



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

November 9, 2016

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Chief Melissa Zak
CU Police Department
1050 Regent Drive
Boulder, CO 80309

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Brandon Simmons on October 5, 2016 in Boulder, Colorado in the Champions Center on the University of Colorado campus. During that incident, two Police Officers, one with the Boulder Police Department (BPD) and another with the University of Colorado Police Department (CUPD) discharged their weapons killing Mr. Simmons. The officers' actions were reviewed with regard to whether their use of force was legally justified.

Representatives from my office have participated in this investigation and worked closely with the Boulder County Investigation Team (BCIT) and were present for the on-scene investigation. Over 80 witnesses were interviewed during the investigation, some by investigators from our office, and some by other agencies. We have reviewed the associated reports, transcripts, video recordings, diagrams and photographs. We also reviewed the Use of Force Policy for BPD and CUPD, and the Officers' training records. We have concluded that the use of force was justified.

Police reports provide a relatively complete picture of Mr. Simmons' actions on the morning of October 5, 2016 from around 7:30am, when Mr. Simmons was in his car on the corner of West 79th Avenue and Meade Street in Westminster, Colorado. At that time, Mr. Simmons summoned a pedestrian to his car and told him to listen to the radio, where a religious program was playing. The witness reported seeing Mr. Simmons writing on his hand in red marker and also seeing a sheathed 12-15 inch knife¹ in the car. Shortly thereafter, a resident of Meade Street reported that the words "Murder, Disrespect, Judgment, Cursing thy father's name #4" had been written in red marker on her garage door. At approximately 8:45am, police received a report of a disabled vehicle on Westbound Highway 36 at Interlocken Loop. When

¹ The sword Mr. Simmons was carrying when he entered the Champions Center in Boulder was 31" in length, and is more accurately described as a sword or machete. It is depicted below.

police responded, the vehicle was gone, but based on the description, including a Texas license plate, it is believed to have been Mr. Simmons' vehicle.



Photo of the patient's car with the words "Murder, Disrespect, Cursing thy father's name, Judgement 4" written on the driver-side window.

The patient rolled his window down and asked if he could help Mr. Simmons, who replied "Roll up your window so I can write a commandment." He reported Mr. Simmons using a "devil voice" like out of a movie. When the patient said "no thanks, man," Mr. Simmons became angry and yelled "roll up your fucking window now." Once the window was back up, Mr. Simmons wrote on it in red marker, much as he had done to the other car.

Once Mr. Simmons was done writing on his window, the patient exited his car and stepped toward the Champions Center. When he looked back, he saw Mr. Simmons removing what appeared to be a machete from his car, unsheathe it, and walk purposefully toward him. The man left his crutches behind and ran for the Champions Center as fast as he could, yelling "no, please don't!" The patient was later emotional as he reported "I thought he was going to hack me to pieces with the machete."

Shortly after 9:00am, Mr. Simmons arrived in Boulder and drove onto the University of Colorado campus. He did not park his vehicle, but stopped behind other cars parked in spaces near the Champions Center. The Champions Center houses various facilities including medical and doctors' offices, CU sports team facilities, and administrative offices for the CU athletics department. Shortly after Mr. Simmons arrived, another car entered the lot driven by a patient who recently had hip surgery. Once the patient was parked, he noticed Mr. Simmons writing in red Sharpie marker on the window of another car in the lot. He then briefly looked down to use his phone, and heard someone tapping on his window.



Photo of the other car in the lot with the same words written on the passenger-side window.

The patient entered the Champions Center and made his way to the second floor, which houses the CU Sports Medicine Center. The patient yelled that there was someone after him with a machete as he made his way to the northwest stairwell. When he looked back, he saw Mr. Simmons following. Mr. Simmons appeared focused on the patient as he walked past other people, telling one witness “back away, you don’t want any of this.” The patient and others entered the stairwell, walked quickly down the stairs, and exited the building.



Still photos from a surveillance camera that recorded Mr. Simmons, dressed in all black and wearing a red scarf, entering the Champions Center and proceeding to the stairway.

Shortly thereafter, another employee encountered Mr. Simmons in the stairwell, which although commonly used by employees and others, allowed access to the upper floors only with an access card. Mr. Simmons had apparently proceeded up the stairs when the others went down, and was trying to exit the stairwell through a locked door onto the fourth floor, which houses administrative offices where numerous staff members were present. The employee asked if she could help Mr. Simmons before noticing the machete in his hand. Mr. Simmons responded that he was “looking for sinners.” The employee reported that she was “scared as hell” and ran up to the fifth floor, where she exited the stairwell and began screaming for help.

Police from BPD and CUPD were dispatched emergent to the Champions Center after receiving numerous 911 calls, and began looking for Mr. Simmons as employees, students, and patients were evacuated. Officer Austin arrived and spoke briefly with witnesses who were visibly shaken, and who described a man carrying a machete. He assisted in getting employees to a safe location and ultimately proceeded to the fourth floor. Officer Connor had previously been dispatched to the scene of a hit-and-run accident near the University, and also responded. Both officers entered the stairwell together from the fourth floor and began ascending.

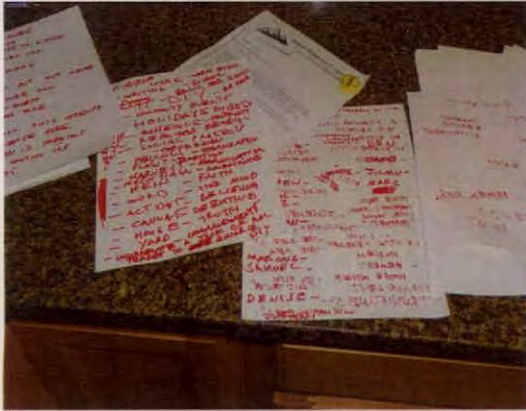


The sword, or machete, held by Mr. Simmons measured 31 inches in length. It is seen here as it was found on scene along with a knife and a pipe taken from Mr. Simmons’ pockets.

As the officers approached the fifth-floor landing, they saw Mr. Simmons descending from the sixth floor with the machete. Because the stairwell cuts back and forth with intermediate landings between floors and only ten steps between landings, Mr. Simmons was already very close to the officers when they saw him. Witnesses heard the officers yell "drop it, drop it!" and "put it down, put it down!" Mr. Simmons, who until then seemed to be walking directly to the stairwell exit, dropped the weapon's sheath on the sixth stair above the landing and began moving directly toward the officers with the machete raised. He yelled something at the officers in the nature of "fuck off" or "fuck you." Both officers fired their weapons as Mr. Simmons continued to advance. Officer Austin fired eight rounds, Officer Connor fired nine rounds. The shots were fired very quickly, and witnesses reported hearing only 4-5 shots in total. Mr. Simmons fell on the fifth-floor landing. Other officers who were searching nearby areas arrived almost immediately and medical attention was provided, but Mr. Simmons did not survive.

The use of force by Officers Austin and Connor 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. Here, it was clear that Mr. Simmons intended to harm officers with a sword, and continued to advance toward them in an aggressive manner. Moreover, there are many reasons why the officers could not simply back away and hope to contain Mr. Simmons, the most obvious being that there was no time for the officers even to safely turn and run. It is reasonable to conclude that even if they had done so, Mr. Simmons might well have overtaken and injured or killed them. Further, this is a stairwell that is commonly used by students, employees and staff in the Champions Center, and the risk of an innocent person happening upon Mr. Simmons and his machete would have presented a great risk to their safety. Additionally, even if the officers would have had the time to transition to a Taser and fire accurately, doing so would have put them at significant risk. Although the officers could not have known this at the time, Mr. Simmons was wearing multiple layers of clothing, and was likely under the influence of amphetamine and THC. It is therefore far from certain that a Taser would have incapacitated Mr. Simmons.

With regard to the question of why Mr. Simmons acted as he did, it is clear that he was suffering from significant mental health and chemical abuse issues. The BCIT contacted a number of witnesses who described Mr. Simmons as having issues with cocaine, "spice," and marijuana abuse. As is alluded to above, a significant amount of amphetamine (110 ng/mL) and marijuana (71 ng/mL Delta-9 THC) was located in Mr. Simmons blood at the time of this incident. Tests for synthetic marijuana or "spice" remain pending. Drug use seems also to have played a significant role in Mr. Simmons' discharge from the Marine Corps, where he had previously served with distinction.



Writings found at the home where Mr. Simmons was staying.

Evidence of Mr. Simmons' mental health issues was also found at the home where he was living. Police found several pages of disorganized writings in red marker that seem in some ways similar to what he had written on a garage door and two cars on October 5. Letters from friends were also discovered in which they urged Mr. Simmons to seek professional help.

While it seems clear that Mr. Simmons was suffering from serious mental health and chemical dependency issues, it is equally clear that he presented a significant danger to Officers Austin and Connor, and that they acted within the law to protect themselves from him.

Because the use of force by Officers Austin and Connor was legally justified, no 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