser malfunction. As they approach the residence, Officer Gallegos kicks open the partially-open front door. Officer Ovalle stands to the left of the door with his pistol drawn. Mr. Coon is directed repeatedly to step out and the box cutter is visible in his right hand. As he emerges from the house, an object becomes visible in his left hand. Increasing the brightness on the lapel video shows that it is a gun-shaped lighter that is later photographed on scene and tagged into evidence. A screenshot of Mr. Coon exiting the house with both items is attached for reference. The image has been zoomed and the brightness has been enhanced to aid the viewer. Officers Gallegos and Ovalle direct him to drop the box cutter repeatedly and Officer Gallegos gives the command to "drop them" (ostensibly referring to both objects). Mr. Coon states, "I have nothing, literally nothing," (while holding up the two objects in his hands) and "I don't want to live." As Mr. Coon steps on the sidewalk in front of the porch, Officer Gallegos draws his firearm using his right hand while retaining his taser in his left hand. Officers inform Mr. Coon they can help him and Mr. Coon repeatedly states "I believe you" while retaining both objects in his hands, twirling the gun-

shaped lighter in his left hand while gesturing with the box cutter in his right. Mr. Coon is extremely agitated and as he states "I believe you" he takes a step toward Officer Ovalle. The gun-shaped lighter is in his left hand near his left side/naval. His left side is angled slightly away from Ovalle but in the line of sight of Gallegos. As he takes the step forward and gestures with the box cutter in the air, Ovalle appears to flinch/duck his head slightly. Officer Gallegos then fires two shots in quick succession followed by a third shot less than a second later as Mr. Coon falls to the ground.

Gallegos then helps detain Mr. Coon, and steps inside the house while radioing to dispatch "shots fired." Ms. Gordan is visible in the living room and asks for him to give her a second, so he steps out. He then relays that the "male had a pistol in his left hand and box cutter in his right hand." As medics arrive Officer Gallegos points out the gun-shaped lighter so they avoid it. He then subsequently stands by the gun-shaped lighter and shows it to Ovalle saying "he pointed it right at us." It appears at this time that he is still unaware that it is not in fact a firearm.

Officer Gallegos's OIS Interview

Officer Gallegos gave a voluntary interview on November 1, 2024 with New Mexico State Police. It is reasonable to conclude that Officer Gallegos would testify to essentially the same information. During his interview he explained being dispatched to a psych call and that information was coming in over the radio as well on the dispatch notes on his in-unit computer system. This information included that Gracen may have a gun or be trying to get a gun. According to Gallegos "I started going emergency traffic because now it went from a mental breakdown to now he's actively threatening the wife." Officer Gallegos describes arriving at the house, directing Ovalle to "go lethal" while Gallegos goes less-lethal. He describes that as "husband" (Mr. Coon) exits the house, he is stating "I don't have nothing, I don't have nothing."

> At that time, he's kind of approaching us. I go from less lethal to now lethal cause now he's approaching us. . . this male is now approaching me with a box cutter and an unknown object in his left hand. Um, as the male steps out, the object in his left hand stops. And I realize that it was a pistol that he was holding. He's spinning it with a trigger guard. That's what the spinning was. He, it lands perfectly in his hand and he points out and says "I don't wanna live." [He] points it at me, I realize it's a gun. And at that point, that's when I fired."

Later in the interview Officer Gallegos is asked to explain in greater detail the information that is being relayed to him as he is en route to the call. He explained that he is receiving the information being relayed over the radio by dispatch as well as being able to read the call notes. "Dispatchers, they kind of give us what they're typing in so that way not only do we hear it, if we miss it here on the screen it's kind of relayed to us." At no point did dispatch relay over the radio or the call notes that the gun was a lighter. Officer Gallegos described the lighting conditions as fairly poor, the bulk of the light came from the porch light as the sun had not peeked over the mountains yet.

Autopsy Report

Mr. Coon underwent an autopsy at the Office of the Medical Investigator ("OMI"). The autopsy indicates that all three gunshots struck Mr. Coon, but only one was a fatal shot. The fatal gunshot was one of the first two shots fired by Officer Gallegos. The final gunshot hit Mr. Coon's neck skin and soft tissue and would not have been fatal. The toxicology report indicated that Mr. Coon had a blood alcohol level of .20 and had amphetamines in his system that were above the therapeutic level. OMI found that the cause of death was gunshot wound, and the manner of death, homicide. "Homicide" as used by OMI is a medico-legal term used by forensic pathologists to classify manner of death when that death is caused by another person. It is not a legal determination as to whether that killing is justified. That determination is the province of the jury, who would be required to apply the applicable law described below to the facts of this

case.

APPLICABLE LAW

The justifiable homicide defense to use deadly force by police officers have evolved by the United States Supreme Court's pronouncements, which has led to the current statute, NMSA 1978, Section 30-2-6. *See State v. Mantelli*, 2002-NMCA-033, ¶ 23, 131 N.M. 692, 42 P.3d 272; UJI 14-5173 comm. comt. Pursuant to Section 30-2-6:

> A. Homicide is justified when committed by a public officer or public employee or those acting by their command and in their aid and assistance:
>
> (1) in obedience to any judgment of a competent court;
>
> (2) when necessarily committed in overcoming resistance to the execution of some legal process or to the discharge of any legal duty;
>
> (3) when necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or
>
> (4) when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.

NMSA 1978, § 30-2-6(A). Under Section 30-2-6(B), "homicide is necessarily committed when a public officer or public employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a public officer or employee should give warning prior to using deadly force."

§ 30-2-6(B).

Additionally, "[u]nder Section 30-2-6, the crucial consideration is the conduct and

dangerousness of the suspect, not the classification of the crime that he or she has committed or is alleged to have committed." *Mantelli*, 2002-NMCA-033, ¶ 25. "[T]he reasonableness of an individual police officer's actions is an objective analysis evaluated from his perspective at the time of the incident and is necessarily a factual inquiry." *Id.* "As detailed in Section 30-2-6(A), a police officer may be legally justified in using deadly force in a variety of situations that would not apply to self-defense and the ordinary citizen." *Id.* ¶ 39.

Of considerable significance, the New Mexico Court of Appeals suggested a jury instruction for the New Mexico Bar to reflect the current law under Section 30-2-6. *Id.* ¶ 48. Based on the Court of Appeals' analysis, the jury instruction committee established UJI 14-5173 NMRA. If this case were to proceed to trial, the jury would receive this instruction and the State would be required to prove each of the following elements of UJI 14-5173 beyond a reasonable doubt.

UJI 14-5173

An issue you must consider in this case is whether the killing of Gracen Coon was justifiable homicide by a public officer or employee.

The killing was justifiable homicide by a public officer or public employee if:

1. At the time of the killing, the defendant was a public officer or employee;
2. The killing was committed while the defendant was performing the defendant's duties as a public officer or employee;
3. The killing was committed while;
   - overcoming the actual resistance of Gracen Coon to the execution of (specified legal process); or
   - overcoming the actual resistance of Gracen Coon to the discharge of (specified legal duty); and

4. The defendant believed that Gracen Coon posed a threat of death or great bodily harm to the defendant or another person; and
5. Under the totality of the circumstances, a reasonable officer would have acted as the defendant did. The following factors may be considered in evaluating the totality of the circumstances:
    - [the officer's training]
    - [the officer's experience]
    - [the officer's expertise]
    - [the feasibility of giving a warning prior to using deadly force]
    - [the feasibility of taking lesser measures than using deadly force]
    - [(*other factor(s)*)][8]

The burden is on the state to prove beyond a reasonable doubt that the killing was not justifiable. If you have a reasonable doubt as to whether the killing was justifiable, you must find the defendant not guilty.

UJI 14-5173 NMRA. As discussed by the committee, "[e]lement 5 provides a nonexclusive, open ended list of specific factors frequently relevant to determining reasonableness under a totality of the circumstances." UJI 14-5173 comm. comt. "Based on the evidence adduced by either party, the trial court can approve including a wide variety of other relevant factors as long as they are not unfairly prejudicial to either party." *Id.* Of note, "[t]his instruction also omits the statutory grounds of justifiable homicide when acting in obedience to a judgment of the court. The committee believed that the provision applied exclusively to death penalty judgments and would never be prosecuted." *Id.*

ANALYSIS

Under the first four elements of the jury instruction, the evidence at trial would easily satisfy the first three elements of UJI 14-5173. As referenced above, the undisputed facts seem to meet Elements 1, 2, and 3 to a near certainty.

Element 4 would require evidence of Officer Gallegos' subjective belief that Mr. Coon's actions posed a threat of death or great bodily harm to Officer Gallegos or another. Introduction of such evidence at trial by the defense would be a straightforward matter. For example, if Officer Gallegos testified that he believed that Mr. Coon's conduct posed a threat to either officer or even to Lili Gordan, Element 4 would be satisfied. This presumes that the jury would find such testimony credible, but it is important to note that the jury must only find it credible that Officer Gallegos <u>believed</u> the threat was posed. Element 4 would likely be met by the evidence at trial.

Element 5 would require the jury to compare Officer Gallegos discharging his firearm to what a reasonable officer would have done under the same circumstances. As suggested by Element 5's non- exhaustive list of factors, the question of whether this element is met would be fact-intensive, would depend on what evidence came out at trial, and would be an open question to the jury.

Element 5's factors that could weigh in Officer Gallegos' favor include that Mr. Coon ignored officers' directives to drop the box cutter and repeatedly verbalized that he "had nothing," in obvious contradiction to the facts. Also, Mr. Coon took a step forward toward Officer Ovalle, raised his voice, and began waving the box cutter, which a reasonable officer could interpret as violent escalation. Officer Gallegos would likely testify that he believed the gun-shaped lighter was in fact a real firearm that was being pointed at himself and Ovalle while he was gesturing toward Ovalle with the box cutter. A jury would likely find this to be a credible belief given the

lighting conditions, the general shape of the gun-shaped lighter that Mr. Coon was spinning on its trigger-guard, and Mr. Coon's erratic movements.

Element 5 factors that could weigh against Officer Gallegos include the fact that Officer Gallegos was covered by Officer Charles Ovalle's drawn service weapon at the time Officer Gallegos switched to his firearm, and Officer Ovalle did not fire his weapon during the same encounter. Officer Gallegos failed to warn Mr. Coon verbally that Mr. Coon would be shot if he did not drop the box cutter, however this could be mitigated by the fact that Mr. Coon was illuminated by three (3) laser dots from the officers' firearms and from Officer Gallegos' taser, constituting a strong implicit warning. ("Giving a warning" is not a term defined by UJI 14-5173.)

Additional facts that the jury would apply to the Element 5 factors include that the officers had been dispatched to a domestic situation with little detail other than the situation involved violence, potential weapons, and a person in crisis. The situation appeared to be escalating, requiring officers to adjust and react accordingly. Additionally, about 20 seconds transpired from the time officers encountered Mr. Coon to the time Officer Gallegos discharged his firearm, requiring Officer Gallegos to decide quickly whether the situation required lethal force. The short duration of the incident likely weighs in Officer Gallegos' favor, given that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham v. Connor, 490 U.S. 386, 396. Further, it is important to note that merely having less lethal options is not a consideration in UJI 14-5173; rather the jury would have to weigh the feasibility of the less-lethal option's use, by a reasonable-officer standard, under the circumstances of this shooting.

While evaluating Element 5, it is important to highlight that Officer Gallegos discharged his firearm twice while Mr. Coon was on his feet and waving the box cutter, and then he discharged

a third time after Mr. Coon had already been subdued and was falling to the ground. According to the OMI report, the fatal gunshot wounds caused "lethal injury to the right lung, right kidney and liver." The two gun shots that caused damage to those areas were the shots that had the same trajectory "front to back, right to left, upward" (p.5 of OMI report) whereas the third shot trajectory was identified as "front to back, right to left downward." It is therefore concludable that the first two shots fired by Officer Gallegos were the "upward shots" when Mr. Coon was still standing with the box cutter and the third non-lethal shot was the delayed shot once he was already falling towards the ground, indicated by the "downward" trajectory.

The final consideration of UJI 14-5173 would present a substantial obstacle to the State securing a conviction in this matter: that it is not up to Officer Gallegos to prove the shooting was justifiable, but rather the burden is on the State to prove that the shooting was not justifiable – and this to a standard of proof beyond a reasonable doubt. Under the details surrounding the fatal shooting of Mr. Coon, the State cannot clear this extremely high hurdle.

Conclusion

It is the duty of the First Judicial District Attorney's Office to determine viability of prosecution based on the standard applied for a motion for directed verdict at trial, to wit: Considering all the known evidence in the light most favorable to the prosecution, could a reasonable jury find Officer Gallegos guilty of a homicide offense based applicable law. After a review of the available evidence -- including body-worn camera footage, RECC audio, police reports, and OMI reports -- and after applying the available evidence to the relevant statutes and jury instructions, it is the opinion of the First Judicial District Attorney that no reasonable jury could find Officer Gallegos guilty of a homicide offense beyond a reasonable doubt.

For the reasons and considerations cited above, it is the decision of the First Judicial District Attorney that the prosecution of David Gallegos for a homicide offense in the shooting death of Mr. Coon is not viable, and this office declines to prosecute Officer Gallegos regarding this incident. This decision is based on the law as stated above, specifically regarding the State's burden to prove guilt beyond a reasonable doubt.

Mary Carmack-Altwies
District Attorney

Event ID: 24-164250	Call Ref #: 36	**PSYCHIATRIC ABNORMAL BEHAVIOR at 102 LA PLACITA CIR**

Notes:

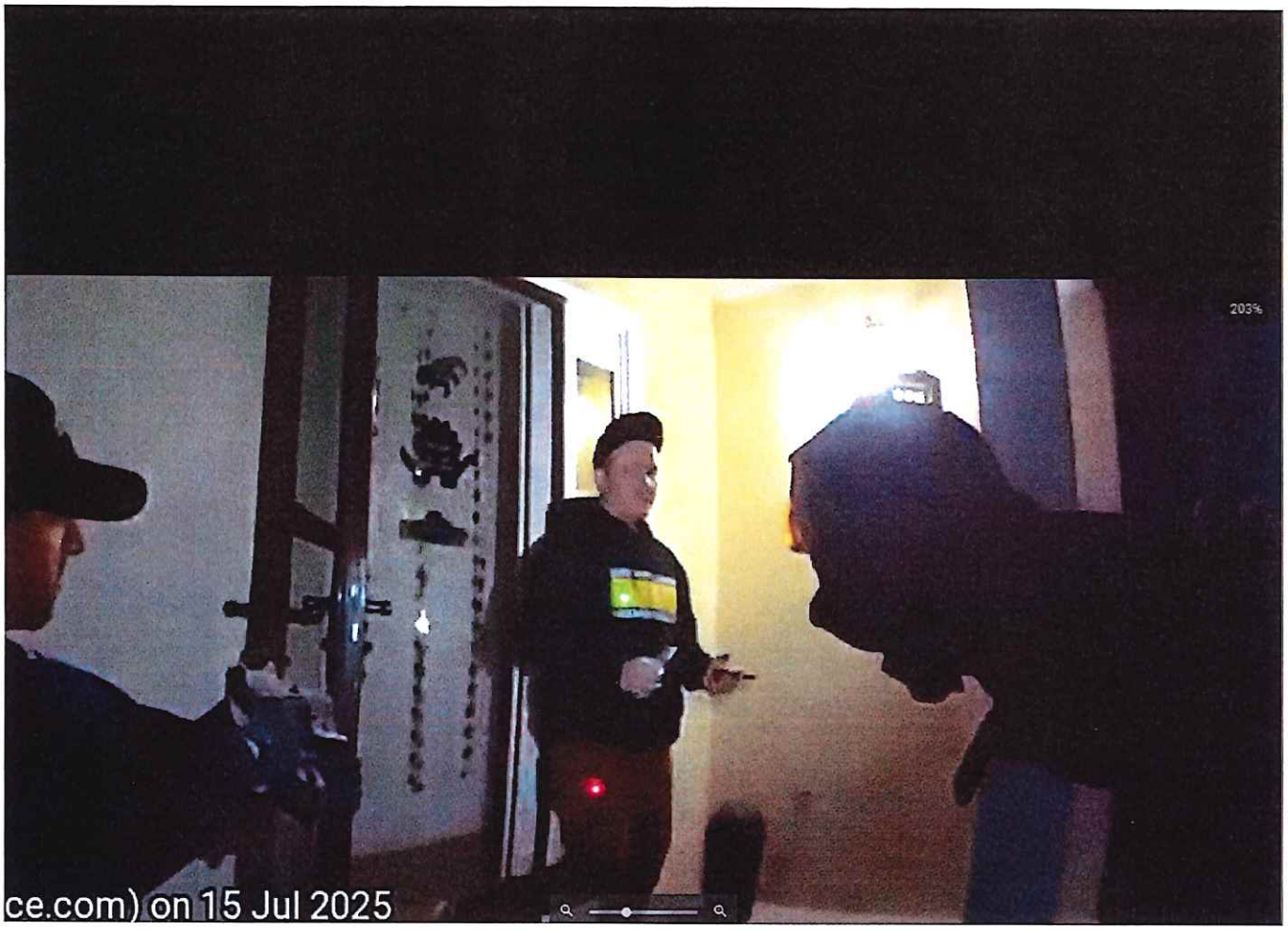
Related Vehicles

Lic Tag	State	Type	Year	Make	Make Desc	Model	Color1 / Color2	Vin
AUHE79	CO	PC	2017	MAZD	MAZDA	CX5	BLU	

Notes:

Event Notes Addendum

Notes caller needs someone to go and get her husband
husband is having a melt down and very aggressive [09/22/24 05:59:07 SPARKER]]
[PROQA] 33-year-old, Male, Conscious, Breathing.
Caller Statement: psych
Chief Complaint: Psychiatric / Mental Health Conditions / Suicide Attempt / Abnormal Behavior
Dispatch Code: 25C04 (ALTERED LOC (sudden change in behavior/personality))
Response: Hot/Cold
Questions:
-- Abnormal behavior.
-- Not violent.
-- No wpn.
-- Not responding nlly.
-- Talking/Standing/Sitting up.
-- No inj to self.
-- Thinking about self-injury.
-- Pt inside same structure.
-- Sudden change in behavior/personality.
-- Send and end questioning. [09/22/24 06:01:27 SPARKER]
[FIRE] CALLER STATES HE IS VERY AGGRESSIVE [09/22/24 06:02:38 SPARKER]
[FIRE] UDTS: {SFM4} STAGING FOR LEO [09/22/24 06:07:32 SPARKER]
[FIRE] UDTS: {SFL4} STAGING FOR LEO [09/22/24 06:08:44 EKWALLACE]
[FIRE] CALLER FEELS LIKE THE MALE IN THE HOME IS BANGING HIS HEAD UP AGAINST THE WALL [09/22/24 06:10:42 SPARKER]
CALLER: GORDON LILY 3039819198 [09/22/24 06:13:26 LALUCERO]
[FIRE] UDTS: {SFL4} STAGING FOR LEO [09/22/24 06:13:47 JHERRERA]
[FIRE] UDTS: {SFM4} STAGING FOR LEO [09/22/24 06:13:47 JHERRERA]
CALLER STATES THE MALE IS TRYING TO LEAVE THE HOME [09/22/24 06:18:57 SPARKER]
NO WEAPONS IN THE HOME BUT THE MALE WAS SAYING HE WAS TRYING TO GET A GUN [09/22/24 06:19:48 SPARKER]
MALE TOOK OFF OUTSIDE [09/22/24 06:19:57 SPARKER]
NOW BACK INSIDE OF THE HOME [09/22/24 06:20:02 SPARKER]
MALE HAS A BOX CUTTER IN HAND [09/22/24 06:20:22 SPARKER]
CALLER IS STUCK IN THE CORNER [09/22/24 06:20:36 SPARKER]
CALLER STATES SHE CANNOT MOVE [09/22/24 06:20:49 SPARKER]
CALLER CANT TALK BUT CAN HEAR THE MALE THREATING THE CALLER [09/22/24 06:21:27 SPARKER]
THE MALE IS HITTING STUFF AS WELL [09/22/24 06:21:38 SPARKER]
CAN HEAR THE MALE SCREAMING [09/22/24 06:22:03 SPARKER]
MALE WEARING A BLACK HOODIE AND A BLACK HAT ON [09/22/24 06:22:22 SPARKER]
MALE BROKE THE DOOR DOWN [09/22/24 06:24:03 SPARKER]
Radio Channel: BOY [09/22/24 06:24:07 AIBUSTILLOS]
MALE AND FEMALE SCREAMING [09/22/24 06:24:14 SPARKER]
{K253} 1003 THE AIR GOING 97 [09/22/24 06:24:16 AIBUSTILLOS]
OPEN LINE [09/22/24 06:24:36 SPARKER]
MALE IS HITTING THE FEMALE [09/22/24 06:24:56 SPARKER]
{K253} SHOTS FIRED [09/22/24 06:26:05 AIBUSTILLOS]
{K253} MALE HAD PISTOL IN HIS L HAND AND BOX CUTTER IN HIS R HAND [09/22/24 06:27:17 AIBUSTILLOS]
{K253} HIT CENTER MASS [09/22/24 06:27:45 AIBUSTILLOS]


203%
ce.com) on 15 Jul 2025