



OFFICE OF THE DISTRICT ATTORNEY  
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

December 30, 2022

**VIA ELECTRONIC MAIL**

Chief Rick Bashor  
Lafayette Police Department  
1290 S. Public Road  
Lafayette, CO 80026

**RE: Investigation into the death of Ethan Huiras on November 8, 2022, involving Officer Jared Fender at 201 W. South Boulder Road, Lafayette, Colorado**

Dear Chief Bashor,

The investigation and legal analysis of the death of Ethan Huiras (DOB: 06/28/2002) that occurred on November 8, 2022, in the City of Lafayette 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 20<sup>th</sup> Judicial District uses deadly, or potentially deadly physical force against a person, while acting under the color of official law enforcement duties. Our jurisdiction's 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. The response to, and review of, this incident is an example of the broader definition and protocol that we use here in Boulder County.

I want to acknowledge the Lafayette Police Department ("Lafayette PD") for immediately notifying the BCIT following the incident. By doing so, Lafayette PD enabled the BCIT to quickly respond and conduct an extremely thorough investigation. Consistent with Boulder County protocol, Lafayette PD did not participate in the use-of-force investigation involving Officer Jared Fender.

The BCIT investigation was conducted for the purpose of determining whether criminal

charges are warranted against Officer Jared Fender for discharging a firearm in the direction of Ethan Huiras on November 8, 2022, within the City of Lafayette. 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 Lafayette PD, 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 Jared Fender committed a criminal offense that can be proven beyond a reasonable doubt.

## **BACKGROUND**

The BCIT completed a thorough investigation into this incident and produced 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 Jared Fender.

My findings, analysis, and conclusions of law with respect to Officer Jared Fender are as follows:

## **SUMMARY OF DECISION**

Under C.R.S. § 20-1-114(1), "The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to C.R.S. § 16-2.5-301, 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."

Officer Fender's discharge of his firearm did not result in injury or death, and therefore this report is not mandated by C.R.S. § 20-1-114(1). However, as District Attorney, I believe this report is necessary to inform the public of what transpired on November 8, 2022, and 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 officer fired his weapon and is not criminally liable.

Applying the applicable statutes to the facts presented through this investigation, Officer Fender is not subject to criminal prosecution for his actions. In all cases, including those involving law enforcement officers, the District Attorney's Office's 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.

The evidence establishes that, prior to firing his weapon, Officer Fender was aware Mr. Huiras was driving a stolen vehicle, fled from officers on foot, and returned to the stolen vehicle in an apparent attempt to elude officers with the stolen vehicle. Officer Fender attempted to apprehend Mr. Huiras by grabbing and pulling on his arm to remove him from the stolen vehicle. While Officer Fender attempted to remove Mr. Huiras from the stolen vehicle, Mr. Huiras reached for his waistband. This action caused Officer Fender to step back from the stolen vehicle, draw his weapon, and seek cover behind the vehicle. Officer Fender issued commands to get Mr. Huiras to show his hands, but instead Mr. Huiras leaned out of the vehicle brandishing a firearm and shot Officer Fender. The bullet hit Officer Fender in the leg and he went down.

Mr. Huiras then fired two additional shots, one of which was a fatal, self-inflicted gunshot wound. Unaware that Mr. Huiras shot himself, Officer Fender fired nine rounds at the back of the stolen vehicle in an effort to protect himself from further injury or death.

Based on Colorado law, the physical force that Officer Fender used was both reasonable and appropriate under the circumstances.

#### **DETAILED SUMMARY OF FACTS**

On November 8, 2022, at 1:20 a.m., Lafayette PD received a Flock License Plate Reader (“LPR”) hit on a stolen vehicle in the area of South Public Road and E. South Boulder Road in the City of Lafayette. As you know, evidence collected from LPR cameras helps law enforcement agencies to respond to stolen cars, as well as develop and solve serious crimes and arrest violent offenders. LPR cameras also serve an important role in helping to prevent and deter criminal offenses from occurring as offenders learn that law enforcement agencies are using these cameras for better detection, identification, and more immediate apprehension of auto thieves.

In response to the notification from the LPR, Lafayette PD Officer Jared Fender and Corporal Cesar Rivas proceeded to the area of the LPR hit and observed a gray Toyota Camry bearing license plate EZQ280 parked at the Circle K on South Boulder Road in Lafayette. Officer Fender and Corporal Rivas were each driving in separate department-issued marked police vehicles. Before contacting the stolen vehicle, Officer Fender and Corporal Rivas coordinated a plan to box the vehicle in to prevent anyone associated with the vehicle from driving away. While formulating the plan, a male and female exited the Circle K and observed the two marked police vehicles nearby. The male would later be identified as Ethan Huiras and the female was identified as a juvenile and will be referred to as K.M. throughout this report due to her age.

Within seconds of spotting the police vehicles, Mr. Huiras and K.M. fled from the Circle K on foot and Corporal Rivas pursued them in his patrol vehicle. K.M. ran westbound away from the Circle K and was later apprehended by officers near 455 W. South Boulder Road without further incident.

Mr. Huiras initially fled westbound and then ran around the Circle K building back toward

the Camry. As Mr. Huiras made his way back to the east side of the building, Officer Fender exited his patrol vehicle and pursued him on foot toward the Camry. Mr. Huiras reached the Camry first, opened the door, and entered the driver's seat before pulling the door closed. Officer Fender reached the vehicle as the door closed, opened the driver's door, and attempted to pull Mr. Huiras out of the vehicle while telling him to get out of the car. Mr. Huiras resisted Officer Fender's attempts to grab him by the arm and shoulder. During the struggle at the car door, Officer Fender witnessed Mr. Huiras reach toward his own waistband in an aggressive manner. Officer Fender disengaged from the struggle, sought cover behind the Camry, and drew his service weapon.



*Image taken from Circle K surveillance video showing Officer Fender pursuing Mr. Huiras to the Toyota Camry to prevent him from fleeing.*

As he stepped backward toward the rear of the vehicle, Officer Fender yelled at Mr. Huiras, "Don't, don't you do it! What do you got in your hands? Show me your hands!" Mr. Huiras exited the vehicle with a handgun in his hands and the weapon pointed at Officer Fender. Mr. Huiras fired at Officer Fender and struck him in the leg. Officer Fender fell to the ground behind the Camry and called out "I'm hit!" Mr. Huiras fired two more shots after striking Officer Fender. The third shot was later determined to be a self-inflicted gunshot wound to the head.



*Image taken from Officer Fender's body worn camera depicting Mr. Huiras exiting the Toyota Camry with his handgun drawn and pointed at Officer Fender.*

From his position on the ground, after being shot and hearing two additional gunshots, Officer Fender then fired his service weapon nine times at the back of the Camry, striking the vehicle multiple times. None of these rounds struck Mr. Huiras. Officer Fender radioed "shots fired" after his nine shots and continued to point his weapon at the back of the Camry. Within seconds, Corporal Rivas approached the driver's side of the Camry with his service weapon drawn and inquired of Officer Fender whether he was ok. Officer Fender communicated that he was hit, and Corporal Rivas radioed that Officer Fender had been shot. Corporal Rivas continued to walk toward the Camry with his weapon drawn and witnessed Mr. Huiras slumped over in the driver's seat. Corporal Rivas communicated to Officer Fender that he was "taking the gun" that was still in Mr. Huiras's hand and resting on his lower abdomen. Corporal Rivas told Officer Fender that Mr. Huiras was "down," took possession of Mr. Huiras's weapon, and placed it on the back of the Camry. From there, Corporal Rivas went to render medical aid to Officer Fender and applied a tourniquet to Officer Fender's upper thigh.

Paramedics responded to the scene, provided medical care to Officer Fender, and found Mr. Huiras deceased in the Camry.

#### Autopsy Findings

On November 9, 2022, forensic pathologist Dr. Meredith Frank conducted an autopsy of Ethan Huiras at the Boulder County Coroner's Office. Dr. Frank performed a full medicolegal postmortem examination of Mr. Huiras that included a thorough external and internal examination and the taking of radiographs, toxicology samples, and photographs. Dr. Frank noted that Mr. Huiras sustained a single gunshot wound to the right side of his head behind his right ear. She observed evidence of a close-range gunshot, namely the soot on Mr. Huiras's clothing and apparent stippling on the skin surrounding the entry wound. The trajectory analysis showed that the bullet traveled from right to left at an upward angle, and slightly front to back. Bullet fragments were

recovered from Mr. Huiras's skull during the examination<sup>1</sup>. Apart from the injuries to the head, Dr. Frank documented a number of minor contusions and abrasions, as well as evidence of past self-harm. Dr. Frank opined that Mr. Huiras died as a result of a single gunshot wound to the head and the manner of death was suicide.

### 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 mapped the scene to document where relevant pieces of evidence were located. Additionally, the collection of video evidence from the surveillance equipment at the Circle K and from the body worn cameras of Corporal Rivas and Officer Fender aided the team in understanding the sequence of events that played out in the early morning hours of November 8<sup>th</sup>.

Upon inspection, members of the BCIT determined that 12 shots were fired during the incident based on the evidence found and collected at the scene.<sup>2</sup> Three SIG 45 AUTO cartridges were located just outside of the driver's side door of the Camry. These cartridges were later determined to be consistent with the rounds located in the Hi-Point JHP .45 ACP pistol carried and fired at Officer Fender by Mr. Huiras that remained in his hand until eventually being removed by Corporal Rivas.



*Photographs showing the evidence markers documenting the cartridges collected by the BCIT. Markers 4-6 show the locations of cartridges from Mr. Huiras's weapon.*

Nine additional cartridges were documented by the BCIT in the area of where Officer Fender fell to the ground behind the Camry after being shot by Mr. Huiras. These were Federal 40 S&W cartridges and were consistent with the rounds carried by Officer Fender in his firearm. Following an inspection of the Camry, the BCIT observed that multiple rounds fired by Officer

<sup>1</sup> The size of these fragments, as discussed below, were consistent with the size of the rounds found in the Hi-Point JPH .45 ACP fired by Mr. Huiras.

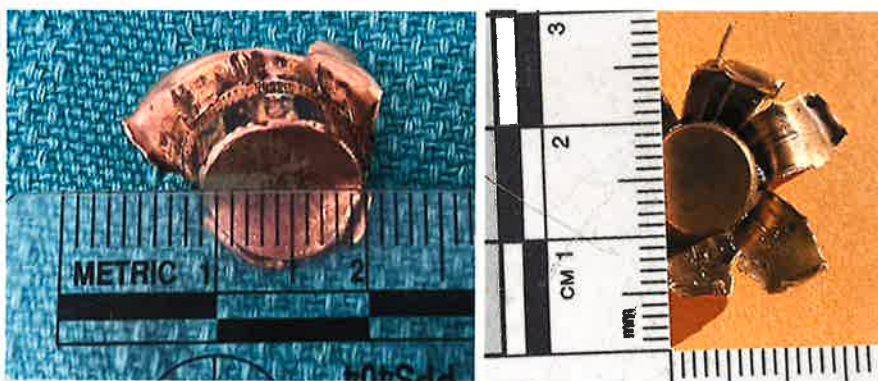
<sup>2</sup> This round count was also confirmed by a careful review of Officer Fender's body worn camera video.

Fender struck the rear of the vehicle. A later analysis of the trajectory of the rounds that entered the vehicle confirmed that none of these rounds actually struck Mr. Huiras, which was consistent with the single, self-inflicted gunshot wound noted at autopsy.



*Photograph showing the evidence markers documenting the cartridges collected by the BCIT. Markers 10-16 and 19-20 show the locations of cartridges from Officer Fender's weapon.*

An inspection of Mr. Huiras's Hi-Point JHP .45 ACP handgun revealed that there were five rounds in the firearm following the incident, with four rounds in the magazine and one in the chamber. Officer Fender's firearm was similarly inspected. Officer Fender carried a Glock 22 with a 15-round magazine. Following the incident, there were five rounds in the magazine and one round in the chamber, confirming that he had fired his weapon nine times. The BCIT collected bullet fragments from rounds fired by Officer Fender for further examination. A later comparison revealed that the size of the bullet fragments found in the skull and skull cavity during the autopsy of Mr. Huiras were inconsistent with the size of the rounds in Officer Fender's Glock 22.



*The left photograph shows the bullet fragment found at autopsy and its size. The right photograph depicts a fragment of a bullet fired from Officer Fender's weapon and its size. The two fragments conclusively show that the rounds are different sizes.*

## Gunshot Wound to Ethan Huiras

Before Mr. Huiras's body was transported from the scene, the BCIT documented further evidence of the gunshot wound to his head and the clothing he was wearing. In addition to other photographs, the BCIT captured an image of Mr. Huiras's hooded sweatshirt that showed a significant amount of gunshot residue, which is indicative of a bullet being fired at close range to his head.



*Photograph of gunshot residue on the hooded sweatshirt of Ethan Huiras.*

## Interviews of Corporal Cesar Rivas and Officer Jared Fender

BCIT Investigators interviewed both Corporal Rivas and Officer Fender in the days following the November 8<sup>th</sup> incident. Under the law, the officers were not required to provide statements to the BCIT. However, both officers provided voluntary statements to investigators after being advised of their rights.

Detective Trevor Soole of the Boulder County Sheriff's Office ("BCSO") and Detective Sarah Cantu of the Boulder Police Department ("BPD") interviewed Corporal Rivas at the Boulder County Sheriff's Office on November 10, 2022. At the time of his interview, Corporal Rivas was a fifteen-year law enforcement veteran; he began serving the City of Lafayette in May of 2021. The details of Corporal Rivas's interview are primarily included in the detailed summary of facts above. In addition to those details, Corporal Rivas also reported that while he was driving in his patrol car he witnessed Officer Fender struggle with Mr. Huiras at the Camry door. As he parked his vehicle, Corporal Rivas heard Officer Fender tell Mr. Huiras "don't do it" and heard the gunfire. As he got out of his car, Corporal Rivas saw Mr. Huiras with a firearm in his right hand and saw Mr. Huiras shoot himself. Based on what he observed, Corporal Rivas could not tell if this action by Mr. Huiras was intentional or not.

After being treated and while recovering from his gunshot injuries, BPD Detective Sarah Cantu and University of Colorado Police Department Detective Kevin Brough interviewed Officer Fender on November 17, 2022 at the Boulder County Sheriff's Office. When interviewed, Officer



Fender had three and a half years of law enforcement experience that was primarily with the Cumberland County Sheriff's Office in Fayetteville, North Carolina. He started as a patrol officer with the City of Lafayette in May of 2022. The details of Officer Fender's interview are primarily included in the detailed summary of facts above. However, for the analysis of this letter it is important to discuss additional details from Officer Fender's perspective.

Officer Fender stated that he pursued Mr. Huiras on foot to prevent him from getting back into the stolen vehicle and fleeing the scene. Officer Fender did not know what might be inside the vehicle and did not know what Mr. Huiras may do if he was able to get back into the vehicle. As he tried to remove Mr. Huiras from the vehicle and Mr. Huiras reached for something in his waistband, Officer Fender attempted to disengage in order to take cover behind the vehicle. He drew his firearm and shouted commands at Mr. Huiras to show his hands. Officer Fender described that he thought that Mr. Huiras was reaching for a weapon based on what he had observed in that moment. Officer Fender explained that he saw Mr. Huiras lean out of the vehicle with a black handgun in his hands and fire at him. This round struck him in the right thigh causing him to fall to the ground. While on the ground, Officer Fender could still see Mr. Huiras's foot planted on the ground outside of the vehicle. Concerned about what Mr. Huiras's next actions may be and unaware of Mr. Huiras's condition, Officer Fender fired his weapon at the back of the vehicle in the direction of where he believed Mr. Huiras to be positioned. Officer Fender recalled believing that Mr. Huiras might reengage him while he was on the ground and injured. Given that he had already been shot once, Officer Fender was scared that Mr. Huiras "was going to try to kill [him]" and he fired to "protect himself." While focused on Mr. Huiras, Officer Fender remembered being "concerned what his next actions would be," "what his intentions might be," or if "he was going to fire on me again."

#### Interview of K.M.

BCSO Detective Trevor Soole and Detective John Kidd of the Lafayette Police Department<sup>3</sup> interviewed K.M. on November 8, 2022. Because she was a minor at the time of the interview, BCIT members obtained consent from her parents before K.M. was interviewed at the Lafayette Police Department.

K.M. reported that Mr. Huiras had contacted her via text messaging and communicated that he wanted to hang out that evening. Mr. Huiras picked K.M. up at her residence approximately 30-50 minutes later in a small beige car. The two then drove to the Circle K gas station, where Mr. Huiras parked the car on the east side of the building. He and K.M. went into the gas station and bought drinks and candy before exiting. Upon exiting, Mr. Huiras communicated something along the lines of "oh shit, there's cops" and "fuck, run." Both K.M. and Mr. Huiras fled westbound on foot. The two separated, with K.M. continuing westbound through the parking lot. As she ran, K.M. heard an officer yell "don't shoot" before hearing multiple gunshots that she believed came from two different guns.

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<sup>3</sup> Detective Kidd participated in the interview for purposes of the investigation of criminal activity in the City of Lafayette and not as part of the BCIT investigation. Consistent with protocol and statute, Lafayette PD remained legally responsible for enforcing criminal violations committed in Lafayette which took place prior to the officer using force against Mr. Huiras.

K.M. stated that, in her experience with him, Mr. Huiras had previously communicated suicidal ideations and had shown an antagonistic view towards law enforcement.

### Circle K Surveillance and Body Worn Camera Videos

As noted above, the BCIT collected surveillance video from the Circle K, as well as the body worn camera videos from Corporal Rivas and Officer Fender. Between these videos, nearly the entirety of the incident on November 8<sup>th</sup> was captured. A review of the video footage supports the evidence, interviews, and details described in the sections above. Significantly, the body worn camera of Officer Fender captured the first shot fired by Mr. Huiras that struck him, causing him to fall to the ground, as well as the audio of the two subsequent shots Mr. Huiras fired from his gun. The video also documents the nine rounds then fired by Officer Fender as he lay on the ground following the gunshot wound to his leg. From the angles of the cameras, there is no video footage that captures Mr. Huiras's self-inflicted gunshot wound to his head.

## **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 at another human being is, generally, prohibited by statute as attempted homicide or attempted assault with a deadly weapon in Colorado, the Criminal Code specifies certain circumstances in which the use of force by a peace officer is justified. One of these specific circumstances is the use of 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 Officer Jared Fender intentionally fired his weapon at Ethan Huiras. Officer Fender indicated that he fired his weapon believing that he was in imminent danger of being killed after he had been shot and was lying on the ground injured. The determination of whether the officer's 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.

(2) When physical force is used, a peace officer shall:

- (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- (b) Use only a degree of force consistent with the minimization of injuries to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force<sup>4</sup> 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;

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<sup>4</sup> Deadly physical force is defined by C.R.S. § 18-1-901(3)(d) as, “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” Mr. Huiras died of a self-inflicted gunshot wound and not by any rounds fired by Officer Fender. As such, the force used by the officer in this case does not meet the statutory analysis for deadly physical force. To be clear, Officer Fender would also have been justified in using deadly physical force under a C.R.S. § 18-1-707(3) and (4.5) or C.R.S. § 18-1-704(2) analysis.

(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.

Here, there are two key questions that must be analyzed. First, whether nonviolent means would have been ineffective in preventing an imminent threat of injury to the peace officer or another person. Second, whether Officer Fender reasonably believed that he was being subjected to or was about to be subjected to the imminent use of unlawful physical force, and whether his actions in defending against that force were objectively reasonable. Alternatively phrased, this second question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that it was necessary to use physical force to defend himself or others and stop the threat that Mr. Huiras presented. The answer to that question is clearly yes.

## LEGAL ANALYSIS

In this case, the actions of Officer Fender were legally justified under Colorado law. At the time he fired his handgun at Mr. Huiras, Officer Fender was justified in using physical force pursuant to C.R.S. § 18-1-707(1) and § 18-1-704(1) respectively.

C.R.S. § 18-1-707(1) provides that officers can use reasonable and appropriate physical force upon another person only if nonviolent means would be ineffective in preventing an imminent threat of injury to the peace officer or another person. When Officer Fender fired, it was clear that nonviolent means would not be sufficient to allow him to protect himself.

Officer Fender had already observed Mr. Huiras walk toward a known stolen vehicle, flee from officers, return to the stolen vehicle, and attempt to elude officers presumably by using the stolen vehicle. It is clear from the investigation that Mr. Huiras knew that Officer Fender and Corporal Rivas were members of law enforcement, as both officers were in full uniform, and each drove marked Lafayette Police Department vehicles, and K.M. described Mr. Huiras stating “there’s cops” upon exiting the Circle K. Mr. Huiras fled immediately upon seeing officers nearby and showed no willingness to allow officers to contact him without incident. Instead, he appeared intent to flee the scene in the stolen vehicle. Officer Fender attempted to pull Mr. Huiras from the vehicle before he could pose any further danger to the officers or others had he been able to flee

in the stolen vehicle or retrieve any weapons from the vehicle. At this point, Officer Fender did not use his weapon and instead tried to apprehend Mr. Huiras by simply grabbing his arm and pulling him out of the vehicle. His attempt to elude was cut short by Officer Fender's quick and decisive actions. When Mr. Huiras reached for his waistband, Officer Fender disengaged and issued commands to try and gain compliance from Mr. Huiras. Mr. Huiras did not comply and instead pointed a handgun at Officer Fender and shot him in the leg. To prevent further harm to himself, it was reasonable for Officer Fender to return fire. His actions are justified under C.R.S. § 18-1-707(1).

Additionally, C.R.S. § 18-1-704 provides that an officer may use physical force where he or she reasonably believes that such force is necessary to protect himself or another from imminent death or serious bodily injury. Under Colorado caselaw, the facts must be viewed as they appeared to the officer at the time.

In review of all of the evidence, it is clear that Officer Fender drew his firearm and retreated to the back of the Camry after witnessing Mr. Huiras reach toward his waistband in an aggressive manner. Officer Fender clearly and unequivocally told Mr. Huiras "don't you do it" and "show me your hands" before Mr. Huiras leaned out of the vehicle and pointed his gun at the officer. Mr. Huiras fired his gun, striking Officer Fender in the leg which caused him to fall to the ground. Before Officer Fender fired any rounds, Mr. Huiras fired two additional shots, including one that resulted in a fatal gunshot wound to himself. Having just been shot and unaware of the condition of Mr. Huiras, Officer Fender believed that Mr. Huiras still posed an active and deadly threat. Officer Fender fired nine rounds at the Camry in an effort to subdue Mr. Huiras and protect himself from either further harm or death. Based on the totality of the circumstances, it was reasonable for Officer Fender to believe the use of unlawful physical force by Mr. Huiras was imminent and the firing of his handgun in the direction of Mr. Huiras was a degree of force that was reasonable in response to being fired upon by Mr. Huiras.

Based on the totality of the circumstances and information available to Officer Fender at the time, his use of force was reasonable in relation to the potential threat, and accordingly, Officer Fender's use of force is justified under the law.

After reviewing the entirety of the evidence, the actions of Officer Fender were legally justified under the applicable statutory provisions and are not subject to criminal prosecution.

## **CONCLUSION**

I find in my review of this incident that no conduct by Officer Fender 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, the officer'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 Fender 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 himself or others. There is no doubt that Mr. Huiras's actions put Officer Fender and other officers at risk of great bodily injury or death. As a result, my office will not be filing criminal charges against Officer Fender.

Officer Fender suffered a terrible injury, and he is fortunate to be alive. He and Corporal Rivas acted with courage and professionalism throughout this entire incident. Under the law, my role is to determine whether criminal charges are appropriate, but I would be remiss if I failed to recognize their service, bravery, and response to this scary and tragic encounter.

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 Lafayette 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. 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, after the Town Hall is completed, the Lafayette Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to Lafayette PD. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty  
District Attorney  
20<sup>th</sup> Judicial District