



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

December 8, 2020

Arvada Police Department
Link Strate, Chief of Police
8101 Ralston Road
Arvada, CO 80002

**Re: Critical Incident Response Team Investigation 20-03 (Officer
Involved Police Shooting of Manuel Arebalo)**

Dear Chief Strate:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on February 21, 2020 to investigate the shooting death of Manuel Arebalo by Arvada Police Detective Hille and Officer Lobosco.

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 person while acting under the color of official law enforcement duties. A CIRT investigation was completed for the purpose of determining whether criminal charges are warranted with respect to the conduct of Detective Hille and Officer Lobosco in the incident.

At the time of CIRT activation in this case, I dispatched the Assistant District Attorney and several District Attorney Investigators to respond and work in coordination with CIRT Investigators and lend legal assistance as necessary. They observed key interviews of witnesses including Detective Hille and Officer Lobosco.

CIRT Investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and completed a background of Manuel Arebalo as part of a thorough and complete investigation into this incident. The investigative file is voluminous and includes

transcripts of witness interviews, reports, diagrams, digital media containing recorded interviews, police communications, and photographs.

A review of the investigative file, including all CIRT reports and documentation has been completed by my office 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 the use of deadly force by Detective Hille and Officer Lobosco are as follows:

Applicable Law

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes, as applicable in February 2020.

§ 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.

§ 18-1-707, 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 in this investigation, I find that the involved law enforcement officers are not subject to criminal prosecution for their actions on February 21, 2020.

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 or use of physical force in making an arrest, 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 of the shooting by Detective Hille and Officer Lobosco it was reasonable for them to believe that Mr. Arebalo posed an imminent threat of serious bodily injury or death to each of them. Throughout the incident, Manuel Arebalo was in possession of a knife and refused to obey commands issued by the police. There is no reasonable probability of disproving the affirmative defenses available to the officers and, therefore, no criminal charges are appropriate at this time.

Summary of Facts

On February 21, 2020, at approximately 5:07 A.M., Manuel Montoya, son of the deceased, called 911 from outside of his residence at 5360 Everett St. #300, Arvada, Colorado. He reported that he was awakened by screaming. He responded to the screaming and discovered that his father, Mr. Arebalo, had killed his girlfriend, Katrina Perez, and was slitting his own wrists.

Numerous Arvada police officers responded to the scene, established contact with Mr. Montoya, and established a perimeter. Several officers approached apartment #300 and staged by the front door. These officers considered that an injured female was likely inside the apartment and in need of medical assistance. Based upon an organizational philosophy referred to as PIE ("Priorities of life, Intelligence at the moment of decision making, and Environment") they formulated a plan to enter the apartment in an effort to render assistance to injured female. Officers developed a plan to deploy a flashbang device and enter the apartment with several officers. The plan was executed and several officers entered the apartment. Among these officers were Detective Hille, Sergeant Auchtung, and Officer Lobosco. As they entered the apartment Detective Hille observed Mr. Arebalo retreat to a bedroom. The officers, knowing Mr. Arebalo was in the bedroom, searched the remainder of the apartment for the female victim but did not find her. Concluding that the female victim must be in the bedroom with Mr. Arebalo, the officers forced entry into the bedroom. Officers observed Mr. Arebalo flee down a short hallway and into a bathroom, where he

closed the door. Upon entering the room officers noted that there was a great deal of blood throughout the room, as there was with the rest of the apartment. They observed a female on the floor adjacent to a bed. Given the layout of the room and the size of the female, officers found themselves in relatively close quarters with one another as they tried to maintain lethal and less lethal cover down a short hallway that led to the bathroom where Mr. Arebalo retreated. Sergeant Huff directed officers Magera and Van Haecke to the interior of the apartment to remove the female. Sergeant Auchtung was armed with a 40-millimeter less than lethal baton launcher. Sergeant Auchtung advised Detective Hille that he was going to use the 40-millimeter to gain Mr. Arebalo's compliance and have him come out of the bathroom. Sergeant Auchtung fired one round at the door. The round failed to penetrate the door. Sergeant Auchtung fired a second round which penetrated the door putting a hole in it. Officers could see light coming from inside the bathroom and they were able to observe Mr. Arebalo pacing back and forth. Sergeant Auchtung fired a third round in an effort to strike Mr. Arebalo in the legs. The round appeared to go through the door at about the same spot the second round went through the door. Sergeant Auchtung could not see if it hit Mr. Arebalo.

In moments, the bathroom door opened, and officers could see the silhouette of Mr. Arebalo. Sergeant Auchtung fired a fourth round from the 40-millimeter striking Mr. Arebalo in the thigh. Mr. Arebalo appeared to have no reaction to the impact. The 40-millimeter baton launcher is usually an effective tool to gain compliance, but it had no visible effect on Mr. Arebalo. Officers observed a knife or edged instrument in his hand and began issuing orders to Mr. Arebalo such as "put the knife down." Mr. Arebalo disregarded the commands to put the knife down and he began advancing on the officers. Sergeant Auchtung fired the remaining two rounds from the 40-millimeter launcher at Mr. Arebalo. Those rounds did not stop Mr. Arebalo. Officer Lobosco and Detective Hille, who were inside the bedroom on either side of Sergeant Auchtung, observed Mr. Arebalo advance rapidly upon them holding a knife. They were fearful that Mr. Arebalo was going to inflict serious injury or death, and the officers reacted with deadly physical force by firing their weapons to eliminate the threat posed by Mr. Arebalo. Detective Hille discharged his rifle and Officer Lobosco fired his handgun at Mr. Arebalo. Mr. Arebalo fell to the ground as a result of the gunfire. Emergency medical personnel were called into the room as soon as it was secured to attend to Ms. Perez and Mr. Arebalo. Due to their condition, no life saving measures were administered and both of them were pronounced deceased.

Interviews of Arvada Police Officers Using Deadly Physical Force

Detective Hille

As part of the CIRT investigation Detective Hille was interviewed by CIRT Detectives on February 24, 2020. On February 21, 2020 Detective Hille was working temporary duty as a Field Training Officer (FTO). His trainee was Officer Magera. Detective Hille and Officer Magera were working patrol and toward the end of their shift, at approximately 5:00 A.M., Detective Hille heard a call from dispatch regarding a stabbing. Detective Hille was advised that a couple of officers were dispatched from the south sector of Arvada to the call at 5360 Everett St. #300. Detective Hille reported that for training purposes it was common to respond to calls even if he and his trainee were not dispatched to a call. Detective Hille began to drive to the call and monitored the radio for additional information. While en route he heard that the reporting party, Mr. Montoya informed the 911 call taker that a male inside the apartment stabbed a female and she may have died.

Detective Hille believed he and Officer Magera were the third of four patrol cars to arrive at the apartment complex. Detective Hille retrieved his duty rifle and then he and Officer Magera went to join other police officers that were staged outside the door of unit #300. As Detective Hille and Magera were making their way to unit #300 Detective Hille heard a door being kicked in, and someone yell "He's got a knife."

Detective Hille recalled during his interview that he and Officer Magera then took up positions outside the apartment, and on the east side of the front door. They were advised by other officers that when the front door was kicked open officers were able to see a male standing inside the apartment covered in blood and holding a knife. Officers were also able to see blood on the floor and walls before the door swung back and obscured the view inside the apartment.

The group of officers staged outside the apartment door began to shout commands, "Police, drop the weapon, police drop the weapon." Mr. Arebalo failed to comply with any commands and yelled back at the officers, "Fuck you." When commands issued by the police were clearly ineffective, Detective Hille tried a different approach. He attempted to build rapport with Mr. Arebalo and asked him several questions. Mr. Arebalo said something Detective Hille could not completely understand. He thought Mr. Arebalo said he done something to his "bitch." When Detective Hille tried to get more information, Mr. Arebalo yelled "Fuck you."

During this time, other officers retrieved a 40-millimeter less than lethal baton launcher and flashbangs. A flashbang is an explosive device used to temporarily disorient and immobilize a subject.

Detective Hille said the officers then decided they were going to make entry into the apartment based upon an operational philosophy practiced by their police department known as PIE. PIE stands for "Priorities of life, Intelligence at the moment of

decision making, and Environment.” The officers believed a female was inside the apartment that had likely been stabbed and was at risk of serious bodily injury or death. The officers were going to try to rescue her. Mr. Arebalo failed to respond to dozens of commands so the front door was breached a second time so that officers could see inside the apartment. Detective Hille saw Mr. Arebalo standing inside the apartment “covered in blood” and holding a box cutter knife in his right hand. Mr. Arebalo then ran west down a hallway and the officers lost sight of him. Detective Hille recalled that the officers repeated several commands to Mr. Arebalo to drop the weapon and come out.

A flashbang was then deployed and the officers entered the apartment. After entering, Detective Hille looked down a hallway where he had last seen Mr. Arebalo. Detective Hille saw Mr. Arebalo standing at the end of the hallway for a moment, and then immediately run into a bedroom and slam the door shut. Detective Hille and Sergeant Auchtung covered the hallway while other officers searched the remainder of the apartment for Katrina Perez. The officers did not locate Ms. Perez and knew she must be in another area of the apartment.

The officers then moved down the hallway to the doorway of the room where Mr. Arebalo was located. This door was breached, and Detective Hille once again saw Mr. Arebalo. Mr. Arebalo ran further back in the room and out of sight. Detective Hille observed a female, Katrina Perez, lying on the floor. She had a large horizontal laceration across her mid-section, and she was not moving.

Detective Hille, moved to a position that enabled him to see down a hallway. At that time, he could see Mr. Arebalo’s arms, but a full view of his body was blocked. Mr. Arebalo had a box cutter knife in his hand and was slashing the inside of his left arm. Detective Hille gave Mr. Arebalo commands to drop the knife, and in response Mr. Arebalo went deeper into the hallway and out of sight.

The police officers quickly formulated a plan that Detective Hille, Officer Lobosco, and Sergeant Auchtung would position themselves to see down the hallway in the direction of Mr. Arebalo. They would provide cover for other officers, allowing them to render assistance to Ms. Perez and get her medical attention. As Detective Hille maneuvered to provide cover he noticed there was “blood everywhere.”

Mr. Arebalo was behind a closed door in a bathroom at the end of a hallway. Detective Hille recalled in his interview that they were concerned that Mr. Arebalo might be accessing a firearm so they made the decision for Sergeant Auchtung to use the 40-millimeter baton launcher against the door to give them a line of sight into the bathroom. Sergeant Auchtung fired the launcher and it was successful in putting holes in the door. They could see Mr. Arebalo pacing around the bathroom.

Detective Hille stated Mr. Arebalo then abruptly opened the bathroom door. Detective Hille described the incident from that point forward as follows:

“the door to the bathroom abruptly opens and the male, uh, is present in the bathroom, uh, or the threshold of the bathroom. Uh, just to describe kind of how that was there, um, the room that we were in wasn't pitch dark but it was, you know, 5:00 in the morning, dark room without any lights on, blinds shut type of dark. Um, and then the bathroom light had all of its lights on, so we had him completely backlit as we saw him, um, and just that narrow hallway coming down straight towards us. Um, as the door opened, there wasn't any hesitation in him. He immediately began coming out of the bathroom, I would say somewhere between a walk and a run. It wasn't like a full-fledged run, but he wasn't moseying out. Um, and as he starts, um, advancing towards us, he has his hand, um, up - I remember it being about between shoulder and head height, um, holding an object in that right hand. Now a matter of, you know, just a moment before - maybe a minute or so before, I had seen in that right hand a box cutter or a knife slicing his arm, um, so logic in my mind is that box cutter's still what's in his hand, um, and he's got it up over his head or between shoulder and head, um, and is quickly advancing on us. Uh, as a kind of mentioned before, I had stepped off that bed up 'til the threshold of the hallway, um, due to the poor footing, um, and the female to my left was blocking any exit out that direction. Um, so I was more or less kind of pinned in. If I had gone backwards onto the bed, I think I may have tripped, fallen, um, and gone into a compromising position, um, and then moving left wasn't feasible just 'cause she was blocking, uh, the, uh, hallway - or I'm sorry - the floor out to the hallway. Um, so the male starts coming at us at a brisk pace. Um, as I kind of mentioned before, I was a - I'm an arrest control instructor over in Arvada, so, um, in my mind, what I'm thinking is this guy's already within our reactionary gap with an edged weapon. Um, he's quickly advancing on us, uh, and we're in a tight location. Um, also running through my head is I'm seeing that he's clearly effective with a knife or with an edged weapon. Um, he had done a violent crime on a female using a similar weapon and now was clearly adva- or quickly advancing on us. Um, in my mind, there was no time to transition to a Taser or a less lethal that I had, um, nor did I feel like there was time for Sergeant Auchtung to deploy his less lethal and it be effective before I would have to make my decision. So, um, as he's closing that distance on us, um, I'm worried for myself, as well as Officer Auchtung or Sergeant Auchtung and Officer Lobosco, um, that, you know, if this guy closes the distance with that edged weapon, uh, there's a real high likelihood that he's gonna be able to, um, inflict either, you know, serious injuries on us or likely, you know, kill us being, you know, seeing what he had just done with this

female, um, and seeing just the array or the scene, you know, in general. Um, so with that fear of him either, you know, killing myself or one of the two officers that was with me right there, um, the decision was made by me to, uh, deploy deadly force using my rifle. Um, I would say the hallway, if I just had to estimate was somewhere between 10 and 15 feet in length from where I was to the bathroom, just a rough guess. Um, so as he started advancing, um - uh, I just shot for center mass on him. I didn't go for any, um, head shots or anything like that. I just went center mass on him. Um, and as always been trained to me, uh, we shoot until our threat is down, so I continued shooting. I followed the suspect down to the ground. Uh, he landed - I'd say by the time his momentum stopped, he was more or less at my feet, um, and he was more or less lying right next to the female by this point, so they were kind of head to head at this point. Um, once he hit the ground, he wasn't moving, he was no longer a threat, uh, an imminent threat at least, um, so no more shots were fired once he was down on the ground. Um, at that point, I was able to see his right hand, um, and I was able to see that there was no weapon in that hand at that point, however, his left hand was now tucked under his chest and we were uncertain of what was in that hand. Uh, we gave him loud commands, "Show us your hands - show us your hands," um, no movement, no response. Uh, we attempted to use the 40-mm to test compliance with him, um, however, all of those projectiles had been deployed, um, through the encounter, so there were no more 40-mm projectiles. Um, due to his lack of movement, he appeared to be deceased. Um, we decided we probably didn't need to test compliance anymore. Um, we just had somebody hold lethal cover while we handcuffed him just in case, uh, something changed."

After the shooting emergency medical personnel were called into the apartment to render aid to Ms. Perez and Mr. Arebalo. They arrived but were unable to administer any life saving measures. Both Ms. Perez and Mr. Arebalo were pronounced deceased.

Officer Lobosco

On February 21, 2020 Officer Lobosco was interviewed at the Arvada Police Department. Officer Lobosco discussed his background as a law enforcement officer and that he was on patrol when he was dispatched to the call at 5360 Everett St. #300. He originally saw the incident pending as a suicide attempt, but it was updated to a stabbing. He was provided information that the reporting party believed his father had killed his girlfriend and was "actively" trying to kill himself.

As Officer Lobosco arrived at the apartment complex he noticed a person in the parking lot with his hands up. This was the reporting party, Mr. Montoya. Officer

Lobosco and Officer Tran, who had also been dispatched on the call for service, contacted Mr. Montoya. Officers Lobosco and Tran attempted to get more information from Mr. Montoya and learned from him that Mr. Arebalo had a knife or razor.

Officer Lobosco entered the apartment building along with Officer Tran and waited outside unit #300 for additional police officers to arrive. As other officers arrived at the area by the front door to #300, they announced themselves as the police and commanded the occupants of #300 to come outside. No verbal response to the police commands was received at that time.

Officer Lobosco kicked the front door to the apartment open. It then swung back to a closed, or almost closed position. While the door was open for a brief period, Officer Lobosco observed a male, Mr. Arebalo, inside the apartment. He was holding a knife and a considerable amount of blood was evident on the floor and walls. Officer Lobosco recounted that Detective Hille then tried a calmer approach with Mr. Arebalo. Detective Hille asked him his name and stated they could "fix it" or "figure it out." Officer Lobosco recalled that Mr. Arebalo responded with something to the effect of "it's just me and the bitch I just killed."

As Officer Lobosco was preparing to enter the apartment he heard radio traffic from officers that were positioned outside of the apartment building. The officers outside the apartment building announced that the male, Mr. Arebalo, was on a balcony and cutting himself. The officers aired that they Mr. Arebalo was going to jump off the balcony, and then that Mr. Arebalo retreated to the interior of the apartment.

Officer Lobosco stated that he and other officers outside the front door decided to deploy a flashbang device and then enter the apartment. Upon entry Officer Lobosco looked for the female in several areas and rooms in the apartment but did not find her. Eventually, the officers positioned themselves outside the closed door to the last remaining room in the apartment, where both Mr. Arebalo and the female, Ms. Perez were located.

From this position the officers issued more commands to Mr. Arebalo. They announced, "Arvada police, open the door." Mr. Arebalo did not comply with the commands. An officer kicked open the door to this bedroom and Officer Lobosco saw Mr. Arebalo "covered in blood...holding the knife." Officer Lobosco then saw the female, Ms. Perez, lying on the floor and covered in blood. Mr. Arebalo ran down a hallway into a bathroom and closed the door. At that time Detective Hille, Officer Lobosco, and Sergeant Auchtung entered the bedroom and moved to a position facing the bathroom door. Officer Lobosco estimated they were 10 to 15 feet from the bathroom door.

Commands were given to Mr. Arebalo to open the door and come out, but he did not respond. Sergeant Auchtung then deployed multiple 40-millimeter less than lethal rounds into and through the bathroom door. Officer Lobosco saw the bathroom door open. He was not sure if the 40-millimeter rounds caused the door to open, or if Mr. Arebalo opened the door. He was covered in blood and still holding a knife. The officers ordered Mr. Arebalo to drop the knife. Mr. Arebalo did not drop the knife and began advancing quickly towards the officers. It was at that time that Officer Lobosco fired his weapon, a Glock 34 handgun.

Officer Lobosco responded to several questions by CIRT Investigators concerning his actions and reasoning. His answers included:

“And then he began advancing at us quickly and that is when I fire my weapon.”

“...I know that once the door was opened he exited clearly advancing towards us with the knife up, which is when I fired shots...”

“Based on the training we were already well within the danger zone. We didn’t have an out at that point because we had taken the route and we couldn’t go back any further.”

“I don’t know how many times I shot exactly. I know that at that time I heard my gun as well as Officer Hille’s. I don’t know who shot first, but as the suspect began closing the distance, I recall aiming at center mass and shooting. And I stopped shooting when the suspect came towards us and then fell to our left, almost directly next to the female. And that is when I ceased shooting when the threat was down.”

“At that point based on the information we had and what we had seen it was clear that he more than likely just murdered his girlfriend or killed his girlfriend. He was attempting to kill himself and was at that point attempting to kill us. Me, Officer Hille, Detective Hille and Sergeant Auchtung.”

“At that point the shooting ceased. The suspect did not appear to be moving. All officer (sic) checked in with one another. No one was injured or hurt. The suspect was on top of his left arm. His right arm was exposed and he did not have anything in it. So at that point I transitioned. I put my, my pistol in my holster and I was requested that I cuff the suspect.”

Officer Lobosco was asked for further explanation of what was going through his mind when he observed Mr. Arebalo coming at him from the bathroom. Officer Lobosco added:

“I would say to, just a little, you know, you get a call for service and it says that this happened and that’s one thing. We get through all these steps and then we see someone who has obviously been mutilated with a knife, and a person actively mutilating themselves, and then they take that knife and start to advance towards you.....”

“I was absolutely fearful for myself, as well as the two people I was standing next to. I knew for a fact that Sergeant Auchtung did not have lethal cover out. Only Officer, sorry, Detective Hille and I did. And at that point when the threat advanced I fired my weapon until I believed the threat had stopped for our safety.”

“I worried, like he was attempting to hurt me, kill me. He obviously had just hurt himself plus more than likely, we did find out killed someone, with the knife. And I saw the injuries to both him as well as the female and I was pretty much thinking that that’s exactly what he was gonna attempt to do to me.”

Non-Use of Force Witnesses

Numerous Arvada police officers responded to the scene at 5360 Everett St. Many of these officers were not directly involved in the shooting, but some made relevant observations.

Sergeant Auchtung

During his interview, Sergeant Auchtung reported he was working at the Lake Arbor substation when he heard officers being dispatched to a stabbing. He went to his police vehicle and started driving to the address of the stabbing. While en route he monitored the police radio. Dispatch aired additional information concerning the call for service and stated that a male in the apartment had stabbed a female.

By the time Sergeant Auchtung arrived at 5360 Everett St., other police officers were positioned outside the front door of unit #300. He got out of his patrol vehicle and joined the officers. Sergeant Auchtung stated that the officers were announcing commands to the occupant of unit #300 to “drop the knife” and “come out” of the apartment. Sergeant Huff asked Sergeant Auchtung to retrieve his 40-millimeter baton launcher to provide the officers with a less than lethal option. When Sergeant Auchtung returned to the front door to the apartment with the 40-millimeter launcher,

officers were still attempting to get Mr. Arebalo to come out of the apartment. He recalled that Sergeant Huff, Detective Hille, and Officers Tran and Lobosco were outside of the front door to the apartment.

As the officers were trying to persuade Mr. Arebalo to come outside of the apartment, Sergeant Auchtung could hear officers who were outside of the apartment building announce over the radio that Mr. Arebalo was on the balcony and may jump. Sergeant Auchtung confirmed with another officer, who was with the reporting party, that a female was inside the apartment. Sergeant Auchtung recalled telling Sergeant Huff they needed to go inside the apartment to get to the female.

The officers kicked the front door open and deployed a flashbang device. Upon entry, Sergeant Auchtung observed Mr. Arebalo move quickly past him and down a hallway. Mr. Arebalo was carrying a knife in his right hand and his fists were clenched. Sergeant Auchtung then heard a door close. Sergeant Auchtung cleared the kitchen and living room and did not find the female. The remainder of the apartment was cleared by officers before they moved toward the room that Mr. Arebalo had entered. At this door, the police again issued commands for Mr. Arebalo to put the knife down and come out slowly. They got no response, so the officers then kicked the door open. Sergeant Auchtung saw a female, Ms. Perez, lying on the floor next to a bed. She was bloody and had numerous cuts. It was apparent to Sergeant Auchtung that she was deceased.

Sergeant Auchtung recalled Detective Hille stating that Mr. Arebalo still has the knife, as he observed him in the hallway leading to a bathroom. Mr. Arebalo then entered the bathroom and closed the door. Again, the officers issued commands for Mr. Arebalo to come out and drop the knife, and again the commands were ignored.

Sergeant Auchtung, who was about 15 to 20 feet away from the bathroom door, decided to fire the 40-millimeter baton launcher at the door. His first round did not penetrate the door. He stated his second round penetrated the door, leaving a hole the officers could see through. Mr. Arebalo was observed pacing back and forth. More commands were issued at that time and they went unheeded. Sergeant Auchtung then fired a third round from the baton launcher in attempt to gain pain compliance. He was unsure if he struck Mr. Arebalo. Sergeant Auchtung explained what occurred from that point forward as follows:

“And the next thing, you know, that as we're still giving commands, is the door comes open and he's still in the same stance that I saw him initially when he walked us in the hallway where his hands are at his hip and they're clenched again... I didn't focus on his hands as much as I remember seeing just his, his

kind of silhouette but he's, he steps out of the bathroom and I had my forty on his left thigh... ..and I shot him with the forty.”

“And we're giving commands and the thing that stuck out to me then was he got hit and kind of it was like what did you do that for? It had zero effect on him. And so it was going through my mind, like, man, this is normally an effective weapon... It normally gets pain compliance and it didn't. And it was almost like right after that he came at us and that, that same stance that I had seen him in before. And fast, right at us. Um, I shot two more times right away, um, at his leg and maybe stomach area? And I think probably the second time, I heard the other two start firing their weapons, 'cause I was in the middle between the two.”

“Like he's comin' out at us. Like, that we are gonna get attacked, this is what's gonna happen.”

Sergeant Auchtung estimated that Mr. Arebalo had closed to within 10 to 12 feet from them when Detective Hille and Officer Lobosco began firing their weapons. Mr. Arebalo was struck by the gunfire and fell to the floor next to Ms. Perez. Sergeant Auchtung stated that after Mr. Arebalo was secured, they called for medical assistance.

Sergeant Huff

Sergeant Huff was on duty the early morning hours of February 21, 2020. Toward the end of his shift he was informed of the stabbing incident at 5360 Everett St. Given the seriousness of the call, Sergeant Huff drove to the apartment complex at 5360 Everett St.

When he arrived, Sergeant Huff ran to the third floor of the complex to join other officers. He could hear officers at the door to an apartment giving commands to “come out of the apartment” and announcing themselves as police officers. He recalled Officer Lobosco, Officer Wintz and Detective Hille were present at the door. Officer Lobosco indicated to the officers that he was going to make entry. He then kicked the door open. Sergeant Huff could not see in, but he immediately heard one of the Officers yell, "He's got a knife, he's got a knife." The door then swung partially closed, and the view to the interior of the apartment was blocked.

As the officers were positioned at the front door, Sergeant Huff heard Detective Hille ask the man with the knife his name, to come out of the apartment to talk, and whether there was anybody else inside of the apartment. Sergeant Huff heard Mr. Arebalo state that he killed his girlfriend. Sergeant Huff said he was trying to come up with a plan to deal with the situation. He got on his radio and asked Sergeant

Auchtung to bring less than lethal baton rounds, and flashbang diversionary devices. Sergeant Huff then heard from other officers that Mr. Arebalo was observed outside on a balcony cutting himself with a knife. Sergeant Auchtung then reported he did not have any flashbang devices so Sergeant Huff left the area of the front door to retrieve them from his patrol car.

Sergeant Huff went back into the apartment building, having retrieved flashbang devices, and up the stairs to meet up with the other officers. Sergeant Huff then heard on the radio that the Mr. Arebalo was near an exterior facing window. Sergeant Huff believed that this was a good opportunity to deploy a flashbang device. He alerted the officers that he was going to throw a flashbang device into the apartment and did so. Detective Hille, Sergeant Auchtung, and Officers Lobosco and Tran, entered the apartment. Sergeant Huff and Officer Magera followed behind them. Sergeant Huff explained that the kitchen was on the right as they entered the apartment, and there was a hallway to the left. He noticed that the doors in the apartment were closed and there was blood over much of the kitchen floor and walls.

The officers began clearing each room, looking for Ms. Perez and Mr. Arebalo. Sergeant Huff then heard one or more of the other officers shouting commands to, "Drop the knife, let me see your hands." Sergeant Huff recalled that after he heard these commands three officers entered the last room of the apartment to be searched, a bedroom. He was several feet behind the officers at that time, but as he moved forward he could see a female, Ms. Perez, lying on the floor. She was not moving, but he heard someone say they thought she might be breathing. Sergeant Huff asked Sergeant Auchtung, who was in the bedroom, if they could enter the room and access the female. Sergeant Auchtung said they could enter. Sergeant Huff, and two other officers started to go into the room to get the female. They then heard officers in front of them start giving commands again to include, "Let me see your hands, drop the knife, don't do this." Upon hearing these commands Sergeant Huff and the two officers assisting him backed up at which time he heard rounds discharged from the 40-millimeter baton launcher. After hearing rounds discharged from the baton launcher, he heard gunshots. Sergeant Huff did not see the shooting and only heard the gunshots.

After the shooting, Sergeant Huff went back into the bedroom to render aid to Ms. Perez and Mr. Arebalo. Nothing could be done to save the lives of either Mr. Arebalo or Ms. Perez, and they were subsequently pronounced deceased by emergency medical personnel.

Manuel Montoya

Mr. Montoya, the reporting party, was transported to the Arvada Police Department following the incident for an in-depth interview.

Mr. Montoya explained he had been staying at the apartment on Everett St. with his father, Manuel Arebaló, and his girlfriend Katrina Perez for a couple of days prior to this incident. On the night prior to this incident, February 20, 2020, Mr. Montoya said he was at the apartment during the evening. He said his father got home from work at about 8:00 P.M. When his father arrived home, Ms. Perez was upset and said she thought Mr. Arebaló was seeing another woman. Mr. Montoya slept on the couch in the living room of the apartment that night and reported no other problems between Mr. Arebaló and Ms. Perez until the early morning hours of February 21, 2020.

At about 5:00 A.M. Mr. Montoya woke up to Ms. Perez screaming from her bedroom begging for help. Mr. Montoya walked to the master bedroom and opened the door. He observed his father sitting on top of Ms. Perez swinging his right hand down toward her. Mr. Montoya believed his father was punching her until his father turned toward him and Ms. Perez sat up. At that time Mr. Montoya saw blood coming from Ms. Perez's neck and running down her chest. He saw that his father was holding a black and yellow box cutter. Mr. Arebaló made a statement to Mr. Montoya that his brothers were dead and then he got off Ms. Perez. Mr. Arebaló began walking toward Mr. Montoya, and Mr. Montoya kicked him in the stomach. Mr. Montoya then left the apartment through the front door but realized he did not have his cellular phone. Mr. Montoya walked around the building and could hear Ms. Perez screaming from inside the apartment, so he returned to get his cell phone.

When he re-entered the apartment, he did not see his father until after he retrieved his cell phone from the living room. Mr. Arebaló then approached Mr. Montoya and was cutting his wrists with the same black and yellow box cutter. Mr. Arebaló told Mr. Montoya "Give me a hug because this is the last time you'll see me." Mr. Montoya said Mr. Arebaló was bleeding significantly.

After hugging his father, Mr. Montoya left the apartment and called 911 from his cellular phone. He remained outside the apartment until officers arrived and he was eventually driven to the police department.

Officer Ames

Officer Ames was interviewed and related that he was on duty when he heard a dispatch and call regarding a stabbing incident. He responded to the dispatch and arrived at 5360 Everett St. after other police officers. Officer Ames was requested by some other officers on scene to communicate with the reporting party, Mr. Montoya.

Officer Ames stated that he contacted Mr. Montoya on the second floor of the apartment building, and he seemed distraught and confused. Officer Ames walked Mr. Montoya out of the building and spoke to him to get more information about what had occurred.

Mr. Montoya told Officer Ames that he was sleeping on the couch and woke up to a female screaming. Mr. Montoya stated it was his father's girlfriend. Mr. Montoya got off the couch and went into the bedroom. When he opened the door, Mr. Montoya saw his father's girlfriend lying on the bed on her back and his father was on top of her. Mr. Montoya said his dad was stabbing or cutting her throat. Mr. Montoya told Officer Ames there was blood everywhere. Officer Ames asked Mr. Montoya if he heard Ms. Perez or his father say anything. Mr. Montoya said he did not hear her say anything, but it sounded like she was "gargling." His father said something to Mr. Montoya like, "I love you," or "I'm sorry, I love you." Mr. Montoya left the room at that time and went into the hallway, outside of the apartment. When Mr. Montoya went back inside, his father was out of the bedroom and was actively cutting his wrists with what Mr. Montoya described as being a box cutter. After Mr. Montoya saw his dad cutting his wrists, he exited the apartment and called 911.

Officer Ames remained with Mr. Montoya throughout the incident at the apartment complex.

Evidence Collection and Processing

Crime scene analysts processed and documented the scene of the shooting, and the police officers involved in the shooting.

Shooting Scene

Detective Archuleta entered the apartment to get an understanding of what resources would be necessary to process the scene. He documented his scene inspection, in part, as follows:

"Upon opening the door, he found that the front door had been forcibly opened by police, and the door jamb was destroyed. Immediately, he observed a large quantity of blood on the flooring that led into the apartment. Progressing into the apartment, it was clear that a very violent struggle had occurred inside. As he made his way to the master bedroom, there was blood spatter seen on the walls and doors. Upon entry into the master bedroom, blood spatter could be seen on all four walls and the ceiling. There were heavy blood saturations on the carpet, and the female, tentatively identified as Katrina Perez, lay supine next to a full-sized bed in this bedroom. The room appeared to be

approximately 10 feet by 10 feet in size. The male suspect, tentatively identified as Manuel Arebalo (10/08/79), lay prone next to her on the floor, and his hands were handcuffed behind him with Arvada Police handcuffs. Both parties appeared to be dressed in night clothes. Arebalo was nude from the waist down. Perez was wearing a shirt and a pair of light cotton, capri night pants as well as ankle socks. Both were well covered with fresh blood. On Arebalo's body, there were several defects that were observed that were consistent with gunshot wounds. Due to the location of the bodies, which were between a bedroom dresser and the bed, it was, at this point, not wise to step further into the bedroom for fear of accidentally destroying any potential evidence."

"Detective Archuleta further noted the signs of a struggle, to include several clumps of hair through the household that would be consistent with the female's hair. They were found from the hallway near the point of entry, into the master bedroom, on both parties, and also in the hallway leading back to the master bath."

"Detective Archuleta assisted in analyzing the male suspect. Closer inspection to the suspect revealed a partially eaten pizza on the carpet floor. This would have matched the pizza located in a box on the kitchen countertop. Obvious to investigators were what appeared to be several self-inflicted stab wounds/ cuts to the suspect's forearms, both laterally and horizontally. The handcuffs were removed and secured into a paper bag. Rigor mortis had begun to set in by this time as well as lividity. At the request of Investigator Kline, Detective Archuleta deployed the Arvada Police Department MorphoIdent mobile fingerprint scanner. The male's index fingers were cleaned with a wet wipe, and index fingerprints were collected from both the right and left hand. The mobile fingerprint scanner was then returned to Detective Steiner who responded outside to connect to police databased in an awaiting police car. The male was positively identified as Manuel Arebalo (10/08/79)."

Efforts were taken, along with representatives from the Coroner's office, to remove Mr. Arebalo from the apartment. When he was moved, a knife was discovered. Detective Archuleta stated in his report, "In the process of removing Arebalo from the bedroom, investigators found a folding utility knife directly under his body near his waistline. The blade was exposed, and the knife itself was heavily stained with deposits of both dry and wet blood."

After Mr. Arebalo was removed from the bedroom, the body of Ms. Perez was examined. Detective Archuleta described his observations of her in his report.

“Closer inspection of Katrina's face found multiple wounds in both cheeks as well as her eyelids. Upon inspecting her neck, investigators discovered that both sides of her neck and throat had been cut to a very deep level. She had cuts and punctures to her abdomen, chest, shoulders, biceps, cheeks, eyelids, and upon rolling her over to inspect the back side of her body, investigators found that she had cuts to her back and her buttocks, all appearing consistent with the knife that was located. Upon rolling her over, investigators immediately realized that Katrina had sustained a massive head wound to the back of her skull. Broken skull pieces were seen on the carpet as well as brain matter which had exited the skull and was not only in the carpet in the surrounding area but also mixed into her hair. Additional photographs were taken during the inspection of the body, and again, Detective Archuleta determined that it would be best to seize the clothing that she was wearing at the time to protect any potential evidence.”

Detective Archuleta ensured that the extensive scene was well documented by the crime scene analysts.

As part of the CIRT investigation, Detective Hille, Sergeant Auchtung, and Officer Lobosco were documented and photographed. Their weapons were also collected and inspected. Criminalist Reid documented his findings as follows:

“Officer Lobosco reportedly fired his Glock 34 9mm handgun, serial number BKC�899. It has a Surefire tactical light mounted on it. He states he normally carries it loaded to capacity with 17 cartridges in the magazine and 1 cartridge in the chamber. Currently, it is loaded with 6 cartridges in the magazine and 1 cartridge in the chamber, indicating 11 rounds were presumably fired. The cartridges are FC 9mm +P. He is carrying two extra magazines, each loaded to capacity with 17 cartridges. Officer Lobosco is also carrying a rifle magazine loaded with 30 LC cartridges. We collect the handgun along with the magazine and ammunition that were loaded. The extra magazines and rifle magazine are documented and returned to Officer Lobosco.”

“Det. Hille reportedly fired his Colt M4LE 5.56mm rifle, serial number LE003402. It has a Surefire tactical light mounted on it. He states he normally keeps it loaded to capacity with 30 cartridges in the magazine and the chamber empty until it is deployed. Currently, it is loaded with 17 cartridges in the magazine and 1 cartridge in the chamber, indicating 12 rounds were presumably fired. The cartridges have a headstamp of LC. He is not carrying any extra rifle magazines on his person. We collect the rifle along with the magazine and ammunition that were loaded. Det. Hille is also carrying a Glock 17 9mm handgun, serial number BBHM829. It is currently loaded to capacity

with 17 cartridges in the magazine and 1 cartridge in the chamber. He is carrying two extra handgun magazines, each loaded to capacity with 17 cartridges. The handgun and magazines are documented and returned to Det. Hille.

“Sgt. Auchtung reportedly fired his 40mm foam baton launcher, serial number PP654235. It is currently loaded with 6 fired 40mm shells, indicating 6 rounds presumably fired. Sgt. Auchtung is carrying a Glock 21 .45 caliber handgun. It is currently loaded to capacity with 13 cartridges in the magazine and 1 cartridge in the chamber. He is carrying two extra extended handgun magazines; each loaded to capacity with 13 cartridges. The handgun and magazines are documented and returned to Sgt. Auchtung. The foam baton launcher is collected. Sgt. Auchtung’s pants are collected due to blood contamination.”

Manuel Arebalo Autopsy

The autopsy of Mr. Arebalo was performed by Forensic Pathologist Dr. Carver on February 23, 2020. Dr. Carver opined that his cause of death was multiple gunshot wounds. He also noted that Mr. Arebalo had numerous superficial incised and stab wounds on various body surfaces.

Legal Analysis

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

As is frequently the case, and as documented in scientific literature, individuals involved in high-stress events such as a shooting may experience wide-ranging emotions and perceptual distortions. 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 assigned to the CIRT, there is no question that Detective Hille and Officer Lobosco intentionally shot, and shot

at, Manuel Arebalo. Their statements and the evidence support that conclusion. The legal analysis then shifts to a consideration of Colorado law regarding affirmative defenses, self-defense, and the “reasonableness” of the Officers use of force under our laws.

In Colorado, and at the time of this incident, pursuant to §18-1-704 (2), C.R.S 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 he reasonably believes a lesser degree of force is inadequate and 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.

A peace officer is also justified in using deadly physical force upon another person as provided in §18-1-707, C.R.S (2). That statute, as it existed in February 2020, provides in pertinent part that a peace officer is justified in using deadly physical force upon another person... 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...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...

(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.

On February 21, 2020, Manuel Arebalo, killed Ms. Perez with a knife, and was armed with a knife throughout the course of his contact with law enforcement personnel. From the time police officers initially arrived on scene and through the entire incident the police officers repeatedly issued commands to Mr. Arebalo to drop the knife. Mr. Arebalo had many opportunities to change his course of conduct through this incident, but instead defied every command he was given. Finally, Mr. Arebalo, in the final moments before the shooting, advanced on officers with a knife. As Mr. Arebalo approached the officers with a knife, the police officers had every reason to believe he intended to stab them, and either kill them or inflict serious bodily injury.

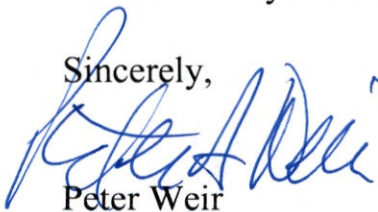
A critical issue in analyzing self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not

required under the law and what is reasonable is based upon all known information and circumstances. It is also important to my analysis, that the United States Supreme Court in *Graham v. Conner*, 109 S.Ct. 1865 (1989), a case involving litigation under 42 U.S.C. §1983, held in all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, or other ‘seizure’ of a citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard. Under the Fourth Amendment, the “reasonableness” of a particular use of force must be judged from the perspective of a reasonable police officer on the scene, rather than with the 20/20 vision of hindsight. Furthermore, the Court in *Graham* recognized that the determination of reasonableness must also account for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation, and in circumstances that are tense, uncertain, and rapidly evolving. The beliefs held by the Arvada police officers that Mr. Arebalo posed an imminent threat of serious bodily injury or death were reasonable, and their actions in response to that threat were reasonable under these circumstances.

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

Therefore, I conclude that the conduct by Detective Hille and Officer Lobosco, did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir
District Attorney
First Judicial District Attorney