



OFFICE OF THE DISTRICT ATTORNEY
Jefferson and Gilpin Counties
Peter A. Weir, District Attorney

March 19, 2018

Arvada Police Department
Edward Brady, Interim Chief of Police
8101 Ralston Road
Arvada, CO 80002

Re: Critical Incident Team Investigation 18-01 (Officer Involved Police Shooting of Erick Michael DeLeon on January 14, 2018)

Dear Chief Brady:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on January 14, 2018 to investigate the shooting of Erick DeLeon by Arvada Police Officer Brandon Valdez. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. In this instance, CIRT conducted a thorough investigation into the use of force by Officer Valdez on January 14, 2018. The investigation was conducted for the purpose of determining whether criminal charges are warranted with respect to Officer Valdez's conduct.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. He observed key interviews of witnesses including Officer Valdez, and has reviewed the entirety of the investigative files.

CIRT investigators completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital media

containing recorded interviews, police communications, photographs, and surveillance video recordings related to the incident.

A review of CIRT reports and documentation filed with my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by CIRT Commanders in charge of the investigation.

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

Applicable Law

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

§ 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 physical 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.

§ 18-1-704, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsections (2) and (2.5) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an

arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

§18-1-901, C.R.S. 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.

§ 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.

Summary of Opinion

Applying these statutes to the facts presented through this investigation, I find that the involved law enforcement officer is not subject to criminal prosecution for his actions on January 14, 2018.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. Moreover, in cases where the evidence supports an affirmative defense of self-defense there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time Officer Valdez shot Erick DeLeon it was reasonable to believe that DeLeon posed an imminent threat of death or serious bodily injury to the Officer. The evidence also establishes that Officer Valdez was justified in using physical force upon Erick DeLeon to apprehend a person he knew was evading arrest.

Therefore, there is no reasonable probability of disproving the affirmative defenses in the shooting of Erick DeLeon and criminal charges against Officer Valdez are not warranted.

Summary of Facts

The following summary was derived from CIRT reports, interviews of witnesses, transcripts, and a briefing by CIRT command staff regarding the incident of January 14, 2018.

On January 14, 2018 at approximately 5:27 P.M., an employee of the Verizon store located at 5095 Kipling St. in the city of Arvada, called the Arvada Police Department, reporting a suspicious vehicle and two suspicious males. The employee stated that one male was in Verizon for an extended period of time; acting suspicious and asking odd questions. The male did not appear to be shopping for a phone. During the same period, the employee reported that there was a male party driving a light green Cadillac, license number IQY546 or possibly IQY596, around the store for approximately two hours. The employee stated the vehicle was parked in the north parking lot for the Verizon store where employees normally park. While the employee was on the phone with the Arvada Police Department, the male party inside the store left on foot and walked toward a Target store which is located to the west of the Verizon store in the same shopping complex.

Arvada Police Officer Elias Brown was dispatched to the suspicious vehicle call at 5:28 PM, and arrived in the area at 5:29 P.M. Upon arrival, Officer Brown contacted a green Cadillac, license plate number IQY946, backed into a parking space on the north side of the Verizon store. The vehicle was occupied by a male. Officer Brown asked the male what he was doing, and the male responded that he was waiting for someone. Officer Brown asked for the man's identification, and the male provided a Colorado ID card identifying him as Erick Michael DeLeon. Officer Brown was accompanied by a trainee, Officer Martson. Officer Brown slid the ID card across the roof of the Cadillac to Officer Martson who proceeded to clear DeLeon. A short time later, the clearance came back, advising DeLeon was wanted on a felony warrant, was considered "armed and dangerous." The information provided by dispatch to the officers concerning DeLeon's warrant status was could have been heard by DeLeon. DeLeon, who was seated in the driver's seat of the Cadillac, put the keys in the ignition and fled the scene at a high rate of speed southbound through the Target parking lot. DeLeon crashed into a curb and drove through bushes on the south side of the parking lot. The vehicle was disabled and DeLeon then fled the scene on foot, running southbound from the Target parking lot.

Multiple Arvada Police Department officers and a K-9 unit moved into the area and began to set up a perimeter in an effort to locate DeLeon. A civilian witness was contacted and reported that a male was hiding in the trees on the north end of an open area between a Conoco gas station at 4901 Kipling St. and a NAPA Auto Parts store at 10100 W. 49th Avenue.

Arvada Police Officer Brandon Valdez and his trainee Officer Sean Ames were monitoring police radio transmissions and heard that Officer Brown was in contact with a person and that there were felony warrants for his arrest. Officer Valdez heard Officer Brown request a cover officer to back him up and then that the individual fled. Officers Valdez and Ames drove immediately into the area to assist other officers in the search for DeLeon. They parked on the south end of the open area between the Conoco gas station and the NAPA Auto Parts store. They illuminated the field to the north with a vehicle mounted spot light and both Officer Valdez and Officer Ames got out of their marked police car. Officer Valdez moved to an area in front of his vehicle and observed a man, Erick DeLeon, advancing toward him. Officer Valdez saw that DeLeon was carrying a black handgun in his right hand. DeLeon raised the handgun toward Officer Valdez and Officer Valdez ordered DeLeon to drop the weapon. DeLeon did not comply with the command to drop the handgun and Officer Valdez fired four shots from his duty weapon. Officer Valdez stated he discharged his weapon at DeLeon because he was in imminent fear of death and believed he and his trainee were going to be shot. DeLeon was struck in the upper right arm and left side of his chest. DeLeon then put his handgun to the right side of his head and fired one shot. DeLeon was pronounced on scene. An autopsy

was performed and it was determined that DeLeon sustained two non-life threatening bullet wounds consistent with those fired by Officer Valdez. Furthermore, DeLeon was killed by the self-inflicted gunshot to the head. The Jefferson County Coroner determined that the manner of death was suicide.

Officer Elias Brown

On January 14, 2018, Officer Brown was working in the patrol division of the Arvada Police Department and training Officer Levi Martson. Officer Brown reported that he and Officer Martson responded to a call of a "suspicious vehicle" at the Verizon store located at 5095 Kipling St. at approximately 5:00 P.M. Officer Brown said he was advised that an employee of the Verizon store called the police department with concerns about a male that had been circling the store for two hours and acting strangely. The male was associated with a Cadillac. As Officers Brown and Martson pulled into the area they observed a Cadillac and illuminated it with a spot light. Officer Brown approached the sole occupant of the vehicle. The occupant, identified as Erick DeLeon was "laughing" and had a drink of some type in his left hand. Officer Brown asked DeLeon what he was "going on" and why he was in the area. DeLeon stated he was waiting to meet a woman in the apartments across the street. Officer Brown obtained a Colorado Identification card from DeLeon and had Officer Martson contact dispatch to clear the individual. Arvada Police dispatch advised as follows:

"This party is showing a felony warrant with a caution armed and dangerous...caution subject has a black handgun in possession offense is a weapons offense..."

The information from dispatch was transmitted over Officer Brown's shoulder mic and Officer Brown believed DeLeon heard the information related by dispatch.

As dispatch was providing information to Officer Brown as described, DeLeon started the Cadillac and put it in gear. Officer Brown attempted to stop DeLeon, but was unsuccessful. DeLeon fled southbound in the Cadillac. Officer Brown did not pursue DeLeon and was initially unsure of DeLeon's direction of travel. Other police officers arrived in the area and began to assist in the search for DeLeon. DeLeon's car was found at the south end of the Arvada Ridge Market Place shopping center parking lot. It was disabled and unoccupied.

Officer Brown then recalled airing DeLeon's description and assisting with establishing a perimeter. Officer Brown and his trainee took up a position at the Shell station located at I-70 and Kipling St. While in this position, Officer Brown heard four gunshots from an area where he had observed another Arvada Police patrol car

on the other side of the I-70 frontage road. Officer Brown responded to the area from which he heard gunshots and saw Officer Valdez and Officer Ames. Officer Brown looked to the north and observed an individual and a handgun on the ground. Officer Brown recognized the individual as DeLeon.

Officer Julie Glynn

Officer Glynn has been a police officer for approximately eleven years. On January 14, 2018, Officer Glynn was working as a patrol officer assigned to the "Baker" sector of Arvada. On this date, Officer Glynn heard Officer Brown air that he was responding to a suspicious vehicle call at the Verizon store at 5095 Kipling St. #130, and after he arrived he requested a cover car. Officer Glynn began driving toward Officer Brown's location and she heard the dispatcher report that the individual Officer Brown was in contact was wanted on a felony warrant and was considered "armed." Officer Glynn stated that she then learned the person fled from Officer Brown. Officer Glynn began to search for the individual in the area of the American Motel and eventually stopped in the NAPA Auto Parts store parking lot. A witness at that location advised Officer Glynn that a male was seen running from the north to the south and into a wooded area to hide. Officer Glynn began walking to the area identified by the witness. As she did so she observed Officer Valdez arrive and illuminate the field to the north with his vehicle mounted spot light. Officer Glynn then observed a male, DeLeon, come out from behind some shrubbery and advance toward Officer Valdez. Officer Glynn reported she could clearly see the male was carrying a black handgun in his right hand.

Upon observing Erick DeLeon with a handgun advancing toward Officer Valdez and his trainee, Officer Glynn began yelling "he has a gun, he has a gun, he has a gun." Officer Glynn observed DeLeon raise the gun toward Officer Valdez, and thought that DeLeon was going to shoot Officer Valdez and Officer Ames. Officer Glynn believed that following her warnings and observation of DeLeon raising his handgun, she heard yelling from the area of Officers Valdez and Ames, but could not discern what was said. That was followed by gunshots. Officer Glynn then reported that she observed DeLeon shoot himself in the head and fall to the ground.

Officer Brandon Valdez Interview

Following the shooting on January 14, 2018, Officer Valdez responded to the Arvada Police Department and was interviewed by CIRT investigators. Officer Valdez spoke with the investigators without benefit of counsel. The interview was video recorded and a transcript has been prepared.

The investigators initiated the interview by obtaining background information regarding Officer Valdez to include; law enforcement experience and training, details concerning his present assignment with the Arvada Police Department, and details of his shift on January 14, 2018.

Officer Valdez stated that while he was involved on a call for service that involved an unrelated traffic accident, he heard Officer Elias Brown request a cover car and that the person Officer Brown was in contact with had felony warrants. Officer Valdez discussed the information he received and his response. The following statement from Officer Valdez is derived from the transcript of his interview:

“...heard Elias call for a cover car non-emergent. Uh, ran a clearance of somebody, um, and a clearance came back that, uh, a subject associated was uh Code 5 Frank so we have warrants for his arrest. They were felony warrants and indicators were associated with the warrant that uh he was to be considered armed and dangerous. He was supposed to be in possession of a handgun I did hear that over the air. Um, but then I heard him ask for cover to respond to emergent at which time a couple cars responded, I know uh our K-9 unit David Long (?) with uh, I think maybe Officer Skitone responded emergent. Um, at that time I, uh, look at my trainee and I look at Officer Trujillo said we should probably start down that way. I asked Trujillo if he was okay to take care of the rest of the stuff and he said he did or that he would. So I got in the vehicle and I heard Elias key up and say, "Stop, stop, stop". Um, and then there was radio traffic that the car was taking off southbound. So the car had taken off. Somebody had located the car over on the south side of the complex. Found that it was unoccupied and that the driver had taken off on foot and fled the scene. So I was having a conversation with, with Ames, so based on the totality of circumstances, Elias attempted to contact the car, the driver took off, he's to be considered armed and dangerous, they're asking for units to start setting up a perimeter, he's on the loose possibly armed and dangerous. I said we're gonna to go respond emergent to this help and help our officers out, um, just to the threat of the officers and obviously since it was over at Super Target, the American Motel, the gas stations, I was even articulating that there is an imminent danger to society down there so we need to get down there so we responded emergent from 80th and Carr. Let's see where did I, do you need to know the route that I took to get down there?”

Officer Valdez continued to describe the route he took to render assistance and search for the person that evaded apprehension. Officer Valdez eventually drove to an area between the Conoco gas station and NAPA, previously referenced, and directed his spot light to an open area to the north. Officer Valdez described what he observed and his thoughts in the following statement:

“...and I shine my spotlight down there and I see the subject who was described as being Hispanic male, wearing a gray hooded sweatshirt, walking in the ditch. So I get my spotlight on him and I exit my patrol vehicle and I start walking and that's when I see a black handgun in the suspect's right hand down at his side. Um, the suspect immediately as I exit the vehicle and I see in his hand, raises it directly at me, so I'm looking down the barrel. Um, I was in imminent fear of death at that time, I thought he was going to shoot me, I thought he was going to shoot my trainee, my backdrop was citizens, I thought there was people around that were in imminent, uh, danger to being shot. I really thought he was going to shoot me. I un-holstered my weapon, um, pointed it directly at him. I gave a loud, verbal command, "Police drop the weapon", uh, it was still leveled on me and I thought I took three shots at him, I heard a, I thought I heard pop, pop, pop. I later found out I had taken four shots just going back there and doing the download. But I could have sworn even talking to officers on site like there should be three casings here, I took three shots at him. And as I'm taking the shots, he kind of brings his arm down with the gun then levels it back on himself and I don't know if he shot himself, I don't know if my bullets were what ended up stopping the threat. Um, there was a moment there that after I shot him, he dropped the gun down at his side in front of him then brought it back up. And the suspect fell, gun was underneath him I could not see the gun. We organized a contact team, um, I heard Officer Laas stop everybody to slow things down; asked somebody get some pictures. Uh, because he was laying on the gun obviously we're going to go render the weapon safe. I could see that he was kind of breathing. I don't know if it was agonal breathing but he was breathing, as he was, you could just see his chest rising and falling. I was over on the sidewalk when the suspect was down in the ravine, I would say about 20 yards, and I just started slowly making my approach...”

Following the shooting, Officer Valdez's weapon, a Springfield Armory .45 caliber, was secured and he underwent routine processing as part of the CIRT investigation.

Scene Processing

2005 Cadillac CTS

A search warrant was obtained to process and search the vehicle DeLeon was driving. The 2005 Cadillac CTS was impounded and examined on January 22, 2018. Of note a wallet containing Erick DeLeon's identification was located partially under the front floor mat. A quantity of marijuana and suspected methamphetamine was located in the center armrest. Other drug paraphernalia was in the car as well.

The electronic data recorder (EDR) of the Cadillac was downloaded and showed that DeLeon was driving approximately fifty-two miles per hour three seconds prior to impacting a curb and disabling the car.

Location of Deceased

Shortly after the shooting incident January 14, 2018, Officers approached Erick DeLeon. A Hi Point 9mm handgun was located next to his body. It was removed from its original position and secured. Officer LeDoux examined the weapon and found one live cartridge in the chamber. Due to the report that DeLeon discharged the Hi Point 9mm, the crime scene investigators searched for a 9mm shell casing near his body without success on January 14th.

On January 16, 2018, multiple law enforcement personnel returned to the area to search for a shell casing which would have been ejected from the Hi Point 9mm handgun when it was fired. Search techniques and methods included a line search, a hand-held infrared (IR) camera, and the use of an unmanned aerial system equipped with an IR camera. None of these measures led to the discovery of a shell casing. The last step taken to locate a shell casing was raking and sifting top soil in the area. This proved successful and the 9mm shell casing was located. The manufacturer and caliber of the casing matched the bullets recovered from DeLeon's handgun.

Autopsy Report

The autopsy of Erick DeLeon was performed on January 15, 2018 by a forensic pathologist. The report includes wound descriptions, toxicology, and cause and manner of death. It appears that two of the rounds fired by Officer Valdez struck DeLeon but were not life-threatening. No organs or major vessels were struck by the rounds fired by Officer Valdez.

The report describes the self-inflicted head wound as follows: "Through-and-through contact-range gunshot wound to the head. The wound course is front to back, right to left, and slightly downward. The wound involves the brain. There is evidence of contact-range fire characterized by the presence of searing and soot."

The final determination of cause and manner of death as contained in the autopsy report is: "The cause of death of this 26-year-old African-American male, Erick DeLeon, is due to a gunshot wound to the head. The manner of death is best classified as suicide."

Toxicology was positive for the presence of amphetamine, methamphetamine, and THC.

DeLeon Background

As noted above, Arvada Police dispatch notified Officer Brown and Officer Ames during their contact with DeLeon that there was an active felony warrant for his arrest. As part of the CIRT investigation additional information was acquired concerning the warrant. The warrant had been issued by the Denver Police Department for Stalking (Domestic Violence) and Possession of a Weapon by a Previous Offender. Offense reports related to this warrant were obtained and they show that on January 11, 2018 DeLeon accosted the victim and was armed with a black semi-automatic handgun. On January 14, 2018, the victim was residing in the apartment complex across the street from the Verizon store where DeLeon was contacted by Officer Brown.

In the course of interviews with CIRT investigators the victim of the domestic violence showed them text messages she had received from DeLeon. One message she received from DeLeon read in part:

“Yup but fuck it tho.it is what it is I really don’t give a fuck either way it goes.either I’m gunna end up taking my own or the cops will lay me downeither way fuck it ...”

Legal Analysis

This office’s review of the shooting of Erick DeLeon is limited to an analysis of applicable criminal statutes and affirmative defenses which apply to the facts.

As is frequently the case, individuals involved in a shooting may experience profound emotions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often, recall of particular details will differ from witness to witness, and those interviewed may not recall all of the same events in the same chronological order. Witnesses have different perspectives to an event and their statements will so reflect. In this case, each of the witnesses offered versions of the event from their perspective and some minor inconsistencies are apparent. While there are some inconsistencies regarding some recollections of this incident, there are no inconsistencies which are relevant to my determination of criminal culpability. The inconsistencies here are not consequential in the analysis.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, there is no question that Officer Valdez intentionally shot Erick DeLeon. Erick DeLeon raised his handgun at Officer Valdez and in the direction of Officer Ames and gave every indication he was going to shoot at them. Officer Valdez indicated he fired his weapon intentionally and the evidence supports that conclusion. The legal analysis then shifts to a consideration of Colorado law regarding the affirmative defenses and self-defense.

In Colorado, all citizens including police officers have the right to self-defense, including the right to use "deadly physical force" under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or another, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. A critical issue in self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

State statute also provides that a peace officer is justified in using deadly physical force upon another person for a purpose specified in § 18-1-704, C.R.S (1) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

Erick DeLeon was armed with a deadly weapon and brandished it in a threatening manner during his advance on Officer Valdez. DeLeon remained a serious threat throughout this incident, although brief, and at no time demonstrated a willingness to surrender. Officer Valdez gave DeLeon commands to drop the gun which were ignored. Officer Valdez was reasonably in fear for his life and the life of Officer Ames. Officer Valdez was also attempting to apprehend Erick DeLeon having been advised there was a felony warrant for his arrest. DeLeon made it clear by his actions that the well-being and safety of those around him was not of concern. Consequently, it was not unreasonable for Officer Valdez to respond to Erick DeLeon threats and actions in the manner that he did.

I find in the review of this shooting, based upon the facts as determined in the investigation and the applicable law, that Officer Valdez's actions during this incident meet the legal requirements of the affirmative defenses as contained in C.R.S. Sections 18-1-704 and 18-1-707. I am certain there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defenses available to

Officer Valdez beyond a reasonable doubt. Therefore, I conclude that Officer Valdez's conduct did not violate any criminal statutes nor involve criminal conduct.

Sincerely,

A handwritten signature in blue ink that reads "Peter A. Weir". The signature is written in a cursive style with a large initial "P".

Peter Weir

District Attorney

First Judicial District Attorney