



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

December 7, 2022

VIA ELECTRONIC MAIL

Interim Police Chief Jeff Fisher
Louisville Police Department
992 Via Appia Way
Louisville, CO 80027

RE: Investigation of the lethal shooting of Lynn Robert Fredericksen on October 23, 2022, involving Officer Michael Miranda, Officer Ben Hibl, and Officer Mackenzie Calvano, at 385 East Street, Louisville, Colorado.

Dear Chief Fisher,

The investigation and legal analysis of the fatal shooting of Lynn Fredericksen (DOB: 06/07/1965), involving Louisville Police Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano, has been completed.

The Boulder County Investigation Team, also known as the Critical Incident Team ("BCIT"), investigated this incident. 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, such as this one, involving the discharge of a firearm by a peace officer that results in injury or death.

I want to acknowledge the Louisville Police Department ("Louisville PD") for immediately notifying the BCIT following the incident. By doing so, Louisville PD enabled the BCIT to quickly respond and conduct an extremely thorough investigation. Consistent with Boulder County protocol,

Louisville PD did not participate in the use-of-force investigation involving Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Officer Michael Miranda, Officer Ben Hibl and/or Officer Mackenzie Calvano for the fatal shooting of Lynn Fredericksen on October 23, 2022, within the City of Louisville. 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 Louisville 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 solely to determine whether Officer Michael Miranda, Officer Ben Hibl and/or Officer Mackenzie Calvano 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. 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 Officer Michael Miranda, Officer Ben Hibl or Officer Mackenzie Calvano.

My findings, analysis, and conclusions of law with respect to Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano 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 result in death and therefore this report is mandated by 20-1-114(1). Additionally, 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.

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 all cases prosecuted by this office, this legal and ethical requirement guides our analysis of this tragic incident

Ms. Fredericksen and Lynn Fredericksen had been married for 7 years. Ms. Fredericksen recently gave birth to their first child on October 14, 2022. After the birth, Lynn Fredericksen acted scared and anxious when they returned home. He was worried about the couple's finances and repeatedly told Ms. Fredericksen that he was concerned for her and the baby's safety.

On October 21, 2022, Ms. Fredericksen found Mr. Fredericksen sitting on the couch with a number of personal items packed and a handwritten "goodbye letter." Ms. Fredericksen explained that the letter said she and the baby would be better off without him and that he would intentionally get into a car crash to take his own life. Mr. Fredericksen had not slept for days. She took Mr. Fredericksen to Avista Hospital that night for an evaluation. The BCIT recovered an "After Visit Summary" medical document dated October 21, 2022, from the house that corroborated this information. The document listed Lynn Fredericksen's diagnosis as insomnia and stress and prescribed him Lorazepam.

Ms. Fredericksen said the morning after, on October 22, 2022, Mr. Fredericksen was peaceful. Mr. Fredericksen was finally able to get some sleep and they started to switch off taking shifts with the baby. Ms. Fredericksen initially thought Lynn Fredericksen was doing better, but sensed he was getting quiet and becoming concerned again.

In the early morning hours of October 23, 2022, Ms. Fredericksen was lying in bed and Lynn Fredericksen came into the room and sat down on the bed next to her. He told Ms. Fredericksen that he was sorry for what was going to happen next. Mr. Fredericksen said something about wanting them all to be together, so Ms. Fredericksen asked him if he was going to hurt himself. Suddenly, he lunged at Ms. Fredericksen, grabbed her by the throat and began choking her. Mr. Fredericksen also covered her mouth and tried to suffocate her. Ms. Fredericksen thought she was going to die and stated she had never seen Mr. Fredericksen's face like that before. Ms. Fredericksen kept trying to fight him off. She felt disoriented and then recalled seeing Mr. Fredericksen on the floor staring at her. She called 911 and pushed him out of the room. Then, she locked herself and the baby in the bedroom.

Ms. Fredericksen called 911 to report that Mr. Fredericksen choked her and tried to kill her. Louisville PD Officer Hibl and Officer Calvano were dispatched to the Fredericksen's home located at 385 East Street, Louisville, Colorado. Officer Miranda and Sergeant Matt Trujillo, also, responded to the residence after hearing the radio call for the strangulation and attempt to kill Ms. Fredericksen. In total, four officers responded to this domestic violence call.

Ms. Fredericksen informed the 911 dispatcher and Officer Miranda that she did not know where Lynn Fredericksen was in the house and that he was suicidal. Eventually, Ms. Fredericksen, while holding her baby, let Officer Miranda and Sergeant Trujillo into the home through the front door. Sergeant Trujillo went down the stairs, located just off the front door leading into the home's living room, to let in Officer Hibl and Officer Miranda through the garage door entrance. During this time, Officer Miranda stayed in the living room with Ms. Fredericksen and her baby.

At some point before the police arrived, Lynn Fredericksen had gone into a bathroom and shut the door. This bathroom was located in a hallway at the top of a short flight of four stairs visible from the front door and the living room. When he was in the bathroom, Lynn Fredericksen cut the left side of his neck a couple times, and then deeply cut the right side of his neck with a large butcher knife. Without medical intervention, Mr. Fredericksen could have died from the self-inflicted knife wounds because they were so severe. As described further below, during the investigation, investigators learned about a previous suicide attempt from many years ago with a large kitchen knife.

Shortly after entering the dark house, Officer Miranda observed the bathroom door opening and he asked if Mr. Fredericksen was okay. Suddenly, Lynn Fredericksen appeared backlit in the bathroom doorway with a large butcher knife raised in his right hand. The front of his shirt was covered in blood and he was bleeding from his neck. He told Officer Miranda, "no, I'm not, you're going to have to kill me." Officer Miranda gave several loud commands directing Lynn Fredericksen to drop the knife.

Lynn Fredericksen did not drop the knife. He started to advance from the bathroom towards Officer Miranda with the large knife still raised in his right hand. He quickly moved towards the top of the stairs that leads into the living room where Officer Miranda was standing near the couch. The distance between the top stair and the couch was approximately 8 feet. Officer Hibl and Officer Calvano followed Sergeant Trujillo up the stairs when they heard Officer Miranda yell at Mr. Fredericksen to drop the knife.

As Mr. Fredericksen moved towards him with the knife raised in his right hand, Officer Miranda fired on him. Officer Hibl and Officer Calvano both positioned behind Officer Miranda and slightly to his left, fired shots at the same time as he quickly moved towards Officer Miranda with the butcher knife raised in his hand. A total of 16 rounds were fired between the three officers: Officer Miranda fired 3 rounds, Officer Hibl fired 5 rounds, and Officer Calvano fired 8 rounds.

Lynn Fredericksen fell to the ground after the first few shots were fired. He continued to hold the large knife in his right hand and his body briefly moved after hitting the floor. He came to a rest at the top of the short set of stairs to the left of the fireplace in the living room. Sergeant Trujillo then grabbed the knife from Lynn Fredericksen and set it down a few feet behind him in the kitchen. Sergeant Trujillo checked for a pulse, but Lynn Fredericksen did not have one.

The evidence established that Lynn Fredericksen had armed himself with a large butcher knife and he used the knife to self-inflict a deep cut to his neck before exiting the bathroom. When he opened the bathroom door, he did not drop the knife after Officer Miranda gave several commands to drop it. Mr. Fredericksen proceeded to quickly move in the direction of Officer Miranda and all three officers started to fire.

Under the circumstances, it was reasonable for Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano to believe Lynn Fredericksen presented an imminent threat of deadly harm to themselves, fellow officers, and Ms. Fredericksen and her baby. Based on Colorado law, the involved officers were legally justified in using deadly physical force. There are no criminal charges that can be proven beyond a reasonable doubt.

DETAILED STATEMENT OF FACTS

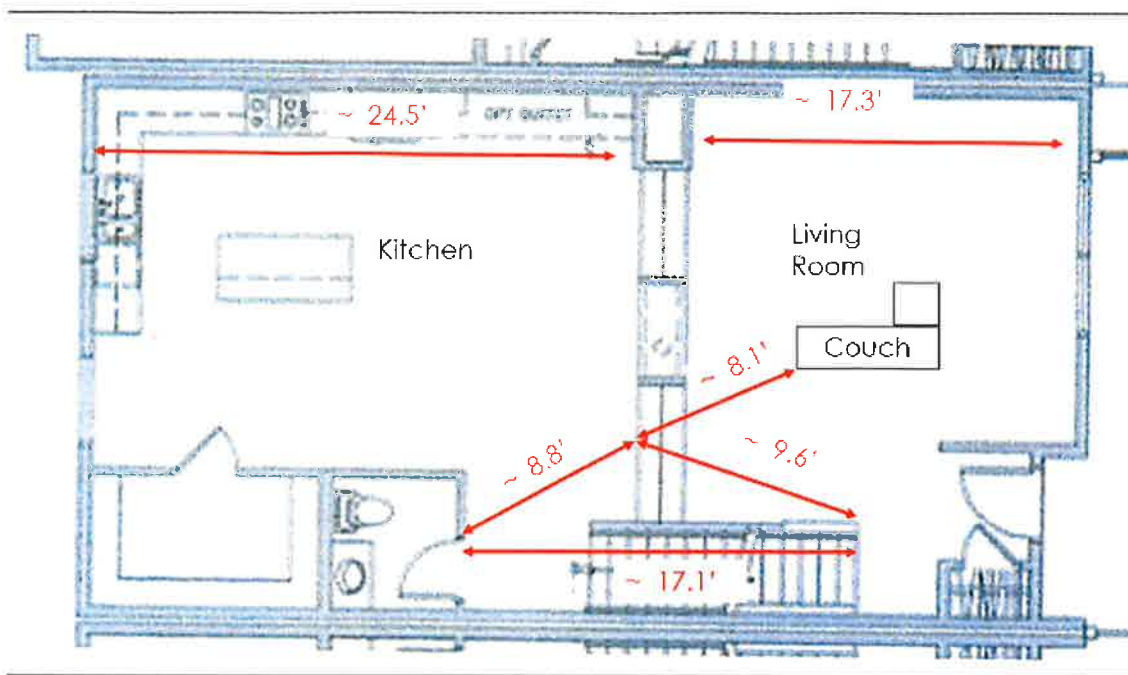
On October 23, 2022 at approximately 6:28 a.m., Ms. Lynn Fredericksen called 911 to report that her husband, Lynn Robert Fredericksen, had tried to kill her in their home located at 385 East Street, Louisville, Colorado. Ms. Fredericksen told the 911 dispatcher that her husband started grabbing her throat, tried to kill her, and she barely got away. She informed the dispatcher that she locked herself in a room with her newborn baby and that Lynn Fredericksen was still in the house. Ms. Fredericksen told the dispatcher that Lynn Fredericksen had not been sleeping over the past 8 days and, the day before, he said "he might kill himself" in a car crash. She told the dispatcher that they did not have weapons in the house.

Louisville Police Officers Ben Hibl and Mackenzie Calvano were the first officers to respond to the residence. Both officers were aware of Ms. Fredericksen's report to dispatch that her husband tried to kill her, and that he was suicidal.

Officer Ben Hibl has worked for Louisville PD for almost three years. Officer Calvano was just three weeks into phase one of her field training program with Louisville PD. The officers initially went to the front door, but it was dark inside and they did not make contact with anyone when they arrived. Ms. Fredericksen then gave the dispatcher the garage code to allow the officers into the home and indicated she did not know where Lynn Fredericksen was in the house. Officer Hibl and Officer Calvano decided to try entering the residence through the garage. They were joined by Officer Michael Miranda and Sergeant Matt Trujillo. Officer Miranda has been a law enforcement officer for over 8 years.

Close to 6:44 a.m., the officers tried to enter the house through a door leading into the residence from the garage, but the door from the garage leading inside was locked. Officer Miranda called Ms. Fredericksen on her cell phone to let her know that the officers could not get in through the garage. Ms. Fredericksen told Officer Miranda over the phone that Lynn was probably hurting himself somewhere in the house and that she was afraid he would find her and hurt the baby.

Officer Miranda and Sergeant Trujillo went to the front door of the residence, while Officer Hibl and Officer Calvano stayed by the interior garage door. Ms. Fredericksen came down the stairs from the upstairs bedroom area with the baby in her arms and opened the front door to let Officer Miranda and Sergeant Trujillo inside at approximately 6:48 a.m. Sergeant Trujillo immediately went down the stairs toward the basement and garage to let the other officers in the garage door residence entrance. Officer Miranda remained in the living room where the front door opened into the home with Ms. Fredericksen and directed her to get behind him towards the corner of the room. Officer Miranda wanted to position himself between Ms. Fredericksen and any possible threat. Ms. Fredericksen told Officer Miranda that she did not know where Lynn Fredericksen was located but said he could be in the bathroom.



This is the floorplan of The Fredericksen's entryway, living room and kitchen. The front door is located at the far bottom right corner of this floorplan.

The living room has two sets of stairs – each with four stairs – that surround the central fireplace and lead into the kitchen and hallway. Facing the two sets of stairs and at the top of the stairs to the left, there is a bathroom.

When Officer Miranda first entered the home, the kitchen area and hallway at the top of the two short sets of stairs were dark. The only light visible was coming from the bottom of the door of the bathroom. Approximately 30 seconds after Officer Miranda entered the house, the bathroom door started to open.

When the bathroom door opened, Lynn Fredericksen was standing in the backlit doorway. Officer Miranda asked Lynn Fredericksen if he was okay. Mr. Fredericksen responded as he started to exit the bathroom. He said: “no, I’m not, you’re going to have to kill me.” He was standing in the bathroom facing Officer Miranda with the bathroom door open – he was bleeding from his neck and his shirt was covered in blood. The volume of his voice was not raised, but loud enough to be heard on Officer Miranda’s body worn camera video. Mr. Fredericksen had a large butcher knife in his right hand raised above his hip and close to chest level. Officer Miranda could see the blood on the knife. Officer Miranda loudly told Lynn Fredericksen: “no, no buddy, just put the knife down.” Mr. Fredericksen did not drop the knife. At that point, Officer Miranda raised his firearm and pointed it in Lynn Fredericksen’s direction.

Officer Miranda continued to yell the following: “No, Lynn, Lynn put the knife down buddy. Put the knife down, we don’t want to hurt you buddy. We don’t. Just put the...”. While Officer Miranda was talking to him, Lynn Fredericksen started to quickly move out of the bathroom towards Officer Miranda with the large knife still raised and pointing towards Officer Miranda. Officer Miranda said that Mr. Fredericksen made “a bee-line” right at him with the knife up. Officer Miranda thought Mr. Fredericksen

was either going to kill him or try to get to Ms. Fredericksen who was still in the room behind him. Officer Miranda started to fire his firearm when Lynn Fredericksen left the bathroom and was in the hallway advancing towards him, just before Mr. Fredericksen made it to the short staircase on the left side of the fireplace in the living room. Officer Miranda said he thought Lynn Fredericksen “was not going to stop.” Officer Miranda was positioned slightly in front and to the left of the couch in the living room, which is approximately 8 feet away from the top stair closest to the bathroom. Officer Miranda estimated the distance between himself and Mr. Fredericksen was 5 to 7 feet and said, “it felt like he was on me” and “he seemed super close.” He thought, “man, this guy is going to get here” and “he is here to kill me.” After reviewing the BWC, it is apparent Officer Miranda was less than 8 feet from the top stair.



While Officer Miranda was engaging verbally with Lynn Fredericksen, Sergeant Trujillo had already gone down the stairs to let Officer Hibl and Officer Calvano into the residence through the garage door entrance in the basement. When Officer Hibl walked through the door, Sergeant Trujillo ran back up the stairs towards the living room where Officer Miranda was loudly giving commands to Lynn Fredericksen to drop the knife. When Sergeant Trujillo came up the stairs, he crossed behind Officer Miranda to the other side of the living room. He did not fire any shots but feared if they retreated that Lynn Fredericksen would have killed Ms. Fredericksen and the baby.

Officer Hibl and Officer Calvano ran up the stairs behind Sergeant Trujillo when Officer Miranda was commanding Lynn Fredericksen to drop the knife. Officer Hibl was the second person to run up the stairs after Sergeant Trujillo. He positioned himself slightly behind and to the left of Officer Miranda with his firearm drawn. Officer Hibl was concerned for Officer Miranda, and he observed Lynn Fredericksen

moving toward officers. He started to shoot his service weapon when Lynn Fredericksen was advancing towards Officer Miranda from the bathroom with the knife raised. He explained that Mr. Fredericksen had a “zombie like walk” and it was a fast walk toward Officer Miranda. Officer Hibl explained that he was scared for himself and the other officers on scene and feared they would be hurt or killed. The distance from the top of the basement stairs to the top stair in the living room near the bathroom is approximately 9 ½ feet.

Officer Calvano ran behind Officer Hibl up the stairs while Officer Miranda was yelling for Lynn Fredericksen to put the knife down. She started to draw her firearm while she was reaching the top of the staircase. Officer Calvano was aware that Ms. Fredericksen and her baby were nearby in the room. Officer Calvano was positioned to the left and behind both Officer Miranda and Officer Hibl at the top of the stairs, close to the front door when she started to fire her service weapon. She started to fire after Officer Miranda and Officer Hibl started to shoot. Officer Calvano later explained that she saw Lynn Fredericksen with the bloody knife, and he was not complying with commands and had continued to advance towards Officer Miranda. She thought the blood on the knife blade might have been Officer Miranda’s blood and that he had been stabbed. Officer Calvano was afraid for Officer Miranda and was afraid Mr. Fredericksen would harm her, Officer Miranda, Officer Hibl and Ms. Fredericksen.

In seconds, a total of 16 rounds were fired between the three officers. Officer Miranda fired 3 rounds, Officer Hibl fired 5 rounds, and Officer Calvano fired 8 rounds. The shots started while Lynn Fredericksen was advancing towards Officer Miranda with the knife and continued while he was falling to the ground. He held on to the large knife in his right hand the entire time. His body briefly moved after hitting the floor and he came to a rest at the top of the short set of stairs to the left of the fireplace in the living room. His head was bent over the top stair. Mr. Fredericksen was hit with 13 rounds. Officers continued to yell at Mr. Fredericksen to drop the knife. Lynn Fredericksen was no longer responsive. Sergeant Trujillo then grabbed the knife from Lynn Fredericksen and set it down a few feet behind him in the kitchen. Sergeant Trujillo observed a severe cut on the right side of Mr. Fredericksen’s neck and checked for a pulse, but Lynn Fredericksen did not have one. Ms. Fredericksen and her newborn baby were escorted away from the scene by Officer Calvano. She was transported to the hospital to have her injuries evaluated and was later interviewed by BCIT investigators.

Autopsy Findings

Forensic Pathologist, Dr. Meredith Frank, completed the autopsy of Lynn Fredericksen on October 24, 2022, at the Boulder County Coroner’s Office. She opined that Lynn Fredericksen died as a result of multiple gunshot wounds and the manner of death was homicide. Mr. Frederickson was shot with 13 rounds. Dr. Frank documented the following findings regarding the 13 entry gunshot wounds that Mr. Fredericksen sustained: #1 gunshot wound to the head into the neck, #2 graze wound of the posterior head, #3 gunshot wound of the right neck, #4 gunshot wound to the left shoulder, #5 to #8 gunshot wounds to the upper left torso, #9 gunshot wound of the lateral right torso, #10 gunshot wound of the medial right torso, #11 gunshot wound of the lower left torso, #12 gunshot wound of the left hand, and #13 gunshot wound of the left leg.

Dr. Frank also found that Lynn Fredericksen sustained the following sharp force injuries: a deep incised wound of the right neck with injuries to the strap muscles and right external and internal jugular veins and two superficial incised wounds of the left neck. The cut to his right neck was a 6 ½ inch by 1 ¾ inch incised wound, with a maximal depth of 1 ¾ inches, along with a few, up to 1 ¾-inch, trailing incisions, in the direction of right to left. The two wounds on the left side of the neck were up to 2 ½ inches, incised defects superficial trailing incisions.

Dr. Frank informed the BCIT that without medical intervention, Mr. Fredericksen could have died from the self-inflicted knife wounds because they were so severe.

Eight projectiles / bullets were collected from Mr. Fredericksen's body during the autopsy. The autopsy report indicates that NMS labs completed the toxicology report and the expanded panel analysis conducted on Mr. Fredericksen's blood did not yield any positive findings.

Scene Preservation and Firearms

After the scene was secured, members of the BCIT took steps to preserve and document the scene. Photographs and video were taken before evidence was collected. Members of the team generated maps and diagrams showing where the officers, Mr. Fredericksen, 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 from the residence.

As noted above, Mr. Fredericksen came to rest at the top of the four stairs leading into the living room in front of the bathroom off the kitchen. Officers observed blood spatter on the stair and the wall behind the area where Mr. Fredericksen fell and stopped moving. They also observed more blood spatter, hair and skull fragments scattered throughout the kitchen area. The BCIT investigators recovered the large butcher knife that Lynn Fredericksen was holding when he came out of the bathroom. It was found several feet behind Mr. Fredericksen's body in the kitchen, where Sergeant Trujillo placed it right after the shooting. Officers also observed a large amount of blood and blood spatter in the bathroom Mr. Fredericksen came out from – the sink and floormat in the bathroom were covered in blood, and blood spatter covers the toilet, sink pedestal, and surrounding floor and walls.



The BCIT collected sixteen 9mm shell casings from the living room floor. Several defects from the bullets were observed in the wall behind Mr. Fredericksen, in the ceiling above him and in the top stair area. Two jacketed bullet fragments were found in the kitchen area with wood fragments scattered around the kitchen island. One bullet skipped off the floor in front of the island cabinet, traveled through the island cabinet and impacted the toe kick beneath the kitchen sink. Another bullet traveled through a kitchen cabinet and ricocheted into the wall just underneath the window on the west side of the kitchen. Officers checked the backside of the complex and inside the neighboring townhouse for bullet holes but did not find any further damage.

Officer Michael Miranda's firearm was examined. He carried a Glock Model 17, 9mm, which had 14 rounds left in the magazine and 1 in the chamber. His firearm was missing 3 rounds. Officer Ben Hibl's firearm was also examined. Officer Hibl shot a Glock Model 17 Generation 5, 9mm, which had 12 rounds in the magazine and one in the chamber. It was missing 5 rounds. Officer Mackenzie Calvano's firearm was a Smith & Wesson M&P, 9mm, which had 8 rounds in the magazine and 1 in the chamber. It was missing 8 rounds.

Interviews with Officer Mike Miranda, Officer Ben Hibl, Officer McKenzie Calvano and Sergeant Matt Trujillo:

BCIT investigators interviewed the three law enforcement officers who discharged their weapons and Sergeant Trujillo who was present at the time of the shooting on October 23, 2022. Under the law, the officers were not required to provide statements to the BCIT. However, all the officers provided voluntary

statements following the incident. Relevant portions of those statements have been incorporated throughout this decision letter.

Interviews with Ms. Fredericksen 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 Ms. Fredericksen. Ms. Fredericksen explained to investigators that she and Lynn Fredericksen were married for seven years and on October 14, 2022, she gave birth to their son. She said that Mr. Fredericksen acted scared and anxious when they returned home after having the baby, and he started acting “manic” and repeatedly told Ms. Fredericksen that he was concerned for her and the baby’s safety.

Before and after the birth of their son, the Fredericksen’s had help from several doulas. Ms. Fredericksen described how Mr. Fredericksen had not been sleeping for days and talked about being very worried about finances and being able to take care of the baby. On October 21, 2022, Ms. found Mr. Fredericksen sitting on the couch with a number of personal items packed and a handwritten “goodbye letter.” Ms. Fredericksen explained that the letter said she and the baby would be better off without him and that he would intentionally get into a car crash to take his own life. She took Mr. Fredericksen to Avista Hospital that night for an evaluation. The BCIT recovered an “After Visit Summary” medical document dated October 21, 2022, from the house. The document listed Lynn Fredericksen’s diagnosis as insomnia and stress and prescribed him Lorazepam. Later in her interview, Ms. Fredericksen told investigators that approximately 20 years ago in Dallas, Mr. Fredericksen attempted suicide and, as a result, spent several days in a hospital.

Ms. Fredericksen told investigators what happened the morning of October 23, 2022. She was laying in bed and Lynn Fredericksen said something along the lines of being sorry for what was coming next. Ms. Fredericksen asked him if he was thinking about hurting himself and without a response, he pounced on her and began choking her. She said there were times she could not breathe, and she thought Mr. Fredericksen was going to kill her. She tried to fight him off and push his hands away, and he placed his hand over her nose and mouth attempting to suffocate her. She stated she had never seen his face like that before and she thought she was going to die. Ms. Fredericksen kept trying to fight him off. She felt disoriented and then recalled seeing Mr. Fredericksen on the floor staring at her. She called 911 and pushed him out of the room. Then, she locked herself and the baby in the bedroom.

After officers could not access the house through the garage door, Ms. Fredericksen went down the stairs and let the officers in the front door. She recalls hearing an officer start yelling and seeing Lynn with a knife in his right hand stumble from the bathroom. Ms. Fredericksen saw blood all over the front of Mr. Fredericksen’s neck, chest, and arms. She thought he was a pretty good distance away. Ms. Fredericksen turned away from Lynn Fredericksen towards the window, because she “could not see him in that state.” She heard an officer yell, “drop the knife,” and immediately with the commands, Ms. Fredericksen heard 4-5 gunshots. She did not see the shooting. Officers continued to yell drop the knife. When she turned around, her husband was lying face down on the floor with the knife still in his hand. She was escorted down the stairs to the garage.

When investigators interviewed Ms. Fredericksen, they observed the following injuries on her: purple bruising underneath her right eye, slight petechia on the outside of her right eye, scratch marks on her nose, redness behind her right ear, redness in the center of her neck by the collar bone, scratch marks on her neck, bruising on the top of both her wrists, and a laceration and swelling on the inside of her bottom lip.

Approximately 17 years ago, Lynn Fredericksen attempted to kill himself with a large knife. According to his wife and his sister, Erica Scaramuzz, Mr. Fredericksen previously attempted suicide. He was sleep deprived at the time due to stress from work and he jammed a chef's knife into his chest. He spent weeks at a hospital in Dallas. BCIT investigators also interviewed Erica Scaramuzz. Erica said that her brother recently seemed a bit anxious about having a new baby, but she did not think he was depressed. She gave investigators more details about Lynn's prior suicide attempt.

BCIT investigators interviewed Kenneth and Jennifer Caputo, who reside near the Fredericksen's at 371 East Street, Louisville, Colorado. They did not hear or see the shooting. However, after the shooting they offered to help, and Ms. Fredericksen went to their house. The Caputos indicated they knew that Lynn and Ms. Fredericksen were having difficulties with the pregnancy and birth of their baby.

Investigators from BCIT canvased the neighborhood. None of the neighbors witnessed the shooting, however, several people heard the gunshots. Neighbors described the Frederiksens as quiet and that they mostly kept to themselves.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and killing another human being is, generally, prohibited by statute as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly force is justified. One of these specific circumstances is the use of deadly force to defend oneself or a third person. A second specific circumstance is the use of deadly force by a peace officer in making an arrest.

The evidence establishes that three Louisville Police Department officers intentionally fired their weapons resulting in fatal wounds to Lynn Fredericksen. All officers indicated that they fired their weapons believing they were in imminent danger of being killed and/or the other people were in imminent danger of being killed. The determination of whether the officers' conduct was criminal is, therefore, primarily a question of legal justification.

The legal framework for the analysis in this case is found in the following sections of the Colorado Revised Statutes:

C.R.S. § 18-1-407 Affirmative defense

(1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

C.R.S. § 18-1-710 Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

C.R.S. § 18-1-704 Use of physical force in defense of a person

(1) Except as provided in subsections (2) and (3) of this section, 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 force 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. § 18-1-707 Use of force by peace officers

(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.

...

(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 of death or serious bodily injury 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 or 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. § 18-1-901 Definitions

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death

The issue is, therefore, whether at the time the Louisville Police Officers used deadly physical force, they reasonably believed that they or another person were in imminent danger of being killed or suffering serious bodily injury.

LEGAL ANALYSIS

In this case, the actions of the Louisville Police Department Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano, were legally justified under Colorado law. At the time each of the officers discharged their handguns, they were justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707. Both statutory provisions provide an affirmative defense to the taking of human life if done in order to protect oneself, or another, from the imminent use of deadly physical force.

C.R.S. §18-1-704 is an affirmative defense applicable to all persons defending themselves or a third party. C.R.S. §18-1-707 is an affirmative defense limited in application to law enforcement officers making an arrest. C.R.S. §18-1-707 is applicable in this case because the officers were carrying out their duties and responded to the residence with the understanding that Lynn Fredericksen attacked his wife and tried to kill her.

Officer Michael Miranda

The investigation established that Officer Miranda fired three rounds from his Glock Model 17, 9mm. Officer Miranda knowingly fired his weapon at Mr. Fredericksen after seeing him covered in blood holding a bloody butcher knife raised in his right hand and quickly moving toward him. He feared that Lynn Fredericksen would stab him or Ms. Fredericksen and her baby, 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, would have concluded that a lesser degree of force was inadequate and that it was necessary to use deadly force to defend himself or another, and stop the threat that Mr. Fredericksen 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 Miranda’s actions were objectively reasonable to prevent the

imminent danger of being killed or receiving great bodily injury to himself, his fellow officers and Ms. Fredericksen. Thus, Officer Miranda was legally justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707.

Leading up to the shooting, Officer Miranda heard from dispatch that Mr. Fredericksen tried to kill his wife, he then heard from Ms. Fredericksen that Lynn Fredericksen strangled her, tried to kill her, and that he was suicidal. He observed Mr. Fredericksen come out of the bathroom covered in blood, and Mr. Fredericksen told Officer Miranda he would have to kill him. Officer Miranda gave multiple commands to Lynn Fredericksen to drop the knife. Mr. Fredericksen did not drop the knife, instead he quickly advanced towards Officer Miranda with a bloody butcher knife raised up in his right hand. Officer Miranda fired his service weapon at Lynn Fredericksen to protect himself, the other officers in the room, and Ms. Fredericksen.

In his voluntary interview, Officer Miranda explained that he thought Mr. Fredericksen was either going to kill him or try to get to Ms. Fredericksen who was still in the room. Such a reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

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

Officer Ben Hibl

The investigation established that Officer Hibl fired five rounds from his Glock Model 17 Generation 5, 9mm. Officer Hibl knowingly fired his weapon at Mr. Fredericksen after seeing him covered in blood holding a bloody butcher knife raised in his right hand and quickly shuffling toward Officer Miranda. He feared that Lynn Fredericksen would kill him or Officer Miranda. 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, would have concluded that a lesser degree of force was inadequate and that it was necessary to use deadly force to defend himself or another, and stop the threat that Mr. Fredericksen presented, and if so, whether that use of force was reasonable and appropriate in response to the threat.

The investigation revealed that, at the time he discharged his service weapon, Officer Hibl's actions were objectively reasonable to prevent the imminent danger of being killed or receiving great bodily injury to himself and his fellow officers. Officer Hibl was legally justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707.

Leading up to the shooting, Officer Hibl heard from dispatch that Mr. Fredericksen strangled and tried to kill his wife, and he heard that Lynn Fredericksen was suicidal. He ran up the stairs when he heard Officer Miranda yell "drop the knife" and observed Mr. Fredericksen coming out of the bathroom covered in blood. He saw Lynn Fredericksen quickly walk towards Officer Miranda with a bloody butcher knife raised up in his right hand. Officer Hibl fired his service weapon at Lynn Fredericksen to protect himself and the other officers in the room.

In his voluntary interview, Officer Hibl explained that he felt he had no choice other than to use lethal force against the suspect because he would not stop. Officer Hibl was scared and worried for both his own and Officer Miranda's safety. Such a reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

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

Officer Mackenzie Calvano

The investigation established that Officer Calvano fired eight rounds from her Smith & Wesson M&P, 9mm. Officer Calvano knowingly fired her service weapon at Mr. Fredericksen after seeing him holding a bloody butcher knife continuing to advance on Officer Miranda. She believed the suspect had stabbed Officer Miranda and she was afraid for the safety of Officer Miranda and Ms. Fredericksen and her baby. 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, would have concluded that a lesser degree of force was inadequate and that it was necessary to use deadly force to defend himself or another, and stop the threat that Mr. Fredericksen presented, and if so, whether that use of force was reasonable and appropriate in response to the threat.

The investigation revealed that, at the time she discharged her service weapon, Officer Calvano's actions were objectively reasonable to prevent the imminent danger of being killed or receiving great bodily injury to her fellow officers and Ms. Fredericksen. Officer Calvano was legally justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707.

Leading up to the shooting, Officer Calvano heard from dispatch that Mr. Fredericksen strangled and tried to kill his wife. She knew that Lynn Fredericksen was suicidal. She ran up the stairs after Officer Hibl when she heard Officer Miranda yell "drop the knife" and observed Mr. Fredericksen holding up a bloody knife. She saw that Lynn Fredericksen was not complying with Officer Miranda's commands and he was advancing on Officer Miranda with the knife. Officer Calvano fired her service weapon at Lynn Fredericksen to protect the other officers in the room and Ms. Fredericksen.

In her voluntary interview, Officer Calvano explained that she thought Officer Miranda had already been stabbed and that it was his blood on the knife. As such, her reaction was entirely reasonable under the circumstances and justified under C.R.S. § 18-1-707(4.5).

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

CONCLUSION

I find in my review of this tragic and scary incident that no conduct by Officer Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano rises to the level of a criminal offense that can be proven beyond a reasonable doubt. 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 Michael Miranda, Officer Ben Hibl and Officer Mackenzie Calvano were each legally justified in their use of reasonable deadly physical force in response to an imminent risk of death or great bodily injury to themselves, their fellow officers, and Ms. Fredericksen. Mr. Fredericksen's actions put Ms. Fredericksen, her baby, and officers at risk of great bodily injury or death. As a result, my office will not be filing criminal charges against Officer Michael Miranda, Officer Ben Hibl or Officer Mackenzie Calvano.

The review of these incidents is important to the officers and civilians involved, as well as to our community. I appreciate the cooperation provided by the Louisville Police Department, and the extremely thorough investigation conducted by the BCIT.

In the interests of transparency and as required by law, I will be releasing this letter to the public. These materials will also be posted on the District Attorney's website. As you are aware, our office also hosts a Community Town Hall after any officer-involved incident to present our findings, be transparent about the decision, and answer any questions.

Pursuant to our policy, the Louisville Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to Louisville PD. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District