



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

November 10, 2020

Re: Investigation of the non-fatal shooting of Leon Gladwell (DOB: 08/03/1980) on September 24, 2020, involving Master Police Officer Daniel Kilian, of the Longmont Police Department, in the area of 1402 Dry Creek in Longmont, Colorado.

Dear Acting Public Safety Chief Spendlow:

The investigation and legal analysis of the non-fatal shooting of Leon Gladwell involving Longmont Police Department Master Police Officer Daniel Kilian has been completed.

The Critical Incident Team for the 20th Judicial District, also known as the Boulder County Investigation Team (“BCIT”), investigated this case. This multi-agency team is designated to investigate use-of-force incidents in which any law enforcement officer within the 20th Judicial District uses deadly, or potentially deadly, physical force against a person while acting under the color of official law enforcement duties. This definition and team protocol are broader than that required by state law, which is limited only to incidents involving the discharge of a firearm by a peace officer that results in injury or death.

I want to acknowledge the Longmont Police Department (“LPD”) for immediately notifying the BCIT following the incident. By doing so, LPD enabled the BCIT to quickly respond and conduct an extremely thorough investigation. Consistent with Boulder County protocol, LPD did not participate in the investigation involving the officer-involved shooting.¹ The investigation in this instance was conducted for the purpose of determining whether criminal charges are warranted for the officer related to the non-fatal shooting of Leon Gladwell (DOB: 08/03/1980) on September 24, 2020, within the City of Longmont. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether policies and procedures were followed.

¹ LPD Detectives remained involved only in the investigation into charges related to Mr. Gladwell causing an explosion at the Residence Inn-Marriott prior to law enforcement’s response and subsequent use of force. Consistent with protocol and statute, LPD remained legally responsible for enforcing any criminal violations committed in Longmont which took place prior to the officer using force against the individual.

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 levels of proof would apply. The authority and role of the District Attorney's Office is to determine whether Officer Kilian committed a criminal offense that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed a very thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes witness interviews, numerous reports, medical records, and media files. The media files contain recorded interviews, police communications, photographs, body worn camera footage, and drone footage related to the incident.

A review of the reports and documentation filed with my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by Team Commanders in charge of the investigation. I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against Officer Kilian.

My findings, analysis, and conclusions of law with respect to Officer Kilian's use of force in this incident are as follows:

SUMMARY OF DECISION

Applying the applicable statutes to the facts presented through this investigation, Officer Kilian is not subject to criminal prosecution for his actions. In all cases, including those involving law enforcement officers, the District Attorney's Office criminal filing standard requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. As in other cases prosecuted by this office, this legal and ethical requirement guides our analysis.

The evidence establishes that, at the time Officer Kilian discharged his firearm, Officer Kilian was aware Mr. Gladwell had already committed felony offenses for which there existed probable cause to arrest Mr. Gladwell and that Mr. Gladwell had used and threatened the imminent use of unlawful physical force against fellow officers and civilians in the hotel. Additionally, the evidence establishes that, at the time Officer Kilian discharged his service rifle, it was reasonable for him to believe that Mr. Gladwell was going to detonate an explosive device and that he and other officers were in imminent danger of serious bodily injury or death. Officer Kilian fired his service rifle at Mr. Gladwell after seeing him brandish what Officer Kilian believed to be a small propane tank and raised his arm in a throwing motion towards Officer Kilian. Finally, based on Colorado law, the physical force that Officer Kilian used in response was both reasonable and appropriate under the circumstances.

Mr. Gladwell had recently been paroled from the Department of Corrections after serving a sentence for Murder in the Second Degree. At 11:29 a.m. on Thursday, September 24, 2020, a therapist working with Mr. Gladwell contacted the Longmont Police Department because she was concerned that Mr. Gladwell was on methamphetamine, had weapons including a propane tank, and posed a significant threat to other people. Mr. Gladwell told the therapist that he wanted to harm himself and other people.

Parole Officer (PO) Josh Kesterson and the Longmont Police Department CORE team responded and completed an initial contact with Mr. Gladwell. During that contact, they removed two knives from Mr. Gladwell. During this initial contact, Mr. Gladwell retreated into his room. PO Kesterson observed what he believed to be a propane tank inside the room. They heard Mr. Gladwell moving things in front of the closed door, in order to barricade himself in the room. PO Kesterson determined he would apply for an arrest warrant due to Mr. Gladwell possessing knives in violation of his parole. A judge authorized the arrest warrant.

At 4:34 p.m., Longmont SWAT officers and PO Kesterson attempted to reengage with Mr. Gladwell. At that time, Mr. Gladwell remained barricaded in the hotel room. The officers set up a perimeter and attempted to negotiate with Mr. Gladwell and de-escalate the situation. At approximately 7:22 p.m., a large explosion ripped through the west facing third floor bedroom window across an open-air walkway. The explosion blew out the window and imbedded it in the roof of the building immediately to the west.

SWAT officers gave Mr. Gladwell multiple commands. They informed Mr. Gladwell that he was under arrest, he needed to surrender with his hands up, or force, including potential lethal force, may be used. These warnings and commands were provided verbally and via the SWAT vehicle. Mr. Gladwell failed to comply with the lawful commands.

At 8:47 p.m., Officer Kilian was positioned on the roof of the building immediately to the west of Mr. Gladwell's room. Officers Kilian, Laundry, and Rimsky were trying to observe Mr. Gladwell and fired less-lethal CS gas into the room. Suddenly, Mr. Gladwell appeared in the window holding items in his hands and appeared to start to throw one of the items at the officers on the roof. Officer Kilian stated he believed Mr. Gladwell was holding a propane tank and was about to detonate another explosive device. At that time, Officer Kilian fired three rounds into the hotel room hitting Mr. Gladwell and causing him to fall to the ground.

At approximately 8:57 p.m., Deputy Chief Jeff Satur of the Longmont Police Department notified the BCIT Commander Trujillo that one of their officers, Officer Kilian, had been involved in a shooting. Deputy Chief Satur informed Commander Trujillo that the scene was dynamic, the individual who had been shot was Leon Gladwell, and Mr. Gladwell had not been taken into custody yet. Per best practices, Officer Kilian had been relieved of his duties and was being transported back to the Longmont Police Department.

Based on the explosion that had occurred earlier, the officers were extremely cautious when entering Mr. Gladwell's room for their own safety and safety of other individuals in the area. SWAT officers were finally able to breach the hotel room through the barricade and place Mr. Gladwell into custody at 11:16 p.m. Mr. Gladwell was immediately transported to Longmont

United Hospital with a single gunshot wound to his chest. At approximately 11:20 p.m., the BCIT team was activated and they were requested to respond to the Longmont Police Department. Mr. Gladwell went into surgery that evening and was ultimately released from the hospital to the Boulder County Jail where he is being held on his parole violation warrant.

DETAILED STATEMENT OF FACTS

In 1998, Leon Gladwell was convicted of Murder in the Second Degree for killing his grandmother. He was sentenced to 48 years in the Department of Corrections. The Court later reduced his sentence to a 40-year sentence. The Division of Parole informed the investigators that Mr. Gladwell had a violent history in the Department of Corrections (DOC), including as a member of the Surenos gang. Mr. Gladwell was considered, and rejected, for transition to three (3) different Community Corrections facilities. Despite his violent behavior in DOC and the lack of placement for him in the community, the Division of Parole authorized his release to the Boulder Homeless Shelter in April 2020. At that point, he had served approximately 22 years of a 40-year sentence for murdering his grandmother.

On September 24, 2020, Mr. Gladwell's therapist contacted the Longmont Police Department because she had reason to believe that he may be in a methamphetamine-induced psychosis, had access to weapons, and was potentially suicidal and homicidal. The Longmont Police Department contacted Mr. Gladwell's parole officer, Chandra Brandt, and she attempted to call Mr. Gladwell. She also sent him several alerts on his ankle monitor, none of which were answered. She notified her colleague, Parole Officer Josh Kesterson and requested he assist the Longmont Police Department in contacting Mr. Gladwell.

PO Kesterson met with the Longmont Police Department CORE team at the Residence Inn-Marriott, the hotel where Mr. Gladwell resided at that time. The CORE team consists of paramedics, clinicians, and officers who are trained to help people having mental health crises. For several years, the Longmont Police Department has utilized EDGE and CORE teams for individuals with mental health issues.

In the first of several attempts to de-escalate Mr. Gladwell, PO Kesterson and the CORE team contacted Mr. Gladwell at 4:34 p.m. During the initial contact with Mr. Gladwell, PO Kesterson was able to remove the two knives from Mr. Gladwell before he returned to his room, slamming the door behind him. PO Kesterson observed what he believed to be a propane can inside the room. He then returned to his office to apply for a parole violation warrant for the arrest of Mr. Gladwell based on the two knives taken from him.

Once the warrant was signed, a small team of Longmont SWAT team members were assigned to execute the warrant, based on Mr. Gladwell's aggressive behavior earlier in the day. Again, SWAT team members tried to convince Mr. Gladwell to exit the room. As SWAT team members attempted to talk with Mr. Gladwell, multiple officers heard a hissing sound followed by an explosion. This explosion occurred around 7:22 p.m. The SWAT Commander then requested the full SWAT team and the Bomb team respond to the scene. The responding team members were provided a briefing that included the events of the day.

SWAT officers then made multiple attempts to again contact Mr. Gladwell. CS gas (aerosol 2-chlorobenzalmalonitrile) was eventually introduced into the room in an attempt to get Mr. Gladwell out of the room. The team continued with announcements to try and get Mr. Gladwell to exit the hotel room and to be taken into custody.

Officer Kilian had been assigned to a position on the roof directly west of the Mr. Gladwell's third-floor hotel room. Officer Kilian reported that Mr. Gladwell was standing along the far wall of the room. He described Mr. Gladwell having a piece of cloth in his left hand and a metal object he believed was a small propane canister in his right hand. He believed Mr. Gladwell was going to launch the propane bottle out of the window towards the officers on the roof, so he fired three shots in an attempt to stop another explosion.

Around 8:47 p.m., the SWAT Commander heard three shots from a suppressed long gun. He heard Officer Kilian broadcast that Mr. Gladwell had another propane tank in his hand, and he was now down in the bedroom.

Arrangements were made to relieve Officer Kilian from his position on the roof and have him transported to the Longmont Police Department. The SWAT team continued to converse with Mr. Gladwell. An explosive hinge charge was placed on the main door to the hotel room. While the charge was successful in removing the door from its hinges, the door was barricaded and did not open. A second charge was placed diagonally across the door and was successful in slitting the door into two pieces, however, the door remained in place. Officers had to physically remove the pieces of the door to access the room. Officers reported the smell of propane. The air was tested by the bomb team and high levels of propane were not present.

A second round of CS gas was introduced into the room. At this time, Mr. Gladwell acknowledged the officers' commands. He then started to move towards the window but collapsed. Officers were finally able to defeat the barricade at the door and enter the hotel room. Mr. Gladwell was taken into custody at 11:16 p.m. and transported to Longmont United Hospital with a single gunshot wound to the chest.

The following is a summary of the interviews of key witnesses:

Interview of Parole Officer Chandra Brandt:

Detective Frey of the Boulder Police Department completed a voluntary interview with Parole Officer (PO) Chandra Brandt. At the time of the offense, PO Brandt had only been Mr. Gladwell's parole officer since September 18, 2020. She was contacted by a Longmont Police Department officer about Mr. Gladwell's behavior. The officer told her that Mr. Gladwell's therapist contacted the police because Mr. Gladwell had barricaded himself in his hotel, had knives, access to propane, and threatened to harm himself and others. Based on this information, PO Brandt tried, unsuccessfully, to contact Mr. Gladwell. She contacted PO Kesterson and requested he meet with Longmont Police Department and attempt to contact Mr. Gladwell in person.

PO Brandt stated that Mr. Gladwell was granted parole by the parole board on March 13, 2020 and released from Department of Corrections on April 2, 2020.

Interview of Parole Officer Josh Kesterson:

Detective Heather Frey and Detective Sarah Cantu of the Boulder Police Department completed a voluntary interview with Parole Officer (PO) Josh Kesterson. PO Kesterson told investigators that Mr. Gladwell's parole officer is currently Chandra Brandt. PO Brandt was contacted by Mr. Gladwell's therapist. Mr. Gladwell's therapist stated that Mr. Gladwell had told her that he has plenty of weapons, knows how to use them, has a propane tank, and wants to harm himself and others.

PO Kesterson met with Longmont Police Department CORE team (two paramedics, a therapist, a sergeant, and an officer) at the hotel where Mr. Gladwell was staying at the time. He learned from the CORE team officers that Mr. Gladwell was escalated, possibly on drugs, possessed weapons, and had a propane tank. PO Kesterson had pulled up historical information on Mr. Gladwell for his reference. From this information, he learned Mr. Gladwell was in prison because he had killed his grandmother by crushing her skull. PO Kesterson also determined that Mr. Gladwell had a violent history while in prison, including being part of prison gangs.

PO Kesterson and the CORE team formulated a plan to contact Mr. Gladwell as they heard he was barricaded in his room. When they got up to the third floor, Mr. Gladwell was standing outside his hotel room door. The officer and the sergeant contacted Mr. Gladwell while the others stayed near the stairwell. Mr. Gladwell was telling them "people were out to get him." Mr. Gladwell had a towel with what appeared to be some blood on it in one hand and told them, "This is what they're doing to me. They keep on coming in here. They're trying to get me."

When contacted, Mr. Gladwell was wearing a pair of shorts and had lanyards, rope, and the drawstring all around his waist. PO Kesterson observed one knife folded in Mr. Gladwell's waistband. He also observed Mr. Gladwell begin to ball up his fists and "square off," as if to fight the CORE team. PO Kesterson immediately started to try and establish a rapport with Mr. Gladwell. After establishing a rapport with Mr. Gladwell, PO Kesterson asked if he could take the knives from him. He was able to take the knife from Mr. Gladwell without any opposition. He noticed Gladwell had another knife in his waistband. He asked Mr. Gladwell what it was, and Mr. Gladwell told him to "find out." He quickly grabbed this second knife off Mr. Gladwell.

As he was securing the knives in a side pocket, a CORE team member began to speak with Mr. Gladwell. Mr. Gladwell very quickly broke off contact and went into his room and slammed the door. While Mr. Gladwell was entering the room and the door was open, PO Kesterson could see a propane tank in his room. He described this as approximately a five-pound propane can used for a BBQ grill.

The CORE team attempted to talk with Mr. Gladwell through the closed and locked door. They could hear Mr. Gladwell moving things in front of the door to barricade himself, as well as possibly latching the door. PO Kesterson believed Mr. Gladwell wanted to commit "suicide-by-cop" based on his interaction with him. An arrest warrant for Mr. Gladwell was issued based on

his possession of knives in violation of his parole conditions. When PO Kesterson received the approved warrant, he notified the Longmont Police Department.

Interview of Sergeant Craig Mortenson:

Detective Connor Pontiakos of the Boulder County Sheriff's Office and Detective Jon High of the Longmont Police Department completed a voluntary interview with Sergeant Craig Mortenson. Sergeant Mortenson advised that Sergeant Ross notified him in the early afternoon about a potential activation of the SWAT team to assist in the apprehension of a person with an active parole warrant. He learned the CORE team and a parole officer had attempted to contact the male earlier in the day at the Residence Inn-Marriot. During this contact, two knives were removed from the individual's possession. He understood the male was on parole for murdering his grandmother. Sergeant Mortenson and his team were instructed to help execute the warrant.

During the initial briefing, Sergeant Mortenson was told that Mr. Gladwell was acting paranoid and had been potentially abusing methamphetamine. He had been contacted earlier in the day because a member of his parole transition team believed the individual was "tweaking" on methamphetamine and had told her people were following him.

The SWAT team's initial plan was to try to get the individual out of the hotel with a ruse. They hoped to get him out of the room and down to the lobby to safely effectuate an arrest. They were unsuccessful with the ruse.

Sergeant Mortenson was then assigned to an arrest team on one of the stairwells. His team was assigned to attempt contact at Mr. Gladwell's door. They attempted a knock and announce without any results. They attempted to open the door using the provided key card. The key card did not work as the deadbolt was set. They attempted a second time with a new card but were unable to access the room because the door was barricaded. His team moved away from the door, approximately 5 - 10 minutes later he heard a big explosion from the room. He heard from a team member on the outside of the building that the explosion blew out the windows of Mr. Gladwell's room.

After the explosion, the hotel was evacuated. Sergeant Mortenson's team maintained their position, securing the main door to the room. He could hear Mr. Gladwell inside the room yelling and screaming. Mr. Gladwell yelled something to the effect of "F- the police" and "come get me." He never heard any cries for help or indications that Mr. Gladwell was injured.

After Officer Kilian shot Mr. Gladwell, Sergeant Mortenson was able to look in the room and get a good visual of the living area of the hotel room. Sergeant Mortenson said they were nervous the bedroom door was possibly wired or booby-trapped because a drone operator had reported seeing a wire dangling from the interior bedroom door.

SWAT Command decided to engage with Mr. Gladwell via the front door, using an explosive charge to open the door. Sergeant Mortenson noticed the bedroom door was open approximately five to six inches. He remembered hearing from SWAT team members on the

outside that Mr. Gladwell was laying on the floor in front of the bedroom door. He looked through the crack in the bedroom door and saw Mr. Gladwell's calf down to his foot. He was approximately two feet away from the open door and was laying on his right side

Commands were given to Mr. Gladwell. He was able to lift his hands up. They completed a visual inspection of the male for explosive devices. Mr. Gladwell lowered his hand to rest on an open drawer. They placed Mr. Gladwell into custody. As Mr. Gladwell was being moved out of the room, Sergeant Mortenson observed two wounds.

Interview of Officer Brett Rimsky

Detective Ross Richart of the Boulder Police Department with Detective Asa Merriam of the Boulder County Sheriff's Office conducted a voluntary interview with Officer Brett Rimsky. Officer Rimsky understood a therapist had reported that Mr. Gladwell had a propane tank in his hotel room. Officer Rimsky thought Mr. Gladwell might be using the propane tank for hash oil extractions or possibly using it to make an incendiary device.

When Officer Rimsky arrived at the Residence Inn-Marriott, he retrieved chemical munitions, less lethal impact munitions, and SWAT equipment items. His initial assignment was the third-floor area outside of Mr. Gladwell's room with Sergeant Mortenson. Officer Rimsky's team approached the door to the hotel room. They attempted contact with Mr. Gladwell two times to no avail.

Officer Rimsky repositioned to the exterior of the building where he met up with Officer Kilian. He started to assess a location to introduce munitions into Mr. Gladwell's hotel room. It was at that time he heard the explosion from the hotel room. Officer Rimsky was reassigned to the roof of the building west of Mr. Gladwell's room with Officer Kilian. Officer Rimsky was directed to get into position to introduce chemical agents into Mr. Gladwell's room. Initially, only he and Officer Kilian were on the roof. Officer Rimsky was able to partially see into the room with the bed. He fired three CS ferret rounds into Mr. Gladwell's room. He fired another three rounds into the south room of the hotel suite.

Officer Laundry arrived and was assigned to assist Officer Kilian and Officer Rimsky on the roof. Sergeant Lewis was on the ground providing support to the officers. Officer Rimsky said throughout the incident that Officer Kilian continuously gave loud verbal announcements to Mr. Gladwell. Officer Kilian told Mr. Gladwell he was under arrest, they would use force if he did not comply with their commands, and the force could be up to lethal force if he did not comply.

Officer Rimsky was focused on Mr. Gladwell's room and was able to see a dark figure in the room move out towards them. Officer Rimsky observed Mr. Gladwell near the curtain of the window, and he observed him holding something in his left hand. He described this object as a "dark object." He then heard Officer Kilian fire three rounds.

Immediately after the rounds were fired, Officer Kilian announced that Mr. Gladwell had a propane tank in his hand. After Officer Kilian fired the three shots, Mr. Gladwell fell out of

view and Officer Rimsky was not able to see him. Officer Rimsky said based on the earlier explosion, he thought the dark object in Mr. Gladwell's hand could have been a gun or an incendiary device. Officer Kilian kept telling Officer Rimsky that Mr. Gladwell had thrown something out of the room.

Interview of Officer Jon Laundry:

Detective Sarah Cantu of the Boulder Police Department with Detective Connor Pontiakos of the Boulder County Sheriff's Office conducted a voluntary interview with Longmont Officer Jon Laundry. When Officer Laundry arrived on scene, he met with Sergeant Ross and Sergeant Mortensen at the command post. He was fully briefed about the current situation with Mr. Gladwell.

Officer Laundry was assigned to assist with moving gear to the roof of the hotel. Officer Laundry ferried equipment, including a pistol shield, a gas bag, and his rifle up to the roof for himself and Officer Kilian. He ended up being positioned straddling the peak of the roof. He observed Officer Rimsky was on a lower roof to the north and Officer Kilian was moving between Officer Laundry and Officer Rimsky.

Officer Laundry advised he "felt exposed", especially since there had been an explosion and he did not know what Mr. Gladwell was doing within the room. Officer Laundry and Officer Kilian repeatedly gave commands to Mr. Gladwell. They identified themselves, told him he was under arrest and he needed to come out with his hands up, and if he failed to comply, that force, including lethal force, may be used. The officers on the roof discussed several options for introducing CS gas into the room from their vantage point.

Once the SWAT vehicle arrived, officers started giving commands through the vehicle. Mr. Gladwell moved from the north side of the room to the south and came into Officer Laundry's line of sight. Officer Laundry began ordering Mr. Gladwell to put his hands above his head or to show his hands. Officer Laundry was still trying to maximize his cover. He could see Mr. Gladwell's head, part of his left arm, and the right side of his body. Officer Laundry saw movement from Mr. Gladwell's left side as if quickly throwing something underhanded. At that time, shots were fired and he saw Mr. Gladwell go down.

He heard radio traffic that Officer Kilian had fired his weapon. He heard Officer Kilian say something about seeing Mr. Gladwell with something in his hand and possibly something like a propane tank. Officer Laundry stated he did not fire because he did not have a clear backdrop at the time.

Interview with Officer Daniel Kilian

Detective Heather Frey of the Boulder Police Department with Detective Don Dillard of the Boulder County Sheriff's Office conducted a voluntary interview with Officer Kilian. Officer Kilian was a SWAT tactical operator for 10 years and recently moved to SWAT Negotiations in 2020. Officer Kilian responded to a SWAT page for the initial call at the Residence Inn-Marriot.

He received a briefing by Sergeant Ross and was assigned to set up a ruse to attempt to lure Mr. Gladwell out of his hotel room to execute the arrest warrant.

When that did not work and Mr. Gladwell detonated an explosion in his hotel room, Officer Kilian was assigned to the roof area west Mr. Gladwell's hotel room. As he did not have his rifle, he was offered Sergeant Ross' rifle for the deployment. He noticed the window damage and was able to see the water flowing out of the room. Once in place, he gave multiple commands to Mr. Gladwell to have him exit the hotel room, that he was under arrest, that he needed to come out with his hands up, and if he failed to comply, that force, including lethal force, may be used.

Officer Kilian observed Mr. Gladwell step towards the window. He observed Mr. Gladwell holding a white rag in his left hand. He described Mr. Gladwell holding a small green propane tank with a torch attachment in his right hand. Officer Kilian gave specific instructions to Mr. Gladwell, that were not followed. He described Mr. Gladwell raising his right hand back in a throwing position, Officer Kilian then fired three shots as he believed the item in Mr. Gladwell's right hand was an explosive device. He was concerned for himself and Officer Laundry's safety, as well as, other officers in the area. He believed Mr. Gladwell had already detonated one propane device and was about to throw a similar type of explosive device. He was concerned that if Mr. Gladwell was able to do that he and other officers were at risk of serious bodily injury or death.

Interview of Leon Gladwell:

In every BCIT investigation, the Team seeks to interview all of the witnesses in order to ensure that the investigation is complete. In this investigation, it was hoped that the Mr. Gladwell would agree to be interviewed. The purpose of the interview would be to develop more information about his possession of the two knives, blowing up the room, his threatening gestures at the police officers, and the actions of the officers in response. When Mr. Gladwell was released from the hospital, Detective Dillard attempted to complete an interview with him. Mr. Gladwell refused to speak with Detective Dillard.

Injuries Leon Gladwell

Mr. Gladwell had been transported to Longmont United Hospital after he was taken into custody. He had one gunshot wound to the left chest area described as 1cm x 1cm, with a corresponding same size injury to his left back area. He had an injury to his spleen which was surgically removed, along with damage to his splenic flexure. The surgeon also removed a damaged part of his mid ileum and completed some repairs to the intestinal tract. His extensive medical records will be included with the case file, once the records are provided to the Team.

Drone Videos

Multiple drones were utilized by the SWAT team in an attempt to determine the safest way to effectuate the arrest of Mr. Gladwell and what, if any, other explosive devices Mr. Gladwell had in his room. One of the drones captured what occurred immediately prior to

Officer Kilian shooting Mr. Gladwell, the shooting itself, and the immediate aftermath.

In the video, the sprinkler system is running in Mr. Gladwell's room, the bed is pushed up towards the window, and Mr. Gladwell is not seen on the video at first. Then, Mr. Gladwell comes into the video. He is holding two items. In his right hand he has a long metal pipe and in his left hand he has a white sheet. Mr. Gladwell throws the item in his left hand out the window towards Officers Kilian, Laundry, and Rimsky. As he is throwing the items, shots are fired into the room and Mr. Gladwell falls out of view behind the bed.

Investigators with the BCIT were able to extract still photos from the drone footage. In reviewing those, investigators were able to determine that a hammer was wrapped in the white sheet Mr. Gladwell threw out of the window.



Scene Documentation and Evidence Collection:

Sergeant Barry Hartkopp of the Boulder Police Department was assigned to supervise the scene documentation and evidence collection. He recovered a silver colored bike handlebar stem inside of the hotel room. This appears to have been the item in Mr. Gladwell's right hand. On the ground outside of the room, investigators recovered a hammer that Mr. Gladwell threw wrapped in a white sheet just prior to being shot. A white shower curtain was also located on the ground outside the window and is believed to be the white sheet observed in the drone footage.

A 290 ml Zippo butane fuel can was recovered from the hotel room. Longmont Fire Investigators believe that the butane fuel can may have been the source of the explosion from the

room. There were no other propane tanks located in the hotel room or the hotel property.



Officer Kilian fired a service rifle assigned to Sergeant Doug Ross. The service rifle is a Seekins Precision Model SP223 SBR. It is a gas impingement operated AR/M4 rifle. The barrel was approximately 11 inches long with an OSS suppressor attached. It was equipped with an infrared laser sign, front and rear flip up iron sights, aimpoint T2 red dot optic, EOTech magnifier, and a flashlight. It had a magpul adjustable stock and a 2-point nylon sling. It had a 30-round magazine. There were 26 Hornaday .556 NATO rounds in the magazine and one round in the chamber.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and further proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited by statute as an assault or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force by a peace

officer is justified. The investigation establishes that one round from Officer Kilian's service rifle struck Mr. Gladwell in the left chest.

Officer Kilian knowingly fired his weapon at Mr. Gladwell after seeing him brandish what appeared to be a propane tank and throw it at officers. Officer Kilian feared that himself, Officer Laundry, and fellow officers on scene could be injured by Mr. Gladwell detonating another explosive device. Officer Kilian was concerned that this could cause serious injury or death to himself, Officer Laundry, and other officers on scene. The determination of whether Officer Kilian's conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707 defines the circumstances under which a peace officer can justifiably use physical force in Colorado. In pertinent part, the statute reads as follows:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - a. Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
 - b. Use only a degree of force consistent with the minimization of injuries to others;
 - c. Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - d. Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - a. The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - b. The suspect poses an immediate threat to the peace officer or another person;
 - c. The force employed does not create a substantial risk of injury to other persons
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury, would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively

reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury....

C.R.S. 18-1-707.

In this case, Officer Kilian knew Mr. Gladwell had an approved felony arrest warrant and the purpose of officers' contact with Mr. Gladwell was to effectuate his arrest. When Officer Kilian explained why he fired at Mr. Gladwell, he stated that he believed Mr. Gladwell was brandishing a propane tank and was throwing it towards officers. Officer Kilian stated that, based on Mr. Gladwell detonating an explosion earlier, he was concerned that his life and other officers' lives were at risk. Independent of making an arrest or preventing escape, Officer Kilian was also justified in using force pursuant to C.R.S. § 18-1-704, which provides in relevant part:

(1) ...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 force² may be used only if a person reasonably believes a lesser degree of force is inadequate and:

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

C.R.S. 18-1-704.³

The analysis under C.R.S. 18-1-704 is the same for law enforcement officers as for any other individual. Officers are entitled to rely on the doctrine of "apparent necessity" so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964); People v. Silva, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken. Silva, 987 P.2d at 909; see also Sanchez v. People, 820 P.2d 1103 (Colo. 1991) (person asserting self-defense may act on appearances rather than reality; question is whether the person's conduct was reasonable under the circumstances as he or she perceived them to be). It

² Deadly physical force is defined by C.R.S. § 18-1-901(3)(d) as, "force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death." Mr. Gladwell, fortunately, survived. As such, the force used by the officers in this case does not meet the statutory definition for deadly physical force.

³ The relevant language from C.R.S. § 18-1-704 did not change with the recent passage of Senate Bill 217.

has long been held by the Colorado Supreme Court that:

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one's right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well-grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity.

Young v. People, 107 P. 274 (Colo. 1910).

The issues, therefore are: whether at the time Officer Kilian used physical force, he reasonably believed that he and or one of the other officers present were being subjected to or were about to be subjected to the imminent use of unlawful physical force; and furthermore, that his actions in defending against that force were objectively reasonable. Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that it was necessary to use physical force to defend himself or another and stop the threat that Mr. Gladwell presented. The answer to that question is a resounding yes.

LEGAL ANALYSIS

In this case, the actions of Officer Kilian were legally justified under Colorado law. At the time he discharged his service weapon, he was justified in using physical force by C.R.S. § 18-1-704(1) and C.R.S. § 18-1-707(1).

C.R.S. § 18-1-704(1) provides that an officer may use physical force where he or she reasonably believes that such force is necessary to protect himself or another from imminent death or serious bodily injury. Under Colorado case law, the facts must be viewed as they appeared to the officer at the time; future developments are irrelevant to the legal analysis.

At the time Officer Kilian discharged his service weapon, he knew that Mr. Gladwell had detonated an explosive device in his hotel room earlier in the evening. He knew that Mr. Gladwell had weapons on him earlier in the day and had been contacted due to his concerning behavior. Officer Kilian and other officers had been trying to communicate with Mr. Gladwell for almost four hours to no avail. Officer Kilian had advised Mr. Gladwell that he was under arrest and that he needed to surrender. Officer Kilian also advised Mr. Gladwell that force, including potentially lethal force, may be used if he did not comply.

Knowing all of that, Officer Kilian saw Mr. Gladwell holding an object that appeared to be a small propane tank and start to throw that object towards Officers Kilian, Laundry, and Rimsky. At that time, Officer Kilian believed the prior explosion had been due to a propane tank and was extremely concerned that Mr. Gladwell was about to throw another explosive device directly at himself, Officer Laundry, and Officer Rimsky. Officers Kilian, Laundry, Rimsky, and

other officers on scene could have been seriously, if not fatally, injured if Mr. Gladwell threw an explosive device at them.

Officer Kilian had a reasonable belief that Mr. Gladwell was throwing an explosive device directly at him. He then fired three rounds at Mr. Gladwell and hit him with one of the rounds. Based on all the circumstances and information Officer Kilian had at the time, that was a reasonable response in relation to the potential threat. Even though the items Mr. Gladwell turned out to not be additional explosive devices, it was certainly reasonable for Officer Kilian to believe they were deadly weapons based on all the facts and observations. It is apparent from the drone footage, which was closer to Mr. Gladwell than Officer Kilian was and at a different angle, that it was reasonable for Officer Kilian to believe Mr. Gladwell was about to detonate and throw an additional explosive device.

Additionally, C.R.S. § 18-1-707(1) provides that officers can use reasonable and appropriate physical force upon another person to effect an arrest. At the time Officer Kilian discharged his service weapon, he had the ability to lawfully arrest Mr. Gladwell based on a valid arrest warrant for a parole violation. The warrant was for having weapons in violation of his parole; he was on parole for second-degree murder.

Longmont Police Department Officers had been trying to arrest Mr. Gladwell since 4:34 p.m. Officer Kilian and other officers repeatedly provided Mr. Gladwell with warnings that he was under arrest, that he needed to surrender, and that force, including potentially lethal force, would be used if he did not surrender. Mr. Gladwell continued to barricade himself in the room and at approximately 7:22 p.m. detonated a large explosion in his hotel room, which endangered the lives of hotel guests and law enforcement officers. He refused to communicate with officers or surrender until, ultimately, officers were able to breach the room at 11:16 p.m.

Officer Kilian had the ability to use force, even lethal force, in arresting Mr. Gladwell based on the nature of the parole violation. He warned Mr. Gladwell of the potential force as required by C.R.S. § 18-1-707(4). Officer Kilian was justified in using potentially lethal force on Mr. Gladwell to effectuate his arrest.

After reviewing the evidence in the case as a whole, the actions of Officer Kilian were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

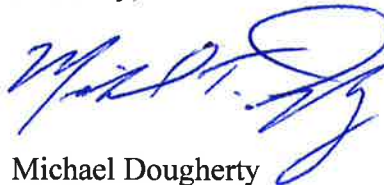
CONCLUSION

We find in our review of this incident that no conduct by Officer Kilian 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 were legally justified as set forth in C.R.S. § 18-1-704 and 18-1-707. Officer Kilian was legally justified in his use of reasonable and appropriate physical force to effect an arrest and in response to the imminent risk of death or great bodily injury to himself, his fellow officers, and the civilians in the area. Officer Kilian did not violate any criminal statutes. As a result, my office will not be filing criminal charges against Officer Kilian.

These cases are important to the officers and civilians involved, as well as to our community as a whole. I appreciate the cooperation provided by the Longmont Police Department and the thorough investigation conducted by the BCIT.

I will be releasing this letter to the public, along with the video presentation prepared by the Boulder County Investigation Team. Our office will, also, post these materials on the District Attorney's website. Pursuant to our policy, the Longmont Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to the Longmont Police Department. Please contact me if you require further information.

Sincerely,



Michael Dougherty
District Attorney
20th Judicial District