



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

July 14, 2016

Acting Chief Dan McCaskey
Lakewood Police Department
Lakewood, CO

RE: Officer Involved Shooting incident involving 3 Lakewood PD Agents on April 26, 2016, CIRT # 2016-01.

Dear Chief McCaskey,

On April 26, 2016, the Jefferson County Critical Incident Response Team was called to respond to an officer involved shooting that resulted in the death of Robin Barber, DOB 1-23-88. This incident occurred in the parking lot of the Motel 6 located at 480 Wadsworth Blvd in Lakewood, Colorado. My office has now reviewed the 1st 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 May 18, 2016 at the District Attorney's office. At that time, my office was presented with all reports regarding this particular incident. Senior Chief Deputy District Attorney Eva Wilson has been involved in the CIRT file review.

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

(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.

§18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) ...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 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 the 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 that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

SUMMARY OF OPINION

Applying these legal standards to the facts presented through this investigation, I find that all of the Lakewood Police Agents involved in this incident were justified in their actions having used reasonable and appropriate deadly physical force upon Robin Barber.

The following is a brief factual summary of the relevant events of that morning compiled from a review of the reports and interviews done by the CIRT, observations of the scene and the CIRT presentation. The officers who fired at the decedent will be identified by initials only due to the suspect's apparent affiliation with a violent street gang.

RELEVANT FACTS

On April 26, 2016 at approximately 8:22 p.m., LPD Agents S.R. and J.M. were on duty and patrolling in an unmarked police vehicle. In driving through the parking area of the Motel 6 located at 480 Wadsworth Blvd, they saw a female passenger sitting in a white Honda in the rear parking lot. They ran a routine clearance on the license plate and learned that the Honda was a stolen vehicle.

Prior to making contact with the passenger, they decided to call in additional police assistance in order to help with surveilling the vehicle and to make contact with any driver. Other agents arrived in the area and plans were made to prevent the suspect vehicle from ramming anyone or anything upon contact and to minimize any danger to the public in the area. Agents were eventually stationed around the area so that there was police containment which was concealed on all sides of the vehicle in an effort to prevent escape.

The agents observed that the driver's seat was reclined and the headrest limited any visibility into the car such that they could not tell if anyone was actually seated in the driver's seat. At one point in time, the female passenger exited the car and walked towards the hotel. A short time later, a female approached the vehicle and opened the passenger door to enter the car. As she entered, it appeared to the agents that the female was talking to someone in the car. Based upon what appeared to be confirmation that there was a person in the driver's seat, the police decided to initiate contact with the occupants.

Agent S.R. activated the red and blue emergency flashing lights on their vehicle and blocked the Honda in from the rear. Agent P.L. positioned his vehicle in from the north and blocked the area so the Honda could not exit on the north side of the parking lot.

Agent J.M. got out of the passenger side of the undercover car and approached the female passenger while saying "Let me see your hands." Simultaneously, Agent S.R. approached the driver's side of the Honda and a male suddenly exited the Honda from the driver's seat. Agent S.R. gave commands to the male which the male ignored. Instead, the male reached over his left shoulder and fired one shot from a handgun towards Agent S.R. This shot went directly past Agent S.R.'s left ear. The subject ran north as Agent S.R. immediately returned fire as did Agent J.M. The subject was running north directly toward Agent P.L. and he still had the gun in his right hand. Agent P.L. also fired at the subject. Agent S.R. fired twelve rounds, Agent J. M fired two rounds and Agent

P.L. fired three rounds. The subject was hit and fell to the ground next to a flatbed trailer. He threw his weapon up onto the trailer as he fell and it was recovered on top of the trailer. The male subject, later identified as Robin Barber, sustained five gunshot wounds and was pronounced dead at the scene. One shell casing from his handgun was located at the scene and there was evidence of a round hitting a building behind Agent S.R. The trajectory of the round fired by Barber matched the location of where the round struck the building.

Upon being interviewed by CIRT investigators, Agent S.R. described the incident in great detail and indicated that he felt it was necessary to fire at Barber after Barber fired at him, Agent S.R. described hearing a bang and then heard the bullet "whiz" past his head on the left side. He said he immediately returned fire but he believed that his first two rounds were low and to the left. Barber ran northward on the east side of the flatbed trailer, looking back towards Agent S.R. and Agent S.R. could still see the gun in Barber's hand. He pursued and continued to fire as Barber ran northward because he knew that Barber was running towards where Agent T.L. was and he was afraid that Barber would shoot at the other agent as well. As he was running, Agent S.R. could hear gunfire and was not sure if it was the suspect shooting or one of the other officers. He believed that he hit the subject with a shot as Barber began to have difficulty running. As Barber continued north-bound, he threw his handgun into the air and fell to the ground. Barber was on the opposite side of the flatbed from Agent S.R. when he fell.

Agent J.M. stated to CIRT investigators that upon approaching the vehicle from the passenger's side, he called out "Police" and was yelling to the occupants to put their hands in the air. He then saw a male exiting the driver's side of the vehicle and saw the male reach over his left shoulder and fire a round toward Agent S.R. The subject then started to run towards the north which is where Agent T.L. was parked with a civilian in his vehicle. Agent J.M. recalled thinking that this individual is placing himself, Agent S.R., the female passenger, the occupants of the hotel and Agent T.L. and his civilian passenger all in jeopardy. He was concerned about the suspect escaping from them with what was still a loaded gun, which also would place others in danger. Agent J.M. described firing his weapon at the subject because of these fears. Agent J.M. recalled firing a shot at the subject when he saw him lying on the ground by the flatbed due to his concern that the subject had gotten into a prone position under the trailer in order to fire at the agents.

During his CIRT interview, Agent P.L. indicated that he witnessed the exchange of gunfire between Agent S.R. and Barber and he then saw Barber running north towards his direction. Agent P.L. believed that Barber was pointing his handgun towards him and he thought that Barber fired two or three rounds at him. Agent P.L. was in fear for his life and also for the life of the civilian "ride along" passenger that was in his police vehicle so he fired three rounds at Barber. There was no physical evidence located on scene that Barber had fired on Agent P.L.

The civilian rider, a juvenile who was doing a ride-along in Agent P.L.'s vehicle, also observed the shooting from the passenger front seat. The juvenile could see the area where the white car was parked and heard Agent S.R. yell "Put your hands up." The juvenile then saw a flash from the car and a shot fired towards Agent S.R. The juvenile then heard more shots from guns being fired by Agent S.R. and Agent J.M. Agent P.L. yelled at the juvenile to get down as Agent P.L. was getting out of their vehicle. The juvenile then heard Agent P.L. fire three shots. He later saw the area where the suspect had fallen, next to a flatbed trailer, which was between their police vehicle and the suspect vehicle.

Kira Simpson, the female passenger in the Honda, was interviewed by CIRT. She indicated that Barber was her husband and that they were temporarily staying at the Motel 6. She indicated that her husband had warrants out for his arrest as he had escaped from a community corrections facility and that he was "on the run". She stated that he owned a Glock pistol and he had told her that he would die or put up a fight to not go back to jail. She indicated that her husband was drunk and they were sitting in the car arguing when she saw the vehicle pull up behind them with police lights activated. She told her husband to run and he got out of the car. Her attention was then focused on the officer who was on the passenger side of the car. She said she did not see any of the shooting incident. She also stated that earlier that afternoon while her husband had been drinking, he had talked about dying that day. He also had handed her his gun and told her to kill him.

Several hotel witnesses heard the officers yelling and heard gunshots. One witness, William Bither, gave several different accounts of what he had heard and seen to include; seeing officers approaching something on the ground near a flatbed, seeing officers firing on the suspect on the ground and other varying accounts. After investigation and further interviews, it was determined that his statements were inconsistent with one another, that he provided details that he could not have known and that some of the things he claimed to have seen were not visible from his vantage point. There was no physical evidence from the scene or any witness statements that supported his claim that he saw officers firing at the suspect when the suspect was on the ground.

The white Honda in this case had been stolen from a location in Wheat Ridge on April 25, 2016. Suspected stolen property was also located in the Barber's motel room.

The three Lakewood Agents were using department issued Winchester 9 mm ammunition. Agent T.L and Agent S.R. were both armed with Glock 17 weapons and their ammunition was older issued, containing the same headstamp. Agent J.M was armed with an STI 9mm and he had newer ammunition which had a different headstamp. CIRT investigation revealed that Agent S.R. fired twelve rounds, Agent T.L fired three rounds and Agent J. M. fired two rounds. The suspect's weapon, which was recovered on scene, was a Glock 22 loaded with .40 Smith and Wesson ammunition. The suspect's weapon contained a ten round magazine with eight rounds remaining in the magazine and one round still in the chamber.

A CIRT officer was present at the autopsy which was conducted by Dr. John Carver. The autopsy revealed that Barber died from multiple gunshot wounds (five) with one of those wounds perforating his left lung, heart and right lung. Two rounds were recovered from his body. Also of note was that Barber's blood alcohol level was a .124 and that he had 21 nanograms of active THC in his system which, per a Wheat Ridge PD DRE Officer, is a relatively high amount.

While the officers' and suspect's weapons and ammunition have been submitted to the Colorado Bureau of Investigations for analysis, no final reports have been received as of the time of this writing. However, it has been concluded that the two rounds removed from Barber were able to be identified as having been fired from Glock weapons but, due to their deformed condition, no other identification is possible.

LEGAL ANALYSIS

We find in our review of this shooting that no conduct of any of the police officers involved in this action was criminal.

It is the conclusion of my office, based upon the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident clearly meet the legal requirements of the affirmative defense of self-defense as contained in §18-1-704 (1)(2)(a). The officers' actions also meet the legal requirements of §18-1-707 Use of deadly physical force in making an arrest or preventing an escape.

Based upon the decedent's firing a shot directly at an LPD officer, that officer and the other officers who fired had the legal right to act in self-defense and defense of others. They were justified in firing at Barber in order to prevent him from attempting to kill anyone else. Barber's actions of shooting directly at Agent S.R. and then turning and attempting to escape created an untenable situation for all officers on scene. Barber was armed and clearly dangerous which was unequivocally demonstrated by his actions of firing a gun at Agent S.R.'s head. The officers had a duty to protect themselves and the public. Barber was a threat that had to be contained and using deadly physical force to do so was a reasonable response by these agents.

Based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense(s) were satisfied by law enforcement actions, that law enforcement was justified in the use of deadly physical force in this case and that their conduct did not violate any criminal statutes.

Sincerely,



Peter Weir

1st Judicial District Attorney

cc: CIRT Commander Mark Cooney