



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

December 7, 2023

VIA ELECTRONIC MAIL

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

Re: Investigation and legal analysis of the use of force against Sean Feeney Wood on October 22, 2023, involving Corporal Leonard Fazio and Police Officer Houston Lair of the Lafayette Police Department, at 2441 Waneka Lake Trail, Lafayette, County of Boulder, Colorado.

Dear Chief Bashor:

The investigation and legal analysis of the non-fatal shooting of Sean Feeney Wood on October 22, 2023, involving Lafayette Police Department Corporal Leonard Fazio and Officer Houston Lair has been completed.

The Boulder County Investigation Team, also known as the Boulder Critical Incident Team ("BCIT"), investigated this case. The multi-agency team is designated to investigate use-of-force incidents in which any law enforcement officer within the 20th Judicial District uses deadly, or potentially deadly, physical force against a person, while acting under the color of official law enforcement duties. This definition and team protocol are broader than that required by state law, which is limited to incidents involving the discharge of a firearm by a peace officer that results in injury or death.

I want to acknowledge the Lafayette Police Department (“LPD”) for notifying the BCIT following the incident. By doing so, LPD enabled the BCIT to respond and investigate the use of force by LPD officers. Consistent with Boulder County protocol, LPD did not participate in this use-of-force investigation involving Corporal Fazio and Officer Lair. LPD Detectives remained involved in the investigation only to the extent potential attempt murder, felony menacing, and assault charges for Mr. Wood’s actions were warranted prior to law enforcement's use of force. Consistent with protocol and statute, LPD remains legally responsible for enforcing any criminal violations which took place prior to the officers using force against an individual.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Corporal Fazio and Officer Lair for the use of force against Sean Feeney Wood (DOB:04/25/2001) on October 22, 2023, 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. The Lafayette Police Department will be responsible for conducting the review of police tactics and the response by their officers.

My decision, based on criminal law standards, does not limit administrative action by LPD or any civil action where less stringent laws, rules, and levels of proof would apply. The authority and role of the District Attorney is to determine solely whether Corporal Fazio and Officer Lair committed a criminal offense that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed an investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes recorded witness interviews, police communications, 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 Corporal Fazio. He did not commit any crime that could be proven beyond a reasonable doubt. Similarly, I conclude that, under applicable Colorado law, no criminal charges can or should be filed against Officer Lair. He also did not commit any crime that could be proven beyond a reasonable doubt.

My findings, analysis, and conclusions of law with respect to Corporal Fazio and Officer Lair’s use of force in this incident are as follows:

SUMMARY OF DECISION

Under Section 20-1-114(1), C.R.S., "The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney

shall post the written report on its website or, if it does not have a website, make it publicly available upon request."

The discharge of a firearm in this case did result in injury to Sean Wood and therefore this report is mandated by C.R.S. §20-1-114(1) and C.R.S. §16-2.5-301. Additionally, as District Attorney, I believe this report is essential to inform the public of the nature and reasons for my decision. The release of this report furthers the interests of transparency and explains the circumstances under which the law enforcement officers fired their weapons and are not criminally liable. Also, as you are aware, our office conducts a Community Town Hall after every officer-involved shooting to fully address any questions from community members.

This report is not, however, to be construed as commentary on the criminal charges pending against Sean Feeney Wood (hereinafter "Sean"), who was arrested for attempt murder and felony menacing charges related to this incident. Those charges are merely accusations. Sean Wood remains presumptively innocent of all the charges against him unless and until a jury finds him guilty beyond a reasonable doubt.

Applying the applicable statutes to the facts presented through this investigation, Corporal Fazio is not subject to criminal prosecution for his actions. Additionally, applying the applicable statutes to the facts presented through this investigation, Officer Lair is not subject to criminal prosecution for his actions.

In all cases, including those involving law enforcement officers, the District Attorney's criminal filing standard requires that there be a reasonable likelihood of conviction to bring criminal charges against an individual. As in other cases prosecuted by this office, this legal and ethical requirement guides our analysis.

DETAILED STATEMENT OF FACTS

The Residence of 2441 Waneka Lake Trail ("the Residence") is a three-car garage single family dwelling where David Wood ("Mr. Wood") resides alone. The Residence's third, single-car garage port is attached on the east side and further recessed back from the front two-car garage port.



2441 Waneka Lake Trail on October 22, 2023

The Residence is equipped with three Ring security cameras labeled “Front” “Garage” and “Side.” The camera labeled “Front” is a doorbell camera next to the front door. The camera labeled “Garage” is mounted inside the garage on the back wall. The camera labeled “Side” is a camera mounted to the exterior of the home on the southeast corner of the garage, overlooking the driveway of the Residence. Video clips from these cameras from October 22, 2023, have been provided and reviewed.



Location of Ring Cameras at the Residence



Side Ring Camera View

Garage Ring Camera View

Front Ring Camera View

On Sunday, October 22, 2023, Sean arrived at the Residence at approximately 2:30 a.m. Sean did not text Mr. Wood to announce himself as he usually did. The Garage camera shows that between 2:30 a.m. and 2:40 a.m. Sean entered the garage and began pacing back and forth toward and away from what is later identified as a gun safe located in the southwest corner of the garage. At 2:38 a.m., Sean walked from the gun safe to the garage steps and entered the Residence. A male voice states “hey” and is answered with “hey.” The first voice asks, “what are you doing?” and then the door closes.

At 2:41 a.m. the Garage video shows Mr. Wood enter the garage, saying “You’re scaring me. I’m serious.” Mr. Wood walked to a gun safe and says, “You cannot get into this.” Sean asks, “Why not? What’s the code?” Mr. Wood replied, “Not a chance in hell.” Sean continued asking Mr. Wood to open the safe to prove he is his dad, and thereafter called Mr. Wood a liar and stated he is going to have to kill him. Mr. Wood replied, “You’re not killing people.” Sean can be observed making guns with his fingers and pointing in the direction of Mr. Wood while making shooting sounds. Mr. Wood states he is going to call 911. Sean then called Mr. Wood a “stupid bitch” and shoved him. Sean challenged his dad to fight and then stated he doesn’t want to hurt him. Mr. Wood can be heard telling Sean he loves him and to come talk with him. Sean then runs into the house screaming “where?” as Mr. Wood follows him asking, “where what?”

At 2:44 a.m., Sean can be heard saying, “You’re not me and you’re just a fucking machine.” Mr. Wood attempts to calm Sean down. At some point during this interaction, Sean pushed Mr. Wood backwards down the garage stairs. Mr. Wood can be heard moaning in pain. Sean comes out of the house and looks down at him and tells him to stay down. Sean again runs to the gun safe in the garage.

Mr. Wood called 911 emergency at 2:45 a.m. and reported that his son was undergoing a “psychotic event,” and was having a “reality issue.” He reported Sean pushed him down the garage stairs, that it was possible Sean was under the influence of drugs or alcohol, and that officers might have to restrain him. It was later determined through an interview with Mr. Wood that it was around this time that Sean walked to the kitchen and retrieved two large kitchen knives from a butcher block. Sean told Mr. Wood, “I have to kill myself to get out,” and then tried to stab himself in the leg. Mr. Wood explained that he attempted to stop Sean from stabbing himself, which resulted in stabbing injuries to Mr. Wood’s arm and forehead. Mr. Wood then ran outside at 2:50 a.m. through the front door followed by Sean, who was armed with a knife in each hand.

Corporal Fazio and his trainee, Officer Lair, responded to the Residence in a two-man unit. En route to the call, dispatch advised that Mr. Wood and Sean were separated in the home and so the officers did not respond emergent to the call. Upon arrival, Officer Lair and Corporal Fazio immediately observed two males in the front lawn. Both officers immediately observed one of the males with a knife. The first male, later confirmed to be Mr. Wood, was running southeast toward the recessed one-car garage. The second male, later confirmed to be Sean, was carrying two knives, closed fist, one in each hand, blade side facing downward.



Officer Lair parked the patrol vehicle in front of the house just to the east of the Residence. Corporal Fazio and Officer Lair drew their service weapons upon seeing Sean with a large knife. In the Side ring footage and Body Worn Camera (“BWC”) footage, Corporal Fazio can be heard loudly and clearly issuing commands to “drop the knife right now!” Sean can be seen turning and gesturing toward the patrol headlights, disregarding the commands, and then charging at Mr. Wood who is backing up into the corner of the garage door. Mr. Wood can be heard screaming as Corporal Fazio and Officer Lair round the corner to within view of the “Side” camera.

The Side Ring camera shows Sean slashing the knife at Mr. Wood several times in the time it took Corporal Fazio and Officer Lair to run to the area of the attack. The direction and succession of these knife slashes to Mr. Wood are:

- Right-handed slash to face of Mr. Wood
- Right-handed backslash to face of Mr. Wood
- Right-handed slash to face of Mr. Wood
- Right-handed backslash to face of Mr. Wood
- Back to front right-handed stab to Mr. Wood’s face
- Left-handed slash to face of Mr. Wood
- Right-handed stab to left shoulder of Mr. Wood

During these seven slashes and stabbings, Mr. Wood can be seen crouching with his hands up in a defensive posture, yelling in distress.



View from Side Ring Camera



View from Officer Lair's Body Worn Camera upon approaching Sean and Mr. Wood



Side Ring Camera view prior to shots fired. Corporal Fazio and Officer Lair from left to right.

Both officers can again be heard ordering Sean to drop the knife multiple times, but Sean continues slashing at Mr. Wood. Corporal Fazio then discharges his firearm three times in quick succession followed by Officer Lair discharging his firearm twice in quick succession. The shots fired between Corporal Fazio and Officer Lair were fired within one second of one another. Approximately nine seconds pass between the time officers arrive to the Residence, as indicated by the appearance of the patrol car headlights on the Side camera, and when shots were fired.

Sean collapses to the ground. Immediately after the fired shots, two more verbal commands are issued to Sean to drop the knife. Mr. Wood is directed out of the confined space, between the two officers, and to the grass of the front yard where he collapses to the ground.

While on the ground, Sean is yelling and moving on the ground. A large knife can be seen in his right hand. One of the officers can be heard stating the need for medical assistance. Corporal Fazio tells Sean "Drop the knife dude. Throw the knife. I want to help you." Sean can be heard yelling, "One more time," and "in the head," while still moving on the ground, knife still gripped in his right hand. Sean suddenly stops moving and drops the knife in his right hand, and Corporal Fazio and Officer Lair approach him and Corporal Fazio uses his right foot to kick the dropped knife away. Officer Lair can be observed holstering his service weapon and pulling his Taser.

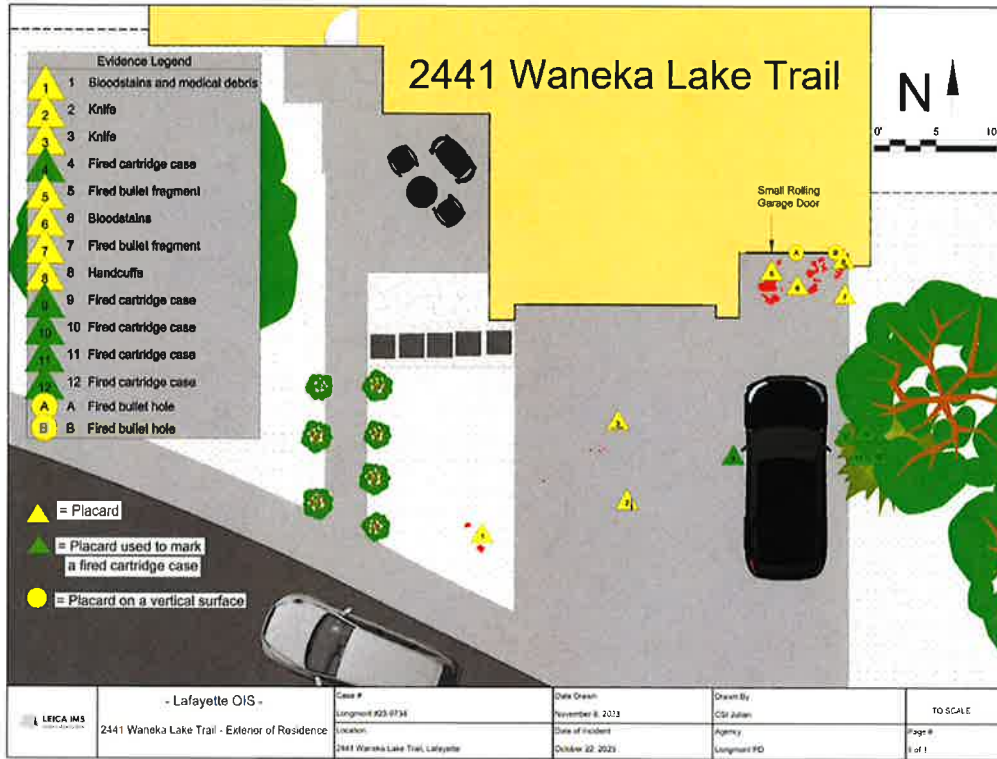
Corporal Fazio then moves toward Sean. One officer can be heard stating, "He has two," referencing the other knife still in Sean's left hand. Both officers move back away from Sean, who then transfers the knife to his right hand. Sean begins to attempt to stab himself in the chest. Six more commands to stop are given, which Sean disregards. Corporal Fazio then tells Officer Lair to "tase him." Officer Lair deploys his taser, which is effective. Both officers advance towards Sean and Officer Lair uses his left hand to pry the knife from Sean's hand, which he was gripping tightly. Officer Lair deploys the second taser cartridge as the knife comes free from Sean's grip. Officer Lair then throws the knife onto the driveway behind him.

Corporal Fazio and Officer Lair then call for medical assistance again and begin rendering aide to Sean and Mr. Wood until paramedics arrived. Officer Lair retrieves a medical kit, attends to Mr. Wood briefly, then runs to Sean with the medical kit. Both officers render aid to Sean. Officer Martinez arrives at the scene shortly thereafter and assists in rendering aid to Mr. Wood. Both Mr. Wood and Sean Wood suffered serious injuries.

Scene Preservation and Evidence Collection

Members of the BCIT and the Longmont Police Department assisted Lafayette Police Officers with processing, documenting, and completing a canvas of the area where this incident occurred. 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, Sean Wood, Mr. Wood, 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. The

Longmont Police Department completed most of the scene documentation and provided the images below.



An initial view of the scene revealed two large kitchen knives laying in the center of the driveway and bloodstains and medical debris in the grass where Mr. Wood collapsed. On the driveway where the attack occurred, large amounts of bloodstains, medical debris, a pair of handcuffs, a first aid kit, and two fired bullet fragments were documented. Additionally, there were two fired cartridge cases on the driveway, one on each side of a Ford Explorer that had been parked in the driveway.



Kitchen knife found in driveway



Kitchen knife found in driveway

A total of five casings were recovered from the scene which coincides with the video of the incident, the officers' interviews, and the round count from the officers' duty weapons, as further discussed below. Additionally, two bullet fragments were recovered and two fired bullet entry/exit holes through the small garage door were documented.

Interviews with Corporal Fazio and Officer Lair

BCIT Investigators interviewed both Corporal Fazio and Officer Lair on the night of the incident. Under the law, the officers were not required to provide statements to the BCIT. However, despite not being required to do so, both officers provided voluntary statements to investigators after being advised of their rights.

Interview with Corporal Fazio

Detective Don Dillard of the Boulder County Sheriff's Office ("BCSO") and Detective Scott Byars of the Boulder Police Department ("BPD") interviewed Corporal Fazio at the Lafayette Police Department on October 22, 2023. Corporal Fazio began with LPD in 2019 and has been a training officer for over three years. Corporal Fazio estimates he has had 15-20 trainees in that time period.

The details of Corporal Fazio's interview are primarily included in the detailed summary of facts above. In addition to those details, Corporal Fazio stated that when the patrol vehicle headlights illuminated the two men in the lawn, the lights reflected one of the knives in Sean's hand. Corporal Fazio stated he could hear Mr. Wood yelling in distress and as he rounded the corner to the garage area, he could see Sean actively stabbing Mr. Wood. Corporal Fazio stated he could see blood coming from Mr. Wood's face.

Corporal Fazio reported he thought Sean "was going to kill his dad" due to: (1) Sean actively stabbing his father with a large knife, (2) the proximate distance between Sean and Mr. Wood during the attack, and (3) because Sean refused to obey commands to drop the knife. Corporal Fazio reported he did not believe there was any other option but to fire his weapon because Sean was an "imminent threat to his dad. He wanted to kill his dad."

Before firing his service weapon, Corporal Fazio stated he was concerned about the proximity of Mr. Wood to Sean and the risk of overpenetration or missing Sean entirely. Corporal Fazio reported he saw an opportunity of clear sight when Mr. Wood was able to create some distance between himself and Sean, at which time Corporal Fazio fired his weapon two to three times, causing Sean to collapse and giving Mr. Wood the opportunity to "get away" from the attack.

Corporal Fazio indicated that after Sean collapsed, he observed Sean attempting to stab himself and slit his throat, causing some injury to his throat. Officer Lair then tased him. Once Sean was controlled and both knives were removed, Corporal Fazio notified dispatch that shots were fired and to start medical to the scene. Corporal Fazio immediately rendered aid to Sean in the form of applying pressure to Sean's gunshot wounds, checking for exit wounds, and keeping Sean talking as he was going in and out of consciousness.

Interview with Officer Lair

Detective Sarah Cantu of BPD and Detective Ed Burke of BCSO interviewed Officer Lair at the Lafayette Police Department on October 22, 2023. Officer Lair began with the Lafayette Police Department in 2022 and, at the time of this incident, had approximately three weeks left until his field training was complete.

The details of Officer Lair's interview are primarily included in the detailed summary of facts above. In addition to those details, Officer Lair reported that upon arrival he observed, by way of the patrol car headlights, Sean carrying two large knives clenched one in each hand, closed-fisted, blade-side facing downward. Officer Lair reported thinking "he is about to stab his dad if he hasn't stabbed him already," and that he needed to stop the assault.

Officer Lair recalled Corporal Fazio say, "He's got a knife" before exiting the patrol vehicle. Officer Lair reported he drew his firearm because Sean was actively pursuing Mr. Wood with two knives and appearing to attempt to "take his dad's life." Officer Lair reported that as he rounded the corner to the garage area, he observed Sean actively "trying to stab his dad." He observed Mr. Wood had blood on the left side of his face, "as if he had already been cut" and that it was a "substantial amount of blood." While describing the attack, Officer Lair demonstrated that Sean was holding each knife, closed-fisted, blades down and aimed at Mr. Wood.

Officer Lair then reported several commands were given to Sean to drop the knife, but Sean was not obeying commands. He reported Corporal Fazio then shot three rounds at Sean and he followed up with two rounds, or there may have been an overlap between rounds fired. Officer Lair reported that when he fired and even after he fired, Sean was still actively "going toward his father as if his father was going to be stabbed a multitude of times."

When asked if he felt there was another option to stop the attack, Officer Lair said based on his observations and the circumstances, there was no other option. He stated, "you never know if a taser is going to work" and Sean was in very close proximity to Mr. Wood. Additionally, Officer Lair reported that a hands-on attempt to stop the attack would have put himself in imminent harm. "Shooting him at that point to eliminate him as a threat to his dad and us was my only option.... My thoughts were, he is stabbing his dad and we need to shoot him because if we don't, he's going to continue stabbing his dad and I'm not going to go up and try to grab him when he's got those two knives in his hands." Officer Lair stated he believed Sean was either going to "harm or kill his dad."

Officer Lair reported that when Sean collapsed after being shot, Mr. Wood was able to retreat, and Sean did not appear to be an imminent threat to either himself or Corporal Fazio. Officer Lair holstered his firearm, but then withdrew his taser because Sean was trying to actively harm himself by slitting his own throat (causing injury to his neck) and stabbing at his own chest. Officer Lair reported that because of Sean's attempt to self-harm, Corporal Fazio told him to tase Sean, which he did to prevent him from further self-harm. Officer Lair reported he had to forcibly pry the

second knife from Sean's hand and then observed Sean either try to grab at him or the knife, so Officer Lair tased him a second time, which he did not believe made contact.

Firearm Accountability

Officers with the Boulder Police Department conducted the round count and uniform check for both Corporal Fazio and Officer Lair. Both officers were dressed in their patrol uniforms with badges and insignia plainly visible. BCSO Deputy Kye Javes conducted the firearms examination and testing. Both firearms were functional and within factory specifications.

Corporal Fazio was carrying a Glock 34 with a mounted light and a mounted optic. Members of the BCIT inspected the firearm and found a 22 round magazine seated in the weapon, which contained 19 rounds, consistent with Corporal Fazio having fired three rounds.

Officer Lair was carrying a Glock 19 with a mounted light. Members of the BCIT inspected the firearm and found a 15 round magazine seated in the weapon, which contained 13 rounds, consistent with Officer Lair having fired two rounds. Officer Lair's taser was also inspected by the members of the BCIT. Examination of the taser revealed both cartridges had been discharged.

Both round counts were consistent with Ring camera footage, evidence found on scene, and officer interviews.

Interview of David Wood

BCSO Detective Eric Robinson interviewed David Wood on October 22, 2023, at approximately 7:20 a.m. Detective Robinson obtained consent to search the Residence and obtain access to the Ring video footage.

Mr. Wood reported that at approximately 3:00 a.m. on October 22, 2023, he woke to multiple ring notifications. Sean appeared unannounced at the Residence, which is not unusual. Mr. Wood went to greet Sean downstairs and noticed he was 'talking weird,' going in and out of blended threads of reality and nonreality. Mr. Wood stated Sean was going in and out of the garage and attempting to access the gun safe located in the southeast corner of the garage. At some point, Sean pushed Mr. Wood down the garage stairs stating, "you're not my dad; you're an imposter." Mr. Wood called 911 emergency and remained on the line with dispatch for the duration of the event.

At some point before officers arrive, Mr. Wood reported Sean retrieved two knives from the kitchen knife block and began to attack him with the knives on the main level of the house, near the front door. Mr. Wood attempted to defend himself by blocking the knife slashes with his hands and arms. Mr. Wood reported exiting the front door and being chased by Sean with knives in hands.

David reported that from his perspective at the time of the shooting, it was a "righteous shoot." He believed that the officers believed Sean would continue stabbing him had they not shot due to Sean's refusal to obey commands to drop the knives. Mr. Wood stated it was reasonable to

believe that Sean was going to continue to stab him and, although he hated that officers had to shoot Sean, he believed they did everything right.

Mr. Wood sustained multiple lacerations as a result of the attack including: Two large, deep lacerations to his left upper forehead, each approximately 15 cm long. A penetrating wound into the muscular layer and 2 cm wound to the lateral aspect of his left upper arm with a palpable hematoma anterior medically. Mr. Wood required 25-30 stitches and sustained serious bodily injury in the form of permanent disfigurement.



Injuries to Mr. Wood

Other Witness Interviews

Sean's mother, Elaine Wood, and his sister, Kate Wood, were interviewed by Detective Dave Arpin of the University of Colorado Boulder Police and BCSO Detective Trevor Soole. Elaine Wood provided some history as to Sean's employment as a Disc Jockey ("DJ"). Upon hearing about the incident, she stated Sean must have been under the influence of a controlled substance. She reported Sean typically ingests Marijuana. She reported Sean did have a "really bad trip" on mushrooms in the past but is unaware of any other current illicit drug use.

Kate Wood reported she is currently studying abroad in Australia. On the morning of October 22, 2023, she received multiple Ring camera notifications. When she reviewed the Ring camera footage, she observed Sean walking around the gun safe, push their father down the stairs, and Sean attacking their father with the knives. Kate Wood was extremely upset as she tried to notify police at the time, but she could not figure out how to contact 911 emergency dispatch internationally.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all the elements of an offense defined by Colorado statute, and further

proven beyond a reasonable doubt that the offense was committed without any statutorily recognized justification or excuse. While knowingly or intentionally shooting at another human being is generally prohibited by statute as an attempted assault or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force by a peace officer is justified.

C.R.S. §18-1-707 defines the circumstances under which a peace officer can justifiably use physical force in Colorado. In pertinent part, the statute reads as follows:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.

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

(a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(b) Use only a degree of force consistent with the minimization of injuries to others;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and

(d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force¹ to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

(a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

(b) The suspect poses an immediate threat to the peace officer or another person;

(c) The force employed does not create a substantial risk of injury to other persons.

...

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a

¹ C.R.S. 18-1-901(1)(d) defines deadly physical force as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” Here, Sean Wood survived the incident. Thus, the force used in this case does not meet the definition for deadly force.

lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

C.R.S. § 18-1-707

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

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

See C.R.S. §18-1-704(1)

Additionally, 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. *See Young v. People*, 107 P. 274 (Colo. 1910).

LEGAL ANALYSIS

The determination of whether the officer's conduct was criminal is primarily a question of legal justification. The question of legal justification is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that it was necessary to use physical force to defend himself or another, and stop the threat that Sean Wood 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 as applied to both Corporal Fazio and Officer Lair.

Corporal Leonard Fazio

An analysis under C.R.S. §18-1-704 is the same for law enforcement officers as it is for any other individual. The investigation revealed that at the time Corporal Fazio discharged his service weapon, his actions were objectively reasonable to prevent the imminent threat of injury or death to Mr. Wood, himself, or Officer Lair.

Here, the investigation establishes that three rounds were fired from Corporal Fazio's firearm. The video surveillance shows Sean was actively stabbing at his father just before and during the time Corporal Fazio fired his firearm. In his voluntary interview, Corporal Fazio explained he observed Sean actively stabbing Mr. Wood, that he first issued commands to Sean to

drop the knife, and that Sean disregarded the commands and continued to stab Mr. Wood. Corporal Fazio stated he feared Sean would cause further imminent serious bodily injury or death to Mr. Wood, and that Mr. Wood's life was clearly in imminent danger.

Corporal Fazio stated he did not believe that a lesser degree of force would have been adequate to stop the attack and it was necessary to fire his service weapon to defend Mr. Wood, and stop the active threat that Sean presented. This belief is not only reasonable but corroborated by a review of the video surveillance and the follow up interviews with Mr. Wood.

Consistent with C.R.S. § 18-1-707, Corporal Fazio ensured he had a clear shot of Sean, and that there was no risk of overpenetration or accidentally hitting Mr. Wood. Corporal Fazio also took steps to render immediate medical aid to Sean after the shooting in calling for medical assistance, applying pressure to Sean's wounds, and talking to Sean to keep him conscious. Thus, Corporal Fazio was legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

Officer Houston Lair

The analysis under C.R.S. §18-1-704 establishes that at the time Officer Lair discharged his service weapon and taser, his actions were objectively reasonable to prevent the imminent threat of injury or death to Mr. Wood, himself, Corporal Fazio, and to Sean.

The investigation establishes that two rounds were fired from Officer Lair's firearm. Officer Lair fired these two shots within one to two seconds, or nearly simultaneously, of Corporal Fazio firing his weapon. In his voluntary interview, Officer Lair reported he observed Mr. Wood with substantial bleeding from his face and that he feared Sean would cause further imminent serious bodily injury or death to Mr. Wood. Officer Lair stated that given his observations it was apparent that Mr. Wood's life was in imminent danger.

Officer Lair reported that when he fired his two shots, and even after firing those shots, Sean was still actively "going toward his father as if his father was going to be stabbed a multitude of times." Officer Lair reported that there was no other option but to fire his service weapon given his observations. He believed Sean was either going to "harm or kill his dad."

Further, Officer Lair explained that he drew and discharged his taser because Sean was still gripping a large knife in one hand and remained a threat. Officer Lair deployed his taser at Sean when Sean began to slice his own neck and stab himself in the chest. In his interview, Officer Lair explained he did not want Sean to kill himself and because he still possessed a knife, the use of his taser was a reasonable use of force necessary to protect Sean, himself, and Corporal Fazio.

Officer Lair also took steps to render immediate medical aid to Sean after the shooting. He retrieved a medical kit from the patrol car, first briefly attended to Mr. Wood, then began to provide aid to Sean by checking for bullet entrance and exit wounds and applying pressure to the wounds until emergency medical personnel arrived. Accordingly, Officer Lair was legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

CONCLUSION

We find in our review of this incident that no conduct by Corporal Fazio and Officer Lair rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, law enforcement's actions during this incident were legally justified as set forth in C.R.S. § 18-1-707 and C.R.S. § 18-1-704. Both Corporal Fazio and Officer Lair were legally justified in their use of reasonable and appropriate physical force in response to an imminent risk of death or great bodily injury to Mr. Wood and themselves. As a result, my office will not be filing criminal charges against either Corporal Fazio or Officer Lair. Here, while my role is to determine whether criminal charges are appropriate under the law, I wish to recognize these officers' bravery and immediate action to protect human life while placing themselves at grave risk during this incredibly tragic situation.

These cases are important to the officers and civilians involved, as well as to our community. At the time of the incident, Sean Wood stated his intention to commit suicide by cop. I am thankful that he survived without more serious injuries and that no one else was further wounded or killed.

I appreciate the cooperation provided by the Lafayette Police Department and the extremely thorough investigation conducted by the BCIT.

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

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District