



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

July 18, 2022

VIA ELECTRONIC MAIL

Chief Doreen Jokerst
Sheriff Joe Pelle
University of Colorado Boulder Police Department
Boulder County Sheriff's Office
Boulder, Colorado

Re: Investigation into the shooting at Trenton Dunham on May 12, 2022, involving Commander Josh Bonafede, Deputy Jeff Black, and Officer Jon Allendorf, of the Boulder County Sheriff's Office & University of Colorado Boulder Police Department, respectively, in the area of Table Mesa Drive and Moorhead Avenue in Boulder, Colorado.

Dear Chief Jokerst & Sheriff Pelle,

The investigation and legal analysis of the non-fatal shooting of Trenton Dunham involving Boulder County Sheriff Commander Josh Bonafede, Boulder County Sheriff Deputy Jeff Black, and University of Colorado Boulder Police Officer Jon Allendorf 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 Boulder County Sheriff's Office ("BCSO") and University of Colorado Boulder Police Department ("CUPD") for immediately notifying the BCIT following the incident. By doing so, BCSO and CUPD enabled the BCIT to quickly respond and conduct

an extremely thorough investigation. Consistent with Boulder County protocol, BCSO and CUPD did not participate in the use-of-force investigation involving Commander Bonafede, Deputy Black, and Officer Allendorf. The criminal investigation of Mr. Dunham was conducted by the Greeley Police Department, Broomfield Police Department and Boulder Police Department. All charges stemming from the criminal episode have been filed in the Twentieth Judicial District. This office will be prosecuting all the criminal offenses committed by Mr. Dunham during this time period.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Commander Bonafede, Deputy Black and/or Officer Allendorf for the non-fatal shooting of Trenton Dunham (DOB: 09/01/96) on May 12, 2022, within the City of Boulder. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether policies and procedures were followed.

My decision, based on criminal law standards, does not limit administrative action by the Boulder County Sheriff's Office, University of Colorado Boulder Police Department, or any civil action where less-stringent laws, rules, and levels of proof would apply. The authority and role of the District Attorney is to determine whether Commander Bonafede, Deputy Black, and/or Officer Allendorf committed a criminal offense that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed a thorough investigation into this incident and gathered detailed reports and documentation in conjunction with the Greeley, Broomfield, Longmont, and Boulder Police departments. The file includes recorded witness interviews, diagrams, department policies, police communications and reports, photographs, and video recordings 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 Commander Bonafede, Deputy Black, or Officer Allendorf.

My findings, analysis, and conclusions of law with respect to Commander Bonafede, Deputy Black, and Officer Allendorf 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."

The discharge of firearms in this case did not result in injury or death and therefore this report is not mandated by 20-1-114(1). However, as District Attorney, I believe this report is necessary to inform the public of the nature and reasons for my decision. I will release this report in the interest of transparency and to explain the circumstances under which the law enforcement officers fired their weapons and are not criminally liable. Although it is not required by law, I believe the public release of this report is appropriate since the BCIT investigated the use of potentially deadly physical force against a person by members of law enforcement, acting in their official law enforcement duties.

This report is not, however, to be construed as commentary on the criminal charges pending against Mr. Dunham. Those charges are merely accusations. Mr. Dunham remains innocent of all 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, Commander Josh Bonafede, Deputy Jeff Black, and Officer Jon Allendorf are not subject to criminal prosecution for their 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.

Over the course of several hours on May 12, 2022, Commander Bonafede, Deputy Black, and Officer Allendorf became aware that Mr. Dunham was armed, dangerous, and had engaged in several violent acts prior to their encounter with him.

In Greeley, Mr. Dunham stole a Glock 43 handgun from his father's vehicle, Mr. Dunham used the handgun to shoot his father's home and vehicle several times and proceeded to steal an unlocked green Honda CRV.

In Broomfield, Mr. Dunham used the stolen Honda CRV to strike another victim's vehicle from behind on U.S. 36. Then, Mr. Dunham attempted multiple carjackings at gunpoint on U.S. 36 and several witnesses reported seeing Mr. Dunham in possession of a firearm. Ultimately successful in a carjacking, Mr. Dunham fled the scene in a stolen white F150 truck. Mr. Dunham evaded law enforcement on two separate occasions, first in Broomfield, then in Boulder.

Mr. Dunham drove rapidly and erratically onto the pedestrian section of the Pearl Street Mall, in the stolen truck, while in possession of a stolen handgun. Mr. Dunham fled from law enforcement at a high rate of speed after officers attempted to stop him around 15th and Pearl Street. Officers successfully deployed stop sticks at Broadway & Baseline. However, Mr. Dunham failed to stop after his vehicle's tires had been flattened. As the suspect's vehicle approached Table Mesa and South 42nd, Mr. Dunham pointed his handgun first at Officer Collin Keith, then at Deputy Black. Officer Keith aired over the radio that the suspect was armed and had pointed the weapon at him.

Deputy Black, positioned in the westbound left turn lane for southbound Moorhead, stated he heard the suspect had a gun in his hand and then saw the suspect point a gun at him. Deputy Black fired his weapon at Mr. Dunham to protect his own life and the life of others. Commander Bonafede, positioned at the rear of his vehicle at Table Mesa and Moorhead, stated

he saw the suspect “aggressively targeting” Deputy Black. Commander Bonafede fired his weapon to protect the life of Deputy Black. Officer Allendorf, positioned in the middle lane, facing westbound, at Table Mesa and Moorhead, stated he believed the suspect fired a shot at him. Officer Allendorf fired his weapon to protect himself and everyone else in the area.

Under the circumstances, it was certainly reasonable for Commander Bonafede, Deputy Black, and Officer Allendorf to believe that Mr. Dunham was armed with a firearm, driving a stolen vehicle, and presented an imminent threat of deadly harm to themselves, fellow officers, and civilians. Based on Colorado law, the physical force that Commander Bonafede, Deputy Black, and Officer Allendorf used in response to Mr. Dunham was both reasonable and appropriate under the circumstances.

DETAILED STATEMENT OF FACTS

In the late evening of May 11, 2022, Greeley Police officers responded to a reported shooting incident at a residence located at 415 36th Avenue, in the City of Greeley. Joshua Dunham reported that an unknown suspect had shot his home and vehicle. Responding officers determined the suspect fired one shot through the residence and shot Joshua Dunham’s vehicle five times. The vehicle had been trespassed, and a Glock 43 handgun was missing from the vehicle. Joshua Dunham told officers he suspected his son, Trenton Dunham, of shooting his house and vehicle. Neighbors told Joshua Dunham that his son had been in the neighborhood earlier in the day looking for Joshua. Later in the evening, the suspect stole a green Honda CRV in Greeley that had been left unlocked with the keys in the car. The victim was unaware their car had been stolen.

In the early morning of May 12, 2022, Broomfield police officers responded to reports of a vehicle crash, a menacing with a gun, and a carjacking around the westbound U.S. Highway 36 off ramp to Highway 121 in the City of Broomfield. The suspect, driving the stolen vehicle from Greeley, struck a silver Prius from behind. The suspect pointed a gun at the driver of the Prius and rammed his vehicle at least four times against the Prius. The driver of the Prius feared he was going to be shot. The driver of the Prius was able to drive away from the suspect. The suspect then exited his vehicle, in the middle of the highway, and pointed his handgun at a driver of a white Ford F150 truck with an “ICI” logo. The suspect approached the truck and told the driver to get out or he was going to kill him. The driver exited the truck and ran, leaving his keys in the ignition. The suspect ran after the driver while pointing the gun at him. The driver sought cover behind a white Nissan Altima stopped behind the Prius. The suspect pointed the gun at the driver of the Nissan Altima. The driver of the Nissan put her hands up and was afraid the suspect would shoot her. The suspect walked to the driver side door while pointing the gun at the Nissan driver. The suspect then ran back to the Ford F150 truck and drove westbound on Highway 36 at a high rate of speed. The carjacking incident was communicated to law enforcement agencies in the area at 5:43 a.m., including the Boulder Police Department. Dispatch aired a “Be on the Lookout” or “BOLO” alert to law enforcement agencies for a white male suspect, with curly blonde hair, driving a stolen white truck. Commander Bonafede received the BOLO alert for an “ICI” truck and a suspect with a handgun, at the beginning of his shift that morning.

Approximately 30 minutes later, at 6:06 a.m., Boulder Police officers were dispatched to a hit-and-run crash on the Pearl Street Mall in the City of Boulder. A witness observed the white Ford F150, driving erratically eastbound on the pedestrian mall. The F150 hit a barrier causing

damage to the barrier and truck. Dispatchers matched the description of the F150 with the carjacking in Broomfield and relayed that information to patrol officers. While at BSCO headquarters, Commander Bonafede and Deputy Black both heard the suspect's truck had been spotted. Commander Bonafede and Deputy Black were aware the suspect was armed, had carjacked and felony menaced several people, and had driven on the pedestrian Pearl Street mall, prior to firing their weapons at the suspect.

At 6:49 a.m., Boulder Police located the suspect driving the F150 truck westbound on Spruce from 15th Street. Officers attempted to stop the suspect, but the suspect drove away erratically. The suspect drove onto Broadway, southbound from Canyon. Boulder Police Officer Chandler Conley reported he had located the suspect's vehicle driving southbound on Broadway. BPD Officers aired over dispatch that the suspect was reaching for something down towards the floorboards of the truck. Commander Bonafede and Deputy Black headed separately to the area of Table Mesa and Foothills Parkway to assist. As the pursuit continued on Broadway, Officer Granberg and Officer Moss deployed "Stop Sticks" at Broadway and Baseline, to disable the suspect's vehicle. The suspect drove over the sticks and at least three of the four truck tires were flattened. Officer Moss, in close pursuit of the suspect, and after the suspect ran over the stop sticks, reported the suspect still driving at a high rate of speed. The suspect's vehicle slowed and turned onto Table Mesa Drive, heading eastbound, and officers continued their pursuit.

As the suspect's vehicle continued eastbound on Table Mesa, BPD Officer Collin Keith positioned his vehicle in the roadway near Table Mesa and South 42nd Street. As the suspect passed him, Officer Keith observed the suspect with a handgun in his right hand, pointing the gun at Officer Keith through the window. The suspect was looking at Officer Keith and the officer was in fear of his safety. Officer Keith prepared to draw his weapon as the suspect's vehicle passed him at approximately 10 miles per hour. Officer Keith relayed over the radio that the suspect was armed and had pointed a gun at him.

At 6:57 a.m., the suspect's vehicle was moving eastbound on Table Mesa at approximately 15 miles per hour near Moorhead Avenue. The suspect again pointed the handgun at Officer Keith and Deputy Black, both positioned facing westbound. Commander Bonafede, positioned at the rear of his vehicle at Table Mesa and Moorhead, observed the suspect holding a handgun in one hand and aiming his gun in the direction of Deputy Black. The suspect's driver side window was up and un-tinted. Commander Bonafede observed the suspect "aggressively targeting" Deputy Black with his handgun. Commander Bonafede recognized the suspect, a white male with shaggy hair, from the BOLO alert. Commander Bonafede feared the suspect was going to shoot and kill Deputy Black. Commander Bonafede fired three shots from his Sig Sauer semi-automatic rifle at the suspect from behind his patrol vehicle to save Deputy Black from bodily harm. Officer Moss, driving behind the suspect, observed a deputy in the westbound turn lane fire his rifle at the suspect at about the same time. Officer Moss heard an officer air over the radio that the suspect was waving a gun.

Deputy Black took up a position with his rifle at the driver's side door of his patrol vehicle in the westbound left turn lane for southbound Moorhead. As the suspect's vehicle approached eastbound, Deputy Black observed the suspect in the driver's seat looking directly at him and yelling something. The suspect raised his right hand to shoulder length and pointed his black handgun at Deputy Black. Deputy Black believed the suspect was going to shoot him. Deputy Black was in fear of his life as the suspect presented an imminent deadly threat to

himself and others. Deputy Black believed that the use of deadly force was his only option because he believed the suspect was going to shoot him. Deputy Black aimed at the driver's headrest and fired three rounds from his Sig Sauer semi-automatic rifle at the suspect.

CUPD Officer Allendorf had heard a report of an alert of an armed carjacking in Broomfield and that the suspect was driving a white F150 and was headed towards Boulder. A subsequent alert indicated the suspect's vehicle was spotted at Broadway and College Avenue. Officer Allendorf departed the police station and headed toward Highway 36. Officer Allendorf heard, via radio reports, that Stop Sticks had been deployed, the suspect's vehicle had run over them, and was travelling south on Broadway. Officer Allendorf was aware the suspect had a handgun, prior to firing his weapon. Officer Allendorf drove to Table Mesa and Moorhead and stopped in the middle lane, facing west. Officer Allendorf saw the pursuit of the suspect, headed eastbound, coming his direction at the intersection of Moorhead and Table Mesa. Officer Allendorf, activated his lights, exited his patrol vehicle, and took up a position at his driver's door with his pistol drawn. Officer Allendorf observed the suspect looking at him briefly as the suspect approached eastbound on Table Mesa. The suspect moved his right arm across his body in a shooting position aiming towards Allendorf. Officer Allendorf heard gunshots and believed the suspect had shot at him. Officer Allendorf believed he saw the bullet discharge and the suspect's driver's side window shatter. Officer Allendorf believed he was going to die at that moment and brought his Smith & Wesson pistol up and fired one round through the driver's side window of the suspect's vehicle as it passed him. Officer Allendorf fired his weapon to protect himself and everyone else as the suspect presented a danger to the nearby pedestrians, public and officers in the area.

Commander Bonafede and Deputy Black followed the suspect separately behind pursuing police vehicles to a bus stop near U.S. Highway 36. As the suspect's vehicle approached the exit ramp to U.S. 36, the vehicle began to drive on the pedestrian sidewalk near the bus stop. Officer Moss, driving beside the suspect, used his police vehicle to pinch the suspect's vehicle against a barrier approximately 10-15 feet from an occupied bus stop at the eastbound U.S. 36 on ramp. Officer Moss stated his goal was to stop the suspect's vehicle from running over the nearby bystanders. Officer Moss estimated he was moving approximately 30 miles per hour when he collided with the suspect's vehicle. Several bystanders ran from the suspect's approaching vehicle to avoid being hit or run over by the suspect. After the suspect's vehicle was disabled, Officer Moss quickly exited his vehicle and Commander Bonafede assisted with the arrest of the suspect. Officer Moss gave the suspect commands and the suspect was taken into custody. Deputy Black took up a position on the driver's side of his vehicle until the suspect was in custody. Officer Allendorf remained at Table Mesa and Moorhead for the duration of the pursuit.

Medical Diagnosis

None of the fired rounds struck Mr. Dunham and Mr. Dunham had no gunshot wounds. Mr. Dunham was medically cleared by the on-duty physician at Boulder Community Hospital.

Scene Preservation and Search Warrants

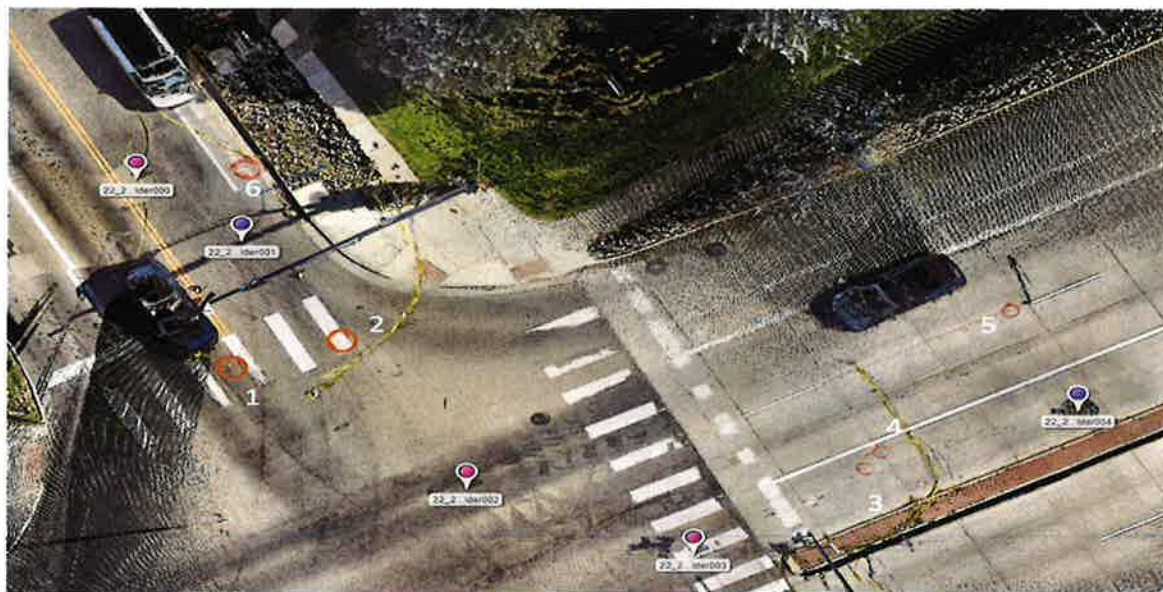
After the scene was secured and Mr. Dunham had been transported to the Boulder Police Department, members of the BCIT took steps to preserve and document the scene. Photographs and video were taken before evidence was collected or distributed. Members of the team generated maps and diagrams showing where the officers, Mr. Dunham, and relevant pieces of evidence were located before, during, and after the shooting. The BCIT conducted a thorough search of the scene and collected several pieces of evidence along Table Mesa Drive and Moorhead Avenue.

The BCIT recovered a black Glock 43 handgun inside the suspect's vehicle on the passenger seat. A Glock magazine with one 9mm round was found loaded in the gun. The stolen handgun found in the suspect's vehicle matched the stolen handgun from Greeley and is pictured below:



The BCIT also located and recovered four 5.56 brass colored shell casings, on and near the crosswalk at the intersection of Table Mesa and Moorhead Avenue. This is consistent with Commander Bonafede and Deputy Black's statements that they discharged their weapons, each a Sig Sauer 5.56 semiautomatic rifle, while the suspect approached them traveling eastbound on Table Mesa. BCIT located one 5.56 silver colored shell casing and one 9mm silver covered shell casing in the Table Mesa and Moorhead intersection. The location of the 9mm shell casing is consistent with Officer Allendorf's statement that he fired one round from a Smith & Wesson 9mm pistol, at the suspect's vehicle from his position at the intersection of Table Mesa and Moorhead. The location of the 5.56 silver shell casing is consistent with Commander Bonafede's statement that he fired three shots as the suspect's vehicle approached the intersection. The location of all six shell casings are consistent with the viewing of the body-worn camera videos and surveillance video. The location of the seventh shell casing is unknown and was possibly destroyed by vehicular traffic during the pursuit or lost in a storm drain.

The location of the shell casings (#1-6) recovered by BCIT is depicted below:



The BCIT recovered stolen F150 keys, a stolen Motorola phone, a victim's personal black bag, paperwork with suspected blood, a yellow cloth and yellow t-shirt with suspected blood, glass fragments, and deployed driver and passenger air bags. The BCIT also recovered Mr. Dunham's clothing. Mr. Dunham's grey t-shirt, grey socks, blue Adidas shorts, black underwear, and Vans shoes were recovered and collected as evidence.

Members of the BCIT canvassed the surrounding area for any witnesses or surveillance footage covering the intersection. Investigators sought and received surveillance footage from the First Bank of Omaha building located at 4770 Table Mesa Drive. In addition, investigators received surveillance footage from the Regional Transportation District Gate A bus stop located on Table Mesa.

A witness, waiting for the Flatiron Flyer bus at the bus stop, described the suspect's vehicle heading eastbound toward the bus stop. The witness said she felt there was a "good chance" that she was going to be hit or shot by the suspect. The witness retreated 10-15 feet away from the suspect's vehicle to seek protection.

The location of the victims fleeing and the suspect's vehicle after being pinched and disabled by Officer Moss near the bus stop is pictured below:



Interviews with Commander Josh Bonafede, Deputy Jeff Black, Officer Jon Allendorf, Officer Nate Moss, Officer Collin Keith:

BCIT investigators interviewed the three law enforcement officers who discharged their weapons and the officers who were present at the time of the shooting on May 12, 2022. Under the law, the officers were not required to provide statements to the BCIT. However, all the officers involved provided voluntary statements following the incident. Relevant portions of those statements have been incorporated throughout this decision letter.

Interviews with Trenton Dunham and the other civilian witnesses:

In every BCIT investigation, the Team seeks to interview all witnesses to ensure that the investigation is complete. As part of this investigation, investigators sought to interview Mr. Dunham. The purpose of the interview had been to develop more information about his earlier interactions with law enforcement and community members in Greeley, Broomfield, and Boulder, the pursuit by law enforcement, the immediate lead-up to the shooting, and the actions of the officers in response. Mr. Dunham agreed to speak with law enforcement, waived his Miranda warnings, and provided statements that were recorded and are being provided to his defense counsel.

Since Mr. Dunham is currently being prosecuted in connection with these events, I will not get into the details of those statements. However, his statements were reviewed prior to the release of this letter.

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.

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 force¹ 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.

...

(4.5) 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.

¹ C.R.S. 18-1-901(1)(d) defines deadly physical force as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” It should also be noted if the legal analysis was conducted under the heightened “deadly force” standard, the deputies’ and officer’s conduct would be legally justified based on the facts known to involved law enforcement officers and circumstances at the time they fired.

Independent of the analysis under C.R.S. 18-1-707, an officer can also be justified in using force pursuant to C.R.S. § 18-1-704, which provides in part:

[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.

C.R.S. § 18-1-704(1).

LEGAL ANALYSIS

Commander Josh Bonafede

The investigation established that three rounds from Commander's Bonafede's Sig Sauer rifle struck the suspect's vehicle and shattered the driver side window. Commander Bonafede knowingly fired his weapon at Mr. Dunham after seeing him holding a handgun and aggressively targeting Deputy Black. Commander Bonafede feared Deputy Black or himself could be shot by Mr. Dunham, causing serious injury or death. The determination of whether the officer's conduct was criminal is primarily a question of legal justification.

The question of legal justification 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. Dunham presented, and if so, whether that use of force was reasonable and appropriate in response to the threat. In this case, the answer to both questions is yes. The investigation revealed that, at the time he discharged his service weapon, Commander Bonafede's actions were objectively reasonable to prevent the imminent threat of injury to himself or his fellow officers. Thus, Commander Bonafede was legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

In the hours leading up to the discharge of his service weapon, Commander Bonafede had heard that Mr. Dunham was armed, had carjacked and felony menaced several vehicles, and had driven erratically on the pedestrian section of the Pearl Street Mall. Then, Commander Bonafede witnessed the suspect pointing his gun at Deputy Black. Commander Bonafede fired his rifle to protect Deputy Black from bodily harm.

Consistent with C.R.S. § 18-1-707, Commander Bonafede ensured that he had a clear backdrop, in this case an unoccupied intersection, before discharging his firearm. As such, his decision did not pose a risk of harm to bystanders. Commander Bonafede fired three shots and stopped firing as the suspect's vehicle passed his location and officers continued their pursuit.

In his voluntary interview, Commander Bonafede explained that he saw the suspect holding a handgun in his right hand and "aggressively targeting" Deputy Black. Commander Bonafede further expressed a fear that if he didn't fire his weapon, Deputy Black would be shot and potentially killed by Mr. Dunham. Such a reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

Similarly, C.R.S. § 18-1-704(1) provides that an officer may use physical force where he 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. Specifically, whether it was later revealed that a suspect possessed a firearm or some other weapon, the legal analysis is required to focus on what was known to the officers at the time of the incident. Given Mr. Dunham's actions, prior reports that he had a firearm and had carjacked a vehicle, and his statement that he pointed his gun at an officer, it was completely rational and reasonable for Commander Bonafede to believe Mr. Dunham was pointing a firearm at Deputy Black.

After viewing the evidence in the case as a whole, Commander Bonafede's actions were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

Deputy Jeff Black

The investigation established that three rounds from Deputy Black's Sig Sauer rifle struck the suspect's vehicle. Deputy Black knowingly fired his weapon at Mr. Dunham after he observed the suspect looking directly at him, yelling something, and as the suspect approached, raising his right hand and pointing his black handgun at Deputy Black. Deputy Black feared the suspect was going to shoot him. The determination of whether the officer's conduct was criminal is primarily a question of legal justification.

The question of legal justification is the same in the case of Deputy Black. The investigation revealed that, at the time he discharged his service weapon, Deputy Black's actions were objectively reasonable to prevent the imminent threat of injury to himself or his fellow officers. Thus, Deputy Black was legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

Before Deputy Black discharged his rifle, he had heard Mr. Dunham was armed, had performed several carjackings and felony menaced multiple civilians, and had destroyed a barrier on the pedestrian section of the Pearl Street Mall. Deputy Black saw the suspect aim his gun in Deputy Black's direction prior to discharging his service weapon. Deputy Black fired his weapon to protect himself from bodily harm.

Consistent with C.R.S. § 18-1-707, Deputy Black ensured that he had a clear backdrop, in this case an unoccupied intersection, before discharging his firearm. As such, Deputy Black's decision did not pose a risk of harm to bystanders or civilians. Deputy Black fired three shots and stopped firing as soon as he saw the glass shatter and the suspect's vehicle passed him.

In his voluntary interview, Deputy Black explained that as the suspect's vehicle approached his position, the suspect was irate, yelling, and pointing a gun at Deputy Black's position. Deputy Black expressed a fear that if he hesitated, he would be shot and potentially killed by Mr. Dunham. Deputy Black's reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

Similarly, under C.R.S. § 18-1-704(1), Deputy Black was justified in using physical force because he reasonably believed that such force was necessary to protect himself from imminent death or serious bodily injury. Given Mr. Dunham's actions, prior reports of his possession of a firearm and felony menacing of civilians, and pointing a gun at Deputy Black, it was entirely rational and reasonable for Deputy Black to believe that Mr. Dunham intended to cause the imminent death or serious bodily injury of Deputy Black.

After viewing the evidence in the case in its entirety, Deputy Black's actions were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

Officer Jon Allendorf

The investigation established that one round from Officer Allendorf's Smith & Wesson pistol struck the suspect's vehicle. Officer Allendorf knowingly fired his weapon at Mr. Dunham after the suspect moved his right arm across his body in a shooting position. Officer Allendorf believed the suspect had shot at him when at the same moment shots were discharged by Commander Bonafede and Deputy Black. Officer Allendorf believed he was going to die by being shot by Mr. Dunham. The determination of whether the officer's conduct was criminal is primarily a question of legal justification.

The question of legal justification is the same in the case of Officer Allendorf. The investigation revealed that, at the time he discharged his service weapon, Officer Allendorf's actions were objectively reasonable to prevent the imminent threat of injury to himself or his fellow officers. Thus, Officer Allendorf was legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

Before Officer Allendorf discharged his service weapon, he was aware the suspect had a handgun, had driven over stop sticks and continued evading law enforcement. Officer Allendorf observed the suspect looking at him briefly as the suspect approached. The suspect moved his right arm across his body in a shooting position, Officer Allendorf heard gunshots and believed the suspect had shot at him. Officer Allendorf believed he was going to die and made the decision to fire his weapon to protect himself, fellow officers, and nearby civilians.

Consistent with C.R.S. 18-1-707, Officer Allendorf ensured that he had a clear backdrop, in this case an unobstructed and empty intersection, before discharging his firearm. As such, his decision did not pose a risk of harm to bystanders. Officer Allendorf heard gunshots and believed the suspect had shot at him. Officer Allendorf saw the bullet discharge and the suspect's driver's side window shatter. Officer Allendorf fired one shot and stopped firing as soon as he saw the glass shatter and the suspect's vehicle move past his position.

In his voluntary interview, Officer Allendorf explained that he was already in Mr. Dunham's line of sight as the suspect approached eastbound on Table Mesa Drive. Officer Allendorf expressed a fear that if he hesitated, he, his fellow officers, or nearby civilians would be shot and potentially killed by Mr. Dunham. Such a reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

Similarly, C.R.S. § 18-1-704(1) provides that an officer may use physical force when he reasonably believes that such force is necessary to protect himself or another from imminent death or serious bodily injury. Given Mr. Dunham's violent actions, prior reports that he was armed and a danger to the public, and his movements toward Officer Allendorf, it was completely rational and reasonable for Officer Allendorf to believe that Mr. Dunham had shot at him.

After viewing the evidence in the case as a whole, Officer Allendorf's actions were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

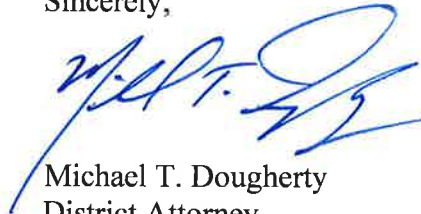
CONCLUSION

I find in my review of this incident that no conduct by Commander Bonafede, Deputy Black, or Officer Allendorf 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, law enforcement's actions during this incident were legally justified as set forth in C.R.S. § 18-1-707 and C.R.S. § 18-1-704. Commander Bonafede, Deputy Black, and Officer Allendorf were each legally justified in their use of reasonable and appropriate physical force in response to an imminent risk of death or great bodily injury to themselves and their fellow officers. As a result, my office will not be filing criminal charges against Commander Bonafede, Deputy Black, or Officer Allendorf.

These cases are important to the officers and civilians involved, as well as to our community. Mr. Dunham's actions put civilians and officers at risk of great bodily injury or death. I appreciate the cooperation provided by the Boulder County Sheriff's Office, University of Colorado Boulder Police Department, and the extremely thorough investigation conducted by the BCIT.

In the interests of transparency, I will be releasing this letter to the public. These materials will also be posted on the District Attorney's website. Pursuant to our policy, the Boulder County Sheriff's Office and University of Colorado Boulder Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to the Sheriff's Office and CU Boulder Police. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District