



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

August 3, 2023

VIA ELECTRONIC MAIL

Jeff Satur, Chief of Police
Zach Ardis, Public Safety Chief
Longmont Police Department
City of Longmont
Longmont, Colorado

Re: Investigation into the use of force against two homeowners on June 15, 2023, involving Police Officer Nathan Miller, of the Longmont Police Department, at 2184 Stuart Street in Longmont, Colorado

Dear Chief Satur and Chief Ardis:

The investigation and legal analysis of the use of force against two homeowners involving Longmont Police Department Officer Nathan Miller is complete.

The Boulder County Investigation Team, also known as the Boulder County 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. The review of this incident is not required by statute. Rather, the BCIT and District Attorney's Office initiated this investigation and review consistent with the protocol for our jurisdiction. This investigation and review demonstrate the enhanced protocol that we have in place in Boulder County. I believe that we are the only jurisdiction with this expanded definition and review. As we have all agreed to previously, it is the right thing to do in an incident such as this one.

With that in mind, I want to acknowledge the Longmont Police Department ("LPD") for notifying the BCIT following this incident. By doing so, LPD enabled the BCIT to respond and investigate the use of force by Officer Miller. Consistent with Boulder County protocol, LPD did not participate in this use of force investigation involving Officer Miller. LPD officers remained involved in the investigation only to the extent of completing the investigation into the suspect that initiated the series of events. LPD, also, assisted with scene preservation. Consistent with protocol and statute, LPD remains legally responsible for enforcing any criminal violations which took place prior to the police officer using force against an individual, such as, the car being stolen.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Officer Miller for the use of force against Homeowner #1 and Homeowner #2 on June 15, 2023.

The investigation and review of this incident does not evaluate or review the appropriateness of police tactics or whether policies and procedures were followed. The LPD will be responsible for conducting the review of police tactics and response by their officers.

As you are aware, I met with the homeowners on August 1, 2023. They were incredibly scared that night and still feel the impacts from this incident. They asked me to keep all their information, including their names and the home address, confidential. Out of respect for their privacy, and since they did not commit any criminal offense, I need not share their full names in this letter. As I explained to them, however, I believe that the address must be shared in the interests of transparency. If a records request is submitted to your agency, I informed the homeowners that their names would likely be shared. However, since the focus of this analysis is on the conduct of the police officer, I have decided to honor their wishes and use only references to Homeowner #1 (male) and Homeowner #2 (female).

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 apply. The authority and role of the District Attorney is to determine solely whether Officer Miller committed a criminal offense that can be proved 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, diagrams, police communications, reports, photographs, and video recordings related to this incident.

My office then completed a review of the reports and documentation, and I, along with members of my staff, were fully briefed regarding this incident by Team Commanders in charge of the investigation. I conclude that, under the applicable Colorado Law, criminal charges should not be filed against Officer Miller. He did not commit any crime that could be proven beyond a reasonable doubt.

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

SUMMARY OF DECISION

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

The discharge of a firearm in this case did not result in injury or death and therefore this report is not mandated by section 20-1-114(1). However, as District Attorney, I believe this report is necessary to inform the public of the nature and reasons for my decision. I will release this report in the interest of transparency and to explain the circumstances under which the law enforcement officer fired his weapon and why he is not criminally liable. Although it is not required by law, I believe the public release of this report is appropriate since the BCIT investigated the use of physical force against another person by a member of law enforcement, acting in his official law enforcement duty.

In summary, this incident started with a car being stolen. Inside the stolen car, the owner had left an unsecured handgun. In tracking the car thief, law enforcement knew that the gun was accessible to the person(s) who stole the car. LPD tracked the car and eventually disabled the tires using stop sticks. The person who stole the car fled on foot through a residential neighborhood. After LPD arrived at a house where the car thief initially hid from police, the police responded to screams from inside the home and moved to enter the home. Homeowner #1, believing the police officers to be the intruder, opened fire with a pellet gun. Officer Miller reasonably believed the pellet gun to be a real firearm and returned fire. Thankfully, no one was injured or killed in this scary and unfortunate situation.

Applying the applicable statutes to the facts presented through this investigation, Officer Miller is not subject to criminal prosecution for his actions. In all cases, including those involving law enforcement officers, the District Attorney's Office criminal filing standard requires that there be a reasonable likelihood of conviction 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

On June 15, 2023, around 7:00 a.m., a white Toyota Highlander was reported as stolen to the LPD. The owner of the Highlander also reported that a loaded Smith & Wesson M&P Shield 9mm handgun had been left in the center console of the vehicle. This gun was not locked in a gun safe and did not have a trigger lock in place. As a result, it could be used by the individual(s) who stole the car.

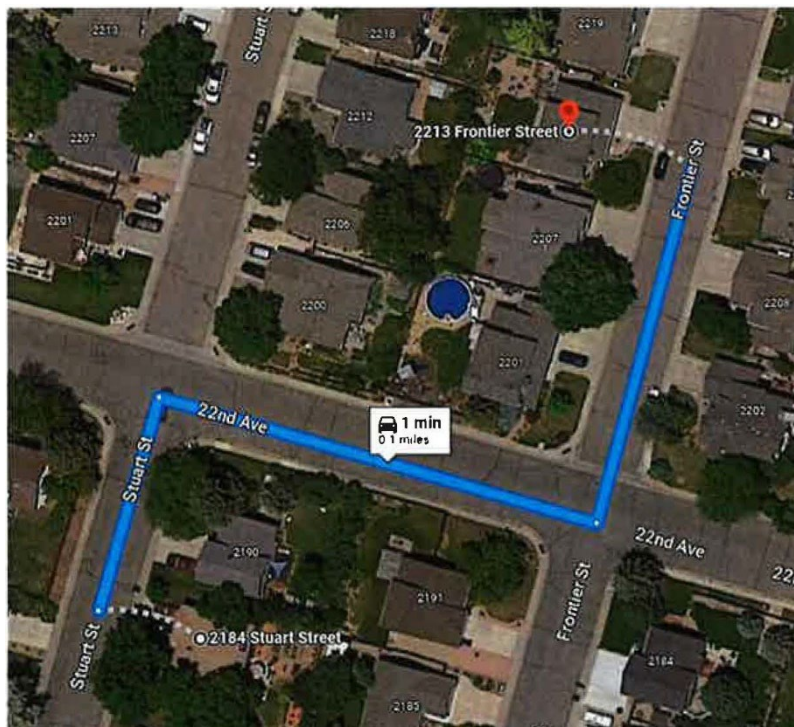
The person who stole the Highlander later told LPD officers that he had found the vehicle unlocked. Assuming this admission is true, the unsecured gun had been left in an unlocked car. While poor judgement, it is not a violation of any criminal law. Given the number of unsecured guns stolen from cars, there are active discussions about possible legislation that would prohibit leaving an unsecured gun inside a parked car. Also, our office continues to work with community partners, including LPD, to distribute free gun safes and free gun locks to the community.

Throughout the day, law enforcement agencies tracked the Toyota Highlander to parts of Weld and Boulder Counties. As a result of the unsecured gun, law enforcement brought a heightened response to the search for this stolen car. Officers contacted Toyota and activated location services on the Highlander. Toyota provide officers with the vehicle's location at several different points throughout the day. However, each time an officer would arrive at a location, the Highlander would be gone. Later in the evening, LPD officers developed a plan to use stop sticks to disable the car. Around 9:00 p.m., Officer Shawn Stone aired on the radio that he was successful in deploying the stop sticks, although the Highlander continued to drive away.

The Highlander was eventually found crashed in the vicinity of 2213 Frontier Street in Longmont. The Highlander was unoccupied, and officers immediately noticed the center console of the vehicle was open and empty. Officers searched the Highlander and did not find the 9mm handgun. Around 9:09 p.m., those officers notified others via radio that the unsecured gun was missing from the stolen car.

Longmont officials initiated a "reverse 911" call to homes around 2213 Frontier Street to warn residents that a possibly armed person was in the area. Around 10:11 p.m., LPD received a

call of an intruder in a garage at 2184 Stuart Street¹. This address is less than a quarter mile away from where the Highlander was found at 2213 Frontier Street.



This is a screenshot from Google Maps showing the approximate distance and vehicle travel time between 2213 Frontier Street and 2184 Stuart Street.

Prior to the Stuart Street call, officers received information that the suspect was likely armed based on a Ring doorbell video showing the suspect carrying a backpack with a black object in his hand. The black object resembled a gun and officers were told that the object was likely a gun. Longmont patrol and SWAT officers converged on the garage at 2184 Stuart Street, aware that a gun could likely be involved. Officers found the garage door open. Officers repeatedly announced their presence, ordered anyone in the garage to come out with their hands up, and warned of the use of a K-9. They made this announcement multiple times over the course of several minutes. No one emerged from the garage.

Throughout the events described below, there was a significant police presence directly outside the home. Patrol vehicles, uniformed officers, and uniformed SWAT officers gathered directly in front of this home.

¹ The suspect who stole the Highlander and hid in the garage at 2184 Stuart Street was later found hiding in the backyard of a neighboring house and was arrested without further incident. The gun from the Highlander was not recovered. The person who stole the vehicle claimed to LPD officers that he had sold the gun that day prior to being contacted by police.

While officers were gathering outside the residence at 2184 Stuart Street, a police dispatcher was on the phone with the residents of 2184 Stuart Street, Homeowner #1 and Homeowner #2. On the recording of the 911 call, the dispatcher is heard telling Homeowner #1 and Homeowner #2 to remain locked in the basement of their home and that officers were gathered outside the residence. Homeowner #1 told the dispatcher he was armed with a "177 pistol." Additionally, Homeowner #1 gave permission for officers to enter the house. The dispatcher told Homeowner #1 that the officers would announce themselves and that Homeowner #1 would "know it's them." Homeowner #1 stated he could see lights in his backyard from the officers searching the area for the suspect.

The dispatcher told Homeowner #1 that SWAT was moving to the house and Homeowner #1 agreed that they could enter the house if he knew that it was the police. At that time, the police were gathered outside the front of the house and, also, searching the backyard.

The dispatcher eventually transferred the call with Homeowner #1 to Commander Doug Ross. Commander Ross had the phone on speaker and Sergeant Craig Mortensen was present during the phone call. Neither Commander Ross nor Sergeant Mortensen had turned on their body worn cameras, therefore this conversation between Commander Ross and Homeowner #1 is not recorded. While on the phone with Homeowner #1, Commander Ross and Sergeant Mortensen heard Homeowner #1 yell something to the effect of "What are you doing? Get out of here! Stop!".

At this point, Commander Ross and Sergeant Mortensen believed that the suspect had entered the house after being in the garage. Both feared that Homeowner #1 and Homeowner #2 could be taken as hostages. Commander Ross then gave a command to SWAT officers to enter the house. The situation had become urgent as the police believed the residents' lives were at risk.

As SWAT officers lined up to enter the house through the front door, they announced themselves, saying "Police Department" multiple times over the course of 15-30 seconds, prior to entering the house. After that announcement, a male, presumably Homeowner #1, could be heard inside the house yelling, "get the fuck out!"

These screams further raised concerns that the suspect was inside the house and that the residents may be taken hostage. The yelling of "get the fuck out" can be heard on multiple officers' body worn cameras. When the officers at the front door and Commander Ross and Sergeant Mortensen heard the yelling from inside, the decision was made to enter the residence.

When the command was given to enter the home, Officer Miller, first in the line of SWAT officers, kicked in the front door and rushed into the home. During their interviews, Officer Miller and Officer Seth Roberts, who was right behind Officer Miller when entering the home, stated that they saw what appeared to be a gun pointed at them as they entered the home. They both stated they believed that their lives, the lives of their fellow officers, and the lives of

the residents were in immediate danger. After seeing what appeared to be a gun pointed at him, Officer Miller immediately fired seven rounds from his SWAT rifle. Officer Miller did not activate his body worn camera prior to entering the home. The buffer period on the camera begins recording as Officer Miller fired his first shot.



This is a screenshot from Officer Miller's body worn camera showing his point of view after he entered the home. The red circle indicates approximately where Officer Miller and Officer Roberts reported seeing the gun pointed at them. The gun is not visible in the screenshot.

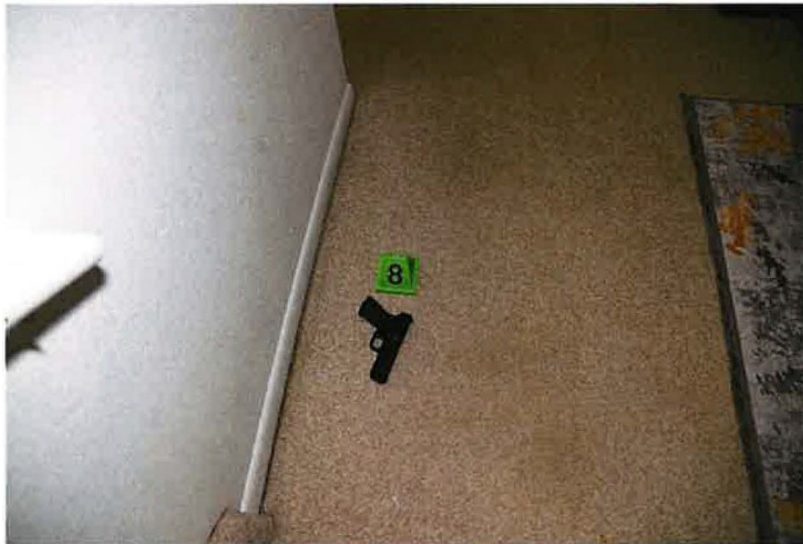
While Officer Miller fired the seven rounds, Homeowner #1 was able to communicate to Officer Miller to stop firing and that it was just him and Homeowner #2 in the house. Officers completed a search of the residence and did not find the suspect inside.

Officers escorted Homeowner #1 and Homeowner #2 outside during the search of the residence. While speaking with Officer Matthew Gadbois, Homeowner #1 stated that he had pointed his pistol, later determined to be a pellet gun, at the front door when officers entered the home. He demonstrated to Officer Gadbois that he was standing by the staircase leading to the lower level of the home and had his arm wrapped around the wall with the pellet gun pointed toward the front door.

Homeowner #1 made further statements to Longmont Police Chief Jeff Satur and Commander Ross, captured on Commander Ross' body worn camera, that he "cranked off a couple on the BB pistol," referring to firing some shots from his pellet gun towards the front door when officers entered the home. Homeowner #1 later said that he believed it was the "bad guy" entering the front door, referring to the intruder that had been in his garage. Investigators later found the pellet gun that Homeowner #1 said he fired, noted that two pellets were missing, and that the gun appeared capable of firing pellets.



This is a screenshot from Officer Gadbois' body worn camera showing Homeowner #1 demonstrating how he was holding and firing his pellet gun when officers entered the home.



This is a photograph of where Homeowner #1's pellet gun was located at the bottom of the stairs in the lower level of the residence.

Scene Preservation

Members of the BCIT assisted Longmont Police officers with processing, documenting, and completing a canvas of the area where this incident occurred.



Photo depicting the entryway into the residence with shell casings from Officer Miller's rifle on the ground.

Several bullet casings were found in the front entryway, consistent with where they would be expected to have ejected from Officer Miller's firearm.



The door frame had damage to it caused by the officers' entry.

Investigators located six bullet holes in the column of the stairwell and the wall of the stairwell. An additional bullet trajectory was traced going through the kitchen and into the backyard, with the bullet lodging in the exterior wall of the residence behind 2184 Stuart Street.



The bullet holes inside the residence are marked with crime scene numbers and show the tracking movement described by Officer Miller in his interview.



Bullet hole in exterior wall of residence behind 2184 Stuart Street.

Officer Miller's Firearm

Officer Miller carried a Seekins Precision model rifle and a Glock 17, Generation 5, 9mm handgun. Officer Miller only fired from his rifle. Detective Erin Starks with the Boulder Police Department examined Officer Miller's rifle and determined that it was in working condition. The ammunition inside the magazine of the rifle appeared consistent in manufacturer, caliber, and bullet type. Detective Starks noted that seven rounds were missing from the magazine, consistent with the seven casings collected at 2184 Stuart Street. Officer Miller possessed a total of 85 rounds for both firearms when he was inspected by BCIT investigators.

Interview with Officer Miller

Officer Nathan Miller submitted to a voluntary interview at the Boulder County Sheriffs Office Headquarters on June 17, 2023. Boulder County District Attorney Investigator Michael Bihrlle and Boulder Police Department Detective Sarah Cantu conducted the interview. The interview was audio and video recorded. Officer Miller explained that he had been with the Longmont Police Department since 2017 and a member of the SWAT team since 2020. He had no prior law enforcement experience. At the time of this incident, Officer Miller worked an overnight shift and reported that he had a normal sleep pattern both nights prior to the incident. He stated that there were not stressors or other noteworthy incidents in the days prior to this incident.

On June 15, 2023, Officer Miller worked his normal shift. During his pre-patrol briefing, he learned some details about the stolen Highlander. Officer Miller described getting continuous updates on the Highlander via his portable police radio. Officer Miller indicated that he was aware via an officer safety email that there was an unsecured handgun in the Highlander. Due to this information, Officer Miller began patrolling in the area of 2213 Frontier Street in case officers needed additional resources. A call then went out for SWAT personnel to gather to conduct a K-9 track to search for the suspect. At some point after police located the stolen car, Officer Miller learned that the gun inside the Highlander was not there. This information led Officer Miller to believe the suspect took the gun when he fled from the crashed vehicle. When Officer Miller was made aware of the 911 call from 2184 Stuart Street about a man in the garage, he believed it was the same suspect.

After Officer Miller arrived at 2184 Stuart Street, it became clear that no one was in the garage. This caused Officer Miller to believe that the suspect was inside the house. Officer Miller said that Sergeant Eric Lewis told him that they were working on a plan to move to the front door of the residence to extract Homeowner #1 and Homeowner #2. Officer Miller's role was to contact them at the front door. Once at the front door, Officer Miller realized the door was locked and found this concerning as it was his understanding that the homeowners were supposed to meet him at the door per the information he received from Sergeant Lewis. As Officer Miller tried turning the doorknob, he heard someone inside say "get the fuck back." Officer Miller stated that he immediately believed the residents were being held hostage by the

suspect. As he continued to try to turn the doorknob, he heard someone inside say again, "get the fuck back, get the fuck back." Officer Miller then believed the suspect was pointing a gun at them and was telling the residents to get back inside the house.

Officer Miller described assessing his options, such as starting a negotiation, stepping back, or going into the home. As he was weighing these options, he heard an officer behind him say "guys we gotta, we gotta go, we gotta make entry." He does not recall if another officer announced the police presence prior to entry². Officer Miller then kicked in the front door. He described that the first thing he saw when entering the home was a female going down a staircase from the main floor. The next thing he saw was a person hiding behind the stairwell column, reaching around the column with a gun pointed at him. He described the person holding the gun as being crouched or sitting down. This is consistent with how Homeowner #1 described pointing the pellet gun at officers during his conversation with Officer Gadbois.

Officer Miller described being fearful as he saw someone pointing a gun at him. He worried for his own life and the lives of his fellow officers coming in behind him. Officer Miller then took his rifle off safety and fired. He believed he fired four or five rounds. After he fired the first couple of rounds, he saw the person with the gun moving along the staircase. Officer Miller then began to track the rounds he was shooting along the staircase, following the person with the gun. Once Officer Miller could no longer see the person with the gun, he stopped shooting. He heard someone say "wait, hey whoa what." Officer Miller then yelled for a cease fire. While speaking with Homeowner #1 and Homeowner #2 inside the home, Officer Miller saw a gun at the bottom of the staircase leading to the lower level of the home. All the shots were fired in a span of less than 5 seconds.

Interview of Additional Witnesses

The BCIT also interviewed several additional witnesses, including Officer Seth Roberts, Officer Matthew Chanlynn, Sergeant Eric Lewis, Sergeant Billy Sawyer, Sergeant Cory Ellis, Sergeant Jason Pitts, Commander Doug Ross, and Sergeant Craig Mortensen. Officer Roberts corroborated Officer Miller's account of the events leading up to and after making entry into the residence, including seeing a gun pointed toward officers. Apart from limited questioning on scene, Homeowner #1 and Homeowner #2 declined to be personally interviewed by the BCIT. They did submit written responses to questions from the BCIT through their personal attorney.

Upon receiving the investigation from the BCIT, the District Attorney's Office again contacted their attorney and invited them into our office. As noted above, I met with them on August 1, 2023. I discussed the purpose of the investigation, the role of the District Attorney, and my findings as contained in this letter. Also, at their request, I shared the audio and video compilation that the BCIT had prepared for my review of the minutes before, during and after the shots fired. We played it for them and provided them with a copy. I informed them that I

² On multiple officers' body worn cameras, an announcement of "Longmont Police Department" can be heard prior to Officer Miller making entry into the residence.

would be sharing a report with the public and conducting a Town Hall. In speaking with Chief Satur after the meeting, I explained to him that they are still very much impacted by the events of that night. Our office is providing them with support and victim advocacy, in conjunction with the related prosecution of the car thief.

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.

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

C.R.S. 18-1-407 Affirmative defense

- (1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.
- (2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

C.R.S. 18-1-710 Affirmative defense

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

C.R.S. 18-1-704 Use of physical force in defense of a person³

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other

³ Deadly force analysis under C.R.S. 18-1-704(2) is inapplicable as the use of force did not result in death. "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death. C.R.S. 18-1-901(3)(d).

person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

C.R.S. 18-1-707 Use of force by peace officers

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

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

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

C.R.S. 18-1-901 Definitions

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

LEGAL ANALYSIS

In this case, the actions of Officer Miller are legally justified under Colorado law. The investigation established that seven rounds were fired from Officer Miller's patrol rifle in the general direction of Homeowner #1, but he was not struck by those bullets. Officer Miller stated that he knowingly fired his weapon after seeing what he believed to be a gun pointed at him from the staircase. Officer Miller feared that his life, the lives of other officers, and the lives of homeowners were in immediate danger. 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 Homeowner #1 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 Officer Miller's personal observations and beliefs. The investigation revealed that, at the time he discharged his service weapon,

Officer Miller's actions were objectively justified to prevent the imminent threat of injury to himself, other officers, and the homeowners.

In his voluntary interview, Officer Miller repeatedly explained that he believed an armed suspect had entered the residence at 2184 Stuart Street. This belief was based on information about the missing handgun from the Highlander, the suspect being seen in the garage of the residence, the suspect no longer being in the garage, and the yelling he heard from inside the home prior to entry. Before Officer Miller discharged his rifle, he clearly explained seeing what he believed to be a gun pointed at himself and fellow officers upon entry into the home.

Officer Miller articulated his fear for his own safety, the safety of the officers behind him, and the safety of the residents. Officer Miller believed that a gun was being pointed at him and fellow officers, and that the suspect was taking the residents hostage. He had to make a split-second decision to protect himself, fellow officers, and the residents. The threat posed by a suspect pointing a perceived firearm at officers posed an "imminent threat of injury." Officer Miller fired seven shots and ceased firing as soon as he lost sight of the person with the gun. Such a reaction was reasonable under the circumstances and law, therefore, justified under C.R.S. section 18-1-704.

An analysis under C.R.S. section 18-1-704 is the same for law enforcement officers as it is for any other person. 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 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).

It is immaterial whether the person Officer Miller saw with the gun was actually trying to injure the officers or capable of inflicting significant harm with a BB gun, so long as a reasonable person, under like conditions and circumstances, would believe appearances were sufficient to require the action taken. *Silva*, 98 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; the question is whether the person's conduct was reasonable under the circumstances as he or she perceived them to be).

C.R.S. section 18-1-704(1) provides that an officer may use physical force where he reasonably believes that such force is necessary to protect himself or another from imminent death or serious bodily injury.

Fortunately, no one was killed in this incident. So, the definition and legal analysis for "deadly physical force" does not apply. Nonetheless, I would highlight for you that the officers announced themselves several times and Officer Miller opened fire only after seeing an individual firing what appeared to be a gun at Officer Miller. In that moment, under the 18-1-707 analysis, the officer's use of force to prevent "imminent threat of injury to the peace officer" was reasonable -- as defined by the law.

Under Colorado case law, the facts must be viewed as they appeared to the officer at the time; future developments are irrelevant to the legal analysis. Specifically, whether it was later revealed that an individual possessed a firearm or some other object that appeared to be a firearm, the legal analysis is required to focus on what was known to the officer at the time of the incident.

After reviewing the totality of the evidence in the case, Officer Miller's actions in using physical force were legally justified and are not subject to criminal prosecution.

CONCLUSION

It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, Officer Miller's actions during this incident were legally justified as set forth in C.R.S. section 18-1-704(1) and 18-1-707(1). As a result, my office will not be filing criminal charges against Officer Miller.

Given the shot(s) fired, I am thankful that no one was wounded or killed. This situation easily could have ended with a loss of life. I appreciate the cooperation provided by LPD as well as the extremely thorough investigation conducted by the BCIT. These cases are important to the officers and civilians involved, as well as to our community.

In the interests of transparency and per our Boulder County protocol, I will be releasing this letter to the public. These materials will, also, be posted on the District Attorney's website. As you are aware, our office also hosts a Community Town Hall after any officer-involved incident to present the findings surrounding my decision and to answer any questions. Our jurisdiction is one of the only ones in Colorado to host Town Halls following an officer-involved incident. It allows us the opportunity to play the video and audio recordings from the incident if there are any questions or concerns from those involved and/or community members.

Pursuant to our policy, following the Town Hall, the Longmont Police Department will become the custodian of records related to this case, and any future records inquiries will be directed to your agency. Please contact me if you require further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "M.T. Dougherty", with a stylized flourish at the end.

Michael T. Dougherty
District Attorney