



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

Re: Investigation of the non-fatal vehicle collision with Jesus Hilario Rodela (DOB: 06/04/1995) on January 13, 2022, involving Sergeant John Garcia, of the Longmont Police Department, in the area of 104 Longs Peak Avenue in Longmont, Colorado

Dear Public Safety Chief Ardis,

The investigation and legal analysis of the non-fatal use of force on Jesus Hilario Rodela involving Longmont Police Department School Resource Officer (SRO) Sergeant John Garcia has been completed.

The Boulder County Investigation Team, also known as the Boulder Critical Incident Team (“BCIT”), investigated this case. The 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 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 use of force by SRO Sergeant Garcia.¹ The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted for the non-fatal use of force against Jesus Hilario Rodela (DOB: 06/04/1995) on January 13, 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 Officers and Detectives remained involved only in the investigation of offenses committed by Mr. Rodela in association with the stolen vehicle and discharging a firearm at a member of law enforcement prior to the use of force. Consistent with protocol and statute, LPD remained legally responsible for enforcing 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 SRO Sergeant Garcia committed a criminal offense that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed a 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, video surveillance, and drone footage related to the incident.

All involved officers submitted to voluntary interviews that were recorded and reviewed as part of the BCIT investigation. 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 BCIT Commanders in charge of the investigation. I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against SRO Sergeant Garcia.

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

SUMMARY OF DECISION

Under Section 20-1-114(1), C.R.S., "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 website or, if it does not have a website, make it publicly available upon request."

As District Attorney, I am required to comply with this statutory obligation. There is no exception for cases in which there is, also, an active prosecution. In addition, this report is necessary to inform the public of the nature and reasons for my decision.

This report is not to be construed as commentary on the criminal charges, which are merely allegations, pending against Mr. Rodela. He remains innocent of all the charges against him unless and until a jury finds him guilty beyond a reasonable doubt.

Applying the applicable statutes to the facts presented through this investigation, SRO Sergeant Garcia 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 SRO Sergeant Garcia struck Mr. Rodela with his truck, SRO Sergeant Garcia was aware Mr. Rodela had fled from officers and fired shots at SRO

Borchowiec when he had attempted to contact Mr. Rodela. Further, it was reasonable for SRO Sergeant Garcia to believe that Mr. Rodela posed a significant threat to him, officers, and the community members.

Immediately before the collision, Mr. Rodela fled from police officers, brandished a firearm and fired at another officer. SRO Sergeant Garcia exercised caution in approaching Mr. Rodela and first flashed his emergency lights to gain his attention. In response, Mr. Rodela began to raise the gun in his hand. At that point, SRO Sergeant Garcia quickly responded to the immediate and deadly threat by striking Mr. Rodela with his pickup truck. Based on Colorado law, the physical force that SRO Sergeant Garcia used was both reasonable and appropriate under the circumstances.

DETAILED STATEMENT OF FACTS

On January 13, 2022, Victoria Morgan contacted law enforcement to report she had spotted her granddaughter's stolen vehicle in the area of 3rd Avenue and Martin Street in Longmont. Ms. Morgan and Marv Setzke followed the stolen vehicle to the alleyway behind 408 Baker Street. This location is known to Longmont Police as a place where stolen vehicles are commonly recovered, and individuals at this location tend to run or become aggressive when contacted by law enforcement. Law enforcement responded to that location shortly thereafter and located the stolen car, a silver Ford Fiesta. Master Police Officers (MPOs) Don Goldware and Kristopher Ford approached the vehicle with caution and observed four individuals. Adauto Molina was standing near the vehicle. Mr. Molina complied with officer's commands and was secured without further incident. Will Solis and Joanna Jacobson were seated in the stolen vehicle. Mr. Solis and Ms. Jacobson complied with officer commands and were secured without incident. Each of these three individuals were later charged with criminal offenses related to drugs.

The fourth individual associated with the stolen vehicle, later identified as Jesus Hilario Rodela, fled as officers secured Mr. Molina, Mr. Solis, and Ms. Jacobson. MPO Ford observed Mr. Rodela run across Baker Street. MPO Ford described Mr. Rodela as being bald and wearing a red sweatshirt with black pants. Once the scene at 408 Baker was secure, LPD began searching for Mr. Rodela in the surrounding area. LPD deployed a camera equipped drone to provide additional support in the search.

A resident in the surrounding neighborhood, David Masslich, later reported to LPD he observed a male in a red-hooded sweatshirt walking in the alley near 417 Baker Street. He reported the male appeared to be acting suspicious and as a result, Mr. Masslich went to check his property to make sure the male had not accessed it. When Mr. Masslich arrived in the alley, he observed a red-hooded sweatshirt and a cream-colored scarf discarded on the ground. He then saw the man walking away from his location and lost sight of him.

As noted above, LPD began coordinating a search for Mr. Rodela in the surrounding neighborhood, which included setting up a perimeter in an effort to quickly contain and locate Mr. Rodela. SRO Chris Borchowiec, heard the radio communications about the stolen vehicle and

fleeing suspect. SRO Borchowiec noted Columbine Elementary School was located inside the search perimeter. SRO Borchowiec communicated with his supervisor, SRO Sergeant John Garcia, about placing the school on Secure Status. Secure Status is utilized when there is a threat outside of the school and the access points into the school are then locked and secured to prevent entry of the external threat. This status allows the school to continue to operate as normal while accounting for the evolving external situation. The decision was made to place the school on Secure Status for the safety of the children and staff. SRO Borchowiec immediately traveled to the school to ensure that it was safe, pursuant to law enforcement protocol. On arrival, SRO Borchowiec pulled his marked patrol vehicle into the parking lot on the north side of Columbine Elementary.

SRO Sergeant Garcia was at the Longmont Police Department when he heard the radio communications and decided to assist officers in locating Mr. Rodela. SRO Sergeant Garcia drove to the area in his unmarked pickup truck and proceeded to drive around inside of the perimeter that had been established by other officers in an effort to locate Mr. Rodela. As he drove, he passed Columbine Elementary School and saw both students and staff outside of the building. SRO Sergeant Garcia also observed a male heading northbound on Baker Street that seemed to match the description of the suspect who had fled from officers. He radioed for further information regarding the suspect's description and turned around, so he was traveling west on Longs Peak Avenue approaching Baker Street.

SRO Borchowiec heard SRO Sergeant Garcia air over the radio he had seen the male walking northbound on Baker Street. SRO Borchowiec drove his marked patrol vehicle to the Baker Street exit from the parking lot. From this position, he observed the male SRO Sergeant Garcia had described approximately a half-block to the south on Baker Street. SRO Borchowiec decided to contact the male and began pulling his vehicle out of the parking lot.

Surveillance video collected from Columbine Elementary School shows Mr. Rodela wearing a white t-shirt, dark pants, and tan boots walking along the sidewalk on the east side of the school at approximately the time SRO Borchowiec observed him. The video shows Mr. Rodela speaking on a cell phone and then crossing Baker Street. As Mr. Rodela crossed Baker Street, he began to run quickly towards the homes on the eastside of Baker Street. As SRO Borchowiec attempted to contact Mr. Rodela, he changed directions and began moving away from SRO Borchowiec's patrol vehicle. SRO Borchowiec drove onto the sidewalk and lawn of a home on the eastside of Baker Street in an effort to cut off Mr. Rodela's escape. As he moved away from SRO Borchowiec, Mr. Rodela reached into the rear of his waistband and pulled out a semi-automatic handgun. Mr. Rodela fired the handgun at SRO Borchowiec, striking the marked patrol vehicle once in the area of the front license plate. SRO Borchowiec placed his vehicle into park and dove out onto the ground to take cover from the gun fire. SRO Borchowiec was able to reach his car radio and communicate with fellow officers that the suspect had fired at him. This radio communication occurred at approximately 2:39 p.m.

After firing at SRO Borchowiec, Mr. Rodela continued northwest across Baker Street and appeared to fire another round at SRO Borchowiec from the westside of Baker Street. Mr. Rodela continued to run northwest through the parking lot north of Columbine Elementary School. At

this time, SRO Sergeant Garcia was in his truck at the intersection of Longs Peak Avenue and Baker Street facing westbound. SRO Sergeant Garcia had heard Officer Borchowiec's radio communication and watched as Mr. Rodela ran into the street in front of him on Longs Peak Avenue. SRO Sergeant Garcia saw that Mr. Rodela had a firearm in his hand and slowed his truck. SRO Sergeant Garcia flashed the emergency lights on his undercover police truck and made eye contact with Mr. Rodela. Mr. Rodela began to raise the handgun and SRO Sergeant Garcia accelerated the truck to approximately 27 miles per hour and struck Mr. Rodela. Mr. Rodela fired a round from his gun that went into the hood of the pickup truck. SRO Sergeant Garcia applied the brakes and brought the truck to a stop, which caused Mr. Rodela to be sent through a short fence that borders the lawn at 104 Longs Peak Avenue. The momentum carried Mr. Rodela into the yard at 104 Longs Peak, where he collided with a tree. The handgun Mr. Rodela had in his hand landed several feet from him in the yard.

SRO Sergeant Garcia exited his truck and gave Mr. Rodela commands to not move while other LPD officers arrived on scene. Radio communications indicate Mr. Rodela was placed into custody at 2:40:28 p.m.

Within two and a half minutes, CORE Paramedic Kyle Hoover conducted a trauma assessment and noted that Mr. Rodela was having difficulty breathing. CORE, or Crisis Outreach Response and Engagement, teams are specialized co-responder units comprised of a specially trained police officer, a mental health clinician, and a paramedic. The CORE team's goal is to provide a dynamic and flexible response aimed at quickly identifying the appropriate resources needed in circumstance to which they respond. Using a Bag-Valve Mask, Paramedic Hoover aided Mr. Rodela in breathing until personnel from AMR-Longmont Paramedics and Longmont Fire Department arrived on scene. Mr. Rodela was transported to Longs Peak Hospital, where he was evaluated and treated for his injuries.

At the time he was apprehended, Mr. Rodela was on parole stemming from his sentence in Weld County case 2015CR466. He absconded from parole in September of 2021. Additionally, he was the subject of two active Boulder County arrest warrants that identified him as the defendant in multiple cases involving felony aggravated motor vehicle theft charges.

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

Interview of Officer Alan Baldivia:

Boulder County Sheriff's Office Detective Trevor Soole and Boulder County District Attorney's Office Investigator Sandra Campanella interviewed LPD Officer Alan Baldivia. Officer Baldivia responded to assist in the search for the suspect who had fled from officers near 4th Avenue and Martin Street. Knowing that other officers had already set up a perimeter in the area, Officer Baldivia drove east on Longs Peak believing that this path may put him in a position to contact the suspect. As he approached the area, Officer Baldivia heard SRO Sergeant Garcia air that he had seen an individual moving with a purpose heading northbound. Officer Baldivia continued to head east on Longs Peak and heard Officer Borchowiec air that the suspect was shooting at him. As he approached Baker Street, Officer Baldivia saw a black pickup truck heading westbound toward him and a bald male in a white t-shirt head into the street between Officer

Baldivia and the pickup. Officer Baldivia watched as the male proceeded to cross the street, turned with his arm toward the pickup truck, and was struck by the pickup truck. At some point during this sequence, Officer Baldivia believes that the male saw him in his marked patrol vehicle and remembers hearing a “round go off,” meaning a gun was fired.

Following the impact with the truck, Officer Baldivia saw the male be thrown through a short fence and into the front yard of the home at 104 Longs Peak Avenue. Officer Baldivia exited his patrol vehicle and saw SRO Sergeant Garcia exit the truck and begin issuing commands to the male to not move. Officer Baldivia joined SRO Sergeant Garcia until other officers arrived on scene and placed the male into custody. While he remained on scene, he remembers seeing a bullet hole on the hood of SRO Sergeant Garcia’s pickup truck and a black and silver handgun lying in the yard at 104 Longs Peak.

Interview of SRO Chris Borchowiec:

Boulder Police Department Detective Sarah Cantu and Boulder County District Attorney’s Office Investigator Michael Bihrlé interviewed SRO Chris Borchowiec. SRO Borchowiec is a twenty-year veteran of the Longmont Police Department, and for approximately six years has worked as a School Resource Officer assigned to Timberline Middle School and Trail Ridge Middle School.

On January 13, SRO Borchowiec was at Timberline Middle School when he learned about the stolen vehicle being located near 4th Avenue and Martin Street in Longmont and that a suspect may have fled the area either in a car or on foot. Given the proximity to Columbine Elementary School, SRO Borchowiec called SRO Sergeant Garcia and discussed placing the school on Secure Status. SRO Sergeant Garcia agreed that placing the school on Secure Status was appropriate. SRO Borchowiec drove to the school to make sure that everyone was safe, and the school was secure. SRO Borchowiec arrived at Columbine Elementary, pulled into the parking lot, and was exiting his marked patrol vehicle when he heard SRO Sergeant Garcia air information about an individual matching the suspect’s description walking northbound on Baker Street “with a purpose.” Given his proximity to where the individual was seen walking, SRO Borchowiec decided to pull his vehicle to a position where he had a view of Baker Street. He watched as a heavysset Hispanic male wearing tan boots, black pants, and a white t-shirt walked quickly down Baker Street about a half-block away from his location. SRO Borchowiec decided to attempt to contact the male, later identified as Jesus Rodela.

When SRO Borchowiec pulled out onto Baker Street, Mr. Rodela began to run across Baker Street toward the houses opposite Columbine Elementary. It appeared to the officer that Mr. Rodela may try to flee by jumping over fences, and in an effort to cut him off SRO Borchowiec drove his vehicle off of the roadway into the driveway and front yard of the house that Mr. Rodela was heading toward. When SRO Borchowiec maneuvered his vehicle around a tree it brought him face to face with Mr. Rodela. SRO Borchowiec watched as Mr. Rodela reached for a gun and the next thing that SRO Borchowiec recalled was hearing three to four shots, which he described as a “pop, pop, pop.” The officer did not recall specifically seeing a gun but recognized he was being shot at by Mr. Rodela.

SRO Borchowiec put his vehicle into park and jumped out of the driver's seat onto the ground outside of his vehicle to take cover from the gun shots. SRO Borchowiec stated his primary concern was alerting other officers the Mr. Rodela was firing at him so they would be prepared if coming into contact with him. SRO Borchowiec attempted to communicate with the radio he had on his person, but it was taking too long to activate. SRO Borchowiec reached into his vehicle and recalled airing "shots fired, shots fired, he's shooting at me."² His concern was that he did not want anyone else to get hurt.

SRO Borchowiec then put down his radio and went to grab his rifle from the back of his vehicle. He heard SRO Sergeant Garcia air the suspect was down. SRO Borchowiec then proceeded toward the location north of Columbine Elementary. He was then led by other officers away from the scene.

Interview of SRO Sergeant John Garcia:

Boulder Police Department Detective Ashly Flynn and Investigator Scott Robinson of the Boulder County District Attorney's Office conducted a voluntary interview of LPD SRO Sergeant John Garcia. SRO Sergeant Garcia has been a law enforcement officer for over twelve years, spending the last four years as a Sergeant. For the last year, he has been assigned as the Sergeant for the School Resource Officer Unit.

On January 13th, SRO Sergeant Garcia was at the Longmont Police Department when he heard officers air on the radio, they were attempting to make contact with individuals associated with a stolen vehicle in the area of 4th Avenue and Martin Street. Upon hearing that one of the suspects fled from officers, SRO Sergeant Garcia decided that he would assist by driving around the interior of the perimeter that officers were setting up in search of the suspect. SRO Sergeant Garcia was driving an unmarked black pickup truck. He received communication from SRO Borchowiec asking if they should place Columbine Elementary on Secure Status given its location inside the perimeter, to which SRO Sergeant Garcia agreed. SRO Sergeant Garcia made the decision to drive near the school to make sure things were safe because he knew that it was close to the time that the school would be releasing children for the day. As he drove westbound on 6th Avenue, he observed adults and children outside of the school and made a U-turn. Heading eastbound on 6th Avenue, SRO Sergeant Garcia saw a bald male wearing a white t-shirt, dark pants, and tan boots walking northbound on Baker Street on the west side of the school at a quick pace. This male, as noted above, was later identified as Jesus Rodela.

Having seen Mr. Rodela next to the school, SRO Sergeant Garcia radioed for more information regarding the suspect's description, and based on that information and Mr. Rodela's suspicious behavior, the Sergeant believed that Mr. Rodela was the individual that fled officers. SRO Sergeant Garcia made the decision that he would attempt to contact the individual and began to circle around to get into a better position for the contact. SRO Sergeant Garcia was heading westbound on Longs Peak Avenue approaching the intersection with Baker Street when he heard SRO Borchowiec radio that he was going to contact Mr. Rodela. SRO Sergeant Garcia saw Mr.

² A review of Officer Borchowiec's radio transmission determined that he aired "shots fired, shots fired, he shot at me, he's running with a handgun."

Rodela run through the parking lot on the north side of Columbine Elementary School pointing back with a gun in his hand. SRO Sergeant Garcia did not see SRO Borchowiec but heard him radio that he had been shot at by Mr. Rodela.

SRO Sergeant Garcia debated whether to turn on the emergency lights his unmarked truck is equipped with because Mr. Rodela had just shot at an officer who had attempted to contact him. He could not remember definitively if he switched on his lights, but he remembered feeling concern for the children, teachers, and residents in the surrounding homes and remembered thinking about turning on the lights to draw Mr. Rodela's attention. SRO Sergeant Garcia did not feel that he had time to stop and get his rifle or, in the alternative, try to get into position to use his handgun in the apprehension of Mr. Rodela. He also expressed concern about the safety of these options considering the school and residences surrounding them. As he continued to drive his truck toward Mr. Rodela, SRO Sergeant Garcia made eye contact with Mr. Rodela through the windshield and noticed Mr. Rodela starting to bring the gun up towards the truck. SRO Sergeant Garcia determined that the best thing to prevent Mr. Rodela from firing at him was his police vehicle, and so he made the decision to accelerate and strike Mr. Rodela.

After the collision, SRO Sergeant Garcia exited his vehicle in order to secure Mr. Rodela with the help of the officers that quickly arrived on scene. SRO Sergeant Garcia observed a handgun in the front yard near Mr. Rodela, as well as a bullet hole in the hood of his truck.

Interview of Jesus Rodela:

Detective Scott Byars of the Boulder Police Department, Detective Don Dillard of the Boulder County Sheriff's Office, and Detective Molly Gettman³ of the Longmont Police Department interviewed Jesus Rodela at Longs Peak Hospital. Mr. Rodela agreed to speak with the detectives on January 22, 2022, and initially reported that he did not remember anything from the incident. Upon further questioning, Mr. Rodela acknowledged that he had tried to get away from police on January 13 and confirmed that he possessed a firearm on that afternoon.

Injuries of Jesus Rodela

Mr. Rodela was transported to Longs Peak Hospital to be treated for the injuries he sustained as a result of this incident. He presented with a small traumatic subarachnoid hemorrhage and a right T1 transverse process fracture. Additionally, doctors noted fractures to the ribs on his right side his right ankle had been dislocated, and Mr. Rodela had experienced a lateral malleolus fracture. After his medical treatment was completed on January 22nd, Mr. Rodela was released and transferred to the Boulder County Jail. His medical records will be included with this case file.

³ Detective Gettman participated in the interview of Mr. Rodela given her role as the lead investigator into any and all criminal charges brought against Mr. Rodela, and not as an investigator with the Boulder County Investigation Team. This is consistent with protocol.

Audio and Video Evidence

Multiple sources of audio and video evidence were collected by the BCIT during the investigation that captured a good portion of what occurred between Mr. Rodela, SRO Borchowiec, and SRO Sergeant Garcia. During the search for Mr. Rodela, LPD deployed a drone to provide overhead surveillance and support to officers. The drone footage captured Mr. Rodela running after his shooting at SRO Borchowiec, SRO Sergeant Garcia striking Mr. Rodela with the truck, and the immediate aftermath following the use of force as officers arrived on scene.

The surveillance cameras that are attached to the exterior of Columbine Elementary provide the clearest visual evidence of what occurred during this incident. The cameras captured Mr. Rodela walking northbound on Baker Street alongside the elementary school. He is seen walking with a cell phone in his hand when he attempts to cross Baker Street heading east. As Mr. Rodela is crossing, SRO Borchowiec's vehicle can be seen attempting to head him off, which is followed by Mr. Rodela changing directions back toward the school. As he stops and turns back the way he came, Mr. Rodela can be seen reaching into his waistband, raising what appears to be a firearm, and firing multiple rounds at SRO Borchowiec.⁴



Mr. Rodela, with arms extended, firing at SRO Borchowiec

Mr. Rodela then proceeds to run north along the school and eventually cuts across the parking lot at the north end of the building towards Longs Peak Avenue. He proceeds into the street with the gun still in his hand and SRO Sergeant Garcia's truck can be seen at the intersection of Longs Peak and Baker Street. The truck approaches Mr. Rodela and a flash of the emergency lights is captured on the video. Mr. Rodela turns toward the truck as it accelerates towards him and he is struck by the truck and thrown through a short fence at 104 Longs Peak Avenue.

⁴ This video footage does not have audio, but Mr. Rodela fired three shots at Officer Borchowiec based on the additional audio evidence collected by the BCIT.



Mr. Rodela raising his arm at SRO Sergeant Garcia

The BCIT also collected a video from a Nest security camera from 538 Baker Street that captured the sound of the gun shots fired by Mr. Rodela. Based on this video, it was determined that Mr. Rodela fired three times at SRO Borchowiec and fired once when contacted by Sergeant Garcia.

Scene Documentation and Evidence Collection:

Boulder Police Department Sergeant Tom Dowd supervised the processing of the scene and collecting of evidence. A red sweatshirt believed to be discarded by Mr. Rodela was found in the backyard of 413 Baker Street. On the 600 block of Baker Street, SRO Borchowiec's patrol vehicle was located facing southwest and positioned predominantly on the grass between the street and the sidewalk. Upon further inspection, a small defect was found in the front license plate of SRO Borchowiec's vehicle and a corresponding projectile was later located in the radiator. To the west of the vehicle, the BCIT collected two Norma 9mm shell casings.



Defect in SRO Borchowiec's license plate above the "S" and path of projectile entry with license plate removed

In front of the residence at 104 Longs Peak, the BCIT noted a defect in the hood of SRO Sergeant Garcia's truck consistent with a bullet hole. Following a thorough inspection of the vehicle, a projectile was discovered at the back of the police radio in the cab of the truck.



Defect in the hood of SRO Sergeant Garcia's truck

The BCIT also documented and collected a SCCY CPX-2 9mm semiautomatic handgun a few feet from where Mr. Rodela was apprehended. The BCIT noted that Norma 9mm rounds were in the magazine of this handgun, which were consistent with the projectiles discovered in SRO Borchowiec's and SRO Sergeant Garcia's vehicles.



SCCY CPX-2 9mm semiautomatic handgun collected on scene

The handguns assigned to SRO Borchowiec and SRO Sergeant Garcia were collected as a standard practice of the BCIT. Neither handgun had been fired.

Several blue pills, believed to contain fentanyl, were also recovered from Mr. Rodela. Those pills have been sent to the Colorado Bureau of Investigation.

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. The investigation established that SRO Sergeant John Garcia struck Mr. Rodela with his unmarked pickup truck which resulted in multiple injuries to Mr. Rodela. While knowingly or intentionally striking another human being with a vehicle is generally prohibited by statute as first- or second-degree assault in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force by a peace officer is justified.

SRO Sergeant Garcia intentionally drove his truck into Mr. Rodela after seeing Mr. Rodela head into the street in front of his vehicle. This action occurred seconds after SRO Sergeant Garcia heard SRO Borchowiec air that Mr. Rodela had fired a gun at him. SRO Sergeant Garcia reasonably feared that himself, fellow officers, residents in the neighborhood, and children at Columbine Elementary could be in further danger given that Mr. Rodela had just shot at SRO Borchowiec when contact was attempted. The determination of whether SRO Sergeant Garcia'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 injury 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, SRO Sergeant Garcia knew Mr. Rodela was brandishing a firearm and had fired it at a fellow officer. SRO Sergeant Garcia stated that, based on Mr. Rodela firing at SRO Borchowiec seconds earlier, he was concerned that his life, other officers' lives, and members of the surrounding school and neighborhood were at risk. Before using force, SRO Sergeant Garcia observed Mr. Rodela beginning to raise what appeared to be a firearm at him. Independent of making an arrest or preventing escape, SRO Sergeant Garcia was 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 force⁵ 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.

⁵ 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. Rodela, fortunately, survived. As such, the force used by the officers in this case does not meet the statutory analysis for deadly physical force. To be clear, SRO Sergeant Garcia would also have been justified in using deadly physical force under a C.R.S. § 18-1-707(3) or C.R.S. § 18-1-704(2) analysis.

Here, there are two key questions that must be analyzed. First, whether nonviolent means would have been ineffective in apprehending Mr. Rodela. Second, whether SRO Sergeant Garcia reasonably believed that he was being subjected to or was about to be subjected to the imminent use of unlawful physical force, and whether his actions in defending against that force were objectively reasonable. Alternatively phrased, this second 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 others and stop the threat that Mr. Rodela presented. The answer to that question is undoubtedly yes.

LEGAL ANALYSIS

In this case, the actions of SRO Sergeant Garcia were legally justified under Colorado law. At the time he struck Mr. Rodela with his pickup truck, he was justified in using physical force by C.R.S. § 18-1-707(1) and § 18-1-704(1).

Section §18-1-707(1) provides that officers can use reasonable and appropriate physical force upon another person to effect an arrest or prevent an escape. When SRO Sergeant Garcia acted, he had the ability to lawfully arrest Mr. Rodela based not only on Mr. Rodela's connection to the stolen vehicle at 408 Baker Street, but also the multiple rounds that he had shot at SRO Borchowiec a few moments earlier. SRO Sergeant Garcia had the probable cause to arrest Mr. Rodela for serious felony offenses involving a firearm.

SRO Sergeant Garcia activated his emergency lights, saw Mr. Rodela begin to point the gun at him, and struck Mr. Rodela with his pickup truck. It was reasonable for SRO Sergeant Garcia to use force in this manner to apprehend Mr. Rodela, prevent further risk of harm to himself, officers and community members. His actions are justified under C.R.S. § 18-1-707(1).

As required by statute, the Longmont Police Department immediately ensured that assistance and medical aid were rendered to Mr. Rodela. This response was, also, captured on surveillance video and their quick transition to rendering medical assistance is to be commended.

Additionally, C.R.S. § 18-1-704 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.

With all the above-referenced information, SRO Sergeant Garcia flashed his emergency lights and drew Mr. Rodela's attention toward him. In doing so, the two locked eyes and Mr. Rodela began to raise the gun in his hand. It was reasonable based on the circumstances for SRO Sergeant Garcia to believe the use of unlawful physical force by Mr. Rodela was imminent. It was therefore reasonable for SRO Sergeant Garcia to strike him with his truck to protect himself.

Based on the totality of the circumstances and information available to SRO Sergeant Garcia at the time, his use of force was reasonable in relation to the potential threat. SRO Sergeant Garcia's use of force is justified under C.R.S. § 18-1-704(1).

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

CONCLUSION

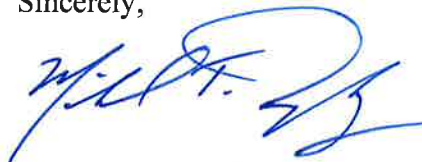
We find in our review of this incident that no conduct by SRO Sergeant Garcia rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident were legally justified as set forth in C.R.S. § 18-1-704 and 18-1-707. SRO Sergeant Garcia 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 and the civilians in the area. SRO Sergeant Garcia's quick reaction to the situation allowed Mr. Rodela to be apprehended without additional harm to officers or community members. As a result, my office will not be filing criminal charges against SRO Sergeant Garcia.

To be clear, this situation could have ended much worse. Two of the bullets fired by Mr. Rodela hit the front of each police vehicle. Other shots went in the direction of the houses behind the police vehicles. SRO Borchowiec and SRO Sergeant Garcia acted with courage and moved quickly to protect the community. Their actions were entirely consistent with the legal standards outlined above.

These cases are important to the officers and civilians involved, as well as to our community. For that reason, 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 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 investigation. Any future records inquiries will be directed to the Longmont Police Department. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District