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OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

December 23, 2013

Chief Mark Beckner
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Beckner,

This office has completed its review of the circumstances surrounding the shooting of Michael Habay, in Boulder, Colorado on November 24, 2013. Police Officer Vincent Gallerani shot Mr. Habay as Mr. Habay charged at officers with knives in each hand. Mr. Habay did not survive his wounds, therefore the officer's actions were reviewed on the question of whether the use of deadly force was justified.

As part of the analysis, I reviewed the complete file provided by the Boulder County Investigation Team ("BCIT"). Additionally, representatives of my office have worked closely with the BCIT since the day of the shooting, advising investigators, approving warrants, and participating in briefings. The case file made available for review includes reports of the investigators assigned to the investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Boulder Police Department's Use of Force Policy, and Officer Gallerani's training records. It is our conclusion that the use of force by Officer Gallerani was justified.

The facts, as determined by the Boulder County Investigation Team are as follows:

In August of 2013, Michael Habay was living with Kristin Stenseng and a roommate at 3009 Madison Ave., #J208, Boulder, Colorado, in an apartment owned by his parents. On August 26, police received a call from Ms. Stenseng's brother requesting that police respond to the apartment. He reported to police that he was on the phone with Ms. Stenseng, and could hear Mr. Habay threaten to slit Ms. Stenseng's throat. He later reported hearing Mr. Habay say that the "cops are here" and "I will kill you."

When Ms. Stenseng was contacted by police, she was upset and crying. She related that Mr. Habay had become verbally abusive when she began packing her things in preparation to

move out of the apartment, calling her names like "nigger" and "whore." Ms. Stenseng reported that at one point during the argument, Mr. Habay had taken out a folding knife and began stabbing a desk. Ms. Stenseng reported being very scared at that time. She told officers that she did not believe Mr. Habay would stab her, but she was fearful for her safety. Officers noticed that Ms. Stenseng was crying and shaking while talking about the knife.

Ms. Stenseng confirmed that Mr. Habay had said something about slitting someone's throat, but did not know whether it had been directed at her or her brother. Officers called Ms. Stenseng's brother to clarify. He said he had heard Mr. Habay threaten him personally as well, but that he did not take those threats seriously. In addition to those threats, he reported that he heard Mr. Habay say "I'm going to slit your throat, bitch" at least a couple of times to Ms. Stenseng. When Mr. Habay was asked if there were any weapons in the apartment, he told officers there were several knives, but no guns. Knives were found in Mr. Habay's bedroom, and stab marks were seen on the desk. He was ultimately arrested and charged with crimes associated with his menacing of Ms. Stenseng. As a result, a protection order was put in place prohibiting Mr. Habay from having any contact with Ms. Stenseng. The case was pending at the time of Mr. Habay's death.

In November, 2013, Ms. Stenseng was again living with Mr. Habay at 3009 Madison Ave., #J208, despite the protection order. On November 24, at 7:19 a.m., officers were dispatched to the apartment based on a call from Ms. Stenseng's mother, who lived out of state, but had just spoken with Ms. Stenseng and was concerned for her safety. She stated that Ms. Stenseng had called her on the telephone "terrified." Police arrived on scene and spoke with Ms. Stenseng, who reported that, while she and Mr. Habay had argued, the situation never became physical.

Police wanted to speak to Mr. Habay. As they approached, they could hear him yelling "fucking nigger, fucking nigger" through an upstairs window. After police knocked on the door, the apartment became quiet. Mr. Habay did not come to the door.

At some point in the investigation, police learned of the prior case and the protection order. Rather than force a confrontation with Mr. Habay, police left the scene and planned to forward the case to detectives or file charges based on Mr. Habay's violation of the protection order. Ms. Stenseng left the area in her car, claiming that she was going to Denver. Officers told Ms. Stenseng not to return to the apartment.

At 12:32 p.m. that same day, police received a call from a concerned neighbor, who indicated that there was a domestic dispute in Mr. Habay's apartment. He reported that he had just seen Mr. Habay on his porch, very agitated, "hitting stuff" with what he described as a large bowie knife or a "shorter machete." According to the caller, Mr. Habay had also thrown his potted plants "all over the place" and was yelling "whore, whore, whore." He described Mr. Habay as "just out of control." He told the dispatcher that he had not seen anyone else, but believed a woman was inside Mr. Habay's apartment. Mr. Habay then went back inside. The caller said that he had heard Mr. Habay yelling in his apartment since seven o'clock that morning, but became very concerned when he saw Mr. Habay on the porch with the knife.

Officers were dispatched to the apartment. When Officer Gallerani arrived, other officers were already on scene assessing the situation. Ms. Stenseng's car was found in the parking lot. Officers saw marks on a post that were consistent with what had been reported by the 911 caller. Plants had been thrown off the porch into the area around the apartment.

Police knocked loudly and announced their presence, but there was no response. The window from which Mr. Habay had earlier been heard yelling, was now closed. At this point, officers had reason to believe that Ms. Stenseng was in the apartment, that Mr. Habay was angry and agitated, that he was armed with a large knife, and that he had previously threatened Ms. Stenseng. When there was no response from inside, police became justifiably concerned that Ms. Stenseng was potentially hurt or in danger inside. After consulting with a Sergeant on scene, the decision was made to enter the apartment to ensure Ms. Stenseng's safety.

Three officers took positions at the door, and others were present in the area. The first officer at the door carried a ram that would be used to force the door open. The second officer carried a ballistic shield and a sidearm. Officer Gallerani was next, armed with a rifle. The door opened after three strikes with the ram. The first officer entered slightly into the apartment with the shield, followed by Officer Gallerani. The officer with the ram intended to be the third to enter, but never got the opportunity because the other two officers never advanced far enough into the apartment.

Both entering officers reported it being dark inside and difficult to see, but saw someone move quickly from left to right across their field of view. Then Mr. Habay ran at the officers. He was armed with a large knife in each hand and was wearing a protective shirt with shoulder pads and plastic armoring. Mr. Habay collided with the shield, swinging the knives at the first officer. Both officers were moving backward out of the apartment as Mr. Habay quickly pushed and maneuvered himself and around the shield and continued to run at Officer Gallerani. Multiple witnesses reported hearing officers yell "Drop the knives" and "back." The officer with the shield intended to fire his sidearm, but due to close quarters around the area of the door frame, he did not have a shot around the shield.

By the time Officer Gallerani fired, he had retreated out of the apartment and quickly retreated across a small patio area where he was standing with his back to a large brick wall. Most of the witnesses in the area reported hearing two to three shots. All witnesses described a single burst of gunfire. Mr. Habay fell to the ground near the brick wall. Officers again told Mr. Habay to drop the knives, which he continued to hold in each hand. They then approached, kicked the knives away, and called for medical assistance.

Police cleared the residence and learned that Ms. Stenseng was not inside. She would later tell officers that she was at a nearby residence with a friend, from where she could hear officers yelling for Mr. Habay to come to the door. She came out only after hearing gunshots.

Two knives were recovered on the porch during a subsequent search of the area. One was 14 inches long, the other was 8 inches long. Three shell casings were also found on the porch. Three corresponding projectiles were also recovered; one was recovered from the back wall of the apartment, which appeared to have struck Mr. Habay in the arm then ricocheted and

fragmented after hitting the door jamb. Two projectiles struck Mr. Habay near the collarbone at a downward angle, causing what initially appeared to be a single entrance wound. The angle of the shots is consistent with witness reports that Mr. Habay was leaning forward as he rushed toward Officer Gallerani, who then fired at a downward angle.

Detectives and investigators associated with the BCIT quickly learned that there were a large number of witnesses who saw or heard relevant events. For example, one family was watching events unfold from a window across the street. Others heard or saw events from within the apartment complex or nearby. These accounts are largely consistent, and confirm officers' accounts.

One account does, however, differ substantially from the others; that is the report of Ms. Stenseng. Ms. Stenseng reported during her second interview with police that she was in a friend's apartment in the same complex, where she was texting with Mr. Habay. She told him not to open the door because the police were there, and that they would "probably just go away." She then got a text from Mr. Habay saying "bye, I love you, or something like that." After hearing two gunshots, she came out of that apartment and saw Mr. Habay on the ground. She reported knowing he was already dead because his skin was grey. She claimed that an officer then shot Mr. Habay in the chest with a shotgun or rifle.

Ms. Stenseng's account of this last shot is contradicted by eyewitnesses at the scene, both police and civilian, as well as physical evidence. As mentioned above, all witnesses reported a single burst of gunfire; none reported a single shot coming later. Eyewitnesses to the event similarly reported nothing like what was described by Ms. Stenseng. Moreover, evidence at autopsy revealed no wounds from a shotgun, the only injury to Mr. Habay's torso being the entry wound near the clavicle, where two projectiles entered. Only three shell casings were found on scene. Analysis from the Colorado Bureau of Investigation shows that each was fired by Officer Gallerani's weapon. Evidence of only three projectiles was found. There was no evidence of less lethal ammunition being used on scene, and all less lethal rounds were accounted for, unfired.

The officers' warrantless entry into the home was justified and appropriate under the circumstances. Police need not obtain a warrant to enter a home where there is an immediate emergency threatening the life or safety of another, and there is a probability that assistance will be helpful. *See People v. Hebert*, 46 P.3d 473 (Colo. 2002). Those circumstances were present here. Police were aware that Mr. Habay was inside. Based on facts available to officers at the time, including the fact that the 911 caller believed a woman to be in the apartment, and the fact that Ms. Stenseng's car was located in the parking lot, they reasonably believed Ms. Stenseng could be in the apartment as well. Based on the prior threat to Ms. Stenseng, Mr. Habay's actions as described by the 911 caller, and the lack of response from within the apartment, police reasonably believed that Ms. Stenseng could be hurt or in danger inside. While police had left the area earlier in the day rather than force a confrontation with Mr. Habay, that would not have been reasonable at this point.

Officer Gallerani's use of deadly force was justified pursuant to C.R.S. §18-1-704, and C.R.S. §18-1-707. A peace officer is justified in using deadly physical force upon another


person when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. See §18-7-707(2)(a) C.R.S. Here, the officer was being charged by an individual wielding two knives. Officer Gallerani fired only when Mr. Habay continued to advance on him, and the officer's back was literally against a wall. It is notable that independent eyewitnesses to the event saw Mr. Habay running at the officers, believed Mr. Habay was trying to stab them, and were surprised when no police officers were hurt.


During the course of the investigation, significant information was collected showing that Mr. Habay had a great animosity toward the police. For example, police observed the words "Boulder cops are pussy," and "Boulder are pussy bitches" written in red ink on the front door window frame. On a calendar in the kitchen, the words "To do: kill cops" were written in thick black ink, with an arrow pointing to the date of November 23, 2013. Information was also collected suggesting that he had a serious medical condition and may have been suicidal. At 6:32 a.m. on the day of his death, Mr. Habay wrote on Facebook "I want to died [sic] like in old west." It is therefore unclear whether Mr. Habay's actions were motivated primarily by a desire harm officers, or whether it was his intent to cause them to use deadly force against him.

At the time of his death, Mr. Habay had exceptionally high levels of Alprazolam, THC, and Methadone in his blood. It is therefore also unclear to what degree intoxication may have motivated Mr. Habay's actions. It is clear, however, that Mr. Habay's unjustifiably placed Officer Gallerani in a position where he reasonably believed that his life, and the lives of his fellow officers, were in imminent danger.

Because Officer Gallerani's use of force 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