



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

March 5, 2024

VIA ELECTRONIC MAIL

Interim Police Chief Redfearn
Boulder Police Department
805 33rd Street
Boulder, CO 80301

RE: Investigation into the death of Jeanette Alatorre on December 17th, 2023, involving Officers Nathan Schultz and Jarrett Mastriona at the intersection of Broadway and Hawthorn Avenue, Boulder, Colorado.

Dear Chief Redfearn,

The investigation and legal analysis of the death of Jeanette Alatorre (Date of Birth 01/09/1972), which occurred on December 17, 2023, in the City of Boulder has been completed.

The Boulder County Investigation Team, also known as the Boulder Critical Incident Team (the "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 to incidents involving the discharge of a firearm by a peace officer that results in injury or death.

I want to acknowledge the Boulder Police Department (“BPD”) for immediately notifying the BCIT following the incident. By doing so, BPD enabled the BCIT to respond quickly and conduct an extremely thorough investigation. Consistent with Boulder County protocol, BPD did not participate in the use-of-force investigation involving Officers Nathan Schultz and Jarrett Mastriona.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Officers Nathan Schultz and Jarrett Mastriona for the use of force against Jeanette Alatorre on December 17, 2023, within the City of Boulder. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics or whether departmental policies and procedures were followed.

My decision, based on criminal law standards, does not limit administrative action by BPD or any civil action where less stringent laws, rules, and levels of proof would apply. The authority and role of the District Attorney is to determine solely whether Officers Nathan Schultz and Jarrett Mastriona 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, diagrams, and video recordings related to the incident. Given the number of police officers who responded, and the length of time involved, the amount of video evidence is particularly significant.

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 Nathan Schultz. 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 Jarrett Mastriona. 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 Officers Schultz and Mastriona’s use of force in this incident are as follows:

SUMMARY OF DECISION

Applying the applicable statutes to the facts presented by this investigation, Officers Nathan Schultz and Jarrett Mastriona are not subject to criminal prosecution for their 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.

The evidence establishes that, at the time Officers Schultz and Mastriona discharged their service rifles, it was reasonable for both officers to believe that Ms. Alatorre was armed with a firearm and that officers or bystanders were in imminent danger. Officers Schultz and Mastriona both discharged their weapons at Ms. Alatorre knowing she had pointed what appeared to be a firearm at a bystander, and after observing her point what appeared to be a firearm directly at officers. Additionally, based on Colorado law, the deadly physical force that Officers Schultz and Mastriona used in response to the situation was reasonable and appropriate.

The discharge of firearms in this case resulted in the death of Jeanette Alatorre, 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 not to file charges against Officers Schultz and Mastriona. 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.

DETAILED STATEMENT OF FACTS

On October 11, 2023, a resident in Brighton reported a burglary and theft of a “BB type pistol that looked somewhat real.” Jeanette Alatorre had recently been fired from that person’s employment. After being fired, Ms. Alatorre had returned to the residence and asked if she could purchase the “fake gun.” The resident declined to sell it. The following day, Ms. Alatorre entered the residence without permission. Ms. Alatorre was recorded on camera. After realizing Ms. Alatorre had been inside without permission, the resident looked for the gun but was unable to find it. The resident reported it to the police.

On December 17, 2023, Ms. Alatorre entered the North Boulder Recreation Center. A patron at the Recreation Center had been in the family changing area and observed a female, later identified as Jeanette Alatorre, talking to herself and saying “I have to defend myself.” Ms. Alatorre then displayed what the patron believed to be a gun in her purse. He reported the incident to staff at the Recreation Center, but he did not mention the gun.

Recreation Center staff repeatedly knocked on the bathroom door and asked Ms. Alatorre to step out. A staff member called the police and that call was recorded. On the call, the reporting party explains that there is a couple “holed up in a cabana” and staff had knocked several times that day to try to get them out but they were not leaving the room. A “cabana” is the staff’s name for the bathrooms in the family changing area.

At 3:13 pm on December 17, 2023, Boulder Police Officers were dispatched to the North Boulder Recreation Center at 3170 Broadway due to the call of a possible trespass inside the building.

Officers contacted the woman, Ms. Alatorre, in the bathroom. She had been washing and cutting her hair in the sink area. The officers allowed her to finish washing her hair before escorting her out of the building without incident. Staff at the Recreation Center wanted the police to remove her but did not want Ms. Alatorre issued a trespass warning or charged with any crimes. At that time, Ms. Alatorre had a large black backpack with her and a purse. During their interaction with Ms. Alatorre, both officers observed that she understood and spoke English, and did not appear to be under the influence of alcohol or drugs.

As the officers were driving away from the Recreation Center, Ms. Alatorre blocked Officer Johnson's vehicle and challenged the officer to fight her. Officers were able to leave the scene without additional incident after Ms. Alatorre walked away to the west.

Later the same day, just before 4:10 pm, Ms. Alatorre menaced bystanders with a handgun¹ while outside the Recreation Center. The incident began when Ms. Alatorre walked into the street on Broadway and blocked traffic by standing in front of a vehicle. The driver of that vehicle called 911 after observing that Ms. Alatorre kept her hand concealed in a bag and was "pointing" the bag in a manner that made the driver believe she possessed a firearm. The driver then reported to dispatch that Ms. Alatorre pulled a gun out of a purple or maroon "leather pocketbook." He believed it was a Glock.

Another bystander tried to convince Ms. Alatorre to move from the roadway when she pulled a gun from a bag slung across her chest and yelled "back the fuck up!" She pointed the gun at the bystander, who then called 911.

BPD officers began responding to the area at 4:10 pm. Officers received current information about the call by listening to dispatch over the radio and by reading updates on their computer-assisted dispatch terminals. Based on the 911 calls, responding officers were aware that there was a woman wearing a red hat who was blocking traffic and had pointed a handgun at least one, perhaps two, reporting parties. At 4:11 pm, dispatch broadcast that the woman had a "purple, maroon leather purse" and had been pointing the purse as if she had a gun.

Officers arrived on scene and contacted Ms. Alatorre, who repeatedly reached into a bag she was carrying and ignored officer commands to show her hands and drop her bags. Officer Cooper took initial command of the scene and called for additional officers and an armored vehicle to respond due to her noncompliance. He also called to divert traffic away from Broadway, but the roadblock took some time to put into effect as officers began responding from their locations around the city.

Responding officers formed strategic contact teams that included a shield, Taser, less-lethal shotgun (bean bag shotgun), and lethal handgun all operated by a different officer on the

¹ While witnesses and responding officers describe what Ms. Alatorre was carrying as a handgun, gun, or firearm, it was later determined to be a Beretta APX .177 caliber air pistol, which is an accurate replica of a real 9mm caliber Beretta APX handgun.

team. As the call progressed, an officer carrying a lethal rifle joined the contact teams. All officers wore clearly marked police uniforms.

The first contact team identified themselves as "Boulder Police" and repeatedly commanded Ms. Alatorre to show her hands, to stop, and to get on the ground. They warned her that non-compliance could result in force, including lethal force, being used against her. Despite clear and repeated commands, Ms. Alatorre continued to walk away from officers while reaching her hand into one of the bags she was carrying and waving the bag as if she was using the bag to conceal a firearm.

Ms. Alatorre walked north on Broadway before turning west on Forest Avenue. She then turned south into an alleyway just west of Broadway. Officers in the initial contact team pursued her and observed her turning back to look at officers while reaching into her shoulder bag. Officers lost sight of Ms. Alatorre when she turned eastbound from the alley towards an open garage and residence. A short time later, Ms. Alatorre re-appeared on Broadway, once again walking northbound while reaching into her bag and ignoring officers' commands.

Officer McGrath joined a contact team while officers were pursuing Ms. Alatorre northbound on Broadway, between the Recreation Center and the Parks and Recreation building. Based on communication from dispatch, Officer McGrath believed that Ms. Alatorre had previously pointed a handgun at two reporting parties. Furthermore, he had observed her repeatedly ignoring officers' commands (including his own) while digging in her purse and pointing the purse at officers as if there was a firearm concealed within. When Ms. Alatorre reached the east side of Broadway she began walking towards officers and Officer McGrath announced to other officers that he was going to "hit her with a bean bag." He fired four less-lethal bean bag rounds while approximately 30 - 40 yards away from Ms. Alatorre. Ms. Alatorre was struck by two or three of the rounds in her hamstring, right buttocks, and right arm, but the strikes did not appear to affect her. As she began crossing to the west side of Broadway, Officer McGrath fired an additional two less-lethal rounds. These rounds also did not appear to affect Ms. Alatorre.

Near Hawthorn Avenue, on Broadway, Ms. Alatorre removed what appeared to be a black handgun from the purse she had previously been reaching into. Ms. Alatorre held the handgun in her right hand and moved the handgun through the air while pointing it in the officers' direction. Despite this movement with the handgun, officers did not fire at Ms. Alatorre because, as they later described in interviews, they observed people and vehicles behind Ms. Alatorre that could have been accidentally struck by their gunfire.

After observing Ms. Alatorre remove the gun from her bag, Officer McGrath ran back to where his patrol car was parked on Broadway and began driving it closer to Ms. Alatorre, so officers could use the vehicle as cover.

At that point, vehicle got around the law enforcement roadblock and ended up in the intersection of Broadway and Hawthorn Avenue. Ms. Alatorre then approached the passenger door and appeared, to officers, to try to open the door. Holding the handgun, Ms. Alatorre walked

around the vehicle and placed the gun on the hood of the car while talking or yelling at the driver. She then picked the gun back up. Multiple officers, including Sergeant Briscoe, observed this interaction from some distance away and began running towards the vehicle because they were concerned Ms. Alatorre would carjack the vehicle or shoot the driver. However, officers did not fire at Ms. Alatorre to protect the driver of the vehicle because they did not have a clear backdrop behind her.

Officer McGrath arrived in his patrol car and used his public address speaker to instruct the driver of the vehicle to leave. The vehicle drove away. As Ms. Alatorre began walking back east across Broadway, Sergeant Briscoe fired four less-lethal bean bag rounds at her from approximately 45 yards away. Other officers gave clear commands for her to "drop the gun." It appeared that at least two of the bean bag rounds struck Ms. Alatorre, while one struck a sign pole nearby. She ignored all commands, and the bean bag rounds, and continued walking east across Broadway towards a residence nearby at 3310 Broadway. The gun remained in her right hand.

An officer inside the armored vehicle observed Ms. Alatorre point the gun at officers as she crossed Broadway. At this time, Officer Schultz was walking north on Broadway to the west of Officer McGrath's patrol car, using it for cover. Officer Schultz observed Ms. Alatorre point her gun at himself, other officers around him, and any members of the general public who may have been south of his location on Broadway. At that time, Officer Schultz did not have a clear backdrop behind Ms. Alatorre and could not fire. Ms. Alatorre pointed the gun once more towards Officer Schultz and other officers.

Officer Schultz feared for his life, and the lives of the other officers nearby, but still did not have a safe backdrop. As heard on the video, Officer Schultz told nearby officers "she's pointing it," referring to Ms. Alatorre's handgun. Officer McGrath then announced "I'm going to hit her with my car," and Officer Schultz agreed. However, seconds later, Officer Schultz observed Ms. Alatorre pointing the gun in his direction for a third time. He fired nine consecutive rifle rounds. Video from Officer McGrath's dash-mounted camera, although quite some distance away, appears to corroborate that Ms. Alatorre had the gun in her right hand and had been pointing the gun at officers.

Officer Jarrett Mastriona was with Sergeant Briscoe and the rest of their contact team on the west side of Broadway. He was armed with a lethal rifle. Officer Mastriona was aware that Ms. Alatorre was non-compliant with all officers' commands and that she had pointed a gun towards himself and other officers. He had observed what he believed to be the attempted carjacking, and feared for the driver's safety because of Ms. Alatorre's behavior and possession of the handgun. However, he did not fire his weapon at that time because there was no clear backdrop, and he did not know if less-lethal weapons had been attempted. He did not observe Officer McGrath previously fire bean bag rounds.

Officer Mastriona heard Sergeant Briscoe deploy four bean bag rounds and observed that Ms. Alatorre never stopped walking and did not drop the gun. She was walking towards a residence at 3310 Broadway when Officer Mastriona heard Officer Schultz discharge a rifle to his

right. Officer Schultz was northeast of Officer Mastriona's position at this time. With his rifle aimed as Ms. Alatorre, Officer Mastriona saw her on the ground, raising her torso and arm in a manner as if she would sit up and begin firing at officers. Officer Mastriona could not see the firearm in her hand due to his position, but was aware that she had the gun in her hand for most of their interaction and refused to drop it. At this time, Officer Mastriona fired three consecutive rifle rounds. The first of his shots coincides with the last of Officer Schultz' shots. Ms. Alatorre was facing towards officers at the time Officers Schultz and Mastriona fired.

Multiple officers observed Ms. Alatorre fall to the ground after being shot, saw her moving slightly, and saw the gun in her right hand. Video evidence collected from the residents at 3310 Broadway shows the moments after Ms. Alatorre was shot. The gun is clearly visible in her right hand and she was moving slightly. Officers took cover behind the armored vehicle on scene and organized a contact team to secure Ms. Alatorre and render her aid. Sergeant Briscoe called for medics to come in once Ms. Alatorre was handcuffed for officer and paramedic safety.



Screenshot from video filmed by the residents of 3310 Broadway, showing the handgun in Ms. Alatorre's right hand moments after officers fired rifle rounds.

Shots were fired at 4:26 p.m. Two teams were formed immediately after and officers begin approaching with shields in front. They give Ms. Alatorre commands to "drop the gun." Someone made a comment that her hand is moving. A contact team approached her and secured her gun at 4:28 p.m. An officer called for paramedics at 4:28 p.m. Officers performed CPR and worked on locating wounds and applying aid until paramedics arrived there at 4:31 p.m.

As Officer Fergie approached Ms. Alatorre, he observed the gun in Ms. Alatorre's right hand with her index finger around the trigger. He kicked the gun away from her hand and assisted other officers rendering medical aid to Ms. Alatorre. After paramedics arrived and took over, Officer Fergie located Ms. Alatorre's firearm and observed "Beretta" on the side. When Officer Fergie pulled the slide back on the gun to render it safe, he realized it was a CO2 pistol, or a BB gun.

Tragically, Ms. Alatorre was pronounced deceased on scene. Law enforcement located drug paraphernalia and suspected fentanyl and methamphetamine in her belongings. Additionally, she had court paperwork with her name on it with her, which led to her identification by police.

Ms. Alatorre's criminal history includes convictions for misdemeanor child abuse, harassment, felony assault, drug possession, and robbery. She was on probation out of Denver county for robbery at the time of this incident.

Scene Preservation and Evidence Collection

The scene of this incident spanned two and a half city blocks between the North Boulder Recreation Center and 3310 Broadway, just north of Hawthorn Avenue.

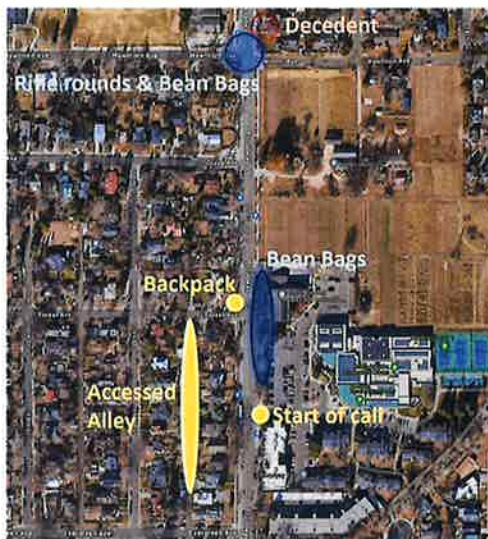


Diagram of Scene and Location of Evidence

The scene was secured, and members of the BCIT and the Longmont Police Department conducted a thorough search of the area. The scene was documented with photographs and drone-assisted 3D laser scans. After the scene was documented, BCIT members began collecting evidence.

A total of ten spent bean bag casings were located in the area. This is consistent with body worn camera footage and officer interviews, which indicates a total of ten bean bag rounds were fired during the incident. Six were fired by Officer McGrath, and four by Sergeant Briscoe.

A total of 12 spent 5.56x45 caliber casings were located. This is consistent with body worn camera footage and officer interviews, which indicate Officer Schultz fired nine rounds and Officer Mastriona fired three. A total of ten casings were located on scene during the search by the Longmont Police Department. Two casings were recovered and secured by Officer Chartrand from BPD, who located two casings on top of a patrol vehicle as he was driving Officer Mastriona back to the Police Department after the incident.

Ms. Alatorre's firearm was located several feet from her body because officers had relocated it from Ms. Alatorre's hand. Upon inspection, it was determined to be a Beretta APX

.177 caliber air pistol. This air pistol is a realistic replica of a Beretta APX 9mm pistol. It had no plastic tip or other coloring/markings to indicate to an observer that it was an air pistol or BB gun.



Ms. Alatorre's Beretta APX .177 caliber air pistol.

Members of the BCIT collected body worn camera and dash camera from officers involved, and, also, collected what surveillance footage was located from nearby buildings. Some witnesses had video recordings of brief parts of the incident, and those videos were also collected. Videos and audio collected are consistent with officer's body worn camera footage.

Interviews with Involved Officers

BCIT Investigators interviewed ten witness officers who responded to Broadway after the menacing call. Five additional witness officers provided written reports.

BCIT Investigators interviewed both Officer Nathan Schultz and Officer Jarrett Mastriona. Both officers were afforded the opportunity to rest and to meet with an attorney prior to presenting for an interview. Under the law, the officers were not required to provide statements to the BCIT Investigators but chose to do so regardless.

Interview with Officer Nathan Schultz

Chief Investigator Thatcher of the District Attorney's Office and Detective Carbajal of the Longmont Police Department conducted the interview with Officer Schultz. His attorney was present. Officer Schultz was hired by the Boulder Police Department as a patrol officer in 2020. He is currently a Training Officer, Officer Survival Instructor, Police Cadet advisor, and the Boulder Police Department's lead Active Shooter Instructor.

This section is intended to supplement the details of Officer Schultz' interview, much of which has already been documented in the above detailed summary of facts. On December 17th, Officer Schultz recalled hearing the original dispatch to the North Boulder Recreation Center at 3:13 pm, during which Ms. Alatorre was contacted inside a bathroom. He also listened to the second call over the radio and read dispatch notes while responding to the location. Officer Schultz

believed the reporting party was credible because he gave a clear description of what the suspect was wearing, and was willing to meet officers nearby and discuss what happened. Furthermore, from the information being communicated to officers, Officer Schultz believed the reporting party was somewhat confident that Ms. Alatorre had a Glock handgun.

Officer Schultz heard Officer Cooper over the radio after Officer Cooper engaged Ms. Alatorre. Officer Cooper said “where’s my cover” and “the female has her hand in the purse, and she is being uncooperative.” Officer Schultz believed Ms. Alatorre’s non-compliant behavior increased the risk for this call. When Officer Schultz arrived on scene, he was aware that Officer Cooper had requested the street be blocked off to citizens, which indicated that Officer Cooper was concerned about public safety. Officer Schultz was also concerned about public safety because Ms. Alatorre was in a dense residential neighborhood. His concern was further elevated when he heard that Ms. Alatorre did not respond in any way to less-lethal beanbag rounds fired by Officer McGrath.

When Ms. Alatorre removed the gun from her bag, Officer Schultz sprinted north on Broadway to join officers who were taking cover behind patrol vehicles and shields. He observed Ms. Alatorre holding a black handgun. It was difficult for him to predict how Ms. Alatorre was going to move, and he was concerned that Ms. Alatorre was going to turn towards officers and point her firearm at them. He identified trees and vehicles as potential points of cover if needed. Civilian vehicles were still driving in the area because there were not enough patrol cars to fully shut down Broadway, and Officer Schultz was concerned for their safety as they drove near Ms. Alatorre. At one point, Officer Schultz was specifically concerned that Ms. Alatorre was going to try to carjack a vehicle or harm the occupants of that vehicle while it was stopped in the intersection of Hawthorn Avenue and Broadway.

After the vehicle drove away, Officer Schultz observed Ms. Alatorre’s behavior change. Previously, she had been pointing the gun towards the ground or other areas in the landscape, but not directly at officers. When she began walking east across Broadway towards a residence, she began clearly pointing the gun at Officer Schultz, the officers around him, and the public to the south. He recalled three distinct times Ms. Alatorre pointed her gun at himself and other officers. At one point, he thought “... hoped she didn’t pull the trigger, because that bullet is going to go right through my skull.” As she was pointing the gun at officers initially, Officer Schultz was not able to fire his rifle because the backdrop behind her was not clear.

When Ms. Alatorre walked further east, Officer Schultz observed the area behind her was clear. He recalled firing five or six shots in rapid succession from approximately 25 to 30 yards away. After she fell to the ground, he ceased firing because she was no longer a lethal threat.

Interview with Officer Jarrett Mastriona

Detective Carbajal of the Longmont Police Department and Chief Investigator Thatcher with the Boulder County District Attorney’s Office conducted the interview with Officer

Mastriona. His attorney was present. Officer Mastriona was hired by the Boulder Police Department in July of 2022 as a patrol officer.

On December 17, 2023, Officer Mastriona was nearing the end of his shift when he heard dispatch advise there was a menacing in progress and a female was pointing a gun at people in the North Boulder Recreation Center. Officer Mastriona had already turned in the keys to his patrol car, so he responded to the scene with Sergeant Briscoe. He brought his duty rifle. While en route, Officer Mastriona heard Officer Cooper over the radio. Officer Mastriona could tell by the tone of Officer Cooper's voice that Officer Cooper was concerned about the situation. After hearing Officer Cooper on the radio, Sergeant Briscoe turned on lights and sirens.

When Officer Mastriona and Sergeant Briscoe arrived on scene, Officer Mastriona retrieved his duty rifle because officers are trained that rifles are more accurate over longer distances. He and Sergeant Briscoe joined a contact team of officers in an alleyway. Eventually, the officers ran towards Broadway to find Ms. Alatorre. When Officer Mastriona first observed her, he immediately saw she was holding a handgun. At this time, Officer Mastriona noticed he was the only person in the contact team who had a rifle, so he switched places within the contact team so he was to the right of the shield officer.

As Ms. Alatorre walked northbound and the contact team followed her, Officer Mastriona began giving her commands to "stop walking" and "drop the gun." He recalled advising that force would be used against her. She ignored his commands. Officer Mastriona saw her point the gun at himself and other officers and he was in fear for his life in that moment. After this, Ms. Alatorre approached an occupied vehicle that had stopped at Broadway and Hawthorn Avenue. When she approached, Officer Mastriona was concerned she was going to enter the vehicle or shoot the driver. Despite fearing for the driver's life in that moment, Officer Mastriona could not fire his rifle because there was traffic and residential housing behind the vehicle Ms. Alatorre was approaching. He also did not believe that non-lethal means had been attempted to gain Ms. Alatorre's compliance.

After the vehicle drove away, Ms. Alatorre began walking east across Broadway. Officer Mastriona heard three to four bean bag rounds fire, and saw that Ms. Alatorre did not stop walking or drop her weapon. He then heard shots fired to the right of him. Officer Mastriona saw Ms. Alatorre on the ground, but she was raising her torso and arms as if she may sit or stand back up and fire at officers. Officer Mastriona could not see her handgun at this time due to his viewpoint, but believed her to be armed because she never dropped the gun at any point during the incident. Officer Mastriona was concerned she was going to begin firing at officers or citizens in the area, and he fired three rounds at Ms. Alatorre.

Witness interviews

A canvass of the surrounding area was conducted by members of the BCIT and a number of witnesses who observed the incident or who had otherwise interacted with Ms. Alatorre were

interviewed. Witnesses who lived nearby or saw portions of the incident corroborated that Ms. Alatorre had a gun during the incident and that she was consistently non-compliant with officer commands.

Members of the BCIT spent a significant amount of time locating the occupant of the vehicle which officers believed could be carjacked during the incident. The occupant of the vehicle recalled that during the incident a female had approached his window, screaming incoherently. He did not see her hands and did not see a firearm. He was not afraid during the incident and did not believe the female was trying to take his car. He drove away when he heard a public address system telling him to drive away.

Several witnesses who had interacted with Ms. Alatorre prior to the incident on December 17th were interviewed or contacted by law enforcement during this investigation. Many patrons of the North Boulder Recreation Center were interviewed, including the patron who interacted with Ms. Alatorre in the family changing area, and the two reporting parties who called 911 after observing Ms. Alatorre with a gun. Furthermore, an individual who knew Ms. Alatorre contacted law enforcement and stated Ms. Alatorre had often displayed a gun in his presence, but he did not believe it was real. She would make statements to him such as “I’ll kill you, motherfucker.”

As noted above, on October 11, 2023 a resident in Brighton, Colorado, reported a burglary and theft of a “BB type pistol that looked somewhat real.” Jeanette Alatorre had recently been fired from the resident’s employment. After being fired, Ms. Alatorre returned to the residence and asked if she could purchase a “fake gun” which the residence owned. She declined to sell the air pistol to Ms. Alatorre. The following day Ms. Alatorre entered the residence without permission. The resident was aware of the entry only because Ms. Alatorre was recorded on camera. After realizing Ms. Alatorre had been inside without permission, the resident looked for the air pistol but was not able to find it. She believed Ms. Alatorre had taken it; she reported it to the police.

Medicolegal Postmortem Examination of Jeanette Alatorre

A full medicolegal postmortem examination was conducted on December 18th, 2023 by Dr. Lingamfelter, a board-certified forensic pathologist contracted with the Boulder County Coroner. The Coroner’s Office confirmed the decedent was Jeanette Alatorre, date of birth January 9, 1972.

Ms. Alatorre sustained eight rifle wounds. One was in her left shoulder, two in her lateral right abdomen, one to her left abdomen, one to her right hip, one to her left arm, one to her lower left leg, and one to her right foot. There were no rifle wounds to Ms. Alatorre’s back. All the wounds indicated the shots went from front to back. A total of 11 bullet fragments were recovered and collected. Photos were taken of all different phases of the autopsy.

An independent laboratory conducted a toxicological analysis for substances in Ms. Alatorre’s blood, which was positive for caffeine, amphetamine, and methamphetamine.

Dr. Lingamfelter opined that Ms. Alatorre's cause of death was multiple rifle wounds, and the manner of death was homicide. 'Homicide,' as used in the context of a forensic pathologist's opinion of the manner of death, means that Ms. Alatorre was killed by another person. It does not reflect the statutory definition of homicide.

Firearm Accountability

Detectives with the Boulder County Sheriff's Office (BCSO) conducted the round count and uniform check for Officers Schultz and Mastriona after the incident. Both officers were dressed in their patrol uniforms with badges and insignia plainly visible. BCSO Armorer Javes conducted the firearms examination and testing. Both rifles were functional and within factory specifications.

Officer Schultz was carrying a 5.56x45 caliber Daniel Defense rifle with a mounted suppressor, light, and optic. This was secured in an evidence locker after the incident and inspected. The rifle contained 21 rounds, and had originally been loaded with 30 rounds. This is consistent with Officer Schultz firing nine rounds. He was also carrying a Glock 27. The Glock 27 handgun was fully loaded during the round count. It was not fired during the incident.

During the incident Officer Mastriona was carrying a 5.56x45 caliber Arrow X15 rifle with a mounted scope, suppressor, light, and optic. He was also carrying a Sig Sauer P320 XFive handgun, for which a round count was done. The Sig Sauer was fully loaded. It was not fired.

A round count was completed for all but four of the responding officer's handguns. The four officers who did not receive a round count included one officer driving the armored vehicle the entire time, and three officers who wrote reports and thus were not interviewed. Based on body worn camera, officer interviews, and evidence from the scene, there is no concern any of those four officers used lethal force during this incident. All other officers' rounds were accounted for, indicating no officers aside from Officers Schultz and Mastriona fired any lethal rounds.

All round counts were consistent with body worn camera footage, evidence found on scene, and officer interviews.

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 person is generally prohibited by statute as an assault or 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 force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

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

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

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

...

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

C.R.S. § 18-1-707

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

In this case, the actions of Officers Schultz and Mastriona were legally justified under Colorado law and C.R.S. 18-1-707 and 18-1-704. 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 Jeanette Alatorre presented, and if so, whether that use of force was reasonable and appropriate in response to the threat. The answer to those questions is yes.

At the time Officer Schultz discharged his service weapon, his actions were objectively reasonable to prevent the imminent threat of injury or death to himself, other officers, and possibly members of the public. The investigation established that Officer Nathan Schultz fired at Ms. Alatorre after a prolonged encounter in which he personally observed that she failed to obey commands to drop her firearm, approached a civilian with that firearm, and repeatedly pointed that firearm at police officers, all while in a residential area on a busy street. Furthermore, he was aware that less-lethal bean bag rounds were used in an attempt stop the threat, but Ms. Alatorre did not respond those attempts. In his interview, Officer Schultz was able to describe three specific times when Ms. Alatorre pointed her firearm directly at police. He recalled hoping she did not pull the trigger because he believed “a bullet would go straight into his skull” if she did. Despite his reasonable belief that she posed an imminent risk of injury or death to himself, other officers, and other citizens (such as the occupant of the vehicle Officer Schultz believed may be carjacked), Officer Schultz was required to wait to discharge his weapon until he knew there was a clear backdrop. He did so.

Under Colorado case law, the facts must be viewed as they appeared to the officer at the time of the incident. Although the firearm Ms. Alatorre pointed at officers was later determined to be an air pistol, Officer Schultz had no reason to believe it was not a deadly weapon at the time he saw it. The Beretta APX .177 caliber air pistol is an accurate replica of a real Beretta 9mm handgun.

It had no plastic tip and no markings indicating it was not a deadly weapon that would have been visible to Officer Schultz.

At the time Officer Schultz discharged his firearm, other means of apprehending Ms. Alatorre were unreasonable because they had been attempted without success: she did not respond to officer commands, and she did not respond to bean bag rounds. Her arrest was for conduct including the use or threatened use of deadly physical force, because she was pointing what appeared to be a deadly firearm at officers. As a result, she posed an immediate threat to Officer Schultz or another person. Because Officer Schultz waited until Ms. Alatorre's backdrop was clear of citizens before firing, the force employed did not create a substantial risk of injury to others.

Similarly, at the time Officer Mastriona discharged his service weapon, his actions were objectively reasonable to prevent the imminent threat of injury or death to himself, other officers, and members of the public. The investigation established that Officer Mastriona fired at Ms. Alatorre after a prolonged encounter in which he personally observed that she failed to obey his commands to drop her firearm, pointed the firearm at himself and other officers, and approached a citizen with that firearm. When Ms. Alatorre pointed her weapon at Officer Mastriona and others in his contact team, he was in fear for his life. However, he could not fire because there was a risk to persons who may have been behind Ms. Alatorre. Then, she approached a civilian driving a vehicle, while holding her weapon, and Officer Mastriona feared this citizen would be shot by Ms. Alatorre. Furthermore, he observed that less-lethal bean bag rounds were used in an attempt stop the threat, but Ms. Alatorre did not respond.

Officer Mastriona then observed Ms. Alatorre on the ground, but moving her arms and torso as if she was preparing to sit or stand up and return fire. Although Officer Mastriona could not see the firearm in her hand at the time he discharged his weapon, it was reasonable for him to believe she still held the firearm because she had never dropped it during the prolonged encounter with law enforcement. Video captured after Ms. Alatorre was shot confirmed that she was holding the firearm in her right hand.

At the time Officer Mastriona discharged his firearm, other means of apprehending Ms. Alatorre were unreasonable because they had been attempted without success: she did not respond to officer commands, and she did not respond to bean bag rounds. She had been shot by Officer Schultz, however, she was moving in such a way that it was reasonable for Officer Mastriona to believe she was preparing to return fire. Her arrest was for conduct including the use or threatened use of deadly physical force. As a result, she posed an immediate threat to Officer Mastriona or another person. Because Officer Mastriona waited until Ms. Alatorre's backdrop was clear of civilians before firing, the force employed did not create a substantial risk of injury to others.

CONCLUSION

We find in our review of this incident that no conduct by Officer Nathan Schultz and Officer Jarrett Mastriona 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 Officer Schultz and Officer Mastriona were legally justified in their use of reasonable and appropriate deadly physical force in response to an imminent risk of death or great bodily injury to themselves, other officers, and any possible bystanders. As a result, my office will not be filing criminal charges against either Officer Schultz or Officer Mastriona.

I appreciate the cooperation provided by the Boulder 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 Boulder Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to the Boulder Police Department. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty
District Attorney
20th Judicial District