



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

November 26, 2018

Re: **Investigation of the lethal shooting of Gillie Thurby III (DOB: 5/21/90) on September 20, 2018, in the area of 1250 South Hover, Longmont, Colorado**

Dear Chief Butler:

The investigation and legal analysis of the lethal shooting of Gillie Thurby III, by Longmont Police Department officers, has been completed.

The Critical Incident Team for the 20th Judicial District investigated this case. The team investigates incidents in which any law enforcement officer within the 20th Judicial District uses deadly physical force against a person while acting under the color of official law enforcement duties. The investigation in this instance was conducted for the purpose of determining whether criminal charges are warranted against the Longmont Police officers involved in the lethal shooting of Gillie Thurby III. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether proper policies and procedures were followed.

The Critical Incident Team for the 20th Judicial District completed a thorough investigation into this incident and generated detailed reports and documentation. The complete investigatory file was provided to the District Attorney's Office. The file is voluminous and includes witness interviews, numerous reports, diagrams, and multiple electronic media files. The electronic media files contain recorded interviews, police communications, photographs, and video recordings related to the investigation.

The District Attorney's Office reviewed the full investigatory file and I, along with members of my staff, have been fully briefed regarding this incident by the Critical Incident Team. I conclude that, under the applicable Colorado law, no criminal charges will be filed against the Longmont Police Department officers involved as their actions were legally justified. My decision, based on criminal law standards, does not limit administrative action by the

Longmont Police Department or any civil actions where less stringent laws, rules, and a level of proof would apply.

My findings, analysis, and conclusions of law with respect to the officers' use of deadly force in this incident are as follows:

SUMMARY OF DECISION

In all cases, the criminal filing standard requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. Applying the applicable statutes and case law to the facts presented through this investigation, I find that the involved Longmont Police Department officers are not subject to criminal prosecution for their actions.

The evidence establishes that Mr. Thurby had a violent history, an outstanding arrest warrant, armed himself with a loaded handgun, and had communicated to other individuals that he would use the gun when located and contacted by the police. Shortly before the incident, Mr. Thurby came into contact with a court-ordered protected party. A witness contacted the Longmont Police Department to report seeing Mr. Thurby at the location.

Furthermore, police officers had reason to believe that Mr. Thurby would, in fact, be in possession of a firearm based on his unlawful attempts to purchase a gun. At the time Longmont Police Department officers discharged their firearms, Gillie Thurby III had refused to comply with multiple police commands, pulled his firearm, and was holding the loaded firearm pointed in the general direction of the officers. Under the circumstances, the involved officers were legally justified in using deadly physical force.

Therefore, the District Attorney's Office will not be filing any criminal charges against the Longmont Police Department officers involved in this fatal shooting incident.

STATEMENT OF FACTS

In November 2017, the Longmont Police Department arrested Gillie Thurby III for Sexual Assault on a Child by One in a Position of Trust as a Pattern of Abuse involving two victims in case number 17CR187. Bond was set, and posted, in the amount of \$50,000. In June 2018, the Longmont Police Department arrested Mr. Thurby in a second case alleging Sexual Assault on a Child involving a third victim in case number 18CR1357. Bond was set, and again posted in the second case, in the amount of \$10,000. Both bonds included no-contact provisions prohibiting Mr. Thurby from having any contact with the named victims or anyone under the age of eighteen. Mandatory protection orders were issued in both cases as required by C.R.S. §18-1-1001.

On September 11, 2018, the Longmont Police Department received notification that Mr. Thurby had attempted to purchase a firearm from Foundation Pawn in Loveland, Colorado. Mr. Thurby untruthfully represented that he did not have pending felony cases on the background check application. The purchase was denied by the Colorado Bureau of Investigation via the Instacheck background system due to the active protection orders.

Based on this attempted purchase of a firearm, on September 17, 2018, the District Attorney's Office filed a verified motion to revoke Mr. Thurby's bond. A report from the Longmont Police Department was attached to the motion to revoke bond. The report documented the attempted purchase of the firearm. The report incorrectly attributed criminal history information associated with Gillie Thurby II to Mr. Thurby. The incorrect information in the report did not, however, impact the validity of the motion to revoke Mr. Thurby's bond following his unlawful attempt to purchase a firearm. The Court set the verified motion to revoke bond for hearing on the morning of September 20, 2018. Mr. Thurby was not present at the hearing. The Court revoked Mr. Thurby's bond and a warrant was issued for his arrest. As explained further below, following the Court hearing, the defense attorney communicated to Mr. Thurby that the Court had issued a warrant for his arrest.

The Longmont Police Department immediately began efforts to locate and arrest Mr. Thurby. Officers obtained a court order to obtain geo-locational data on Mr. Thurby. That evening, the geo-locational data showed Mr. Thurby was in the area of 1250 South Hover in Longmont, Colorado. The Longmont Police Department was also contacted by a witness indicating they had come into contact with Mr. Thurby at the Regal Village at the Peaks Theatre. This witness was with one of the protected parties for whom a mandatory protection order had been issued by the Court. The witness called the Police Department to inform the police that Mr. Thurby was at the same location as the protected party.

Officer #1¹ responded to the Regal Theatre in an effort to locate Mr. Thurby. Officer #1 was wearing plain clothes and not visibly displaying any indication he was a police officer. Officer #1 was familiar with Mr. Thurby as he had interacted with him during the initial sexual assault investigation. During the previous interaction with Officer #1, Mr. Thurby had been aggressive and stated he had been arrested 6 - 7 times for assaulting police officers. Officer #1 was also aware of Mr. Thurby's recent attempt to purchase a firearm. Officer #1 entered the area and located Mr. Thurby sitting near the fire pit in front of the Regal Theatre with a female. Officer #1 positively identified Mr. Thurby and requested additional cover officers to respond. As Officer #1 waited for additional officers, he observed Mr. Thurby enter Marco's Pizza and then return to his seat near the fire pit. Officer #1 did not attempt to make contact with Mr. Thurby. Officer #2 was in uniform and entered the area from the west. Officer #2 was aware of the warrant for Mr. Thurby's arrest and his attempt to purchase a firearm. Officer #3 was in uniform and entered the area from the south. Officer #1 remained back and observed, intending to allow the uniformed officers to place Mr. Thurby in custody.

Officer #1 said Mr. Thurby stood up from his chair after being contacted by Officers #2 and #3. After a brief interaction, Mr. Thurby sat back down as requested. After being seated, Mr. Thurby began to reach into the area of his waistband. Officers gave him commands and told him to keep his hands where they could see them. The female with Mr. Thurby (Anna Norman) became more vocal and Officer #1 moved closer in the event he needed to intervene. When Mr. Thurby stood up a second time, Officer #2 grabbed his left arm and Officer #3 grabbed his right

¹ In past critical incidents, all officers involved have been identified. In this case, the District Attorney is aware of repeated and numerous threats against members of the Longmont Police Department related to this incident, by individuals connected to Mr. Thurby. As a result of these serious threats, the District Attorney is not identifying the involved officers by name because of safety concerns.

arm. Mr. Thurby struggled and actively resisted the officers' efforts to control his hands. As Mr. Thurby tried to break free from the officers, he turned to his left. Officer #1 stated that when Mr. Thurby turned to the left, his shirt came up and Officer #1 saw the handle of a gun in the right side of Mr. Thurby's waistband. Officer #1 repeatedly yelled "Gun!" to alert the other officers. Officer #1 drew his Glock .45 and moved closer after he observed the firearm.

Officer #1 saw Mr. Thurby stumble towards the fire pit as he spun to the right and broke free from the officers. Officer #1 saw the laser sight from Officer #2's taser on Mr. Thurby and heard the deployment of a taser. After the taser deployment, Mr. Thurby fell and was positioned on his back with the gun in his hand. Officer #1 observed Mr. Thurby lift the handgun away from his torso moving it in the direction of the officers. Fearing for his safety, and the safety of the other officers, Officer #1 discharged his firearm. Officer #1 believed he fired 3 times. Officer #1 then approached, secured the handgun, and Officer #3 started to perform CPR.

Officer #2's interview was consistent with Officer #1's account, but he was able to provide additional details based on his position. Officer #2 stated that as he approached, Mr. Thurby started talking to a "kid" across the fire pit. Officer #2 stated that when he and Officer #3 initially made contact, Mr. Thurby provided a false name. The officers knew the name to be false. As the officers questioned him further, Mr. Thurby became, "nervous and twitchy" and put his right hand in the area of his waistband. Mr. Thurby stood up and walked in front of Ms. Norman. Officer #2 put his hand out, his palm touched Mr. Thurby's chest, and he told Mr. Thurby that he was not free to leave. Mr. Thurby sat back down, leaned back in the chair and again started to fidget with his waistband.

Officer #2 asked Mr. Thurby if he knew that lying to an officer was a felony. Mr. Thurby stood up again, and started to reach into his waistband. When he did this, his shirt pulled up and Officer #2 saw something black. Officer #2 saw Officer #3 grab Mr. Thurby's right hand and heard Officer #3 tell Mr. Thurby to, "Stop digging." Officers #2 observed Mr. Thurby yank his hand away, grab at his waistband, and start pulling his hand up. At this point, Officer #2 heard Officer #1 yell, "Gun, gun, gun!" Officer #2 backed up, drew his taser, and aimed it at Mr. Thurby. Mr. Thurby spun towards Officer #3 and Officer #2 pulled the trigger on his taser. Officer #2 observed Mr. Thurby's body lock up for a second but he believed the connection was poor, so he pulled the trigger again. Mr. Thurby started to turn towards him and he saw a firearm in Mr. Thurby's right hand. Officer #2 observed Mr. Thurby's finger was off the trigger at this time. After the taser was deployed, Officer #2 stated Mr. Thurby fell to the ground, positioned on his back.

Officer #2 dropped his taser and transitioned to his firearm. He aimed his weapon at Mr. Thurby's chest and saw that his body was tensed, consistent with still being tased. Mr. Thurby had the gun in his hand resting on his chest. Officer #2 described the barrel of Mr. Thurby's gun pointed in the direction of Officer #3. When the five-second cycle for the taser finished, Officer #2 saw Mr. Thurby's body relax and his finger move to the trigger of the gun. Officer #2 indicated at this point he believed that Mr. Thurby was going to kill Officer #3 and fired his weapon.

Officer #3's account of the incident was consistent with Officer's #1 and #2. Based on his positioning, Officer #3 did not see Mr. Thurby's gun during the incident and did not discharge his weapon.

Numerous witnesses to the incident were interviewed during the investigation. Witnesses Anna Norman and AA were closest to the incident and were able to provide the greatest detail.

Anna Norman

Anna Norman was interviewed by Critical Incident Team investigators on the night of the incident. Ms. Norman stated that she knew Mr. Thurby by the name "Skylar Sinclair" and referred to him as "Skylar" during the interview. For clarity purposes, we have used "Mr. Thurby" in describing her account. Ms. Norman explained that she and Mr. Thurby had been dating for approximately one month. Ms. Norman stated that on the afternoon of September 20, 2018, she and Mr. Thurby made plans to go to the Village at the Peaks. They took a bus from North Main around 4:00 p.m. and were dropped off near Kohl's. Ms. Norman and Mr. Thurby walked around in the area and went to several stores. They purchased a fifth of whiskey at a liquor store and both drank from the bottle. Ms. Norman did not believe that she or Mr. Thurby was intoxicated. Ms. Norman and Mr. Thurby ate at Burger King and then walked to the Regal Theatre.

They did not have plans to go to a movie but made a spontaneous decision to see "The Nun." They purchased tickets for the 7:40 p.m. show and waited for approximately one hour in front of the Regal Theatre. Ms. Norman said during the movie Mr. Thurby continually got up and left the theatre and was making and receiving texts and calls. Ms. Norman told police that she was aware that during the movie someone delivered "PTSD" medication to Mr. Thurby. After the movie, Ms. Norman and Mr. Thurby sat near the fire pit in front of the theatre. Ms. Norman said they went to Marco's Pizza and ordered a drink, and then returned to their seats near the fire pit. Ms. Norman noticed an "unusual" man sitting across the fire pit from them and believed he was an "undercover" police officer. Ms. Norman noticed Mr. Thurby fixated on a uniformed police officer walking in their direction. Uniformed officers made contact with her and Mr. Thurby while they were seated near the fire pit.

When the uniformed officers made contact, Ms. Norman observed Mr. Thurby moving his hands around where officers could not see them and grabbing for something. Ms. Norman demonstrated during the interview that Mr. Thurby's hand was near his right side in the area of his waistband. Officers were giving Mr. Thurby commands and he was not complying. Ms. Norman told Mr. Thurby to stop and encouraged him to cooperate with the officers. Ms. Norman was concerned because she recognized Mr. Thurby's actions appeared dangerous to the officers.

Ms. Norman struggled to provide details of the events immediately before the shooting, but was able to supply the following information. Mr. Thurby stood up while talking to the officers and refused to follow the officers' commands to sit down. The two uniformed officers each grabbed one of Mr. Thurby's arms. Ms. Norman believes she saw or heard handcuffs at this time. Mr. Thurby struggled with the officers' attempts to control him and one arm came free. Ms. Norman saw the handle of a black handgun in Mr. Thurby's waistband during the struggle. Ms. Norman saw Mr. Thurby's hand going towards the gun but due to him twisting away and her efforts to move out of the way, she never saw his hand on the gun. Ms. Norman believes she saw two officers deploy tasers and heard the sound of a taser. (Evidence at the scene and autopsy indicated Officer #2 deployed his taser twice during the incident resulting in four probes striking Mr. Thurby). Ms. Norman saw Mr. Thurby fall to the ground and knock

over a bench. Ms. Norman said after Mr. Thurby fell to the ground he was “still trying to get up.” She observed the “undercover” officer move around to help and heard him yell “Gun! Gun! Gun!” Ms. Norman stated she heard five to six shots.

Ms. Norman said that during the incident the officers “gave him a lot of warnings” but he did not listen. Ms. Norman mentioned during the interview she thought the taser would have “sufficed,” indicating they did not need to shoot Mr. Thurby. However, Ms. Norman acknowledged Mr. Thurby was going for the gun and refused to comply with commands from the officers.

Ms. Norman was asked about the gun during the interview. Ms. Norman reported that, approximately two weeks earlier, she had purchased a black 9mm Remington handgun from "Liberty" in Fort Collins. Ms. Norman confirmed that Mr. Thurby was with her at the time the gun was purchased. She claimed she had purchased the gun for herself because she wanted it for personal protection. Ms. Norman admitted that she was aware that Mr. Thurby had previously attempted to buy a gun and had been denied. As described below, further investigation by law enforcement revealed that she was observed on security video with Mr. Thurby at the time of the attempted purchase by Mr. Thurby -- prior to buying the gun herself later that same day. She also revealed Mr. Thurby subsequently possessed the gun on multiple occasions following her purchase.

Ms. Norman said that she and Thurby went to shoot the gun the previous Saturday (September 15th). While shooting, the gun "jammed" multiple times. Ms. Norman wanted to take the gun back for a refund. Mr. Thurby had been encouraging her to get a different gun and allow him to keep the Remington.

Ms. Norman was questioned about who had been carrying the gun on the night of the incident. Ms. Norman responded that she and Mr. Thurby had discussed bringing the gun with them, but they had decided to drop the gun off at Mr. Thurby's mother's house. Ms. Norman said the gun was inside a "box" when they left it at the home of Mr. Thurby's mother.

Ms. Norman was asked if it was possible that Mr. Thurby brought the gun to the Regal Theatre without her knowledge. She was adamant that he had not done so. She said that she was really surprised when she saw the gun in his waistband.

Ms. Norman described she has seen Mr. Thurby carry the gun in his waistband in the past and he was constantly adjusting it. Ms. Norman was certain that if Mr. Thurby had been carrying the gun in his waistband earlier that afternoon and evening she would have known. Ms. Norman suggested that whoever brought the “PTSD” medication may have also brought the gun to him. Ms. Norman was shown a picture of the gun recovered from Mr. Thurby and she confirmed that it appeared to be her gun. Follow up investigation confirmed the firearm in Mr. Thurby's possession at the time of the shooting was the Remington 9mm purchased by Ms. Norman at USA Liberty Arms in Ft. Collins on September 11, 2018. Video evidence also established that Ms. Norman was with Mr. Thurby when he attempted to purchase the firearm at Foundation Pawn earlier on September 11, 2018 and was denied. Mr. Thurby and Ms. Norman are wearing the same clothing in video from Foundation Pawn and USA Liberty.

Ms. Norman was re-interviewed by investigators on October 1, 2018. During the second interview, Ms. Norman indicated she had talked to Mr. Thurby's family and others after the shooting incident. Her conclusion was "this is how Gillie would have wanted to go out," and clarified she meant "suicide by cop." Ms. Norman's belief was based on statements Mr. Thurby made to people before the shooting and his actions with the gun that night. Ms. Norman disclosed that before the shooting Mr. Thurby made several statements that, if the police came to arrest him, he would rather pull a gun than sit in jail for something he didn't do. Ms. Norman also indicated Mr. Thurby made a statement he would rather go out shooting than be behind bars. Ms. Norman said when Mr. Thurby started to pull out the gun the officers, "did what they had to do" and "they did not have a choice." Ms. Norman's statements to investigators were consistent with her statements to other people after the incident. Interviews revealed that after the shooting Ms. Norman had told people Mr. Thurby wanted to "go out in a blaze of glory" and the shooting was "suicide by cop."

AA

AA, a young civilian witness, was contacted on scene following the incident. AA was interviewed at the Longmont Police Department by members of the Critical Incident Team the night of the incident. AA said he went to the Mall around 9:25 p.m. and purchased a movie ticket. He then sat outside of the movie theater near the fire pit. He was thirsty and went to Marco's Pizza for some water. When he came back he sat on the north side of the fire pit. He noticed a male and a female sitting across the fire pit from him (south side). The male and female were sitting on a two-seat bench. The male was sitting closer to the theater and the female was seated on the male's left. There was no one else at or near the fire pit, although AA was aware that other people were in the general area on the west side, as well as on the patio of the restaurant to the north (identified later as Fuzzy's Tacos). There was no one on the patio of Marco's Pizza.

The male spoke to AA and asked him two questions. The male first asked AA if he had come there by himself, and AA responded he had. The male then asked him what movie he was going to see. AA could not remember the exact name of the movie but he told the male it was something like, "Castle of the Walls." At this point, AA saw two uniformed police officers approach the male.

The uniformed officers stood behind the male, one officer on the male's left and one on his right. When the officers first approached the male, it was a casual conversation. AA heard the initial exchange between the male and officers. The exchange involved the officers asking for the male's name and date of birth. AA put in his ear buds as he did not want to be involved with the situation between the male and the officers. He had not yet turned on his music and was able to hear the male give the officers a date of birth. AA recalled the officer asking the male several times about his date of birth. AA believed the male looked like he was trying to hide something based on the interaction. At this point, AA turned on the music in his earbuds. The music was not loud enough that he didn't know what was happening, but he couldn't hear specific words from the officers or the male.

AA observed the male was talking with the officers for about a minute when he noticed the male becoming very uncomfortable. Approximately 20-30 seconds after that the male became "hostile." AA said it appeared the officers were about to arrest the male. The male tried to stand up but the officers told him to sit back down. He did not see the officers place their

hands on the male, but they moved toward him and were about to physically get him to sit back down when the male sat back down. Prior to him trying to stand up, AA could tell that the male was becoming agitated. AA explained the male was moving around a lot, very fidgety, and looking around like he wanted to get out of there.

AA saw the male turn to his right and stand up. The male then pulled a gun out from his left side waistband with his left hand. AA described the gun as having a black handle, but he could not describe anything else specific about the gun. The gun was completely out of the male's waistband and he was bringing it around to the front of his body. When the gun was still coming around the male's left side, both officers fired their tasers twice. The male never got the gun around far enough to point it at someone before he was tased. The officers were telling the male to "Get down," "Get on the ground" and "Put your weapon down." The male was never able to fully turn around and was tased in the back. The male fell on the ground behind the fire pit. AA never saw the male again as his view was obstructed by the fire pit.

After the male was tased, a "casual" officer (Officer #1) came from the northwest and was behind the uniformed officer on the right. This "casual" officer had his gun out and yelled "gun" very loud. At this point the female moved slightly away. AA heard multiple gunshots in a row. He is not sure of how many gunshots he heard but believed it was less than ten. AA believed only the "casual" officer fired his gun. AA said before he heard anyone yell that there was a gun, he had already seen it, and knew that it was a gun as he had been around guns in the past. AA said as soon as he saw the gun he immediately ran around to the back of his chair to take cover. When he ran around the chair, both of his earbuds fell out, and his phone fell on the ground. After the gunfire stopped, AA went into Marco's Pizza where he was contacted by officers.

AA said he never saw the uniformed officers with their guns drawn, as they both had their tasers drawn. He described the tasers as being black in color. AA believed that both uniformed officers tased the male because he saw wires coming from both officers' tasers and heard two rounds of taser noise. (As stated above, the physical evidence showed Officer #2 fired his taser twice resulting in the deployment of four probes and wires). AA described the tasers going off "one, two." He was not sure how long the tasers went off, as the sound of the gunfire blocked that out.

Jonathon Ballard

Jonathon Ballard was identified and interviewed during the investigation. Mr. Ballard knows the Thurby family and worked with Gillie Thurby III at Valvoline Instant Oil Change on September 20, 2018.

During his interview, Mr. Ballard indicated he was aware Mr. Thurby had attempted to purchase a gun in the last few weeks, but had been denied based on the background check. Mr. Thurby told Mr. Ballard he was thinking about having "Anna" purchase a gun for him. Mr. Ballard said he went shooting with Mr. Thurby and Anna in the mountains the week prior and recalls the gun jamming at times.

Mr. Ballard described overhearing Mr. Thurby having a phone conversation at work on September 20, 2018. Mr. Ballard said Mr. Thurby was saying something about having a warrant. Mr. Ballard said after the phone conversation Mr. Thurby was acting "sketchy" and borrowed

Mr. Ballard's car to go to lunch, rather than take his own truck. After returning from lunch around 1:00 p.m., Mr. Thurby left in his own truck and did not return.

Mr. Ballard described that around 8:00 p.m. the night of the shooting, he received some phone calls and text messages from Mr. Thurby. Mr. Thurby requested that Mr. Ballard go to Mr. Thurby's mom's house to pick up a box that had Mr. Thurby's "PTSD" medications inside. Mr. Thurby instructed Mr. Ballard to bring the box to him at the Village at the Peaks Movie Theatre. Mr. Ballard said that when he arrived at the home, Mr. Thurby's mom opened the front door. She immediately pointed to a box located just inside the doorway. According to Mr. Ballard, Mr. Thurby's mom did not speak during this interaction. Mr. Ballard said that the box was closed, and he could not see the contents. After picking up the box, he met Mr. Thurby at the movie theatre.

When Mr. Ballard arrived at the theatre, Mr. Thurby was waiting at the curb and got into his vehicle. Mr. Thurby instructed Mr. Ballard to drive away from the theatre. Mr. Ballard drove away and parked in the west parking lot a bit north of the theatres. Mr. Ballard believed they parked directly west of the T-Mobile store. After parking, Mr. Thurby opened the box. Mr. Ballard watched as Mr. Thurby removed a pill bottle from the box, unscrewed the cap and took a pill. After taking the pill, Mr. Thurby removed a smaller-sized box. When Mr. Thurby opened this smaller box, Mr. Ballard saw a handgun he recognized as the same gun from when they went shooting in the mountains. Mr. Ballard said that Mr. Thurby also removed a loaded magazine from the larger box. Mr. Thurby pointed to the top bullet, and told him it was a hollow point. During the conversation, Mr. Thurby said the hollow point bullet was the one that would do the worst damage. Mr. Thurby then put the magazine inside the gun. Mr. Ballard could not remember if Mr. Thurby racked a round into the chamber of the gun or not. After Mr. Thurby put the loaded magazine into the gun, he put the gun inside the right front pocket of his pants.

Mr. Ballard said that while in the car, Mr. Thurby stated many times he wasn't going to go back to jail, and he wasn't going to go to prison. Mr. Thurby also told Mr. Ballard he purposely didn't drive his truck to the theater because he would have gone around shooting at cops. Mr. Ballard believed he and Mr. Thurby were in the car together for 15 - 30 minutes. When Mr. Thurby left the car, he walked back in the direction of the movie theatre.

Family Members

Laura Mason is Mr. Thurby's mother and was interviewed as part of the investigation. She indicated that she saw Mr. Thurby on September 20, 2018. Ms. Mason told investigators Mr. Thurby was aware the Court had issued a warrant for his arrest because his defense attorney had called that day and notified him after the bond revocation hearing. Ms. Mason stated that Mr. Thurby conveyed his fear the Longmont Police Department was stalking him and she was aware he carried knives to protect himself from Longmont officers. She also stated she knew Mr. Thurby owned a pistol but claimed she was not aware if he was carrying it on September 20, 2018.

Investigators also talked to Mr. Thurby's father, Gillie Thurby II, by phone during the investigation. Gillie Thurby II said Mr. Thurby called him from the bathroom at the movie theatre before the shooting. He indicated they talked on the phone for approximately 30 minutes.

He described that during the conversation Mr. Thurby was very upset and crying. In addition, Mr. Thurby communicated to his father that the protected party had been at the theatre.

Scene and Firearms

Members of the Critical Incident Team processed the scene of the incident. Investigators recovered ten .45 caliber shell casings. Investigators collected a bench containing four bullet impacts. Officer #1's department issued cell phone and AA's cell phone were collected from the scene. A purse belonging to Anna Norman was collected at the scene. Inside the purse was a disassembled cell phone identified as belonging to Gillie Thurby III. Efforts to process the phone failed to recover usable information as all content on the phone was encrypted. One Remington Arms, model RP9, 9 mm pistol was collected. The pistol contained one fully loaded 18 round magazine. The first round in the magazine was a hollow point round; the remaining 17 were full metal jacket rounds. Officer #2's taser was collected on scene and an examination showed both cartridges had been deployed.

An examination of Officer #1 and Officer #2's firearms revealed Officer #1 fired four rounds and Officers #2 fired six rounds. Officers #1 and #2 were both carrying .45 caliber handguns with department issued duty ammunition. All rounds recovered during the investigation were consistent with the department issued .45 caliber ammunition.

Dr. Lingamfelter performed the autopsy of Gillie Thurby III at the Boulder County Coroner's Office on September 21, 2018. Dr. Lingamfelter found six entrance wounds during the autopsy. Two rounds entered Mr. Thurby's lower abdomen with an upwards, slightly left to right, and slightly front to back trajectory. Four rounds entered Mr. Thurby's neck and face, all indicating an upward trajectory. Several of these entrance wounds showed an additional slight right to left trajectory. Toxicology analysis from the autopsy indicated Mr. Thurby had a blood alcohol content of .095 and nine nanograms of THC in his system.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and killing another human being is, generally, prohibited by statute as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly force is justified. One of these specific circumstances is the use of deadly force to defend oneself or a third person. A second specific circumstance is the use of deadly force by a peace officer in making an arrest. The evidence establishes that two Longmont Police Department officers intentionally fired their weapons resulting in fatal wounds to Gillie Thurby III. Both officers indicated that they fired their weapons believing they were in imminent danger of being killed. The determination of whether the officers' conduct was criminal is, therefore, primarily a question of legal justification.

The legal framework for the analysis in this case is found in the following sections of the Colorado Revised Statutes:

C.R.S. § 18-1-407 Affirmative defense

(1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

C.R.S. § 18-1-710 Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

C.R.S. § 18-1-704 Use of physical force in defense of a person

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

- (a) The actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury.

C.R.S. § 18-1-707 Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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

C.R.S. § 18-1-901 Definitions

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

The issue is , therefore, whether at the time Longmont Officers used deadly physical force, they reasonably believed that they or another person were in imminent danger of being killed or receiving great bodily injury.

LEGAL ANALYSIS

In this case, the actions of the Longmont Police Department officers were legally justified under Colorado law. At the time the officers discharged their handguns, they was justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707(2)(a). Both statutory provisions provide an affirmative defense to the taking of human life if done in order to protect oneself, or another, from the imminent use of deadly physical force.

C.R.S. §18-1-704 is an affirmative defense applicable to all persons defending themselves or a third party. C.R.S. §18-1-707 is an affirmative defense limited in application to law enforcement officers making an arrest or preventing an escape. C.R.S. §18-1-707 is applicable in this case because Gillie Thurby III was a fugitive with an active arrest warrant and the officers were attempting to place him under arrest.

On September 20, 2018 Gillie Thurby III was aware he had a warrant for his arrest. Prior to the incident, Mr. Thurby made multiple statements about not going back to jail and planning to use a gun if confronted by law enforcement officers. After Mr. Thurby came into contact with the witness and the protected party at the theatre, he would reasonably have believed they would have reported his location to law enforcement. The witness did, in fact, call the Longmont Police Department to report seeing Mr. Thurby at the theatre. Mr. Thurby was upset prior to his interaction with the officers based on his phone call with his father from the bathroom of the Theatre. Mr. Thurby, despite knowing he had an active warrant and officers would likely be responding to his location, elected to remain at the Theatre. In addition to remaining at the Theatre, Mr. Thurby made arrangements to have Mr. Ballard deliver his handgun to him at that location. Mr. Thurby made additional statements to Mr. Ballard about not going back to jail and references to shooting at cops. Based on Mr. Thurby’s statements and actions, it is reasonable to infer he actually intended to engage in an armed confrontation with officers at that location on the night of September 20, 2018.

Officers contacted Mr. Thurby to take him into custody on the active warrant. Officers gave Mr. Thurby multiple commands during the interactions and he failed to comply. Mr. Thurby engaged in a physical struggle with the officers when they attempted to place him in custody. During the struggle, Mr. Thurby pulled a loaded handgun from his waistband. Officer #2 attempted to utilize a lesser degree of force by deploying his taser two times. When the taser

deployments ended, Mr. Thurby was positioned on his back, with a firearm in his hand. Officer #1 observed Mr. Thurby lift the firearm away from his body, and move it towards the officers. Officer #2 described that when the taser cycle ended Mr. Thurby's body relaxed and he moved his finger to the trigger of the firearm with it pointed in the direction of Officer #3. The circumstances immediately before the officers discharged their weapons make Officer #1 and #2 reasonable in their beliefs that Mr. Thurby's use of deadly physical force was imminent.

CONCLUSION

We find in our review of this shooting that no conduct by the Longmont Police Department Officers rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident meet the legal requirements of the affirmative defense of using deadly physical force in self-defense as contained in C.R.S. §18-1-704(2)(a). The officers' actions also meet the legal requirements of C.R.S. §18-1-707(2)(a) involving the use of deadly physical force in making an arrest or preventing an escape. Therefore, based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense(s) were satisfied by law enforcement actions, that law enforcement was legally justified in the use of deadly physical force in this case and, therefore, that their conduct does not violate any criminal statutes. Accordingly, pursuant to C.R.S. §18-1-704(2)(a), and §18-1-707(2)(a), and applicable case law, I find that Longmont Police Department officers were legally justified in using deadly physical force against Gillie Thurby III under the circumstances. As a result, my office will not be filing criminal charges.

The Longmont Police Department is the custodian of records related to this case. Any records inquiries should be directed to the Longmont Police Department.

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District