



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

September 10, 2015

Mike Butler
Public Safety Chief
Longmont Police Department
225 Kimbark Street
Longmont, CO 80501

Dear Chief Butler,

This office has reviewed the investigation by the Boulder County Investigation Team (BCIT) into the circumstances surrounding the shooting of Levi Rosales in Boulder County, Colorado on August 3, 2015. During that incident, Officer Robert Buswold fired his sidearm grazing Mr. Rosales' hip. It is our conclusion that the use of force was justified, and that the officer should therefore not be charged with any crime resulting from this incident.

It is important to note that although Mr. Rosales has been charged with crimes allegedly arising out of the incidents described here, this review focuses solely on whether the officer's actions conformed with the requirements of Colorado law. The charges against Mr. Rosales are merely accusations; he is presumed innocent beyond a reasonable doubt and is entitled to a fair trial. Mr. Rosales' behavior is discussed here solely as it informs our conclusions with regard to Officer Buswold.

As a part of this review, prosecutors and investigators from this office were on scene on the day of the shooting, and have worked in conjunction with BCIT since that time. We have reviewed the documentation generated by that investigation as well as photographs of the scene, the Use of Force Policy for the Longmont Police Department, and the Officer's training records.

On August 3, at approximately 3:55pm, officers were dispatched to Car Quest, an auto parts store in Longmont. There they learned that a man had stolen a power steering pump and other auto parts, then driven away in a red Cadillac. Witnesses were able to provide police with a physical description of this individual, as well as a partial license plate number.

Shortly thereafter, Officer Buswold was dispatched to a nearby home where the homeowner reported that a person matching the description of the person who was just at Car Quest had pulled into the alley behind his house, come into his back yard, and tried to enter his home through the back door. The homeowner told police that when confronted, the person was angry, and had told him that his car was overheating. The homeowner suggested that he call

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police for assistance. The conversation escalated and the homeowner ultimately told the person that he should leave and that the homeowner was calling the police. In response, the person lifted his shirt displaying a metal object that appeared to the homeowner be a badge or a gun. As the person left, the homeowner was able to use his phone to take a picture of the red Cadillac and its license plate, which was provided to police. He was also able to tell police what the individual was wearing, which included a red button down shirt, black pants, and a fedora.

Officer Buswold spoke with the officers who had been dispatched to Car Quest, and concluded that both incidents likely involved the same individual. Officer Buswold remained in the area looking for the red Cadillac until 4:54pm, when he saw it driving northbound on Lashley Street. Officer Buswold made a U-turn to get behind the Cadillac, and as it turned onto Elk Place, he activated his emergency lights. Shortly beyond the intersection, Elk Place ended in a cul-de-sac, where the Cadillac pulled into the driveway of 120 Elk Place, a private residence.

Officer Buswold pulled up near the driveway, and got out of his patrol car. A male later identified as Levi Rosales exited the Cadillac wearing a red shirt, a tie, and black pants. A brown fedora was later located on the passenger seat. It would later be determined that this was not Mr. Rosales' address, and the occupants did not know him, but the officer did not know that at the time.

Mr. Rosales said to the officer "the guy just ran back that way," and pointed. The officer said "no, I want to speak to you," as he saw Mr. Rosales reaching into the Cadillac. When the officer told Mr. Rosales not to reach into the car, Mr. Rosales closed the driver's door and moved to the passenger side, where he pulled what appeared to be a hunting rifle with a scope through the open passenger side window. Officer Buswold told Mr. Rosales to drop the gun as he drew his own sidearm, but Mr. Rosales did not comply. Instead, Mr. Rosales began manipulating the weapon in a way that made the officer believe he might be manipulating the action of a bolt-action rifle. Mr. Rosales then raised the barrel toward the officer. Officer Buswold fired two shots. One missed Mr. Rosales, and the other grazed Mr. Rosales' hip. Mr. Rosales fell to the ground and yelled "don't shoot." The officer yelled back "don't move."

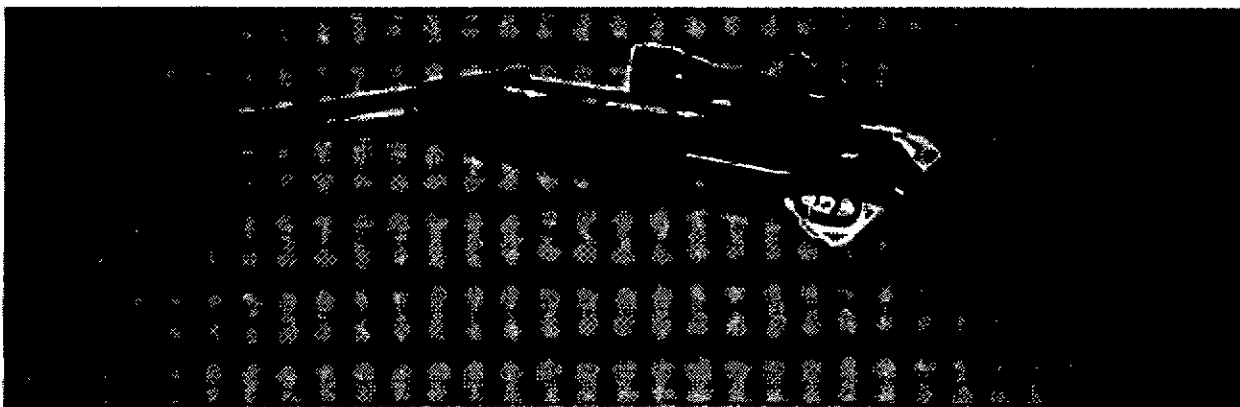


Photo of the rifle Mr. Rosales removed from his vehicle and raised toward Officer Buswold.

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Officer Buswold noticed that his sidearm had jammed, and moved to take cover behind a vehicle while he cleared it. He did not fire his weapon again because after that time he did not feel that he was in immediate danger. The officer saw Mr. Rosales get up and run toward the residence. He radioed for immediate emergency assistance and waited for additional officers.

Mr. Rosales broke in a window-mounted air conditioner unit and entered the home, where no one was present at the time. He ran through the residence leaving behind two glass pipes of a type that are commonly used to smoke methamphetamine. He also left the rifle, which was later discovered to be a pellet gun, near the back door. Mr. Rosales ran out the back, leaving his red shirt and tie in the yard. He then climbed the back fence and entered another yard.

The resident of 139 Placer Street, which backs to 120 Elk Place, was in her back yard when Mr. Rosales came over the fence. She immediately said "please don't hurt me" as Mr. Rosales entered her house. He left again shortly thereafter saying "I'm sorry." A badge was later found by the resident in the bathroom of the home, along with Mr. Rosales' ID and Cadillac title. The resident gave these things to a police officer, who was now tracking Mr. Rosales with the help of a police dog. Notably, the part of the badge that identified it as a badge for someone in "bail enforcement" was covered in black electrical tape.

Mr. Rosales then ran north to 141 Snowmass Place. The resident there heard someone trying to open his sliding back door, and approached just as the door was thrown open. Mr. Rosales tried to enter the house, but was pushed out by the resident, who got no response to his question "what the f___ are you doing?" As Mr. Rosales ran away, the resident called police.

As police were looking for Mr. Rosales in the area of 137 Telluride, they were approached by a woman who had been painting her house. She had left the door to the garage open all day, but the door was now closed, and she had heard noises inside. Officers opened the door and ordered Mr. Rosales to come out. There was no response. There was also no response when a police dog was sent in, or when a "stingball" grenade - a grenade that ejects a large number of rubber balls, was deployed in the garage. A robot was used to clear some items from the garage, and among the items found and removed was a pair of black pants with blood in the hip area.

Finally, when tear gas was deployed into the garage, Mr. Rosales broke out an air vent on the side of the garage near the roof. He then placed one arm and his head out through the opening. He was ordered to come out, but did not comply. Ultimately, officers entered and pulled Mr. Rosales down from where he had climbed into the rafters wearing only his underwear.

Mr. Rosales was immediately taken to Longmont United Hospital where he was treated and released. Mr. Rosales was uncooperative and verbally abusive to both medical professionals and police officers while at the hospital. He did angrily tell police, however, that he believed he had been stopped for no reason, and shot for no reason, and that he "was going to show the

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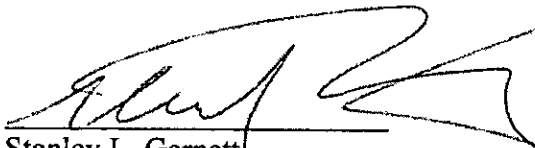
officer he had a bb gun." He was ultimately sedated at the hospital so that he could be medically treated.

Preliminary tests of the blood taken from Mr. Rosales at the hospital show the presence of alcohol, THC, and methamphetamine.

The use of force by Officer Buswold was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. While the weapon Mr. Rosales pointed at Officer Buswold was ultimately revealed to be a pellet gun, the officer had no way to know that he was not in a life or death situation, and was legally entitled to respond as he did.

Because the use of force by Officer Buswold was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District