



**OFFICE OF THE DISTRICT ATTORNEY**

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

June 9, 2020

Lakewood Police Department  
Dan McCasky, Chief of Police  
Lakewood, CO 80226

RE: Officer Involved Shooting incident involving SWAT members/Lakewood PD Detective Matt Vandiver and Lakewood PD Sgt. Jason Maines on January 12, 2020 CIRT # 2020-01.

Dear Chief McCasky,

On January 12, 2020, the Jefferson County Critical Incident Response Team was called to respond to an officer involved shooting that resulted in fatal injuries to Thomas Snyder, DOB 7/13/1966. This incident occurred at the American Motel in Wheat Ridge, Colorado. My office has now reviewed the 1<sup>st</sup> Judicial District Critical Incident Response Team's submitted reports regarding this incident. Senior Chief Deputy District Attorney Eva Wilson responded to the scene and observed interviews of the involved officers and other witnesses. Members of my staff and I were present for a briefing presented by CIRT members on April 28, 2020 at the 1<sup>st</sup> Judicial District Attorney's office. At that time, my office was presented with the CIRT investigation regarding this particular incident.

**APPLICABLE LAW**

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

**§ 18-1-407, C.R.S. 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.

## **§ 18-1-710, C.R.S. Affirmative defense**

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

## **§ 18-1-704, C.R.S. 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 force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

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

## **SUMMARY OF OPINION**

Applying these legal standards to the facts presented through this investigation, I find that both Detective Matt Vandiver and Sgt. Jason Maines were justified in their use of deadly physical force upon Thomas Snyder.

The following is a brief factual summary of the relevant events of this incident compiled from a review of the reports and interviews done by the CIRT, observations of the scene and the CIRT presentation.

## **RELEVANT FACTS**

On January 11, 2020 at approximately 11:45 am, a male later identified as Thomas Snyder, committed an armed robbery at the Bank of the West in Longmont, Colorado. Armed with what appeared to be a semi-automatic handgun, he demanded money from a teller who gave him \$1075 which included approximately \$60 in \$2.00 bills. Snyder fled in a white 2019 Kia Optima which he had stolen from Enterprise Sales in Thornton earlier that day. At that time, Snyder had an active arrest warrant for a parole violation which issued due to his escape on January 9 from a community corrections facility. The underlying charge for which he was on parole was robbery. Snyder's identity was quickly discovered as he had left his Colorado ID card, at the Enterprise business during his test drive of the KIA. Two of three bank employees positively identified Snyder in photo line-ups as the robbery suspect.

The Longmont Police Department was in charge of the robbery investigation and the FBI was also involved. During the afternoon of January 11<sup>th</sup>, LPD Detective Munoz contacted the suspect's sister who was listed as his emergency contact with Intervention Community Corrections. She indicated to police that her brother called her during the evening of January 10<sup>th</sup> and told her he was

on the run and that he was in Denver. He said he had a gun and he was going to engage in a shoot-out so he wouldn't have to go back to prison. He said he was doing what he does best and was going to go out in a blaze. She indicated he was addicted to illegal drugs and she was so concerned about his behavior that she contacted the police to make a report. She provided the suspect's phone number to Detective Munoz. Due to the fact that Snyder had robbed a bank, brandished a weapon and had a current arrest warrant for escape, an emergency ping was requested from the phone carrier by LPD. Later that afternoon, the suspect phone was pinging in the area of I-70 and Kipling in Jefferson County. Local law enforcement was alerted to this information and the details of the criminal cases against Snyder including the wanted bulletin prepared by Longmont PD. Arvada PD located the unoccupied stolen Kia in the parking lot of Motel 6 at 9920 W. 49<sup>th</sup> Avenue in Arvada. The vehicle was towed from that location.

At approximately 8 pm, an arrest warrant for aggravated robbery and other charges was prepared along with a fugitive ping warrant for Snyder's phone. Those warrants were signed by a Boulder Judge on January 11th at 8:08 pm. That evening, additional pings came in from the area of the American Motel located at 10101 W I-70 Frontage Road in Wheat Ridge, Colorado. Photographs of suspect Snyder were provided by LPD to Wheat Ridge PD. Additionally, the FBI Denver Rocky Mountain Safe Streets Task Force became involved and another search warrant was prepared which would allow special equipment to be used to pinpoint the specific location of Snyder's phone. That warrant was authorized by a judge and sent to Safe Streets Detective Pyler at 12:14 am on January 12th.

Meanwhile local law enforcement confirmed through video surveillance from the lobby of the American Motel that the suspect entered the motel at approximately 2pm on Jan. 11<sup>th</sup> wearing the same clothes he had worn during the bank robbery. He paid for 2 additional days for room 416 which was registered under the name of Jerome Maisel. The surveillance videos did not show Snyder leaving the motel after he arrived. The West Metro SWAT team, which included members from Wheat Ridge and Lakewood PD, was notified to respond to the motel to assist with a high-risk search warrant. SWAT members arrived at the motel and began their preparation for the arrest of the suspect. Surrounding motel rooms were evacuated and detailed plans were devised and rehearsed regarding the entry and apprehension process. The West Metro Fire Department was on scene and silenced the fire alarms so that any smoke from the planned use of a diversionary device would not set off the alarms.

Meanwhile, WRPD Officer Reyna Johnson prepared a search warrant to search for and seize Snyder along with evidence related to the Thornton auto theft and the Longmont bank robbery. This search warrant was signed by a Jefferson County Judge at approximately 3am on January 12<sup>th</sup>.

At 3:05am, SWAT negotiators placed a phone call to room 416 in hopes that Snyder would answer the phone but he did not answer. They knocked and announced they were police officer and indicated that they had a search warrant to enter the room. They ordered anyone inside the room to come out. There was no response. They then used a key card to open the door and threw a flash bang into the room and gave loud commands for the occupants to show themselves and surrender. Shortly after that, shots were fired and the fire department was requested to respond to room 416 to provide aid. Snyder was on the floor and was deceased. Detective Matt Vandiver and Sgt. Jason Maines had each fired one round at Snyder after he refused to drop the gun he was holding and as he began to advance upon the officers.

The 1<sup>st</sup> Judicial CIRT team was notified of the shooting and members responded to the scene and to Lakewood Police Department to take over the investigation. All of the SWAT team members were interviewed who were present on scene. The following are the portions of certain interviews which pertain to this legal analysis:

LPD Detective Matt Vandiver

Detective Vandiver works for the Lakewood Police Department and is also a member of the West Metro SWAT team. He received a call at 10:30 pm on January 11th notifying him of a possible SWAT deployment. He then received a call out page at 12:54 am and was provided more information about the suspect, Thomas Snyder. This information included that Snyder was wanted for an escape with the underlying offense being robbery. He was also told about the aggravated robbery from Longmont which occurred on January 11 and was told that the suspect was to be considered armed. He then responded to the motel where the team convened to make plans for the contact with Snyder. Prior to attempting contact, Det. Vandiver learned that Snyder had made a statement that he was going to "shoot it out" as he did not want to go back to prison. Additionally, prior to entry of the motel room, Detective Vandiver learned that a search warrant had been obtained allowing entry.

Detective Vandiver described that four SWAT members constituted the entry team. Those members included LPD Agent Matt Shay, LPD Sgt. Jason Maines, WRPD Sgt. Simpson and himself. Sgt. Barefoot was the SWAT medic and he was staged down the hallway from the target motel room. Agent Shay announced several times that West Metro Swat was at the door with a search warrant but no one opened the door. The door was then opened by SWAT and Sgt. Simpson deployed a noise flash diversionary device into the room. Detective Vandiver used the lights on his shield and his weapon mounted light to illuminate the motel room. The SWAT members held their positions at the door and did not immediately make entry. The noise flash device caused a cloud of smoke which limited their view into the room. Detective Vandiver then saw Snyder with his right side more visible than his left side. However, he could see that Snyder had a gun in his left hand. Detective Vandiver repeatedly gave loud verbal commands to Snyder to "Drop the gun" but the suspect shuffled towards the officer, taking approximately three steps. Detective Vandiver explained:

*"At that point, I knew, um, based on the proximity to Mr. Snyder, uh, from where we were in the doorway to where he was standing, um, I knew that he could pretty much instantaneously bring that handgun up and, and effectively fire at us even without, regardless of his skillset or ability or even aiming. Due to our proximity, I knew that he could, um, quickly start firing at us from that position without aiming, just like, just pointing the handgun at us in that small hallway. So primary concerns at that point, I was behind the ballistics shield which I had, um, checked prior to deploying it since it was a shield I'd never used before, um, and it was, uh, was specifically rated for a handgun round, so I did have that in front of me. It's not a full-length shield, so, uh, the concern for myself was that I knew my legs were exposed and that, um, obviously with that comes your femoral arteries and, uh, fatal wounds that you can receive from handguns into the legs, which I knew if he came up as he started shooting that that was a possibility. Um, primarily though, my biggest concern was, having trained with ballistic shields both as the shield operator and as shooting with lethal cover to the right the left, I knew that, um, I was providing some cover for Sergeant Maines and for Matt Shay, but it was very minimal based on their position*

*for them to get their rifles around the shield, uh, to provide cover for me. I knew that, um, primarily, they didn't have any ballistic protection, and we were in such close proximity that, uh, I, my concern was that all three of us, but especially those two, were in imminent danger of serious bodily injury or death because I knew he could get a lot of rounds on us fairly quickly by just raising that, that handgun and firing. Um, so that was, that was my mindset at that point, uh, and my concern. I knew, I started to elevate as he advanced towards us.*

*I knew my, my threshold for, um, making a decision to fire, to defend, uh, myself and, and Matt Shay and Jason Maines was, as soon as he started moving that gun towards us, that, uh, I had made the decision that I was gonna, to fire. Uh, several times while giving commands, I, um, had looked through the handgun optic that's on my handgun to make sure that the, the red dot was indexed, uh, centered mass on his chest, uh, because I was dealing with looking through the, the shield and firing one handed, um, so I, I do remember several times, uh, re indexing that (unintelligible) to make sure that, uh, that I was on target. Um, at that point, he began raising that, the gun from the position where it was pointed at the ground where he had kept it up until that point towards us, and then as soon as I saw that upward motion, um, with the barrel coming towards us was, uh, when I made the decision to fire.”*  
Transcript, lines 471-503.

Detective Vandiver described that just as he was pulling the trigger of his handgun, Sgt. Maines also fired who was on his left side. He described their shots as “pretty much simultaneous”. He then saw the suspect immediately drop to the floor and make no further movement. He stated that they did not immediately approach as they could not see his head, left arm or the handgun based on the position of his body on the floor. The officers were still unsure if anyone else was in the bathroom area to their left as they could not see into that area and they were aware that the room had been rented by someone using a different name than the suspect. Detective Vandiver started to give commands for anyone else in the room to come out with nothing in their hands. Sgt. Simpson then called for a sting ball to be deployed towards Snyder to see if he would give a response. That sting ball was deployed and Snyder remained completely still. The entire room was then cleared and no other occupants were located. Medic Sgt. Barefoot checked Snyder’s vital signs and found him to be deceased.

#### LPD Sergeant Jason Maines

Sgt. Maines is employed by the Lakewood Police Department and has been a member of the West Metro SWAT team for approximately ten years. On January 12th at approximately 1am, he received a call from WRPD Sgt. John Simpson notifying him that law enforcement officers had located a robbery suspect at the American Motel in Wheat Ridge. Sgt. Maines was requested to respond to assist with the execution of a search warrant at the motel. He was told that the suspect’s name was Thomas Snyder and that he had an active warrant for robbery. He was told that Snyder had also committed an aggravated robbery of a bank in Longmont, Colorado and that he used a firearm in that robbery. Sgt. Maines drove to the motel and upon arrival, met with Sgt. Simpson on the 4<sup>th</sup> floor of the building. Sgt. Simpson showed him the crime bulletin that had been issued regarding the suspect and told him that earlier, officers had confirmed through surveillance that the

suspect was in room 416. He was also informed that the tactical team was working on getting a key card to access the electronic door system for room 416. Sgt. Maines observed that occupants in the room surrounding 416 had all been evacuated and he saw many motel room doors left open. Sgt. Maines described the tactical plan which involved Detective Vandiver having a shield and being in the middle of the formation. Agent Shay would be on the right side of Detective Vandiver and Sgt. Simpson would be on the left side. Sgt. Maines role was to be behind Sgt. Simpson and Detective Vandiver. They would knock and announce that they were police and that they had a search warrant. If there was no answer, they would use the key card to open the door. They would then hold their place in the doorway and put a flashbang into the room. They would continue to give announcements for anyone in the room to come to them. If their efforts were successful, LPD Agent Cory was the officer designated to handcuff the suspect. During the preparation, the SWAT members received the notification that the search warrant had been approved and signed by a judge.

The team proceeded with the plan and Sgt. Simpson knocked on the door with Agent Shay giving loud verbal commands. When there was no response from within the room, Sgt. Simpson opened the door with the key card. Sgt. Maines believed that Sgt. Simpson was the one who threw the flashbang into the room. Sgt. Simpson then moved out of position and Sgt. Maines took over Sgt. Simpson's position which put Sgt. Maines shoulder to shoulder with Detective Vandiver. Sgt. Maines had his rifle out and he was providing cover for the other officers as they continued to give verbal commands into the room that police were at the door and that anyone in the room should show them their hands. Sgt. Maines described the room as having no lights on with some residual smoke in the air from the flashbang but he was still able to see inside the room. His rifle was equipped with a light and that light as well as the lights from other officers provided illumination into the room. Sgt. Maines could not see the left side of the room due to his position at the doorway but he saw an adult male appear in his field of view a few seconds after the flashbang went off. He indicated the person had a green shirt on and pants. He could see the person's face and he believed it was the same person he had seen on the crime bulletin shown to him by Sgt. Simpson although he appeared somewhat older. Sgt. Maines had his rifle pointed at the suspect and had his rifle optic, which is equipped with a laser red dot, on the suspect. The suspect's body was turned somewhat away from the front door such that the suspect's left arm and hand were concealed. The suspect then turned towards the doorway enough that Sgt. Maines could see something in the suspect's left hand that was square at the top. Sgt. Maines told the other SWAT officers that he saw something in the suspect's hand. Verbal commands continue to be given to the suspect to comply. The suspect moves his hand and Sgt. Maines can then tell there is a handgun in the suspect's left hand which is pointed towards the ground against his left leg. Sgt. Maines announces that he has a firearm just as other team members are also announcing that fact. The commands being given to the suspect to show his hands immediately change to telling the suspect to drop the gun. These commands are being given loudly and multiple times over. Sgt. Maines observes the suspect to step backwards a few steps towards the bed and Sgt. Maines loses sight of him. The suspect then came back into his field of view in the same position as before with the gun pointed towards the floor. Detective Vandiver told Sgt. Maines that if the suspect raises the gun towards them, he was going to fire his weapon. Sgt. Maines indicated that this was the same thing he was thinking and he verbally acknowledged Detective Vandiver's statement. Sgt. Maines then saw the suspect raise the gun in his left hand to where his forearm was parallel with the ground and his forearm and upper arm were at a 90-degree angle. The suspect then started to turn towards the officers at the door. Sgt. Maines fired one round at the suspect and struck him in the head or neck area. Sgt. Maines believed that Detective Vandiver also shot at the suspect at that same time.

During the interview, Sgt. Maines told CIRT investigators that he feared for the safety of himself and his SWAT teammates in the doorway based upon the suspect's action of raising the gun at them. Sgt. Maines indicated he believed his use of lethal force on the suspect was necessary due to the fear he had for his life and the safety of himself and his fellow officers. After being shot, the suspect fell to the floor. Sgt. Maines continued to provide lethal cover on the suspect. A sting ball was introduced into the room and the suspect remained still. The SWAT members then searched the room for other occupants and found none. Sgt. Barefoot was brought in to check on the suspect's condition.

Sgt. Maines was asked if he heard the suspect say anything during their encounter. Sgt. Maines recalled hearing the suspect say, "Just shoot me". However, he could not remember if the suspect said this when he first saw him or after he came back into his field of view prior to raising the weapon. He specifically recalled hearing the suspect make that statement however. Sgt. Maines indicated that he felt the suspect was trying to provoke the officers to shoot him. He indicated that he felt the officers at the door had given the suspect several opportunities to change his mind about what to do with the firearm but the suspect's actions of bringing the gun up towards the officers caused him to believe that he had to shoot the suspect to stop him from shooting at them.

#### WRPD Sgt. John Simpson

Sgt. Simpson works for the Wheat Ridge Police Department and was on duty the night of the shooting. He had seen the bulletin pertaining to Snyder and was contacted by the Longmont Police Department informing him that, based upon phone pings, Snyder was likely in the area of the American Motel. Sgt. Simpson was told that the Safe Streets Task Force was involved with surveillance and other technology to further locate the suspect. Sgt. Simpson was involved with viewing the motel surveillance footage and through witness interviews of motel staff, they were able to determine that Snyder had entered the motel on January 11<sup>th</sup> at approximately 2:03 pm, had paid for the room in cash and then walked to the elevator and got off on the 4<sup>th</sup> floor. He also learned that the room had been rented two days prior to a person named Jerome Maisel with an address in Longmont. No identification had been provided for that person. When Safe Streets identified that the phone was inside either room 416 or 418 (418 was unrented and vacant), Sgt. Simpson sent out a page to activate the SWAT team. A search of the room would be conducted by SWAT once the search warrant was approved by a judge. Sgt. Simpson was aware that it had been reported to him by dispatch or on the bulletin that Snyder wanted to have a shoot-out with the police and he communicated that to his SWAT team members as well.

Sgt. Simpson obtained a master key for room 416 and the SWAT team planned the operation and began to rehearse how they would conduct it. Sgt. Simpson's role was to use the master key to open the door if no one inside opened it. He was then to throw a flash bang into the room and move out of the doorway. When the door was not opened, he followed that plan. When he moved out of the doorway, Sgt. Maines, Agent Shay and Detective Vandiver were at the threshold. Sgt. Simpson could not see into the room but he heard the commands being given to the suspect. He then heard Sgt. Maines state that the suspect had a gun and he requested that Agent Cotton move up with the less lethal 40mm. He heard commands being given to the suspect to drop the gun. He heard Sgt. Maines tell Detective Vandiver that if the suspect raised the gun, he would "take him". He then heard the suspect say either "Just shoot me" or "Just kill me". Very quickly after this statement, he heard simultaneous gunfire. The team then waited about ten seconds and deployed the less lethal sting ball at the suspect. When the suspect did not react to the sting ball, SWAT members entered the room to make it safe and medical was called to tend to the suspect. Sgt. Simpson said it



appeared that the suspect was deceased. He saw what he thought was a semi-automatic handgun on the ground next to the suspect's leg.

### LPD Agent Matt Shay

Agent Shay has worked at the Lakewood Police Department for nineteen years and has been on the SWAT team since 2005. He was serving as a team leader on the West Metro SWAT. Agent Shay responded to the SWAT call out and was briefed by Sgt. Simpson as to what was taking place. He assisted with evacuating the rooms surrounding the suspect's room which took approximately 20 minutes. He placed tape over the peep hole on the suspect's door so the suspect could not view the activity in the hallway. Agent Shay indicated that he read the wanted poster from Safe Streets, he was aware of the warrants for the suspect's arrest for a bank robbery and he was aware that law enforcement investigation had revealed the suspect's location. He stated that he knew that phone contact would be attempted with the suspect by a negotiator as they were preparing to make entry into the room. Agent Shay was part of the entry team. His role was to make the announcement "West Metro SWAT team, residents of Room 416, we have a search warrant, search warrant" and that he was armed with his rifle. He stated he was to loudly announce 5 to 6 times so the suspect could hear him through the closed door.

The announcements were made by Agent Shay and the door did not open. Per the plan, Sgt. Simpson opened the door with the card key, pushed the door open and pitched the flashbang into the room. Sgt. Simpson stepped out of the way and Agent Shay, who was to the right of Agent Vandiver, looked into the smoky room. He saw a person's legs walking from the bed area into the main portion of the room. He said it was hard to see into the smoky area since the light on his rifle was like a flashlight. Agent Shay yelled repeated commands for the suspect to show his hands. He heard another SWAT member say there was something in the suspect's left hand and he then heard that person state "It's a gun." Agent Shay then saw a gun on the subject's side. Commands were being given for the suspect to drop the gun. Agent Shay indicated that the laser sight on his rifle was on the suspect's chest while the commands were being given. Agent Shay could see that the gun was a silver semi-automatic but he was not close enough to identify it further. He indicated that the suspect backed out of their view for a second towards the area of the room where there was a bed. The suspect then came back with some type of canned drink in his right hand. Agent Shay could hear continued commands for the suspect to put the gun down. His view was of a profile of the suspect's right side and he saw the suspect "slam the drink" which he demonstrated to show that the suspect raised the drink quickly to his lips. He then heard the suspect calmly say, "Shoot me".

The suspect started to walk towards the east wall and Agent Shay indicated he lost sight of the gun. He heard one of the other SWAT members say, "If he keeps coming, I'm going to take him." Agent Shay said the suspect advanced a little bit and he instantaneously heard two "booms" and the suspect went down. He knew that Sgt. Maines fired his rifle because he knew there was a suppressor on Maines' rifle and one of the shots sounded suppressed. He could also tell that Agent Vandiver fired a pistol because the other shot sounded like a pistol shot. He could partially see the suspect's body on the ground. He grabbed the sting ball from Agent Vandiver and he deployed the sting ball towards the suspect on the ground. There was no movement by the suspect so they went into the room to clear it. He took the bathroom area to clear it and found no other person in the motel room. Sgt. Barefoot came in to check for signs of life from the suspect. As they backed out of the room, Agent Shay saw shell casings on the floor and he covered them with cups from the bathroom.



Agent Shay did not fire at the suspect and he explained that, while the safety was off his rifle and he was ready to shoot, he did not feel comfortable shooting because he could only see half of the suspect's body and based on his proximity to Agent Vandiver, he did not have the shot. He indicated that he did not see the suspect raise the gun but he could only view the suspect's right side as the suspect moved to the east side of the room which is the location where he was shot. He indicated that he was concerned for the safety of himself and his fellow officers because he saw the gun in the suspect's hand and they had information that the suspect would shoot it out with the police. He felt that the officers could have sustained serious bodily injury or death because the suspect had the means to do it.

#### LPD Sgt. Ben Barefoot

Sgt. Barefoot has worked at the Lakewood Police Department for over seven years and he is also a licensed paramedic. He has been a member of the SWAT team for two and one-half years and he serves in a back-up/support role during call-outs and acts as the medic on the team. Sgt. Barefoot responded to this call and was present during the planning and preparation. He knew that the SWAT team was being deployed due to the severity of the crime along with the possibility that the suspect was armed and dangerous.

Sgt. Barefoot was staged in the stairwell on the 4<sup>th</sup> floor and he did not observe the shooting. However, he heard the radio traffic and could also hear the loud commands being given by the team. He heard the flash bang grenade being deployed and then heard radio traffic that the team was in contact with someone who had a gun. He then heard a dozen commands being made for the person to drop the gun. He was called by Sgt Simpson to move closer to the room 416 and as he exited the stairwell into the 4<sup>th</sup> floor hallway, he heard what he believed to be a single gunshot. He joined the tactical team as they made entry into the room. He saw Snyder on the floor at the far end of the room from the entry door. It was apparent to Sgt. Barefoot that Snyder was deceased. However, he checked Snyder's right wrist for a pulse and also checked his neck. He saw what he believed to be gunshot wounds to Snyder's chest and left wrist as well as facial trauma. There was a pool of blood on the floor to the left of Snyder's head. Sgt. Barefoot did not render further aid as he believed Snyder was dead. He then requested that Arvada Fire personnel, who were staged outside the motel, to respond to the room. There was nothing in Snyder's left hand and his silver pistol was located underneath Snyder's left knee.

#### WRPD Officer Mitch Cotton

Officer Cotton is employed by Wheat Ridge Police Department and is a member of the West Metro SWAT team. He was on duty on January 11<sup>th</sup> and he assisted with the investigation at the American Motel prior to SWAT being called to the scene. He was informed by Sgt. Simpson that a warrant was being worked on and the motel would be locked down with a perimeter to be established. He was told that they were looking for Thomas Snyder who had an active warrant for a bank robbery on January 11, 2020 in Longmont. He was told that the suspect was considered armed and dangerous. He was also told that the suspect had made statements that he would not "go back" and that he was going to use the weapon he had with him. The SWAT team was called in to assist and Agent Cotton's role was to arm himself with a less lethal weapon, a 40 MM launcher. He was assigned to the arrest team with Officer Cory. Officer Cotton's position on the door entry team was that he was to the right side of Sgt Simpson. He could hear everything that occurred and was able to see into the room once the door was opened and he was offset and behind Sgt. Maines. He saw the suspect in the middle of the room but he could not see his entire left side. He could not

see if the suspect had a gun. He heard the officers give commands to drop the gun and he heard the suspect say, "Just shoot me. Just kill me." He heard one of the SWAT members say, "If he takes one more step, I'm going to take it". He saw the suspect start to move and he heard two shots and saw Thomas fall to the ground. He described the suspect's movement as going from a stationary position to a position as if he was walking forward or raising his arms. Officer Cotton indicated that as the situation unfolded, he felt in fear for his life and safety. He was trying to "suck in tight" behind Sgt. Maines in the hallway because he did not know what Thomas would do based on his history of bank robbery and being considered armed and dangerous. When he heard the SWAT members indicate that the suspect was not dropping the gun, he knew it was serious.

#### LPD Agent John Cory

Agent Cory has been with the Lakewood Police Department for six years and has been a member of the West Metro SWAT for the past 3 years.

He received the SWAT activation at 1:30 am on January 12<sup>th</sup> and he responded to the American Motel to assist with the apprehension of a bank robbery suspect. He was told that he would be the operator responsible for taking the person into custody. He had received additional information regarding the suspect including that he had displayed a handgun during the bank robbery and that he was armed and dangerous.

He was advised of the plan by Sgt. Simpson and he was stationed next to Officer Cotton. He did not have his rifle deployed because he was to be cuffing the suspect. He was not able to see into the room because of his position but he heard the initial commands, the statement that the person had a gun, the commands for him to drop the gun and he heard the suspect say two separate times, "Shoot me". He heard ongoing commands for the suspect to drop the gun and he then heard two almost simultaneous shots. The first shot was from a suppressed rifle which he knew to be Sgt. Maines' weapon and the second shot was from a handgun.

The first time Agent Cory could see into the room was after the sting ball had been deployed. He entered directly behind the team and he saw a man in the back of the room on the ground. He could see the man's legs 10-15 feet away from him and he saw a handgun underneath the suspect's leg. He observed blood spatter on the wall behind the male and he observed no signs of life.

#### Lay Witnesses

The motel was canvassed for possible witnesses to the shooting and no one was found to have viewed the incident. Many occupants denied hearing anything but a few residents of the motel described hearing a loud bang, commands to "Drop the gun", and "Get on the ground" and gun shots.

#### Physical Evidence

The motel room was searched and evidence was seized by members of the CIRT. Two weapons were located on scene in the alcove outside room #416. One weapon was a Bushmaster XM15-E2s rifle, 223-5.56mm, with a magazine which belonged to Sgt. Maines and the other weapon was a Glock 34 Gen4 handgun, 9mm with a magazine which belonged to Detective Vandiver. The rifle contained 26 rifle rounds in the magazine as well as 1 in the chamber. The Glock handgun contained 16 rounds in the magazine as well as 1 in the chamber.

Two shell casings were located from the hallway in front of room 416 that had been covered by plastic motel room cups. One of the casings was a .223 and the other casing was a 9mm casing. A Bersa Thunders 380 pistol was recovered under the suspect's left leg. The weapon was loaded with seven live rounds in the magazine and the chamber was empty.

On the bed was a dark green colored jacket which appeared to be the same jacket worn by the bank robber in the video collected by Longmont PD. The suspect was still wearing the lime green colored t-shirt which appeared in that same video. Additionally, a plastic Coke bottle was lying on the floor next to the suspect's head. On the night stand next to the bed was a cell phone which was charging, several empty or mostly empty Coke bottles and \$748 in cash to include a stack of \$2 bills that were paperclipped together. Also located was a receipt from the American Motel for Thomas Snyder's two-night continued rental of room 416 which was dated 2-11-20 at 2:09pm. A set of car keys which belonged to the stolen 2019 Kia Optima were also located.

An autopsy was conducted by Forensic Pathologist Dr. John Carver on January 13, 2020. Of significance to this investigation, the autopsy revealed a rifle wound to the suspect's head of indeterminate range. It entered his right cheek, fractured his skull causing hemorrhages to his brain and exited the back of his left neck. The suspect also sustained a bullet wound to his left upper chest which lacerated his heart and lung. That 9-mm bullet was recovered from the suspect's lower left back. The defendant's blood was tested for the presence of drugs and alcohol and 1700 nm/ml of benzoylecgonine were found in his system. Benzoylecgonine is an inactive metabolite and is the chemical breakdown product of cocaine with a half-life of 6 to 10 hours. The amount of 1700nm/ml detected in the suspect's blood was approximately 25% higher than the average amount commonly found in cocaine-impaired drivers and approximately 25% higher than the average amount commonly found in patients admitted to an emergency room for cocaine related medical complaints. Dr. Carver's opinion was that the cause of death in this matter were the two gunshot wounds sustained by the suspect and the manner of death was homicide.

### **LEGAL ANALYSIS**

We find in our review of this shooting that the conduct of Detective Matt Vandiver and Sergeant Jason Maines was not criminal.

It is the conclusion of my office, based upon the applicable law and the facts and circumstances of this case, that both law enforcement officers' actions during this incident meet the legal requirements of the affirmative defense of self-defense as contained in §18-1-704 (1)(2)(a).

Thomas Snyder was a wanted felon who had been convicted of robbery and who had recently escaped from a community corrections facility. He had been identified as committing an armed bank robbery the day before this shooting occurred and an additional warrant was out for his arrest. He was viewed as armed and dangerous and law enforcement knew that he had made recent statements to his sister that he would not go back to prison and would shoot it out with police instead.

The investigation into his whereabouts confirmed that it was highly likely that he was in room 416 in the American Motel. It was also highly likely that he was armed with a handgun and that he would not be taken into custody easily. As a result, the West Metro SWAT team was activated to make the arrest of this armed and dangerous suspect. Their goal was to take the suspect into

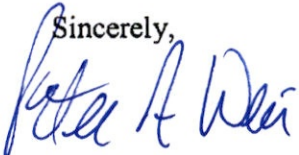
custody without incident and without harming him or anyone else in the motel. That plan including evacuating close-by motel residents, rehearsing the arrest process, using the phone plus voice commands to clearly identify themselves as police and to notify him they had a search warrant to enter the room. Their plan involved not forcing their way into the room to have a physical confrontation but instead to utilize a distracting device to convince the suspect to exit the room on his own. The focus of their efforts was to allow the suspect an opportunity to turn himself in safely despite the high risk of this situation.

As part of their entry plan, they simultaneously phoned him and knocked on his motel room door announcing that they were SWAT and that they had a search warrant. Snyder did not answer the phone and did not respond to their commands to open the door. Instead of ramming the door or physically forcing entry, they opened the door with a key card. Upon the door swinging open, the SWAT officers did not enter the room which could have resulted in an immediate confrontation. Instead, they held their positions in the alcove outside the open door and continued to give commands for Snyder to get on the ground and to surrender. The flash bang was deployed and SWAT still did not enter but held their positions. As the smoke cleared and the suspect walked into their view, he held a gun in his left hand pointed downward next to his leg. Commands immediately changed for him to drop the gun. He ignored the commands and did not get on the ground nor did he drop the gun. Instead, he briefly went out of sight and walked back into their view with a drink in his right hand. He moved about the space and, despite ongoing commands, he did not drop the gun. He drank quickly, keeping the gun in his left hand away from the officers and then said, "Shoot me."

SWAT officers continued to loudly command him to drop the gun. Snyder then made his fatal choice. He turned toward the officers clustered in the doorway, raised his left hand and pointed the gun at the officers. Both Sgt. Maines and Detective Vandiver simultaneously viewed the deadly threat to themselves and their fellow officers. Their initial concern they both had when they saw him armed with the gun had been tempered by him holding it in a downward motion. They did not fire at that time nor did they fire as he moved around the motel room. However, as soon as Snyder changed his position and raised the gun towards them, they both clearly perceived the deadly threat he posed and they both fired immediately. Their decisions to shoot Snyder were entirely reasonable and appropriate. They used restraint as long as they could that evening without endangering human life. When Snyder pointed his gun at the officers, he forced them to fire their weapons resulting in his death, Thomas Snyder held true to the words he had uttered to his sister just the day before. He was not going back to prison but would rather shoot it out with the cops. He caused his own tragic end.

Based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense were satisfied by Sgt. Maines and Detective Vandiver's actions, that they were clearly justified in their use of deadly physical force in this case and that their conduct did not violate any criminal statutes.

Sincerely,



Peter Weir  
1<sup>st</sup> Judicial District Attorney

cc: CIRT Commander Eric Kellogg