



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

October 31, 2022

VIA ELECTRONIC MAIL

Maris Herold, Chief of Police
Boulder Police Department
City of Boulder
Boulder, Colorado

Re: Investigation into the shooting of Zakiyy Saadiq Lucas on October 2, 2022, involving Police Officer Eric Stephens, of the Boulder Police Department, in the area of 1165 13th Street in Boulder, Colorado

Dear Chief Herold:

The investigation and legal analysis of the non-fatal shooting of Zakiyy Lucas involving Boulder Police Department Officer Eric Stephens 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 Police Department (“BPD”) for immediately notifying the BCIT following the incident. By doing so, BPD enabled the BCIT to quickly respond and conduct an extremely thorough investigation. Consistent with Boulder County protocol, BPD did not participate in the use-of-force investigation involving Officer Stephens.¹

¹ BPD Detectives remained involved only in the investigation into potential attempt murder, disorderly conduct-discharge of a firearm, and felony menacing charges for Mr. Lucas’s actions prior to law enforcement’s use of force, as well as investigation

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Officer Stephens for the non-fatal shooting of Zakiyy Lucas (DOB: 01/09/2000) on October 2, 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 BPD 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 Officer Stephens committed a criminal offense that can be proved 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 recorded witness interviews, diagrams, 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 Officer Stephens.

My findings, analysis, and conclusions of law with respect to Officer Stephens'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, however, to be construed as commentary on the criminal charges pending against Mr. Lucas and Gabriel Ajay Sharma (DOB 03/28/2004) who were both arrested for attempted murder related to this incident. Those charges are merely accusations. Mr. Lucas and

into the other suspects involved. Consistent with protocol and statute, BPD remains legally responsible for enforcing any criminal violations which took place prior to the officers using force against the individual.

Mr. Sharma remain innocent of all the charges against them unless and until a jury finds them guilty beyond a reasonable doubt.

Applying the applicable statutes to the facts presented through this investigation, Officer Stephens 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.

While Officer Stephens was participating in a routine patrol call involving a nuisance complaint at a local fraternity, he and his partner, Officer Dan Colwell, heard from dispatch that there was a fight involving firearms approximately a block from their location. Officer Stephens and Officer Colwell immediately ran toward the area of the reported fight.

As Officer Stephens turned the corner onto Pennsylvania Avenue running eastbound, he saw the suspect fire one round from his firearm. The suspect had his back to Officer Stephens and Officer Colwell. Officer Stephens saw the muzzle flash and heard the round fired in an easterly direction towards 13th Street. While Officer Stephens could not see if there were individuals at the end of Pennsylvania Avenue towards the location where the suspect was firing, based on his training and experience, he believed there were likely other individuals in the line of fire.

Officer Stephens believed this to be an active shooter situation. After firing the shot, Mr. Lucas turned and ran directly towards to officers with the gun in his hand. Officer Stephens began firing his weapon. Mr. Lucas dropped the firearm on the ground and began to run north at an angle, across Pennsylvania Avenue. Officer Colwell told Mr. Lucas to stop, and he complied.

As Officer Colwell was taking Mr. Lucas into custody, four more rounds were fired from the far east area of Pennsylvania Avenue. Based on video evidence and the location of the .45 caliber casings found at the east end of Pennsylvania Avenue, it is believed these four rounds were fired by the other group of suspects involved in the fight. Mr. Sharma has been arrested and charged for firing the four rounds. Mr. Sharma fired the four rounds west down Pennsylvania Avenue towards Mr. Lucas, Officer Stephens, and Officer Colwell.

Based on all the information available, it is unclear if the round that struck Mr. Lucas was a 9mm round fired by Officer Stephens or a .45 caliber round fired by Gabriel Sharma who fired west down Pennsylvania Avenue. However, based on the timing that Mr. Lucas sustained the wound and his location at the time he was shot, it is probable that Officer Stephens fired the round that entered and exited Mr. Lucas's arm. Regardless, whether Mr. Lucas was shot by Mr. Sharma or by a police officer does not change the role of the BCIT or the legal analysis required of this office in evaluating the officer's actions in using potentially deadly physical force.

Under the circumstances, it was reasonable for Officer Stephens to believe that Mr. Lucas was armed with a firearm, that Mr. Lucas did and would shoot that firearm, and that members of the community were in imminent danger of being killed or seriously injured by Mr. Lucas. Based

on Colorado law, the physical force that Officer Stephens used in response to Mr. Lucas was both reasonable and appropriate under the circumstances.

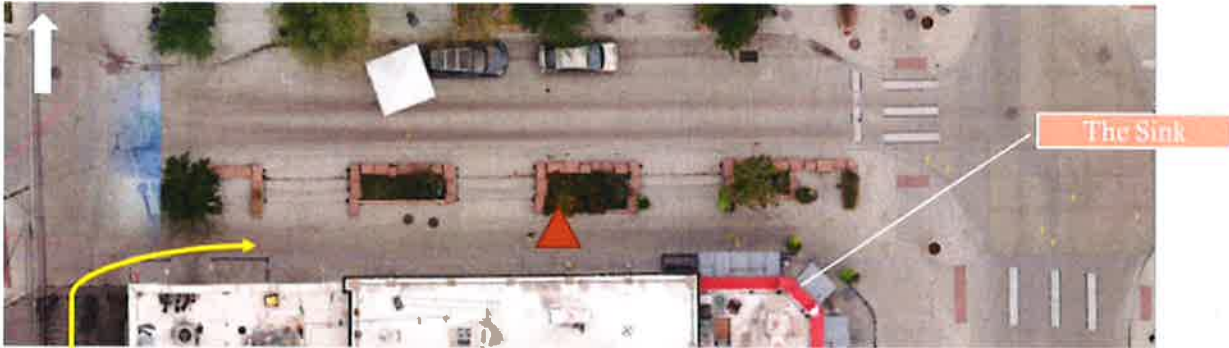
DETAILED STATEMENT OF FACTS

On October 2, 2022, at 01:27:14 hours, Boulder Police Dispatch received a 9-1-1 call from a passerby who reported a fight near The Sink restaurant located at 1165 13th Street within the City of Boulder. The Sink is located on the corner of 13th Street and Pennsylvania Avenue. The caller indicated there was a “huge brawl,” and initially stated they heard “pops” but did not see any weapons. Within 47 seconds of calling 9-1-1, the caller said that one of the individuals fighting did, in fact, have a firearm. The caller frantically requested officers respond to the area.

Simultaneously, Officer Stephens and Officer Colwell were handling a nuisance call at a fraternity located at 1146 12th Street within the City of Boulder. Officer Stephens and Officer Colwell heard over dispatch that a “brawl” involving firearms was occurring. As they were less than a block away, officers left the nuisance call and began to run towards the reported violent incident involving firearms.

Officer Stephens was running ahead of Officer Colwell as they ran northbound in the alley and turned onto Pennsylvania Avenue running eastward. The yellow line in the diagram below depicts the route taken by Officer Stephens and Officer Colwell. Officer Stephens saw a man with his back to them. Officer Stephens and Officer Colwell heard people yelling. Officer Stephens then observed the man raise his right arm and shoot one round from a firearm eastbound down Pennsylvania Avenue. The orange triangle depicts the location of the man when he fired the round eastbound. The man with the firearm was later identified as Mr. Zakiyy Lucas.

While Officer Stephens could not see if there were people in the direction that the round was fired due to lighting conditions, based on his training and experience, he believed there were likely people in that area. Officer Stephens believed that this was an active shooter situation. Mr. Lucas turned and ran towards Officer Stephens and Officer Colwell with the firearm still in his hand. Based on the body-worn camera video, the shot fired by Mr. Lucas occurred at 1:28:30 and Officer Stephens begins to fire at 1:28:32. Mr. Lucas dropped the firearm to the ground and started to run north at an angle across Pennsylvania Avenue. Officer Colwell gave him commands to stop, and Mr. Lucas complied. The white square depicts where Mr. Lucas was taken into custody.



While Mr. Lucas was being taken into custody, four rounds were fired from the eastern end of Pennsylvania westward, in the direction of Officer Colwell, Officer Stephens, and Mr. Lucas. It was later determined these were .45 caliber rounds fired by Gabriel Sharma.

Mr. Lucas told Officer Colwell he had been shot in the right arm. Officer Colwell quickly applied a tourniquet on his right arm after handcuffing him. Rescue personnel were called, and Mr. Lucas was taken to Boulder Community Health Emergency Room.

While being taken into custody Mr. Lucas made several statements to Officer Colwell which were captured on body-worn camera. In sum, Mr. Lucas stated that he should not have had the firearm and that he was shooting at the other parties who were trying to hurt his friend. He also stated the firearm was "clean." When Officer Colwell inquired as to how he was feeling, he indicated that his arm hurt.

Boulder Police Department issued a community-wide request for any information or videos regarding the incident. Several videos and photos were received as a result of this request. Additionally, as a result of further investigation, officers were able to find witnesses who took videos of the events before and after Officer Stephens fired the four rounds.

One video received depicted two groups of men physically fighting on 13th Street just south of Pennsylvania Avenue. The men fighting in this video are the same men involved in the officer involved shooting. Mr. Lucas and Mr. Sharma can both be seen in the video participating in the physical altercation.

A second video was retrieved from an identified individual who witnessed the event. His video depicts Mr. Lucas arguing with two men who are east of The Sink. One of the men was identified as Gabriel Sharma and the other as a known Juvenile. Mr. Lucas is on the sidewalk on the north side of The Sink. Mr. Lucas has an assault rifle pistol in his right hand. Near the end of the video Mr. Lucas fires a round to the east.

The witness was interviewed and told investigators he was walking in the area when he heard two groups of young men arguing with one another. He witnessed a male pull an "assault rifle" out of his pants while arguing with another group of young men. The second group of men seemed to be encouraging the man with the firearm to shoot the assault rifle as they were saying "blow it." The male with the firearm fired a single round and the other men fired back three times. The witness said he believed officers fired four rounds at the man with the "assault rifle" after he dropped the firearm. The witness acknowledged he was hiding under a car during a portion of the incident. The sequence of events as reported by this witness is belied by Officer Stephens body-worn camera.

A third video was taken after Officer Stephens fired his handgun. This 13-second video was taken by a person crouched behind a car on the north side of Pennsylvania. This video starts as Mr. Lucas ran to the northside of the street and dropped his firearm. Simultaneously, the .45 caliber rounds are being fired from the group of men to the east. Officer Stephens is seen moving to the north. There appears to be a flash near the muzzle of his firearm. The Critical Incident Team worked hard to identify whether Officer Stephens had fired his gun again at this point in

time. He did not. The light near his handgun is a light on the video behind him that remains constant throughout the video.

The screenshot below to the left depicts the approximate time the flash appears in unison with the sound of a shot being fired. The screen shot to the right shows that as Officer Stephens moves north, there is a reflection in the window that appears to be the source of the flash near Officer Stephens's muzzle. Based on the available videos and evidence at the scene it is apparent that Officer Stephens did not fire a round in this video. Rather, the shots fired at this point came from Mr. Sharma at the other end of the street. In addition to the video, the firing of shots by Mr. Sharma was confirmed by a witness and the location of the shell casings.



Officers Stephens and Colwell were both wearing body-worn video cameras that captured the incident. Officer Stephens's footage shows Officer Stephens running to the reported disturbance. After he rounds the corner from the alley to east bound on the south sidewalk of Pennsylvania, there are three people in view, including Mr. Lucas and two others. There is a single gunshot fired by Mr. Lucas, which is followed by someone, likely an officer due to the sound clarity, yelling something followed by "stop."

Based on the slow-motion video and the timestamp from Officer Stephens's body worn camera, Mr. Lucas is in view of the camera at 01:28:27 hours and Mr. Lucas fires at 01:28:30. Officer Stephens fires his first round at 01:28:32 and his last round at 01:28:33. After Officer Stephens fires, he and Officer Colwell focus on bringing Mr. Lucas into custody. At this time four additional rounds are fired from the intersection of 13th and Pennsylvania by Mr. Sharma, who had been involved in the initial fight.

As a result of the investigation by BPD, the individual who shot four rounds west down Pennsylvania towards Officer Stephens, Officer Colwell, and Mr. Lucas was identified as Gabriel Ajay Sharma (DOB 03/28/2004). Mr. Sharma has been taken into custody and, as noted above, charges have been filed for his actions from that night.

Medical Diagnosis:

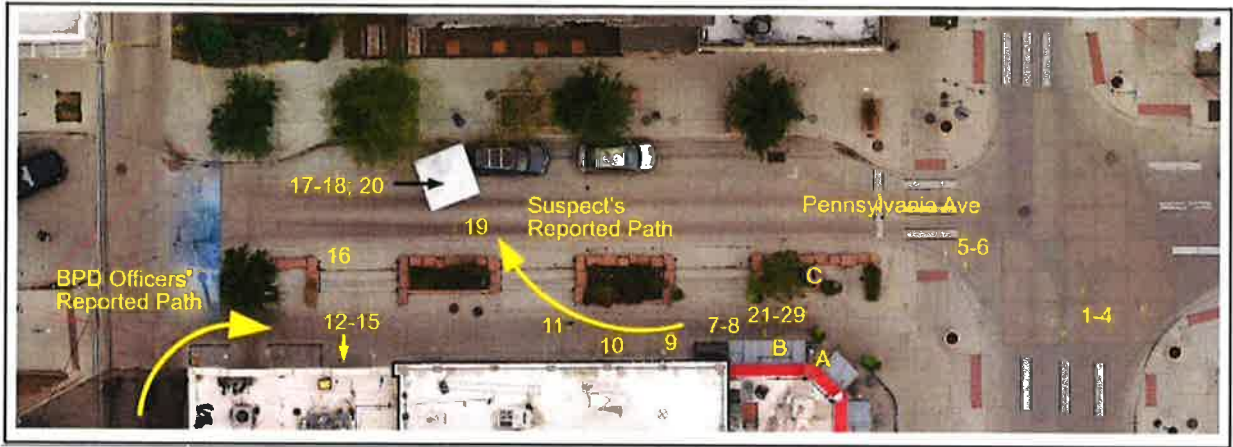
Mr. Lucas sustained a gunshot wound to his right forearm. The projectile fractured his ulna, mid-shaft, without causing significant damage to major blood vessels or nerves. The bullet entered and exited Mr. Lucas's arm. An X-Ray revealed some type of shrapnel in Mr. Lucas's arm. The shrapnel was not removed as it is potentially pieces of either bone or bullet fragments. The emergency room doctor did not make any observations regarding bullet directionality, entry, or exit direction. Based on the medical information, it is unknown if the round that struck Mr. Lucas was a 9mm round fired by Officer Stephens or a .45 caliber round fired by Mr. Sharma. However, based on the timing that Mr. Lucas sustained the wound and his location at the time he was shot, it is probable that Officer Stephens fired the round that entered and exited Mr. Lucas's arm.

Scene Preservation:

After the scene was secured and Mr. Lucas had been transported to the hospital for treatment, members of the BCIT took steps to preserve and document the scene. Photographs were taken before evidence was collected or disturbed. Members of the team also generated diagrams and maps showing where the officers, Mr. Lucas, and relevant pieces of evidence were located before, during, and after the shooting. The BCIT conducted a thorough search of the scene and collected multiple pieces of evidence.

Members of the BCIT assisted Boulder Police Officers and an agent from the Colorado Bureau of Investigation with processing, documenting, and completing a canvass of the area where this incident occurred. The Colorado Bureau of Investigation completed the bulk of the scene documentation and provided the image below. The Colorado Bureau of Investigation also documented the items in the table below. Included in the documentation is a greater explanation of each article based on interviews, video footage, or on scene observations – the observations appear in italics.

The location of these items is depicted below:



Items Number	Description
17-18,20	Swabs of the blood (17&18) and a pair of black shorts (20) <i>presumably from Lucas</i>
16	Suspected bullet fragment - <i>likely from the subejcts shooting from the east to the west.</i>
12-15	Four (4) 9mm shell casing - <i>The same caliber as Stephens' handgun and grouped together in a small alcove.</i>
19	Swab of blood - <i>presumably from Lucas</i>
11	AR 15 pistol - <i>Dropped by Lucas</i>
10	Suspected bullet fragment
9	.223 caliber [or 5.56mm] shell casing - <i>consistent with the caliber of the AR 15 pistol</i>
7	Unfired .223 caliber [or 5.56mm] round consistent with the caliber of the AR 15 pistol
8	Suspected bullet fragment
21-29	Suspected bullet fragment - <i>likely from the subjects shooting from east to west based on location and damage to table legs - item B</i>
B	Defect on a metal table leg
C	Defect on the west facing side of a concrete planter
A	Defect in east facing brick wall - <i>if from this incident - likely from Stephen' firearm due to west facing damage</i>
5-6	Suspected bullet fragments
1-4	Four (4) .45 caliber shell casing - <i>fired from firearm of subjects involved in fight with Lucas</i>

The image below depicts measurements from the assault rifle pistol dropped by Mr. Lucas to the 9mm casings from Officer Stephens' handgun as 44 feet. There are 37 feet from where the assault rifle pistol was dropped to the location where Mr. Lucas was taken into custody. Additionally, it shows the approximate center of the .45 caliber shell casings to the assault rifle pistol is 101 feet.



Images from the scene are below. Please note that the evidence items have two associated placards near them. One placard was initially laid by BPD and a second was placed by the Colorado Bureau of Investigation. The item numbers above reflect the Colorado Bureau of Investigation placards.



Image facing west from 13th and Pennsylvania, items 1-4.



Image taken facing west depicting damage on table legs believed to be from rounds fired during the incident. On the tables and ground investigators found suspected bullet fragments.



Image depicting area where AR pistol was found, spent shell casing and bullet fragment. Items 11, 9, and 10



Image depicting 9mm casing believed to have been fired by Officer Stephens and a suspected bullet fragment. Items 12-15 and 16.

Officer Stephens' Firearm:

Officer Stephens was carrying a 9mm Sig Sauer 320 handgun, serial number 58B231701. The firearm had an attached electronic Trijicon RMR site. The firearm was inspected by an armorer who determined the firearms trigger weight was within manufacturer specifications, the safety mechanisms functioned properly, as did the firing mechanisms. The armorer also found the RMR site and iron sites co-witnessed, indicating the RMR site was accurate. Officer Stephens last qualified with his handgun on August 31, 2022, scoring 250 out of a possible 250 on the qualification course. Officer Stephens carried two 21 round magazines, loaded to capacity on his duty belt and one 21 round magazine, loaded to capacity, in his handgun, along with a round in the chamber of the handgun. Investigators found the magazines on Officer Stephens's duty belt were loaded to capacity and the magazine in his firearm had 17 rounds in it, along with a round in the chamber. Officer Stephens was short four rounds. This is consistent with the number of 9mm casings found at the scene, along with the video evidence and Officer Stephens account of the incident. The location of the shell casings fired from Officer Stephens' weapon are consistent with Officer Stephens remaining in one position throughout the discharge of his firearm.

Interview with Officer Stephens:

BCIT investigators interviewed Officer Stephens the day after the incident on October 3, 2022. Under the law, Officer Stephens was not required to provide statements to the BCIT. However, Officer Stephens provided a voluntary statement following the incident. Relevant

portions of those statements have been incorporated throughout this decision letter.

Officer Stephens was interviewed by Longmont Police Detective Nick Aiello and Sheriff's Office Detective Mike McKinley. Officer Stephens has worked for the Boulder Police Department for four years. Prior to working for BPD, he worked as a jail deputy at the Denver County Jail. Officer Stephens had not watched his body-worn camera video prior to giving his statement but was given an opportunity to view it afterward.

Officer Stephens told investigators he was preparing to issue a ticket at a fraternity for a nuisance party and heard a radio call of a large fight in front of The Sink. Officer Stephens recalled hearing that there were possibly weapons involved. Both he and Officer Colwell responded. Officer Stephens said the two immediately ran north through the alley and turned the corner onto the south sidewalk of Pennsylvania, which is corroborated by his body-worn camera video. Officer Stephens heard yelling and said that since the call was aired as a fight possibly involving weapons, he unholstered his handgun. He recalled that on the sidewalk there was a male wearing a black jacket who was later identified as Mr. Lucas. Mr. Lucas was facing away from Officer Stephens, towards the east, and his back was to Officer Stephens and Officer Colwell.

Officer Stephens recalled seeing a muzzle flash on Mr. Lucas's right side and could see that Mr. Lucas was holding a firearm on his right side. Officer Stephens said that he was concerned and knew Mr. Lucas was shooting at someone. He did not know if it was civilians, bystanders, or other individuals involved in a fight. Officer Stephens felt he had no choice other than to shoot as no other officers were on scene yet and Mr. Lucas was either shooting into a crowd or at somebody. Officer Stephens said he believed that this was an "active shooter" type situation and that he had to stop the threat to others in the area.

Officer Stephens said he did not have time to give verbal commands because he needed to stop the threat immediately. Officer Stephens said that he believed Mr. Lucas fired one or two rounds, but recalled hearing one shot. Officer Stephens believed that he fired four shots and that one shot hit Mr. Lucas. He said he fired at Mr. Lucas as Mr. Lucas was running towards him. Mr. Lucas then dropped the gun and "took off running across the street." Officer Stephens identified the gun as a long gun. Officers took Mr. Lucas into custody and Mr. Lucas told Stephens the gun was an "AR."

Officer Stephens said he knew that Mr. Lucas was arguing with or yelling at other people to the east, however he could not see these other people due to the lighting in the area where they were located. Officer Stephens noted that Mr. Lucas was injured, and Officer Stephens aired this information on the radio and requested medical care for Mr. Lucas as Officer Colwell applied a tourniquet to his arm.

Officer Stephens did not hear the other shots fired from the other direction, although those shots can be heard on video.

Interview with Officer Colwell:

Officer Dan Colwell was interviewed by Longmont Police Detective Nick Aiello and University of Colorado Police Department Detective Kevin Brough on October 2, 2022, in the early morning hours after the incident occurred. Officer Colwell has been employed by BPD since January 2021. Prior to joining the Boulder Police Department, he served in the military for four years.

Officer Colwell stated he was assisting Officer Stephens at a nuisance party report. Officer Stephens intended to issue a summons to a representative of the fraternity where the party was being held. While in the east alleyway of the 1100 block of 12th Street and speaking with the fraternity representative, they heard Dispatch air a report of a fight that possibly involved weapons. Officers Colwell and Stephens were less than a block away from the call. Officer Colwell stated they looked at each other and ran to the north toward Pennsylvania Avenue. Officer Colwell said Officer Stephens was in front of him as they ran to the call.

As the two rounded the corner onto the sidewalk on the south side of Pennsylvania Avenue, heading east, Officer Colwell heard a loud pop which he believed was a gunshot. Approximately 40 to 50 feet in front of the officers, Officer Colwell saw a tall black male wearing a black hoodie, later identified as Mr. Lucas, on the sidewalk with his back towards Officer Stephens and Officer Colwell. Officer Colwell said Mr. Lucas was yelling or arguing with someone who was further east of Mr. Lucas.

Mr. Lucas turned and faced the officers and Officer Colwell could see Mr. Lucas holding something in his hand. It took Officer Colwell a moment to determine what the object was. Officer Colwell said he was expecting to see a handgun, but at first thought it was a stick Mr. Lucas was holding. Officer Colwell then recognized the object as an AR style pistol, and that it was a firearm having a short barrel with no stock. Officer Colwell believed the firearm was in his left hand. Officer Colwell described multiple things happening at this time. He believed Mr. Lucas was talking or yelling at people across the street and Officer Colwell also heard three or four gunshots from further away and saw a male running south. Officer Colwell said he and Officer Stephens unholstered their handguns and Stephens fired three to four times.

Colwell provided a clarifying statement that after Mr. Lucas turned, he heard gunshots which he believed were coming from behind Mr. Lucas from the east. At that point he believed Officer Stephens fired. Officer Colwell noted he could only see Stephens in his peripheral vision. Officer Colwell said after Mr. Lucas turned towards Officer Stephens and himself that Mr. Lucas appeared to drop the weapon and run at an angle, heading towards the officers northbound.

Officer Colwell explained that when Officer Stephens fired it was immediately as Mr. Lucas turned towards the officers with the firearm in his hand and that Mr. Lucas dropped the firearm prior to running across the street. Officer Colwell began moving to the north and went down several steps. He gave commands to Mr. Lucas as Mr. Lucas was laying prone on the ground. Officer Colwell placed handcuffs on Mr. Lucas as Officer Stephens provided cover with his handgun. Mr. Lucas told officers he had been shot in the arm and Officer Colwell noted a small amount of blood and damage to Mr. Lucas's sleeve. Officer Colwell applied a tourniquet

and as other officers began arriving, he provided them with information.

Interview with Mr. Lucas:

In every BCIT investigation, the Team seeks to interview all witnesses in order to ensure that the investigation is complete. As part of this investigation, investigators sought to interview Mr. Lucas. The purpose of the interview would be to develop more information about his involvement in the fight, statements to officers about having a gun, what happened, the immediate lead-up to the shooting, and the actions of the officers in response.

The BCIT and the District Attorney's Office sought to interview Mr. Lucas. As is his constitutional right, he declined to be interviewed in connection with this incident. No inferences are to be drawn from his decision. This information is contained herein as it relates to the thoroughness of the investigation and the attempts to secure any and all information about the officers' conduct.

Interview of Additional Witnesses:

The BCIT also interviewed several additional witnesses. As previously mentioned, several witnesses also provided video footage. Members of the BCIT canvassed the neighborhood for any witnesses or footage covering the area of the shooting. Multiple people heard or saw the initial fight between Mr. Lucas and the other suspects. Several people heard gunshots.

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 force² 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.

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 relevant 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.

² 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. Thankfully, Mr. Lucas survived the incident. Thus, the force used in this case does not meet the definition for deadly force.

C.R.S. 18-1-704(1).

The analysis under C.R.S. 18-1-704(1) 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 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).

LEGAL ANALYSIS

In this case, it is clear that the actions of Officer Stephens are legally justified under Colorado law. The investigation establishes that four rounds were fired from Officer Stephens's 9mm handgun. It is probable one of those rounds struck Mr. Lucas in the right arm. Officer Stephens knowingly fired his weapon at Mr. Lucas after seeing him shoot one round in the direction of what Officer Stephens believed to be a group of people or an individual. Officer Stephens feared that Mr. Lucas would continue shooting, which could cause serious injury or death to bystanders or the individuals he had been fighting with previously. 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. Lucas presented, and if so, whether that use of force was reasonable and appropriate in response to the threat. In this case, the answer to those questions is yes. The investigation revealed that, at the time he discharged his service weapon, Officer Stephens' actions were objectively reasonable to prevent the imminent threat of injury to bystanders and other members of the community. Thus, Officer Stephens was legally justified in using physical force under both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

It is important to note that Officer Stephens already had information that firearms were involved in the altercation, before he even rounded the corner. Before Officer Stephens discharged his service weapon, he saw Mr. Lucas fire one round from a firearm. Additionally, Mr. Lucas turned toward him still holding the firearm in his hands. Officer Stephens was not necessarily in fear for his own safety, but rather believed this was an active shooter situation. Officer Stephens had to make a split-second decision to protect members of the community. Officer Stephens fired four shots in the span of approximately one second. Officer Stephens also took steps to render immediate medical aid after the shooting, as Officer Colwell applied a tourniquet and Officer Stephens called for medical assistance.

In his voluntary interview, Officer Stephens explained that he believed Mr. Lucas was an active shooter and did not have time to issue additional commands. Officer Stephens believed Mr. Lucas may continue shooting, as he just witnessed him fire one round towards what he believed to be a crowd or an individual. 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 object, the legal analysis is required to focus on what was known to the officers at the time of the incident. Given that Officer Stephens observed Mr. Lucas not only in possession of a firearm, but also saw him shoot a round on the street towards what he believed to be other individuals, it was completely rational and reasonable for Officer Stephens to believe Mr. Lucas was an imminent danger and may continue shooting, ultimately leading to serious injury or death of a member of the community.

After viewing the totality of the evidence in the case, Officer Stephens's actions 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 Stephens 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. Officer Stephens was legally justified in his use of reasonable and appropriate physical force in response to an imminent risk of death or great bodily injury to others. As a result, my office will not be filing criminal charges against Officer Stephens or any other member of law enforcement involved in this incident.

These cases are important to the officers and civilians involved, as well as to our community as a whole. I am thankful that Mr. Lucas survived without more serious injuries and that no one else was wounded or killed. It is apparent that this situation could have ended much worse, but for the officers responding in the time and way they did.

I appreciate the cooperation provided by BPD and the extremely thorough investigation conducted by the BCIT.

As required, 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, BPD will become the custodian of records related to this case. Any future records inquiries will be directed to the BPD. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty
District Attorney