



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
Michael T. Dougherty, District Attorney

August 31, 2020

Re: Investigation of the non-lethal shooting of the vehicle driven by Keith Beyer (DOB:4/4/89) on August 10, 2020, involving Longmont Police Department Officer Kenneth Nix, in the area of 819 Bross Street, Longmont, Colorado.

Dear Acting Public Safety Chief Spendlow:

The investigation and legal analysis of the shooting of the vehicle driven by Keith Beyer by Longmont Police Department Officer Kenneth Nix has been completed.

The Critical Incident Team for the 20th Judicial District, also known as the Boulder County Investigation Team ("BCIT"), investigated this case. This 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 only to incidents involving the discharge of a firearm by a peace officer that results in injury or death.

I want to acknowledge the Longmont Police Department ("LPD") for immediately notifying the BCIT following the incident. By doing so, LPD enabled the BCIT to quickly respond and conduct a thorough investigation. Consistent with Boulder County protocol, LPD did not participate in the investigation involving the officer-involved shooting.¹

It is important to note at the outset that, in the early stages of the investigation, it was determined that this incident did not involve a use of force that required the BCIT to be activated. In an overabundance of caution, Longmont PD had notified the BCIT. The Team

¹ LPD Detectives remained involved only in the investigation into charges related to Mr. Beyer's breaking into houses, cars, and garages prior to law enforcement's response and subsequent use of force. Consistent with protocol and statute, LPD remained legally responsible for enforcing any criminal violations committed in Longmont which took place prior to the officer(s) using force against the individual.

subsequently investigated the incident. This incident did not, however, involve the use of deadly, or potentially deadly physical force, against another person. The investigation revealed that the police officer intentionally fired his weapon at a car tire to stop the car. The bullet travelled through the tire. As such, this incident did not involve a use of force against a person as defined by the BCIT protocol or under state law. However, since the Team responded and conducted the investigation, it was decided that the process and report should be completed.

Additionally, I have determined that this report, along with the supporting materials, should be made available to the community because the integrity and outcome of these investigations is important to our community. As such, the District Attorney's Office has handled this matter as we would an investigation involving a law enforcement officer using the requisite force against a person.

Specifically, the investigation was conducted for the purpose of determining whether criminal charges are warranted for any law enforcement officer based on conduct related to the shooting of the stolen car driven by Keith Beyer (DOB: 04/04/1989) that occurred on August 10, 2020, within the City of Longmont.

The investigation and review of this incident does not evaluate 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 Longmont Police Department or any civil actions where less-stringent laws, rules, and levels of proof would apply. The statutory authority and role of the District Attorney's Office is to determine whether Officer Nix committed a criminal offense that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes witness interviews, numerous reports, and digital media files. The media files contain recorded interviews, police communications, photographs, and video recordings related to the incident.

A review of the reports, documentation, and digital media filed with my office has been completed and I, along with members of my staff, have reviewed the executive summary and investigation prepared 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 Nix.

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

SUMMARY OF DECISION

Keith Beyer has been criminally charged for offenses related to the conduct which took place prior to his encounter with law enforcement (The charges are merely an accusation and Mr. Beyer is innocent unless and until he is proven guilty). The focus of this review is whether the response to Mr. Beyer's criminal actions by Officer Nix and/or other officers rises to the level of criminal conduct.

In all cases, 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. Applying all applicable statutes to the facts presented through this investigation, I find that Officer Nix is not subject to criminal prosecution for his actions. The evidence establishes that at the time Officer Nix discharged his firearm at the car driven by Keith Beyer it was reasonable for Officer Nix to believe that Keith Beyer had committed felony offenses for which there existed probable cause to arrest and that Mr. Beyer used or threatened the imminent use of unlawful physical force against Officer Nix, fellow officers, and civilians in the area. Additionally, the evidence shows that the conduct of Keith Beyer would have reasonably been perceived by Officer Nix as posing an imminent threat of death or serious bodily injury, providing legal justification for Officer Nix to fire upon Keith Beyer or his car.

Therefore, in light of Mr. Beyer's actions, the District Attorney's Office would not be able to prove beyond a reasonable doubt that the use of force by Officer Nix was unjustified.

STATEMENT OF FACTS

On August 10, 2020, the Longmont Police Department received multiple calls from residents in the area surrounding the 800 Block of Bross Street, Longmont, CO regarding an individual who was breaking into cars, climbing on roofs, entering residents' garages, and entered at least one home. The individual committing these criminal acts was described as a heavier set, shirtless white male who was heavily tattooed.

At approximately 11:44 AM, police dispatch aired that the same individual had entered a residence at 820 Gay Street and was now on the roof of a building just to the east of 820 Gay Street. The dispatcher noted the location as 829 Bross Street. Officer Nate Macchione, Officer Michael Carter, and Officer Kenneth Nix each responded to that address to locate the suspect. While officers were searching for the suspect, Deborah Deacon flagged down Officer Carter and told him that she had just seen an individual enter her garage without permission. Officer Macchione and Officer Carter headed up a narrow driveway towards Ms. Deacon's garage, which is located behind her house at 819 Bross Street. Officer Nix was behind them also heading towards the garage. Civilians remained in the area in front of Ms. Deacon's house.

As Officer Macchione and Officer Carter started to approach the garage, the garage door opened, the reverse lights of a Suburban inside the garage came on, and the Suburban began to back up towards Officer Macchione and Officer Carter. Officer Macchione and Officer Carter took cover behind a Volvo that was parked in the driveway. The Suburban swerved off the driveway and on to the grass to get around the Volvo. The driver then reversed very quickly

down the narrow driveway. As the Suburban was reversing, Officer Macchione and Officer Carter yelled loud, clear commands at the driver to stop the vehicle. The driver of the stolen Suburban matched the description of the individual who had been breaking into cars and entering garages in the area. The driver of the stolen Suburban was ultimately identified as Keith Beyer.

Keith Beyer did not stop or comply with lawful commands and continued to reverse down the narrow driveway at a high rate of speed. While doing so, he hit both a fence and a terracotta pot that were located on either side of the driveway. Officer Macchione was able to see that Officer Nix was coming up the driveway as Mr. Beyer was rapidly backing up. Officer Nix was in an area of the driveway that Officer Macchione described as the "pinch point" because it was in between a fence and the side of the house thereby leaving no way for Officer Nix to escape the path of the Suburban that Keith Beyer was driving in reverse. Officer Macchione yelled at Officer Nix to get out of the way. Officer Nix ran out of the driveway into the area in front of 819 Bross Street.

Officer Nix then fired one shot into the Suburban's tire. Officer Nix stated in a voluntary interview with investigators from the BCIT that he fired into the tire rather than at Mr. Beyer because Officer Nix did not have a clear background and, as a result, he did not know where the other officers and civilians were located. Officer Nix was hoping that he would be able to flatten the tire and stop the Suburban so it would not be able to hit him or any of the civilians in the area. Officer Nix stated that when he fired at the Suburban, he thought the vehicle was going to "take him out." Officer Nix stated that he believed Mr. Beyer was going to kill him and that his life was in danger. He also stated that he believed the civilians in the area were also at risk of being hit by the Suburban which would likely cause serious bodily injury or death.

After Officer Nix fired at the Suburban's tire, Mr. Beyer continued to reverse out of the driveway at a high rate of speed. When he entered the roadway, he rapidly left the scene with multiple police cars in pursuit. Officer Macchione and Officer Carter ran to their vehicles to help apprehend Mr. Beyer. As they ran through the area in front of 819 Bross Street to get to their police cars, Officer Macchione yelled "Don't shoot! Stop!" at Officer Nix because he was running directly into the area where Officer Nix had just fired his service weapon. The round that Officer Nix had fired struck the Suburban's tire, causing the tire to slowly deflate as Mr. Beyer continued to drive. At Bowen Street and Spruce Avenue, Mr. Beyer abandoned the vehicle and was contacted by officers and taken into custody after a brief foot chase.

Mr. Beyer was interviewed by investigators with the BCIT. Mr. Beyer stated that he believed parole officers were looking for him and that he had been running from them throughout the day. He admitted that he entered someone's house without permission in the area around 800 Bross Street. He was confronted by the resident of the house who ordered him to leave and he did. Mr. Beyer then entered another stranger's house and noticed that there was a vehicle in the garage with keys on the center console. He got into the vehicle and then noticed police officers were behind him. He admitted that he heard the officers' commands and backed up towards officers to flee the scene. He stated that he was not trying to hurt anyone.

Investigators from the BCIT interviewed multiple witnesses who were present when Officer Nix fired at the vehicle Mr. Beyer was driving from the garage. The witnesses include Deborah Deacon, Hector Rodriguez, and Erika Rodriguez.

Deborah Deacon confirmed that the stolen Suburban belonged to her and been parked inside her garage. She stated that she ran out of the driveway when the suspect started backing the Suburban out. She heard the police officers yelling “stop” in a loud and clear voice. She said that she knew the suspect would not stop and was afraid she would get run over if she did not move, so she started running to the front of her house and out of the driveway. She said it was very clear the suspect did not care if he hurt anyone.

Hector Rodriguez stated that he saw the car start to move out of the garage. He was concerned because officers were in the driveway and so was Ms. Deacon. The car started to accelerate, and he became even more concerned for the safety of officers and Ms. Deacon.

Erika Rodriguez stated that she witnessed Mr. Beyer attempt to enter her father, Hector Rodriguez’, vehicle, and then saw the Suburban backing up out of Ms. Deacon’s driveway. She stated that he was driving “crazy” and she heard sounds as if he had hit something while backing up. She was afraid that he was going to hit the officers on scene.

Investigators from the BCIT examined the Suburban. Investigators were able to find where the bullet hit the tire. The bullet itself was not recovered from the vehicle or on scene. Officer Nix’s handgun was a Glock 19 Gen 5 9mm semi-automatic handgun. There was one round in the chamber and fourteen rounds in the magazine. Investigators from BCIT collected one Hornady 9mm casing on the scene. The evidence was consistent with him having fired one round.

Although not required by current state law, Officer Nix, Officer Macchione, and Officer Carter were equipped with body worn cameras by the Longmont Police Department. The body worn cameras were activated during the incident. Officer Nix’s body worn camera shows his proximity to the truck during the incident, the reckless manner in which Mr. Beyer was driving, and the chaotic nature of the incident from the perspective of Officer Nix. Officer Carter’s body worn camera shows the vehicle speeding down the narrow driveway in reverse and that there were civilians in the area the vehicle was quickly reversing towards.

Members of the Boulder County Critical Incident Investigation Team conducted the investigation. Team members involved in the investigation included personnel from the Boulder County Sheriff’s Office, Erie Police Department, University of Colorado Police Department, Boulder Police Department, and the District Attorney’s Office.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and further proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. The investigation established that one round from Officer Nix's 9mm handgun struck the tire of the vehicle driven by Mr. Beyer. Mr. Beyer was not injured. Knowingly or recklessly shooting at an occupied vehicle is generally prohibited as illegal discharge of a firearm and/or criminal mischief pursuant to C.R.S. 18-12-107.5 and C.R.S. 18-4-501, respectively. The Criminal Code specifies certain circumstances, however, in which the use of physical force by a peace officer is justified.

Officer Nix knowingly fired his weapon at the tire of the stolen car after Mr. Beyer almost hit Officer Nix with the vehicle. At the time, Officer Nix had probable cause to arrest Mr. Beyer and, also, feared that he himself, his fellow officers, and/or civilians standing in the area could be hit by Mr. Beyer's stolen vehicle, causing serious injury or death. The determination of whether the officer's conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707 defines the circumstances under which a peace officer can justifiably use physical force in Colorado when making an arrest or to prevent an escape.² In pertinent part, the statute reads as follows:

- (1) ... a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
 - a. To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
 - b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

C.R.S. § 18-1-707.

In this case, Officer Nix had sufficient information to lawfully arrest Mr. Beyer for multiple felony offenses that the defendant had perpetrated in the area prior to law enforcement's use of force. Also, at the time Officer Nix fired his weapon he knew that Mr. Beyer had been in Ms. Deacon's garage and was actively stealing her vehicle. When Officer Nix explained why he fired at the vehicle Mr. Beyer's was driving, he also explained that he was concerned the stolen car was going to "take him out" based on the manner and direction in which Mr. Beyer was

² The recent passage of Senate Bill 217 has changed several statutes and laws regarding officers' use of force. The quoted statute is the version that was in effect on August 10, 2020. The passage of Senate Bill 217 does not change the applicable legal analysis in this case. If Senate Bill 217 had been in effect at the time of the incident, it would not change the conclusion of the legal analysis. The officers' conduct was justified and appropriate under both versions of the law.

driving. He specifically stated that he fired at the car because he believed his life was at risk.

Independent of making an arrest or preventing an escape, Officer Nix was also justified in using force pursuant to C.R.S. § 18-1-704, which provides in relevant part:

(1) ...a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force³ may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury....

C.R.S. § 18-1-704.

The analysis under C.R.S. 18-1-704 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). C.R.S. 18-12-107.5(2) provides, “It shall not be an

³ 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. Beyer, fortunately, survived. As such, the force used by the officers in this case does not meet the statutory definition for deadly physical force.

offense under this section if the person who discharges a firearm in violation of subsection (1) of this section is a peace officer as described in section 16-2.5-101 C.R.S., acting within the scope of such officer's authority and in the performance of such officer's duties". Officer Nix is a peace officer as described in C.R.S. 16-2.5-101.

The issues, therefore are whether at the time the officer used physical force he reasonably believed that he, other officers, and/or the civilians that were present were being subjected to or were about to be subjected to the imminent use of unlawful physical force; and furthermore, that his actions in defending against that force were objectively reasonable. Alternatively phrased, the 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 another and to stop the threat being presented by Mr. Beyer or attempt to effect the arrest of Mr. Beyer. Based on all the evidence in this instance, the answer to each question is yes.

LEGAL ANALYSIS

In this case, the actions of Officer Nix were legally justified under Colorado law. At the time he discharged his service weapon, he was justified in using physical force by C.R.S. § 18-1-704(1) and C.R.S. § 18-1-707(1).

C.R.S. § 18-1-704(1) provides that an officer may use physical force where he or she reasonably believes that such force is necessary to protect himself or another from imminent death or serious bodily injury. Under Colorado case law, the facts must be viewed as they appeared to the officers at the time; future developments are irrelevant to the legal analysis.

At the time Officer Nix discharged his service weapon, he had just jumped out of the way of the Suburban that Mr. Beyer was driving towards him in reverse at a high rate of speed. Officer Nix knew that there were civilians and other officers in the area where Mr. Beyer's vehicle was headed. Officer Nix made a split-second decision in order to protect himself, his fellow officers, and civilians. In his voluntary interview, Officer Nix further expressed a fear that if he hesitated, one of the civilians or other officers in the area would have been hit by Mr. Beyer's vehicle causing serious bodily injury or death. Officer Nix did not feel that he could safely shoot at Mr. Beyer because he did not have a clear back drop, so he made the quick decision to shoot down at the tire instead, hoping to disable and stop the vehicle.

Additionally, witnesses believed Officer Nix and civilians, specifically Ms. Deacon, were at risk of being struck by the vehicle. Witnesses stated that, based on the speed and manner in which Mr. Beyer was driving, Officer Nix and the civilians could have been seriously injured or killed.

Furthermore, C.R.S. § 18-1-707(1) provides that officers can use reasonable and appropriate physical force upon another person to effect an arrest. At the time Officer Nix discharged his service weapon, he had probable cause to lawfully arrest Mr. Beyer for multiple felony offenses. Specifically, Officer Nix had probable cause to believe that Mr. Beyer was the individual who had been breaking into garages, cars, and at least one house in the same area earlier in the day. Additionally, at the time he fired his service weapon, he knew that Mr. Beyer had just been in Ms. Deacon's garage, that he was

actively stealing Ms. Deacon's car, and had almost hit him with the Suburban. Mr. Beyer was not abiding by commands from officers to stop and was reversing rapidly to escape from officers when Officer Nix fired at the tire of the Suburban.

Even after Officer Nix's round struck the Suburban's tire, Mr. Beyer continued to escape at a high rate of speed in a residential neighborhood. Mr. Beyer ultimately abandoned the stolen vehicle because it had a flat tire. Mr. Beyer was arrested shortly after abandoning the vehicle and fleeing on foot.

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

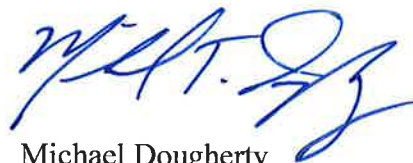
CONCLUSION

We find in our review of this incident that no conduct by Officer Nix rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident were legally justified as set forth in C.R.S. § 18-1-704 and 18-1-707. Officer Nix was legally justified in his use of reasonable and appropriate physical force to effect an arrest and in response to the imminent risk of death or great bodily injury to himself, his fellow officers, and the civilians in the area. As a result, my office will not be filing criminal charges against Officer Nix.

These cases are important to the officers and civilians involved, as well as to our community as a whole. I appreciate the cooperation provided by the Longmont Police Department and the thorough investigation conducted by the BCIT.

I will be releasing this letter to the public, along with the video presentation prepared by the Boulder County Investigation Team. Our office will, also, post these materials on the District Attorney's website. Pursuant to our policy, the Longmont Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to the Longmont Police Department. Please contact me if you require further information.

Sincerely,



Michael Dougherty
District Attorney
20th Judicial District