

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: Boulder County Justice Center 1777 Sixth Street Boulder, Colorado 80302 Court Phone: (303) 441-3750	
IN RE: 2019 BOULDER COUNTY GRAND JURY,	COURT USE ONLY
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<b>BOULDER COUNTY GRAND JURY REPORT</b>	

The Boulder County Grand Jury has investigated the shooting of Jesus Ramos by Officer Michael Kimbley of the Longmont Police Department on December 31, 2018. Members of the Grand Jury examined video and audio evidence, reviewed photographs, and received testimony from eight witnesses. Upon completion of the investigation, the Grand Jury was instructed upon and applied Colorado law pertaining to the use of deadly physical force. The Grand Jury determined that the investigation was thorough, and no additional witnesses or evidence would alter the Grand Jury's conclusion. Based upon the facts and the applicable law, the Grand Jury determined that No True Bill shall be issued and therefore, no charges will be filed.

The Grand Jurors expressed concerns with the Longmont Police Department's response to this incident that are included in the Grand Jury Conclusions below. Thus, the Grand Jury determined, pursuant to Colorado Revised Statute Section 16-5-205.5, that a report is in the public interest because the investigation concerned allegations of abuse of authority by a peace officer and allegations of commission of a class 2 felony.

#### OVERVIEW OF THE INVESTIGATION

On December 31, 2018, Longmont Police Officer Michael Kimbley discharged his firearm while on duty and responding to a call for service of a male party, 34-year-old Jesus Ramos, who had reported a failed suicide attempt with a firearm. Jesus Ramos died from a single .223 caliber gunshot wound to the lower-left back. The incident took place at 2211 Pratt Street, Longmont, County of Boulder, Colorado at approximately 4:20 am. In accordance with statute and protocol, the Boulder County Investigation Team, consisting of experienced multi-agency personnel, responded to investigate this officer-involved fatality. Pursuant to protocol, the agency involved

in the incident is not to play an active role in the investigation. In this case, the Boulder Police Department took primary command of the investigation, with assistance from other outside Boulder County agencies, including the 20<sup>th</sup> Judicial District Attorney's Office.

In every case of an officer involved shooting, at the conclusion of the investigation, the findings are reported to the District Attorney who reviews the investigation in its entirety as well as the applicable law, and then makes a decision as to whether the shooting was legally justified or not.

The authority and jurisdiction of the District Attorney is limited to whether a crime was committed. The District Attorney cannot discipline an officer for acting outside of departmental policies and procedures. In addition, the District Attorney's Office cannot pursue or consider civil tort claims.

Pursuant to section 20-1-114:

(1) The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its web site or, if it does not have a web site, make it publicly available upon request.

(2) If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's investigation. If no true bill is returned, the grand jury may issue a report pursuant to section 16-5-205.5, C.R.S.

After the team's investigation into this incident, and due to the nature and circumstances of Mr. Ramos' death, the District Attorney requested the Grand Jury review all pertinent facts and conduct additional investigation into the circumstances, including whether a charge of Murder in the Second Degree should be filed against Officer Kimbley. The Grand Jury collected evidence between June 20, 2019 and August 22, 2019. Ultimately, the Grand Jury returned a "No True Bill" and unanimously requested and approved the issuance of a Grand Jury Report, due to the circumstances involved in this officer-involved shooting death.

## INVESTIGATIVE AND TESTIMONIAL SUMMARY

At approximately 4:16 a.m. on December 31, 2018 Mr. Ramos called 911 after he had discharged a revolver in his father's apartment. He had fired one shot into his mattress and floor during an attempted suicide. Mr. Ramos's father testified that he awoke after Mr. Ramos fired one shot and unloaded the remaining rounds of ammunition. In his recorded 911 call, Mr. Ramos cited having suicidal thoughts and having ingested methamphetamine and possibly heroin. He requested an ambulance take him to the hospital due to his suicidal thoughts. He eventually informed

Dispatch that the gun was left in the apartment and his father would be driving him to the hospital. This information was aired to Longmont Police Officers on duty.

The Officers on duty each testified as to their training and experience. Each officer was certified by the Colorado Peace Officer Standards and Training (P.O.S.T.) Board. Although they varied in experience levels, they each testified as to a variety of specialty training they completed, in topics such as firearm and tactical approach training, crisis intervention training, simulated use-of-force scenarios, defensive tactics, less-lethal training and drug-recognition training.

Pursuant to protocol, Dispatch issued alert tones, usually indicating an immediate threat to life or limb and usually involving a weapon. The Grand Jury received testimony that even when the call is for a suicidal party involving a firearm, officers approach the situation as a "hot stop" which is an approach that is taken whenever they have reason to believe that someone may be armed. During a "hot stop" officers will give commands to exit the vehicle, to show hands, confirm that the person is not armed, and put the person into hand cuffs for safety purposes. Longmont officers on duty at the time responded to the tones either at the direction of Dispatch or upon their own initiative due to the nature of the call.

During the 911 call, Dispatch directed Mr. Ramos to exit the apartment building, go down to his knees with his hands raised, and wait for officers to arrive. Mr. Ramos's father testified that he unloaded the firearm and left it in the apartment. Mr. Ramos and his father ultimately exited the apartment building leaving the firearm in the apartment, got into Mr. Ramos's father's vehicle and drove out of the parking lot. Mr. Ramos's father was driving the vehicle and Mr. Ramos sat in the passenger seat. The vehicle began driving southbound on Pratt Street and was heading to the hospital.

The first officer to arrive at 2211 Pratt Street began to stage the street and parking lot in front of the apartment buildings. As other officers began arriving, officers observed that the potential subject vehicle was exiting the parking lot and headed southbound on Pratt Street. The initial officer testified that he was prepared to allow the vehicle to pass and follow it to the hospital. The sergeant on scene executed a "hot stop" on the vehicle and officers began giving commands to the passengers. Firearms, including handguns and rifles, were deployed by most officers due to the call involving a firearm. Mr. Ramos's father pulled the vehicle over to the west curb and stopped at the direction of law enforcement. A less-lethal shotgun was deployed by one officer, and officers took cover behind patrol vehicles during the verbal contact with Mr. Ramos. Officer Kimbley was positioned at the rear-passenger side of a patrol vehicle positioned northbound on the west curb of Pratt Street facing Mr. Ramos's vehicle. Officer Kimbley deployed his .223 caliber rifle. Ten Longmont police officers responded to the scene. One officer was Spanish speaking.

Officers testified that initially, officers directed Mr. Ramos's father to remain in the vehicle. One officer took the lead giving commands to Mr. Ramos. He commanded Mr. Ramos to show them his hands multiple times. Mr. Ramos did not comply with any commands. In addition to giving commands, this officer also employed verbal de-escalation techniques in communicating with Mr. Ramos. During the interaction, officers could hear Mr. Ramos making threats to kill police officers, civilians and himself. Mr. Ramos informed officers that he had a "six shooter" and had "5 out of 6 shots left," referring to a revolver. He threatened to harm someone if his father was

not let out of the vehicle. He threatened to kill cops and/or civilians. It was determined that the father would be removed from the vehicle and was taken to a patrol car. Mr. Ramos's father told an officer not to shoot his son and that the gun was in the apartment. Mr. Ramos's father requested that officers let him speak with his son and believed that Jesus Ramos would listen to him. This information was aired to other officers via radio. Mr. Ramos made multiple furtive movements down below the dashboard, appearing to search for something in the vehicle, and sitting back up. Mr. Ramos remained on the phone with the 911 dispatcher while he was in the vehicle. One officer attempted to connect via telephone with Mr. Ramos but was never able to communicate with him. Mr. Ramos also made statements to the effect that he didn't want to hurt anyone, gave his word that he would not hurt anyone, and he wanted to talk.

After approximately 10 minutes, Mr. Ramos opened the passenger door of the vehicle and exited. He was observed wearing no shirt, shorts, an ankle monitor, and had a camouflaged jacket wrapped around his right hand. Mr. Ramos was holding a cell phone in his left hand. Officers and even Mr. Ramos's father's statements differ about what occurred after Mr. Ramos exited the car, but body-worn camera video evidence recorded some of the events on scene. In one officer's body-worn camera video footage, Mr. Ramos can be seen walking northwest of where officers were located, away from officers. Once he reached the apartment building parking lot, he can be seen turning clockwise towards officers and his left hand is obstructed by view due to the jacket. He completed the turn and began running toward Building B. As he ran away, he failed to obey officer's commands to stop and show his hands. The video shows that while running away from officers, Mr. Ramos dropped the jacket. Several officers did not see Mr. Ramos turn towards officers, one officer saw Mr. Ramos turn but described the turn differently than what is observed in video footage.

Once Mr. Ramos began running away, an officer attempted to discharge the less-lethal shotgun, but it did not function properly. Neither officers nor the subsequent investigation could determine why the less lethal shotgun failed to discharge. In the body-worn camera videos and surveillance videos, Officer Kimbley can be seen leaving his position behind the patrol vehicle and advancing towards Mr. Ramos. He took position at a tree on the median between Pratt Street and the apartment parking lot. At the tree, and approximately 4-5 seconds after the turn, Officer Kimbley fired his rifle once as Mr. Ramos ran in the other direction. Mr. Ramos was struck in the lower-left back as he was running away from the officers. Officers described seeing Mr. Ramos flinch and yell out but continue running around the side of a van at the end of the parking lot.

Several officers testified that they considered firing their weapons at Mr. Ramos but did not due to distance or obstructions. One officer testified that he did not fire his weapon at Mr. Ramos because he did not see a gun. At the time Officer Kimbley fired his weapon, a number of the officers believed that the discharge was actually the less-lethal shotgun. At the time they heard the shot and Mr. Ramos continued running away, those officers were unaware that the less-lethal shotgun had not functioned properly. Officers continued to pursue Mr. Ramos and eventually determined that he entered apartment B106 by crashing through a garden-level window. Mr. Ramos resided in apartment C106, which is in the same location in building C, north of building B, therefore Mr. Ramos may have believed that he was jumping into his own apartment. He was found dead in the living room of B106, having died where he fell on the floor. The entire scene was searched and investigators never recovered a firearm on scene. Mr. Ramos's cell phone was

collected from a bush near Building B. Police later recovered the unloaded revolver used earlier in the evening in a bag in apartment C106 as well as the fired round and unused ammunition.

The sergeant on scene testified that during this contact, the officers were attempting to safely detain Mr. Ramos, verify that he was not injured, and intended to determine whether it was appropriate for an emergency mental health hold or whether any criminal charges would apply. According to the sergeant, officers were not attempting to formally arrest Mr. Ramos for a crime at the time Mr. Ramos exited the vehicle.

In the immediate hours following the incident, lay witnesses and officers were interviewed by the critical-incident team. Officer Kimbley voluntarily submitted to an interview several days later. At the time of this incident Longmont Police officers were not required to carry body worn cameras. Several officers on scene captured events utilizing a body-worn camera and cell phone video functioning as a body-worn camera. This video evidence was collected, as well as the physical evidence, photographic evidence, the 911 call, dispatch radio traffic, and surveillance from the Moose Lodge across the street to the east of the scene. Several months later, Officer Kimbley voluntarily submitted to a second interview to address additional questions.

A formal “emotional debrief” was held by the Longmont Police Department and peer support counselors following the officer involved shooting. The sergeant on scene later hosted an informal debrief for the law enforcement involved at his home. During both debrief sessions, according to testimony, officers discussed the facts and circumstances of the shooting. A formal law enforcement tactical debrief has not yet been completed due to this pending investigation.

The Grand Jury also took testimony from an expert in human factors and officer-involved shootings. He offered insight into human factors that affect decision-making in critical incidents, including perception, attention, time-span of perception, the stress-impact on performance and total response times with firearms. The expert discussed some of the studies demonstrating the range of times that may account for the amount of time from when an officer perceives a threat to when the officer takes action. However, the expert noted that the studies are in controlled settings and may not accurately reflect the actual amount of time needed in any given situation. He testified as to law enforcement training in use-of-force situations. He also testified as to his analysis of the video evidence. He testified that the body-worn camera videos were the most accurate depictions of the events, whereas the Moose Lodge surveillance video did not capture all frames of the events. The expert provided possible reasons for the discrepancy between Officer Kimbley’s recall of events and the video evidence, as well as possible factors to account for the actual delay between when Officer Kimbley observed the turn and when he fired the shot. However, the expert testified that he could not account for a delay of this length using the studies on human factors alone.

#### Summary of Officer Kimbley Interviews

Officer Kimbley is a P.O.S.T. certified peace officer employed by the Longmont Police Department for almost 27 years. In December 2018, Officer Kimbley was assigned as a patrol officer. He had previously served as a canine officer, has been assigned to narcotics crimes, has served as a field training officer, and is a sergeant’s apprentice. In addition to P.O.S.T certification and other departmental trainings, Officer Kimbley has also received SWAT training, gun sights

carving training, Defensive Tactics training, and is certified in Pressure Point Control Tactics. Officer Kimbley has served as a firearm, and weapons tactics instructor.

In his initial interview, Officer Kimbley stated to Boulder Police Detectives that he responded to 2211 Pratt Street after hearing dispatch tones. He believed that he responded on his own initiative given the nature of the call. He arrived on scene and positioned himself to the rear passenger side of a patrol vehicle with his rifle. Prior to arriving on scene, dispatch had provided information that Mr. Ramos had attempted suicide with a handgun, discharged a firearm, and was under the influence of methamphetamine. He did not know or recognize Mr. Ramos on the night of the incident although later learned that he had previous contacts with Mr. Ramos. Officer Kimbley received information that Mr. Ramos was leaving the building and at some point, either before arriving on scene or shortly thereafter, received information that the gun was in the apartment. He stated that he could see Mr. Ramos clearly and was concerned about the furtive movements he was making below the dashboard and the fact that Mr. Ramos was reaching under the passenger seat. He stated he could hear Mr. Ramos making threats to kill police officers and civilians, including statements that he had "six shooter" and had "5 of 6 shots left." He described observing that Mr. Ramos was not complying with commands. He described holding his rifle just below a "ready" position, and that once Mr. Ramos exited the vehicle, he began pursuit. Once Mr. Ramos exited the vehicle, Officer Kimbley observed that Mr. Ramos had a jacket wrapped around his hand in a manner that he believed was concealing a weapon. Officer Kimbley went on to describe his concern that he would lose sight of Mr. Ramos and that Mr. Ramos would follow through with his threats to kill officers and/or civilians. Throughout the contact, Mr. Ramos continued to ignore officers' commands. Officer Kimbley described seeing Mr. Ramos turn towards officers, that the jacket came off his arm, and that Officer Kimbley believed that Mr. Ramos was about to engage them. Officer Kimbley then described that, while moving to a cover position, he brought up his rifle, got a clear sight of the picture on Mr. Ramos's front torso and fired. Officer Kimbley described then moving to a tree on the grassy median after Officer Kimbley had fired. Officer Kimbley articulated that he believed Mr. Ramos to be an immediate threat to himself when Mr. Ramos started to turn toward him. Officer Kimbley also stated that he believed Mr. Ramos was an imminent threat to anyone else in the area and given Mr. Ramos's threats to shoot officers, Officer Kimbley was concerned for the safety of unarmed citizens.

In the second interview, Officer Kimbley again voluntarily agreed to answer additional questions. During this interview Officer Kimbley explained that he had learned additional information about events that had taken place from other officers during post-incident debriefs. Despite learning of discrepancies between Officer Kimbley's and other officers' recollection of events, Officer Kimbley maintained his belief that he was moving toward the tree at the time he fired the shot and that he fired at Mr. Ramos's upper front torso. When asked if he would have arrested Mr. Ramos if he had complied with officer's commands, Officer Kimbley stated that they probably would have taken him in on an "M1" mental health hold. He stated that whether to arrest would have depended on whether Mr. Ramos actually had a firearm, he explained that Mr. Ramos had potentially committed a Menacing given the threats Mr. Ramos had made to the officers. Officer Kimbley stated that someone else would have ultimately made the decision whether to arrest Mr. Ramos.

## APPLICATION OF THE FACTS TO THE LAW

The Grand Jury considered the charge of Murder in the Second Degree, C.R.S. § 18-3-103. The Grand Jury was also presented with and considered the affirmative defenses of Use of Physical Force in Defense of a Person, C.R.S. § 18-1-704 and Use of Physical Force in Making an Arrest or Preventing an Escape, C.R.S. § 18-1-707. The Grand Jury was advised of the law regarding apparent necessity. The Grand Jury was instructed that there must be unanimous agreement by nine grand jurors that probable cause exists in order to issue a true bill. However, the Grand Jurors were also instructed that at a jury trial, the prosecution would be required to disprove the affirmative defenses beyond a reasonable doubt. The Grand Jury was provided with the definition of beyond a reasonable doubt. In all cases, to lodge criminal charges against an individual, there must be a reasonable probability of proving each and every element of the offense beyond a reasonable doubt. Moreover, in cases where the evidence supports an affirmative defense of self-defense, there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges can be brought against an individual. The Grand Jury was instructed on these legal requirements.

The Grand Jury considered the following legal standards to determine whether there was sufficient evidence to indict Officer Michael Kimbley, considering the applicable affirmative defenses in this type of case.

The elements of Murder in the Second Degree include:

1. That Michael Kimbley,
2. in the State of Colorado, at or about December 31, 2018,
3. knowingly,
4. caused the death of Jesus Ramos.
5. and that the Michael Kimbley's conduct was not legally authorized by the affirmative defenses of Use of Physical Force in Defense of a Person or Use of Physical Force in Making an Arrest or Preventing an Escape.

Michael Kimbley was legally authorized to use deadly physical force upon another person if:

1. he was a peace officer, and
2. he used deadly physical force upon another person when he reasonably believed that it was necessary, to defend himself or a third person from what he reasonably believed to be the use or imminent use of deadly physical force, while making, or attempting to make, an arrest; and
3. he did not know that the arrest was unauthorized.

Michael Kimbley was legally authorized to use deadly physical force upon another person if:

1. he was a peace officer, and
2. he used deadly physical force upon another person when he reasonably believed that it was necessary, to make an arrest of a person, whom he reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, and
3. he did not know that the arrest was unauthorized.

Michael Kimbley was legally authorized to use deadly physical force upon another person if:

1. he was a peace officer, and
2. he used deadly physical force upon another person when he reasonably believed that it was necessary, to make an arrest of a person, whom he reasonably believed had otherwise indicated, except through a motor vehicle violation, that he was likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay, and
3. he did not know that the arrest was unauthorized.

Michael Kimbley was legally authorized to use deadly physical force upon another person without first retreating if:

1. he used that deadly physical force in order to defend himself or a third person from what he reasonably believed to be the use or imminent use of unlawful physical force by that other person, and
2. he reasonably believed a lesser degree of force was inadequate, and
3. he had a reasonable ground to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving great bodily injury.

Even though the sergeant on scene and Officer Kimbley both stated that they were not attempting to formally arrest Mr. Ramos at the time he was shot, but instead were only intending to detain Mr. Ramos and would later determine whether they would take him to the hospital on an "M1" mental health hold or whether charges may be applicable, the Grand Jury was instructed on the definition of Felony Menacing since that term was raised by Officer Kimbley in his second interview.

The elements of the crime of Felony Menacing are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. by any threat or physical action,
5. placed or attempted to place another person in fear of imminent serious bodily injury
6. by the use of a deadly weapon or any article used or fashioned in a manner to cause person to reasonably believe that the article was a deadly weapon, or by representing verbally or otherwise that he was armed with a deadly weapon.

## GRAND JURY CONCLUSIONS

The Grand Jury considered the testimony, the photographic evidence, the audio and video evidence, and Officer Kimbley's statements concerning his belief that Mr. Ramos presented an imminent threat to himself, other officers on scene, and residents of the apartment building. The Grand Jury determined that although Mr. Ramos was ultimately unarmed, at least nine members of the Grand Jury agreed to issue a No True Bill, due to the applicable affirmative defenses available to Officer Kimbley, which, at trial, the prosecution would be required to disprove beyond a reasonable doubt. At least nine members of the Grand Jury voted to write this report, which they agreed would be in the public interest. In addition to this written report, the Grand Jury also releases a photograph of the scene (Attachment A), the 911 call, dispatch radio traffic audio, body-

worn camera footage, cell phone video, and Moose Lodge surveillance videos (Attachment B) as part of this report.

Although the Grand Jury determined No True Bill based on the totality of the circumstances and the applicable affirmative defenses, they voiced a number of concerns in this case. The Grand Jury strongly emphasized that the loss of life in these circumstances need not have happened and was “unacceptable.” They pointed to the nature of the 911 call and the response on scene prior to Mr. Ramos exiting the vehicle. Additionally, the Grand Jury expects that the Longmont Police Department will obtain additional training concerning the use of deadly physical force, less lethal force, and de-escalation tactics to ensure the safety of all involved. The Grand Jury also expects that the Longmont Police Department will obtain additional training concerning the response to suicidal parties and individuals in mental health crisis. Finally, the Grand Jury raised concerns about the informal, undocumented debriefings that followed this critical incident and the impact on witness recollection and testimony.

The Grand Jury hereby authorizes the District Attorney’s Office to sign this report on our behalf, indicating that this report has been authored and approved by at least nine members of the Grand Jury. The Grand Jury verifies the contents and release of this report to the public pursuant to C.R.S. 16-5-205.5.

Respectfully submitted by the 2019-2020 Boulder County Grand Jury on this 29<sup>th</sup> day of August 2019.

DATED THIS 2<sup>nd</sup> DAY OF August 2019

I, [REDACTED], the Foreperson of the 2019 Boulder County Grand Jury, do hereby swear, affirm and verify that the Grand Jury report was issued after deliberation and with the assent and agreement to the report by at least nine members of the 2019 Boulder County Grand Jury.

[REDACTED]

FOREPERSON

Subscribed and sworn to before me in the County of Boulder, State of Colorado, the 29<sup>th</sup> day of August 2019.

MICHELLE WELLS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID# 20064009133  
MY COMMISSION EXPIRES 03/08/2022

Michelle Wells  
NOTARY PUBLIC

Michael T. Dougherty  
Michael T. Dougherty, Reg. # 41831  
District Attorney