



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

July 12, 2023

VIA ELECTRONIC MAIL

Maris Herold, Chief of Police Boulder
Police Department
City of Boulder
Boulder, Colorado

**RE: Investigation into the fatal shooting of Christopher Steven Swanger
on May 25, 2023, involving Officer Collin Keith and Officer Nathaniel
Taylor of the Boulder Police Department in the area of 1717 Baseline
Road in Boulder, Colorado**

Dear Chief Herold:

The Boulder County Critical Incident Team and the Office of the District Attorney for the 20th Judicial District have completed their investigation and review of Boulder Police Department Officer Collin Keith and Officer Nathaniel Taylor's fatal shooting of Christopher Steven Swanger. Based upon my review of this investigation and a thorough legal analysis, I have determined that the shooting was legally justified.

The Boulder County Investigation Team, also known as the Boulder Critical Incident Team (the "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 Boulder Police Department ("BPD") for immediately notifying the BCIT following this incident. By doing so, BPD enabled the BCIT to quickly respond and conduct an extremely thorough investigation. Consistent with Boulder County protocol, BPD did not participate in this use-of-force investigation involving Officer Keith and Officer Taylor.

The BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Officer Keith and Officer Taylor for the fatal shooting of Christopher Steven Swanger (DOB: 12/24/1986) on May 25, 2023, within the City of Boulder. The investigation and review of this incident does not evaluate or review the appropriateness of police tactics or whether policies and procedures were followed. While every death is tragic, my role and authority in these reviews is solely to determine whether criminal charges are warranted.

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. Rather, the authority and role of the District Attorney is to determine whether Officer Keith or Officer Taylor committed criminal offenses that can be proven beyond a reasonable doubt.

BACKGROUND

The BCIT completed a very thorough investigation into this incident and generated detailed reports and documentation. The BCIT file includes recorded witness interviews, diagrams, police communications and reports, photographs, and video recordings related to the incident.

A review of the reports and documentation provided to 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 this investigation. I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against Officer Keith or Officer Taylor.

My findings, analysis, and conclusions of law with respect to Officer Keith and Officer Taylor'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 firearms in this case did result in Mr. Swanger's death, and therefore, this report is mandated by Section 20-1-114(1). Additionally, 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 officers fired their weapons but are not criminally liable. Also, as you are aware, our office conducts a Community Town Hall after every officer-involved shooting in order to fully address any questions from community members.

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 in order to bring criminal charges against an individual. As in other cases prosecuted by this office, this legal and ethical requirement guides our analysis.

On the date of this incident, Christopher Swanger had two active felony domestic violence warrants pending for his arrest. One originated in Adams County and involved charges of Assault in the Second Degree, as well as Child Abuse, stemming from an incident that occurred on January 26, 2022.

The second warrant was for charges of Assault in the Second Degree and Intimidating a Victim on May 13, 2023. Around 12:55 a.m. on May 13th, BPD Officer Darren Burton and Officer Collin Keith were dispatched to Christina Verner's residence located at 1717 Baseline Road in Boulder, Colorado due to reports of an assault. Upon arriving on scene, Ms. Verner explained that Mr. Swanger had come to her residence that night and that they had gotten into a verbal argument. Mr. Swanger then proceeded to strike Ms. Verner in the face with a closed fist and, also, damaged her tablet electronic device. Before leaving the residence, Mr. Swanger threatened Ms. Verner that she would "pay for it." Ms. Verner explained to officers that she had been in a brief, intimate relationship with Mr. Swanger. She further stated that he had threatened to kill her on multiple occasions and that he kept a handgun in his car at all times.

While Officer Burton and Officer Keith were speaking with Ms. Verner on May 13, 2023, Mr. Swanger proceeded to call her cellphone three times to yell, berate, and threaten her. Officer Burton then called Mr. Swanger back and asked if he would like to make a statement about what had happened that night. Mr. Swanger was verbally confrontational with law enforcement and refused to discuss things. Ultimately, Officer Burton advised him that a warrant would be issued for his arrest.

On May 16, 2023, Ms. Verner sought medical treatment at Boulder Community Health ("BCH") as the pain to her head had worsened considerably since the assault three days prior. It was then confirmed that she had suffered serious bodily injury in the form of an orbital fracture due to Mr. Swanger's assault of her. While at the hospital, BPD Officer Verdine responded to speak with Ms. Verner. She then showed Officer Verdine a text message that she had recently received from Mr. Swanger, which stated, in part, "You'd be smart to call that fucking cop and change your story, if you don't I'll be seeing you again real fucking soon... "

On May 25, 2023, at 9:40 p.m., Ms. Verner called 911 to report that Mr. Swanger had called her and stated that he was coming to her apartment that night between 10:15 p.m. and 10:30 p.m. She reiterated that Mr. Swanger was known to carry a black handgun. In addition, she provided Dispatch with a description of Mr. Swanger. Given Officer Keith's familiarity with both Mr. Swanger's assaultive history as well as his pending arrest warrant, he responded to the area of 1717 Baseline Road with Officer Taylor and Officer Meghan Nettles to protect Ms. Verner and effectuate Mr. Swanger's arrest.

At 11:17 p.m., Mr. Swanger arrived as a passenger in his cousin Gerrick Nelson's vehicle. Officer Taylor attempted to initiate contact with him, but Mr. Swanger proceeded to throw a Monster energy drink at him. He then began to walk quickly away. In response, Officer Taylor commanded Mr. Swanger to stop and to show his hands. Mr. Swanger refused to comply and continued to walk away from Officer Taylor while reaching his hands into a tan satchel that he was carrying. Officer Taylor repeated the previous commands and, also, told Mr. Swanger to get on the ground and to stop reaching into his bag or he would be tased. Mr. Swanger did not follow these orders and was tased, which caused him to fall to the ground on his stomach on Baseline Road.

Officer Taylor, Officer Keith, and Officer Nettles then approached Mr. Swanger while he was on the ground. Officer Taylor saw Mr. Swanger continue to reach around his waist area and pull a black handgun out. Officer Taylor yelled, "gun" as Mr. Swanger pointed his firearm toward Officer Taylor. Both officers then made a split-second decision to protect themselves, their fellow officers, and Ms. Verner, and they began firing at Mr. Swanger. Mr. Swanger fired at Officer Taylor. Officer Taylor fired a total of 12 rounds, Officer Keith fired a total of 11 rounds, and Mr. Swanger fired one shot. As described below, it appears likely that Mr. Swanger's gun malfunctioned after firing the single shot at the officers.

The evidence clearly demonstrates that, on May 25th, Mr. Swanger was aware that the police were seeking to arrest him for the prior domestic violence assault(s), he had threatened to kill Ms. Verner, he had sent the text message threatening that she should change her police report, he had armed himself with a handgun, and he went to her residence. It is important to note that all of this information was known to the police officers. When he was contacted by officers, he refused to follow multiple commands and continued to reach into his satchel. As officers approached him after he was tased, he proceeded to pull a handgun out, point it directly at Officer Taylor, and fire it.

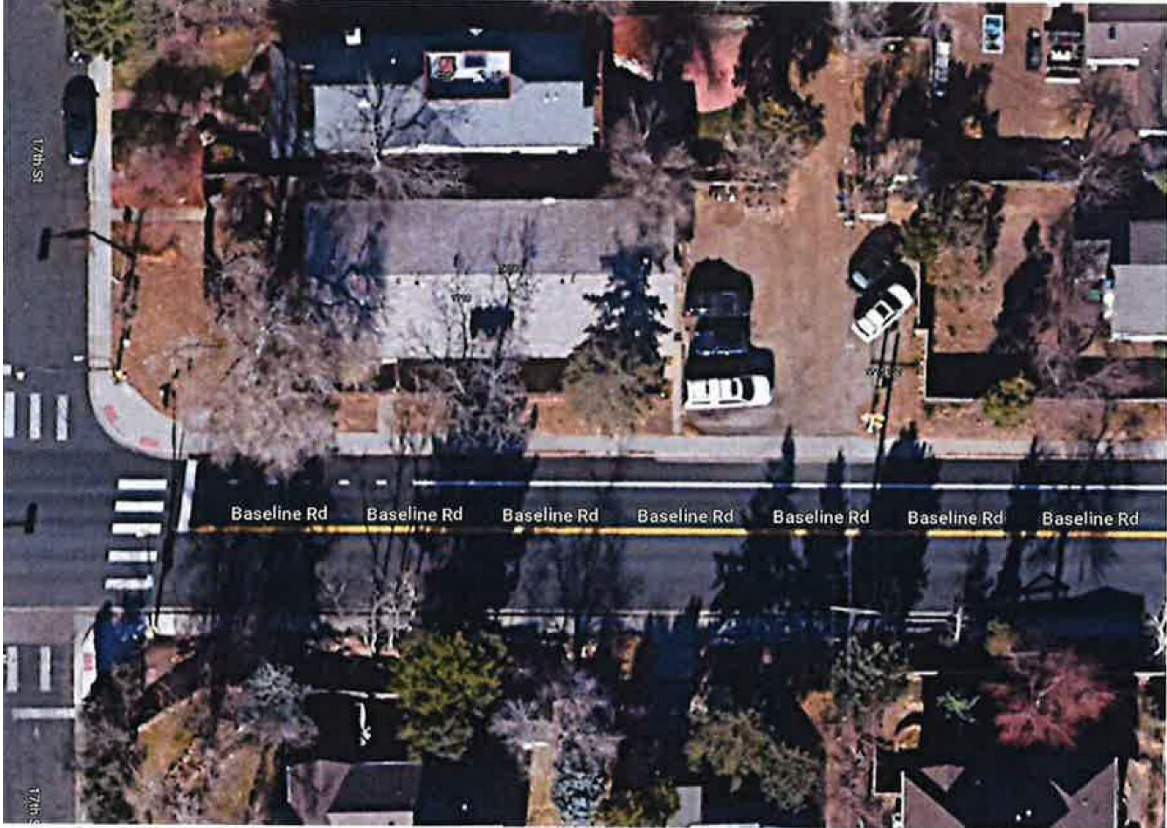
Under the circumstances, it was reasonable for Officer Keith and Officer Taylor to believe that Mr. Swanger was armed with a firearm with the intent to shoot and that he presented an imminent threat of deadly harm to them, their fellow officers, and Ms. Verner. Based upon Colorado law, the physical force used by these officers was reasonable. Consequently, there are no criminal charges that can be proven beyond a reasonable doubt. No criminal charges will be filed against the officers.

DETAILED STATEMENT OF FACTS

On Thursday, May 25, 2023, at approximately 9:40 p.m., Christina Verner called 911 to report that Christopher Swanger had called her and that he was on his way to her residence at 1717 Baseline Road in Boulder, Colorado. Ms. Verner advised that there was a domestic violence case currently pending because Mr. Swanger had previously assaulted her. She told the dispatcher that she knew Mr. Swanger to carry a black handgun. In addition, she stated that he had called her repeatedly since that time and left voicemails that stated, "I'm going to kill you and all your friends."

Boulder Police Officer Keith had recently begun his shift and saw Ms. Verner's pending call for service. Given his involvement with the domestic violence assault investigation, Officer Keith was familiar with Mr. Swanger and knew that he had seriously assaulted Ms. Verner on May 13, 2023. In addition, Officer Keith knew that Mr. Swanger carried a handgun. Moreover, previous interactions between Mr. Swanger and Officer Burton confirmed that Mr. Swanger knew a warrant was pending for his arrest and that he had been volatile with law enforcement when they had tried to contact him by phone. Officer Keith and Officer Nettles responded to Ms. Verner's address. Based upon the heightened threat that Mr. Swanger posed to Ms. Verner, Officer Keith contacted Officer Taylor to assist to ensure that Mr. Swanger did not enter Ms. Verner's apartment and would be safely taken into custody. Thus, Officer Taylor responded in a separate, unmarked police vehicle.

Upon arriving in the area of 17th Street and Baseline Road, Officer Keith and Officer Taylor parked their vehicles in the parking area to the east of Ms. Verner's apartment and waited in case Mr. Swanger arrived. While there, Officer Keith was in communication with Ms. Verner to obtain updates on Mr. Swanger's possible arrival time. In addition, officers were able to pull up a photograph of Mr. Swanger to better identify him. Around 11:17 p.m., Officer Taylor saw a dark F150 truck pull in and park in the parking area of 1717 Baseline Road. The truck's interior lights turned on, at which time, Officer Taylor was able to identify the passenger as Mr. Swanger.



Area of 17th Street and Baseline Road in Boulder, Colorado.

Mr. Swanger proceeded to walk around the truck to the rear driver's side door and was reaching in to retrieve something when Officer Taylor contacted him. Mr. Swanger immediately threw a Monster energy drink in Officer Taylor's direction and began to quickly walk along Baseline Road while reaching into a tan satchel that he carried by his right hip. Officer Taylor followed and began giving Mr. Swanger loud, verbal commands. Specifically, he yelled, "Show me your hands. Get on the ground. You're going to get tased. Get on the ground now. I'm going to tase you." While Officer Taylor approached, Officer Keith also advanced in Mr. Swanger's direction with his gun drawn. While doing so, Officer Keith began giving Mr. Swanger orders as well, and shouted, "Get on the ground right now. Get on the ground. Get on the ground. Do not reach in that bag. Get on the ground." Officer Nettles was behind Officer Keith and did not have her handgun drawn.

As officers approached, Mr. Swanger refused to comply with either officer's orders and instead yelled expletives at them. He proceeded to walk at a brisk pace westbound on Baseline Road. Further, he continued to reach into his satchel as he turned around to look at Officer Taylor. Given Mr. Swanger's noncompliance, Officer Taylor shot his Taser 10 at Mr. Swanger, which resulted in neuromuscular incapacitation. This caused Mr. Swanger to fall to the ground on his stomach with his hands underneath him. Officer Taylor moved toward Mr. Swanger from the east with the taser still activated as Officer Keith and Officer Nettles approached from the

north side of the street on Mr. Swanger's right side to handcuff him. As officers moved toward Mr. Swanger, they commanded him to "stay down" and not to move.

When the taser cycle finished, Officer Taylor was approximately two to three feet from Mr. Swanger's feet. Officer Keith approached Mr. Swanger's right side and then placed his knee on Mr. Swanger's back to place him into custody. Officer Keith continued to firmly command Mr. Swanger not to move. Yet, Mr. Swanger immediately began to roll over onto his right side. As he was doing so, Officer Taylor saw a black semi-automatic pistol appear on Mr. Swanger's left side. Officer Taylor immediately yelled, "gun" three times as Mr. Swanger pointed his firearm directly at Officer Taylor. In response, both Officer Taylor and Officer Keith fired rounds at Mr. Swanger as they backed away from him. Officer Taylor later said, "I thought he was going to shoot me, and umm, and quite frankly, I am surprised he didn't..."



Still image from Officer Taylor's body worn camera.



Still image from Officer Nettle's body worn camera showing plumes of smoke from Officer Taylor and Mr. Swanger 's firearms.

Officer Taylor fired three rounds when he saw Mr. Swanger begin to pull his handgun out from under him and point it in his direction. Mr. Swanger fired one round toward Officer Taylor that missed as Officer Taylor continued to fire his weapon. Officer Keith began firing after Mr. Swanger fired his handgun at Officer Taylor. Officer Taylor fired a total of 12 rounds, and Officer Keith fired a total of 11 rounds. Mr. Swanger was hit with between 12 to 17 rounds. From Officer Taylor's initial contact with Mr. Swanger at the truck to the last round fired, 25 seconds elapsed.

Mr. Swanger was not responsive after the last shot was fired, and Officer Brandon Mulhall then approached Mr. Swanger to secure his weapon. He also found a large, holstered knife in Mr. Swanger's front pant pocket. During this time, Officer Pamela Arnedos retrieved a medical bag. She and Officer Sam Coffee then proceeded to render first aid to Mr. Swanger. This included the application of an emergency bandage around Mr. Swanger's torso. In addition, a chest seal was applied to his chest and gauze was used to bandage his head. Paramedics arrived soon after this, at which time, Mr. Swanger was pronounced deceased.

Autopsy Findings

Forensic Pathologist Dr. Meredith Frank completed the autopsy of Christopher Swanger on May 26, 2023, at the Boulder County Coroner's Office. Dr. Frank's postmortem examination included a thorough external and internal examination and the taking of radiographs, toxicology samples, and photographs. She opined that Mr. Swanger died as a result of multiple gunshot wounds and that the manner of death was homicide. Mr. Swanger was shot with 12-17 rounds.

Dr. Frank documented the following findings regarding the gunshot wounds that Mr. Swanger sustained: #1 gunshot wound to the right side of the head, #2 gunshot wound to the left side of the head, #3 gunshot wound to the upper left torso, #4 gunshot wound to the anterior chest, #5-10 gunshot wounds to the left torso, #11 gunshot wound to the lower left torso, #12-15 gunshot wounds to the left upper arm, #16 gunshot wound to the right arm, and #17 gunshot wound to the upper right thigh. Dr. Frank was unable to confirm whether gunshot wounds #12- 17 were the result of multiple bullets. She opined that it is quite possible that some of these wounds may have resulted from a single bullet that traveled through Mr. Swanger's extremities and into his torso. Accordingly, Dr. Frank opined that Mr. Swanger sustained 17 gunshot wounds as a result of 12-17 bullets.

Apart from the gunshot wounds, Dr. Frank found that Mr. Swanger sustained injuries to his teeth and mouth as well as bruising on his shoulder, which are consistent with him having been tased by Officer Taylor and then falling face first onto the ground.

Twelve projectiles/bullet fragments were collected from Mr. Swanger's body during the autopsy as well as four taser barbs. The autopsy report indicates that NMS Labs completed the toxicology report, and the expanded panel analysis conducted on Mr. Swanger's blood showed 800 ng/mL of amphetamine and 2900 ng/mL of methamphetamine.

Scene Preservation and Firearms

After the location 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 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.

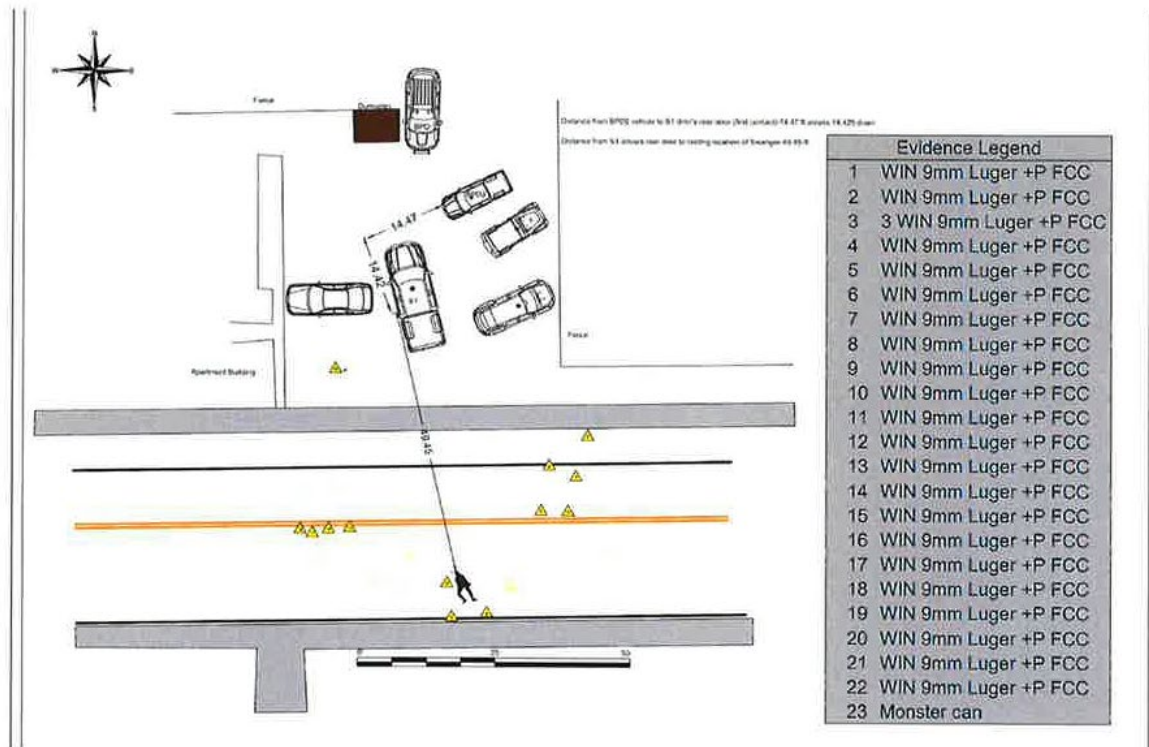
The BCIT recovered a black 9mm Springfield XD handgun, which was located by Officer Mulhall near Mr. Swanger's right hand immediately after this incident. The handgun's magazine was found to contain WIN 9mm Luger+P cartridges. One round was found to be missing from the 16 round capacity magazine, and 15 rounds were collected from the magazine. Given the positioning of the magazine in the gun, it appears that the gun may have misfired or malfunctioned after the first shot fired by Mr. Swanger. In addition, they retrieved a knife from Mr. Swanger's left, front pant pocket.



Handgun and knife recovered from Mr. Swanger.

The BCIT also collected Officer Taylor, Officer Keith, and Officer Nettles' duty weapons. Each carried a department-issued 9mm handgun. Officer Nettles carried an HK VP9 9mm handgun, and all 46 rounds were accounted for. Officer Taylor carried a Glock 17 9mm handgun with an X-300 Surefire weapon-mounted light attached. His handgun had five rounds in the seated magazine and one round in the chamber. Officer Taylor had two magazines in his pouch, which contained 17 rounds. Prior to conducting the round count, Officer Taylor confirmed that he had 17 rounds in each of his magazines and one round in the chamber for a total of 52 rounds. Forty rounds remained. Thus, Officer Taylor fired a total of 12 rounds. Officer Keith carried an HK VP 9 9mm handgun with a Holosun red dot sight as well as a TLR-7 Streamlight weapon-mounted light attached. His handgun had 17 rounds in the seated magazine and one round in the chamber. Officer Keith had one magazine in his pouch, which contained 17 rounds. Officer Keith had a third magazine in his pocket, which contained six rounds. Prior to conducting the round count, Officer Keith confirmed that he had 17 rounds in each of his magazines and one round in the chamber for a total of 52 rounds. Forty-one rounds remained. Therefore, Officer Keith fired a total of 11 rounds.

The BCIT also located and collected 24 9mm cartridge cases from the area of 1717 Baseline Road. It should be noted that Mr. Swanger's firearm used the same 9mm bullets that the officers' fired. The location of these cartridges is consistent with Officer Taylor and Officer Keith's body-worn camera videos, which showed that both began backing away from Mr. Swanger as they fired their weapons. One casing was located on Baseline Road directly south of where Mr. Swanger was. That casing was found have a different firing mark, which differentiated it from the other 23 casings found on scene. Given its location and unique marks, this was likely the casing from the bullet fired by Mr. Swanger.



Overview of the area of 1717 Baseline Road in Boulder, Colorado. Ms. Verner's apartment is located in the top left of this map. The shell casings recovered from this location are marked with yellow triangles.

Members of the BCIT also found eight bullet defects in the fence of 1780 Baseline Road, which is immediately south of where this incident occurred. In addition, one bullet defect was found in the exterior wall of that residence. That bullet did not enter the home. Days after this incident, officers were made aware of a suspected bullet strike in a truck that was located at 1750 Baseline Road. Specifically, a defect was noted in the truck's back fender.

Officers canvassed the neighboring homes for any witnesses or home security footage covering this area of Baseline Road. None of the individuals that were contacted witnessed the incident or had relevant video footage.

Interview with Officer Collin Keith

Detective Ryan Williams of the Longmont Police Department and Detective Eric Robinson of the Boulder County Sheriffs Office conducted the voluntary interview with Officer Keith on May 26, 2023. Officer Keith is a BPD patrol officer and had been employed there for two years.

Officer Keith explained that he noticed a pending domestic violence call for service at the beginning of his shift on May 25, 2023. He was familiar with Mr. Swanger, the pending domestic violence warrant involving Ms. Verner, and that Mr. Swanger carried a firearm. Given

the risk Mr. Swanger posed, Officer Keith set up a team of two vehicles to contact Mr. Swanger when he arrived at 1717 Baseline Road. He confirmed that he received updates on Mr. Swanger's arrival time from Ms. Verner while he was parked outside of her residence.

After Mr. Swanger arrived, he fled on foot when Officer Taylor attempted to contact him. As Officer Keith approached Mr. Swanger on Baseline Road, he drew his handgun as lethal cover. He continued to observe Mr. Swanger actively reaching into his satchel. Both Officer Taylor and Officer Keith were giving loud, verbal commands throughout this time. Officer Taylor then deployed a taser when Mr. Swanger refused to comply with these commands, which caused Mr. Swanger to fall to the ground on his stomach. Officer Keith went to place Mr. Swanger in custody, at which time Mr. Swanger rolled away from him and presented a firearm across his chest. Officer Keith saw him discharge a round toward Officer Taylor. In response, Officer Keith stood, began backing away from Mr. Swanger, and fired his handgun. He estimated that he fired ten rounds before doing a tactical reload. Officer Keith described being in fear of his life during this time.

Interview with Officer Nathaniel Taylor

Detective Don Dillard of the Boulder County Sheriffs Office and Detective Jessica Carbajal of the Longmont Police Department conducted the voluntary interview with Officer Taylor on May 26, 2023. Officer Taylor is a BPD patrol officer and had been employed there for almost two years.

Officer Taylor confirmed that he had reviewed the information Ms. Verner shared with Dispatch, specifically that Mr. Swanger stated he was heading to her residence at 1717 Baseline Road, that he was possibly armed with a gun, and that there was an active domestic violence warrant pending for Mr. Swanger's arrest. He was also able to view a photograph of Mr. Swanger.

Officer Taylor explained that Officer Keith, Officer Nettles, and he had developed a plan to contact the suspect and prevent him from entering Ms. Verner's apartment. Once he saw a dark F150 truck pull into the driveway, he was able to identify Mr. Swanger as the front seat passenger. Officer Taylor then radioed the other officers to approach. As Mr. Swanger walked to the rear driver's side door, Officer Taylor approached him. He noted that Mr. Swanger was reaching into his pockets, which concerned him as he knew Mr. Swanger was likely armed. Accordingly, Officer Taylor gave Mr. Swanger commands and asked that Mr. Swanger show his hands. Mr. Swanger then fled and refused to stop. During this time, Mr. Swanger began reaching into a satchel that he was carrying. He remained fixated on something in his bag but continued to look back at Officer Taylor multiple times.

Officer Taylor described thinking that Mr. Swanger was reaching into his satchel for a handgun. As Mr. Swanger was not following orders, Officer Taylor shot his Taser 10 an unknown number of times, which activated the device. He witnessed that this caused neuromuscular incapacitation of Mr. Swanger, and that Mr. Swanger then fell on the ground with his hands

underneath him. At this time, Officer Taylor had his taser in his left hand and his handgun in his right hand.

Officer Keith then approached from Officer Taylor's right side, and it appeared that he was going to handcuff Mr. Swanger. When the taser cycle finished, Mr. Swanger rolled to his right side. Officer Taylor saw a black semi-automatic handgun in the suspect's right hand. He noted that Mr. Swanger had a "full grip" on the gun and that he was pointing it at him. Officer Taylor stated that there was no time to give orders to drop the gun as he was only two to three feet from Mr. Swanger. Instead, Officer Taylor started firing and began backing away. He thought he fired four to five rounds. Once he stopped shooting, he aired over the radio that shots were fired and proceeded to hold Mr. Swanger at gunpoint until other officers arrived. Officer Taylor stated that he thought Mr. Swanger was going to "kill [him] right now."

Interview with Officer Meghan Nettles

Detective Shannon Crow of the Erie Police Department and Detective Eric Robinson of the Boulder County Sheriffs Office conducted the voluntary interview with Officer Nettles. Officer Nettles was a BPD patrol officer and had been employed there for almost five years.

Officer Nettles confirmed that she assisted Officer Keith on May 25, 2023. They both verified that Mr. Swanger had two active domestic violence warrants for his arrest. Moreover, she learned that Mr. Swanger was known to carry a firearm. Based upon the threat level of this call, she explained that they developed a plan to park at Ms. Verner's residence and to contact Mr. Swanger upon his arrival in order to take him into custody.

Officer Taylor aired over the radio that Mr. Swanger had arrived and been positively identified. Officer Nettles ran toward where Officer Taylor was and saw him discharge his taser. Once Mr. Swanger fell to the ground, she holstered her handgun and moved in with Officer Keith to effectuate his arrest. As this was occurring, she heard Officer Taylor scream "gun" multiple times. As she did not have her handgun drawn, she began moving away from Mr. Swanger. Officer Nettles did not see Mr. Swanger's handgun at the time shots were fired.

Interviews of Civilian Witnesses:

Christina Verner and her friend Christopher Johnson were interviewed by Detective Trevor Soole of the Boulder County Sheriff's Office and Detective Cody Hartkopp of the Boulder Police Department. Aside from confirming the assault perpetrated against her by Mr. Swanger on May 13, 2023, Ms. Verner also stated that she had continued to receive threatening messages from Mr. Swanger since that time. After Mr. Swanger called her to state that he was coming over, Mr. Johnson urged her to call police as they both knew Mr. Swanger carried a firearm. Later that evening, Ms. Verner and Mr. Johnson were watching television when they heard what they thought were fireworks. They did not witness the shooting.

Gerrick Nelson was interviewed by Detective Jon High of the Longmont Police Department and Detective Max Neuzil of the Boulder Police Department. He confirmed that he was Mr. Swanger's cousin and that he had driven Mr. Swanger to 1717 Baseline Road in his truck on May 25, 2023. Mr. Nelson did not know Mr. Swanger to be armed with a firearm but did note that he usually carried a four-inch fixed blade knife. Mr. Nelson claimed that Mr. Swanger seemed happy while driving to Boulder and that he was planning to stay with Ms. Verner at her residence that night. Upon arriving at the location, Mr. Nelson noted that Mr. Swanger ran from officers. He then heard "stop" followed by multiple gunshots.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and killing another human being is, generally, prohibited by statute as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly force is justified. One of these specific circumstances is the use of deadly force to defend oneself or a third person. A second specific circumstance is the use of deadly force by a peace officer in making an arrest.

The evidence establishes that two Boulder Police Department officers intentionally fired their weapons resulting in fatal wounds to Christopher Swanger. Both officers indicated that they fired their weapons believing they were in imminent danger of being killed and/or that others were in imminent danger of being killed. The determination of whether the officers' conduct was criminal is, therefore, primarily a question of legal justification.

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

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

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

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

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

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

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

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

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

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

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

(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 of death or serious bodily injury to the peace officer or another person;

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

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

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

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

Accordingly, the issue is whether at the time Officer Keith and Officer Taylor used deadly physical force, they reasonably believed that they, or another person, were in imminent danger of being killed or suffering serious bodily injury.

LEGAL ANALYSIS

In this case, the actions of BPD Officer Keith and Officer Taylor were legally justified under Colorado law. At the time each of these officers discharged their handguns, they were justified in using deadly physical force pursuant to C.R.S. 18-1-704(2)(a) and C.R.S. 18-1-707. Both statutory provisions provide an affirmative defense to the taking of human life if done in order to protect oneself, or another, from the imminent use of deadly physical force.

C.R.S. 18-1-704 is an affirmative defense applicable to all persons defending themselves or a third party. C.R.S. 18-1-707 is an affirmative defense limited in application to law enforcement officers making an arrest. C.R.S. 18-1-707 is applicable in this case because the officers were carrying out their duties and responded to the area of 1717 Baseline Road with the understanding that Christopher Swanger had two active domestic violence arrest warrants pending, that he had repeatedly threatened to kill Ms. Verner and was armed with a handgun.

Officer Collin Keith

The BCIT investigation established that Officer Keith fired 11 rounds from his HK VP 9 9mm handgun. Officer Keith knowingly fired his weapon after seeing Mr. Swanger discharge his firearm directly at Officer Taylor. This occurred after Mr. Swanger was given repeated verbal commands to stop fleeing, get on the ground, and to stop reaching into his satchel. Despite having been tased, Officer Keith observed Mr. Swanger roll over while he was trying to effectuate his arrest. Officer Keith explained that he was in fear for his life. The determination of whether his 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, would have concluded that a lesser degree of force was inadequate and that it was necessary to use deadly force to defend himself or another, and stop

the threat that Mr. Swanger presented, and if so, whether that use of force was reasonable in response to the threat.

In this case, the answer to those questions is yes. The investigation revealed that, at the time he discharged his service weapon, Officer Keith's actions were objectively reasonable to prevent the imminent danger of being killed or receiving great bodily injury to himself and his fellow officers. Thus, Officer Keith was legally justified in using deadly physical force pursuant to C.R.S. 18-1-704(2)(a) and C.R.S. 18-1-707.

Officer Keith was familiar with Mr. Swanger's assault of Ms. Verner. Moreover, he was aware of Mr. Swanger's volatility and his repeated threats to kill Ms. Verner. Leading up to the shooting, Officer Keith learned that Mr. Swanger had reached out to Ms. Verner again and stated that he was on his way to her residence. He knew that Mr. Swanger had two domestic violence arrest warrants pending and that Mr. Swanger carried a firearm.

Officer Keith then observed Mr. Swanger refuse to follow each and every command given to him by officers while he continued to reach into his satchel. After being tased, Mr. Swanger remained noncompliant and proceeded to roll over and point a handgun at Officer Taylor. Officer Keith fired his service weapon at Mr. Swanger to protect himself, the other officers, and Ms. Verner.

In his voluntary interview, Officer Keith explained that he was in fear for his life. His reaction in this situation was entirely reasonable under the circumstances and justified under C.R.S. 18-1-707(4.5). Thus, after viewing the evidence in the case as a whole, Officer Keith's actions were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

Officer Nathaniel Taylor

The investigation established that Officer Taylor fired 12 rounds from his Glock 17 9mm handgun. Officer Taylor knowingly fired his weapon after seeing Mr. Swanger point his handgun directly at Officer Taylor. This occurred after Mr. Swanger was given repeated verbal commands to stop fleeing, get on the ground, and to stop reaching into his satchel. Despite having been tased, Officer Taylor then observed Mr. Swanger roll over with a handgun in his right hand while Officer Keith was trying to effectuate Mr. Swanger's arrest. The determination of whether Officer Taylor'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, would have concluded that a lesser degree of force was inadequate and that it was necessary to use deadly force to defend himself or another, and stop the threat that Mr. Swanger 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. The investigation revealed that, at the time he discharged his service weapon, Officer Taylor's actions were objectively reasonable to prevent the imminent danger of being killed or receiving great bodily injury to himself and his fellow officers. Thus, Officer Taylor was legally justified in using deadly physical force pursuant to C.R.S. 18-1-704(2)(a) and C.R.S. 18-1-707.

Prior to arriving on scene, Officer Taylor had familiarized himself with Mr. Swanger's assault of Ms. Verner as well as his domestic violence history. He also knew of Mr. Swanger's threats to kill Ms. Verner and that Mr. Swanger carried a handgun. He then gave Mr. Swanger repeated commands. Yet, all of his orders were refused. Officer Taylor observed that Mr. Swanger remained noncompliant even after being tased. As Mr. Swanger proceeded to roll over, Officer Taylor observed a black handgun, saw Mr. Swanger raise it in his right hand, and then point it directly at Officer Taylor. As a result, Officer Taylor yelled "gun" three times and proceeded to fire his service weapon at Mr. Swanger to protect himself, the other officers, and Ms. Verner.

In his voluntary interview, Officer Taylor explained that he thought Mr. Swanger was going to shoot him and that he is surprised that Mr. Swanger did not hit him. His reaction in this situation was entirely reasonable under the circumstances and justified under C.R.S. 18-1-707(4.5). Thus, after viewing the evidence in the case as a whole, Officer Taylor's actions were legally justified under the applicable statutory provisions and not subject to criminal prosecution.

CONCLUSION

I find in my review of this incident that no conduct by Officer Collin Keith or Officer Nathaniel Taylor rises to the level of a criminal offense that can be proven beyond a reasonable doubt. It is the conclusion of my office that, based upon 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. Officer Keith and Officer Taylor were each legally justified in their use of reasonable deadly physical force in response to an imminent risk of death or great bodily injury to themselves, their fellow officers or Boulder community members. Mr. Swanger's actions put officers and others at risk of great bodily injury or death. As a result, my office will not be filing criminal charges against Officer Keith or Officer Taylor.

The review of this incident is important to the officers and civilians involved, as well as to our community. Mr. Swanger made the decision to fire a handgun at officers. Given the shot(s) fired, I am thankful that no one else was wounded or killed as this situation could have ended much worse. I appreciate the cooperation provided by BPD as well as the extremely thorough investigation conducted by the BCIT.

In the interests of transparency and as required by law, 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.

Pursuant to our policy, following the Town Hall, the Boulder 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,



Michael T. Dougherty District Attorney
20th Judicial District