



OFFICE OF THE DISTRICT ATTORNEY  
JEFFERSON AND GILPIN COUNTIES

Alexis D. King, District Attorney

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June 14, 2021

Chief Dan McCasky  
Lakewood Police Department  
445 South Allison Parkway  
Lakewood, Colorado 80226

Dear Chief McCasky:

The First Judicial District Critical Incident Response Team has completed its investigation into the fatal shooting of Matthew Lyvon Paul on September 18, 2020, by Lakewood Police Department Sergeants Creighton Bates and Louis Tomasetti and Agent Patrick Dunlevy (the “Officers”). Arvada Police Department Commander Eric Kellogg presented the investigation to me and Assistant District Attorneys Jennifer Rhoads and Amanda Gall on February 25, 2021.

After a thorough review and analysis of the evidence, I find that the Officers’ use of deadly physical force was legally justified to defend themselves and others from the threat posed by Mr. Paul. Given my conclusion, no criminal charges will be filed against the officers. I am issuing this letter to you pursuant to § 20-1-114(1), C.R.S.

#### **INVESTIGATION AND REVIEW**

The First Judicial District Critical Incident Response Team investigates any incident in which a 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. The CIRT team is comprised of highly trained and skilled investigators working under my authority and appointed from multiple law enforcement agencies, including my office. This multi-jurisdictional team of objective, dispassionate professionals protects the integrity of the investigation by exercising independent judgment in conducting a thorough investigation. To maintain transparency and reduce conflict of interest, officers from the involved agency do not perform critical duties related to the investigation.

Here, the Lakewood Police Department (“LPD”) immediately activated the CIRT team to investigate the use of deadly force by the Officers. Consistent with CIRT policy, LPD did not participate in the CIRT investigation. The CIRT team promptly responded to investigate, led by Arvada Police Department (“APD”) Commander Kellogg. Under his direction, the CIRT team processed the scene, completed interviews with those who saw or heard the events, and preserved necessary evidence. The Officers provided voluntary statements and submitted to questioning. These interviews were recorded, reviewed as part of the investigation, and included within the file. Commander Kellogg briefed me and my leadership team on this investigation and provided the file for my review.

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I reviewed over 2,000 photographs, digital documentation and diagrams of the scene, and 450 pages of reports by APD, LPD, and our other CIRT agencies through out the First Judicial District. I also reviewed the recorded interviews of the Officers, eight other law enforcement witnesses, and multiple civilian witnesses.

## **STANDARD OF REVIEW**

As District Attorney, my role is to determine whether the Officers committed a criminal offense. No charges may be legally or ethically brought unless a crime can be proven beyond a reasonable doubt, a standard that applies to officers and civilians alike. Because this shooting was justified under Colorado law, no criminal charges can or should be filed against the Officers.

A person may be held criminally liable under Colorado law only when the evidence proves beyond a reasonable doubt that he committed every element of an offense defined by Colorado statute. When a person intentionally shoots another person, resulting in that person's death, they commit the crime of murder, unless a legally recognized justification exists. If a justification exists, the shooter is not criminally liable. Generally, acting in self-defense or defense of others is one such justification. These defenses are available to all Coloradans, including officers. Officers are also specifically authorized to use deadly physical force under certain circumstances.

As relevant here, a peace officer is justified in using deadly force if: 1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or of receiving serious bodily injury; 2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or of receiving serious bodily injury; and 3) the officer has an objectively reasonable belief that a lesser degree of force is inadequate. § 18-1-707(4.5), C.R.S. Acting in self-defense or defense of others is subject to the same analysis. § 18-1-704(1)-(2), C.R.S. By law, in deciding whether the Officers were justified in acting in self-defense or defense of others, it does not matter whether Mr. Paul was actually trying to injure the Officers or another person, so long as a reasonable person, under like conditions and circumstances, would believe that it appeared that deadly physical force was necessary to prevent imminent harm. The facts must be viewed as they appeared to the Officers at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time the Officers shot Mr. Paul, they had objectively reasonable grounds to believe, and did in fact believe, that they or another person were in imminent danger of being killed or suffering great bodily injury, and whether they reasonably believed a lesser degree of force was inadequate. In other words, would a reasonable person, confronted with the same facts and circumstances, believe that it was necessary to use deadly physical force to defend himself or others from Mr. Paul? If so, the shooting is justified under Colorado law.

## **FACTS ESTABLISHED BY INVESTIGATION**

The investigation established the following facts: On September 18, 2020, at about 10:00 a.m., a man was shot and killed at the Walmart located at 440 Wadsworth Blvd., Lakewood, Colorado. At the scene, the victim was located deceased in his vehicle in the Walmart parking lot, with gunshot wounds. LPD processed the scene. Subsequent investigation determined a likely drug transaction at the time of the murder. Witnesses provided a description of the suspect – a white male wearing a gray shirt, orange shorts, and a baseball cap, with a backpack.

Sgt. Creighton Bates, at his desk, received notice of “shots fired” at the Walmart. Sgt. Bates joined LPD in 1991, holding several positions including patrol, SWAT, and Detective. Once promoted to sergeant, he supervised patrol, investigations, and major crimes. On the date of the incident, Sgt. Bates wore a police uniform marked with LPD badges and a ballistic soft vest under his shirt. He carried on his person a Colt Commander .45 automatic handgun, two additional magazines (eight capacity each, with one in the chamber), a taser, baton ring, and handcuffs.

Sgt. Bates notified dispatch and other officers by radio of his intent to respond to the Walmart scene in his marked patrol vehicle. He received notice that the suspected shooter had responded to a nearby Grease Monkey and continued to head westbound. The suspect description was aired, and a second report indicated the suspect may have changed clothes. Sgt. Bates reported prioritizing finding the suspect and directing other agents to set a perimeter and check in at the Walmart. As he drove westbound, he saw other patrol officers eastbound on Fourth Avenue and decided to meet them.

On Fourth Avenue, just west of the Walmart, a woman was upstairs in her home folding laundry when she heard a loud bang. Afraid that her four-year-old daughter, playing downstairs, was hurt, she dashed downstairs to find the house empty and the sliding glass door to the backyard open. While the open door was not unusual, she was surprised to find a man later identified as Mr. Paul on her back patio, stumbling over her patio furniture. Mr. Paul told her that he had just murdered two people and told her to leave. Mr. Paul held a handgun in one hand, down by his side, and a gun magazine in his other hand. The woman asked where her daughter was and Mr. Paul said she was in the front yard.

Meanwhile, a neighbor heard an unfamiliar voice yelling “get out of the house” from the direction of the woman’s house. Concerned, the neighbor walked towards the woman’s house. At the picket fence dividing the properties, he found the woman’s daughter and Mr. Paul, unknown to him, who said, “get [the little girl] out of here...I’m a murderer.” The woman ran through the yard to her daughter, who was standing near the fence with the neighbor on the opposite side. As the woman tried to open a gate in the fence to join her daughter, Mr. Paul walked up behind her, picked the woman up, and put her on the other side of the fence.

Almost instantaneously, Sgt. Bates’s marked patrol vehicle drove past on Fourth Avenue. The neighbor and woman screamed for help. Sgt. Bates reported noting a disturbance and observing two or three adults standing by a fence line. Sgt. Bates stated that a man, later determined to be Mr. Paul, was lifting a woman and another man was standing nearby. Sgt. Bates did not specifically recall seeing a gun in that moment but his impression was that Mr. Paul had a gun to the woman’s head, and that this was a hostage situation.

Sgt. Bates pulled his patrol vehicle in front of the picket fence. He reported seeing Mr. Paul lift the woman. The neighbor saw Sgt. Bates get out of the patrol vehicle, giving commands. When Sgt. Bates got out of his vehicle, he immediately felt “sound waves hitting [his] face” from bullets flying past him. One shot hit the vehicle, and Sgt. Bates felt “something hit [his] face as well.” In that moment, Sgt. Bates reporting determining that Mr. Paul had shot and killed the man in the Walmart parking lot, physically engaged the woman, and now had just fired a gun at him while holding the woman in front of him like a human shield.

Sgt. Bates returned fire, and as Sgt. Bates and Mr. Paul exchanged gunfire, Mr. Paul let go of the woman. The neighbor ran for his house with the woman and her daughter. As they ran, they heard more gunshots. Once inside, they heard police yelling commands, a pause, and then another round of gunshots. Sgt. Bates reported commanding Mr. Paul to “stop running” and “get on the ground” but Mr. Paul ran north, continuing to fire as he ran deeper into the yard.

As he hopped the small picket fence and followed, Sgt. Bates reported dialing Mr. Paul in on his sight and firing because he did not believe Mr. Paul was going to stop and respond to his commands. Dropping an empty magazine and reloading, Sgt. Bates reported aiming at Mr. Paul’s legs, but he was unsure if he hit Mr. Paul as Mr. Paul took cover behind a very large tree trunk. Sgt. Bates, joined now by another agent, took cover behind a hot tub about 30 feet from Mr. Paul. Sgt. Bates reported that he and the agent continued to command Mr. Paul to “come out with his hands up,” to “crawl out on his belly,” and to “show his hands” until Sgt. Bates was hoarse. Mr. Paul ignored all commands.

Agt. Patrick Dunlevy is a thirteen-year LPD veteran and member of the sniper team, with five years of SWAT experience. That day, he was assigned to the Special Enforcement Team. Agt. Dunlevy reported that when he heard Sgt. Bates air that shots were fired at the Walmart, he left the station with a soft external black vest over his shirt, marked with “Police” across the front and back. Because of the urgency of the situation, Agt. Dunlevy was not wearing his duty belt or his duty pistol.

Agt. Dunlevy reported radio airing a description of the shooter as a man wearing a gray shirt, red shorts, and hat, carrying a bag or backpack. He reported that dispatch also confirmed that someone was shot at the Walmart parking lot, and that the shooter was last seen running westbound through the parking lot and into a Grease Monkey.



Sgt. Bates’s vehicle on the left with picket fence on the right.



Picket fence from the backyard looking towards Sgt. Bates’s vehicle, driver’s door open.



Drivers side door of Sgt. Bates's vehicle with potential bullet hole.

Accompanied by Agt. Byron Allen and armed with the suspect's description and last location, Agt. Dunlevy decided to search for the suspect. After hearing that a hat and backpack were found on Fourth Avenue, the agents responded to Fourth Avenue, where other agents relayed that witnesses saw the suspect running in a northwest direction.

As Agt. Dunlevy drove, he reported seeing a sergeant's patrol vehicle coming from the other direction at a high rate of speed and pull into the side yard of 7710 West Forth Avenue. He could see a woman and child standing in the side yard, just over the hood of Sgt. Bates's vehicle. Agt. Dunlevy saw Sgt. Bates get out of his car and draw his gun.

As Agt. Dunlevy got out of his truck, he heard a volley of three shots and saw Sgt. Bates duck down. Agt. Dunlevy could tell that Sgt. Bates was pointing his gun at someone in the side yard but could not see the person. Agt. Dunlevy thought he heard Sgt. Bates say that something hit him in the face. Agt. Dunlevy heard another couple of gunshots, then saw Sgt. Bates start to run towards the side yard on the west side of the house.

Agt. Dunlevy reported believing that Sgt. Bates had been shot and that the unknown person had also shot at the woman and child who were now out of sight. Armed with a Bravo Company Manufacturing 11.5 inch rifle with EO Tech, holographic sight, and 3x magnifiers, Agt. Dunlevy ran toward the backyard. His rifle was loaded with 28 rounds of ammunition, and he had only one magazine because he did not have his duty belt.

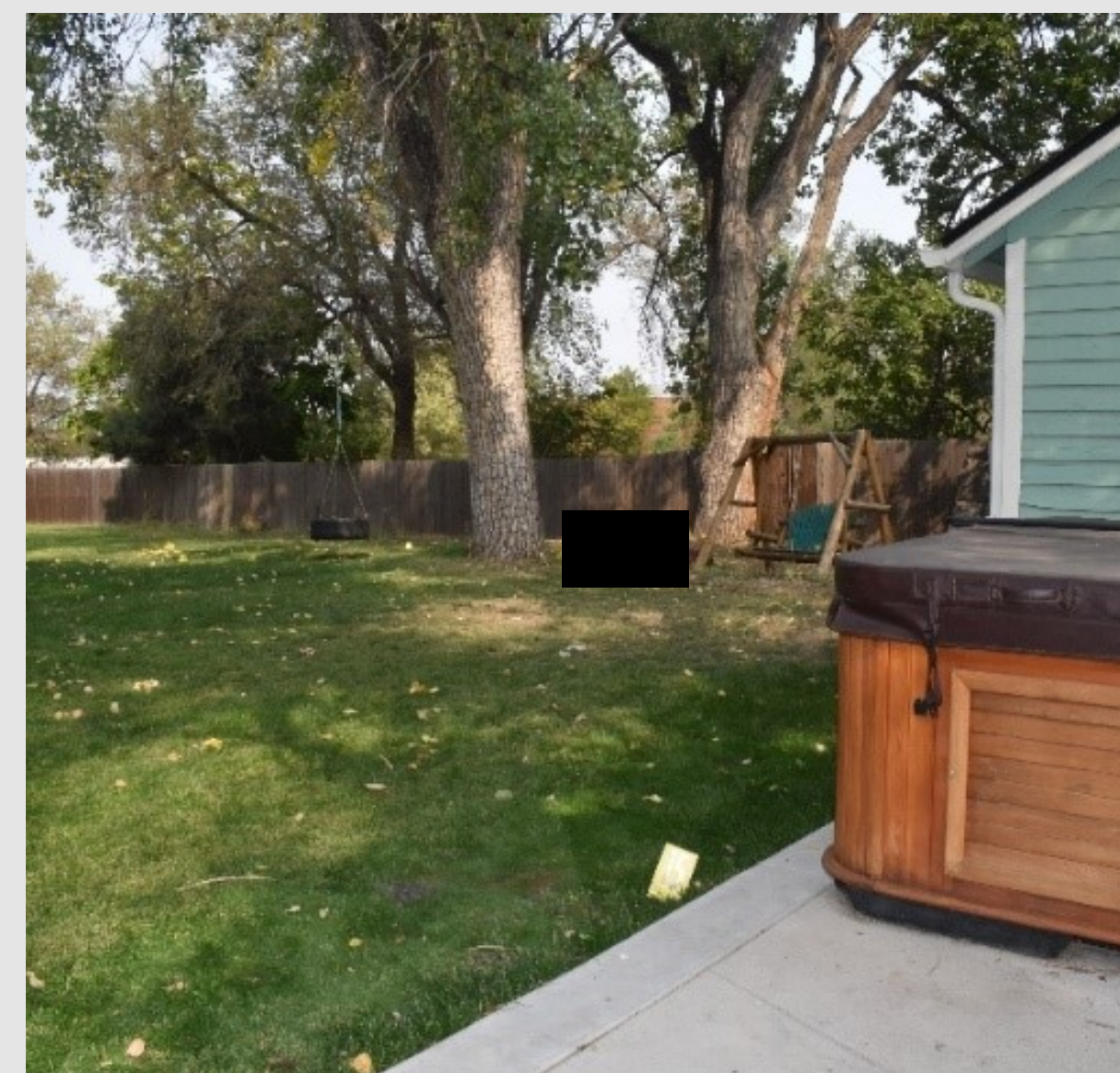
Agt. Dunlevy ran up the east side of the house hoping to cut off the suspect. He reported finding a small wrought-iron gate, about three feet wide, between the house and detached garage that he could see through. He announced himself and reported seeing Sgt. Bates run across the yard in front of him.

Agt. Dunlevy also took cover behind the hot tub, joined by a few other agents who had entered the yard from the east side. Sgt. Bates continued yelling commands at Mr. Paul, about thirty feet away hiding behind the tree. Mr. Paul did not respond. Agt. Dunlevy reported that Sgt. Bates's voice was extremely loud and he seemed to be yelling at the top of his lungs.

Sgt. Bates continued to yell commands. Agt. Dunlevy reported seeing an arm reach from the left side of the tree holding a black semiautomatic pistol. The arm was between four-and-a-half to five feet off the ground. The rest of Mr. Paul's body was still hidden behind the tree. The pistol fired two rounds at Agt. Dunlevy and the officers taking cover behind the hot tub. Agt. Dunlevy heard the bullets "whizzing by."

Sgt. Louis Tomasetti, a fifteen-year law enforcement officer, reported responding to tones for a critical emergency at the Walmart. Dressed in a uniform shirt and vest that had "Police" written across the chest and back with Velcro patches, he reported hearing radio air that the suspect fled west on foot, went to the Grease Monkey, had a knife, and was trying to rob someone.

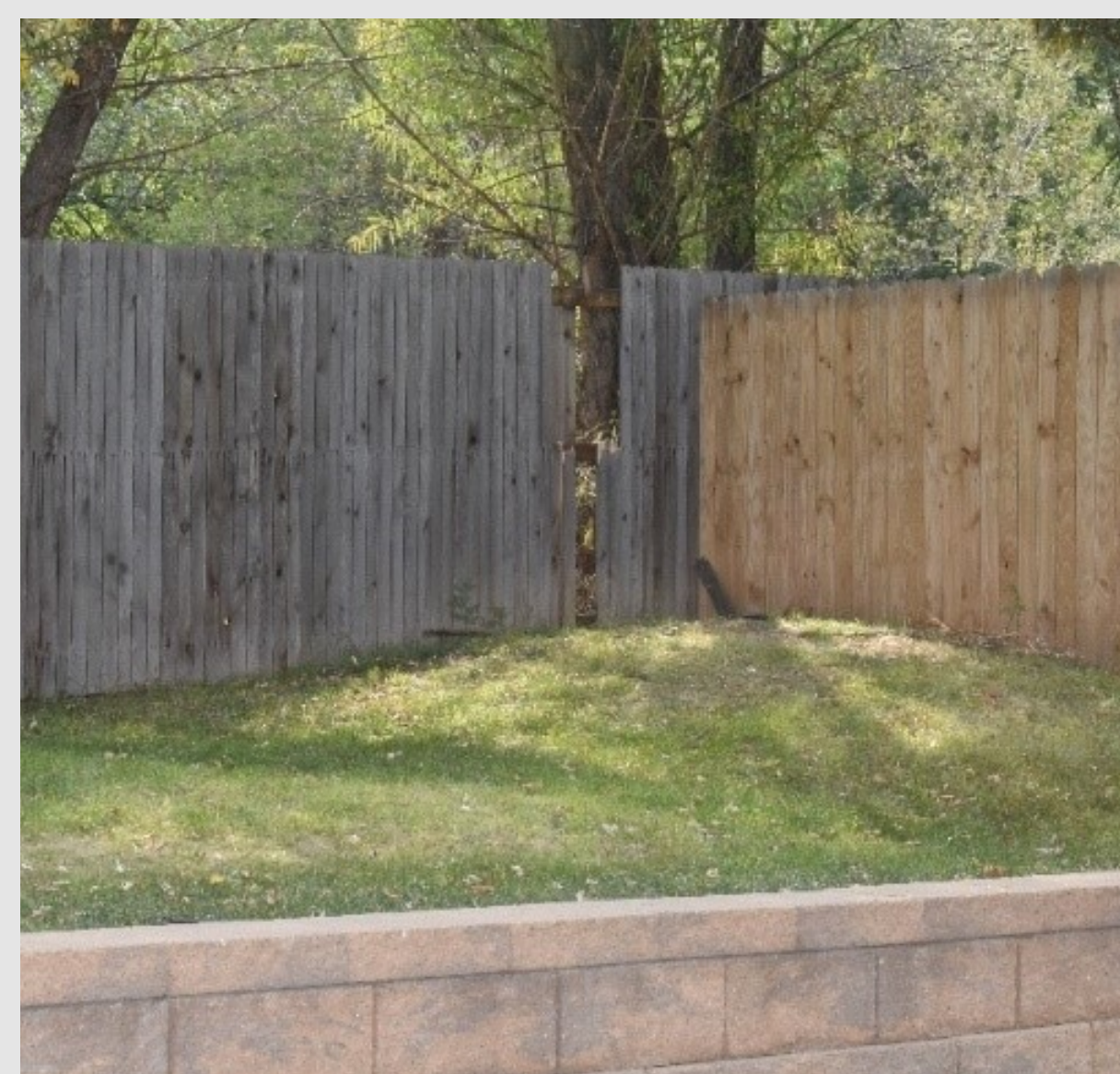
As he approached the area, he observed several police cars beginning to form a perimeter and traveled north when he heard gunshots. The gunfire sounded close to him, and he reported getting out of his car and hearing someone confirm on the radio that there was a murder, presumably referring to the shooting at Walmart. He reported approaching a six-foot-tall wooden fence.



Hot tub along with large trees visible.



Firearm recovered from the shooter.



Fence bordering the yard where Sgt. Tomasetti observed Mr. Paul.

Sgt. Tomasetti took a position looking through the fence running along the back of the yard. From his vantage point, he could see Mr. Paul hiding behind the tree. Mr. Paul matched Sgt. Tomasetti's recollection of the radioed description, wearing red shorts and a white shirt. He could also see uniformed officers behind the hot tub. Sgt. Tomasetti was well-concealed but the fence did not provide any protection if he were fired upon so he did not announce himself. On the radio, Sgt. Tomasetti heard that Mr. Paul was not responding to commands. He could see Mr. Paul fiddling with a gun magazine, possibly to reload or fix a malfunction and shared that information via radio. Sgt. Tomasetti then saw Mr. Paul reload the magazine, rack the slide, and bring the gun up towards the officers behind the hot tub.

The officers at the hot tub then heard two or three rounds coming from the north and suspected another officer had taken position there. As Mr. Paul fired at the officers behind the hot tub, Sgt. Tomasetti had fired his handgun three times. Mr. Paul turned toward Sgt. Tomasetti, and in turn was no longer sheltered behind the tree. Sgt. Dunlevy reported Mr. Paul was moving behind the tree and exposed his side. Through his rifle, Sgt. Dunlevy noted that Mr. Paul matched the previously aired description and saw Mr. Paul start to bring his right arm up and towards Sgt. Dunlevy with a pistol in his right hand. Sgt. Dunlevy had a clear shot of Mr. Paul's left side and chest and both Sgt. Bates and Sgt. Dunlevy fired their weapons.

Mr. Paul hunched over and appeared to be breathing but his hands were not visible. At that moment, Sgt. Tomasetti aired on the radio, "shots fired by the police, suspect down, officers code 4 [not injured]," though he did not know if any officers were injured. Sgt. Bates called for a shield, which is strong enough to withstand rifle fire, and organized a team to safely approach Mr. Paul while also calling for the fire department for medical support. The team walked up to him, calling out commands, but Mr. Paul was not responsive. Sgt. Dunlevy saw a black semiautomatic pistol in Mr. Paul's right hand and a loaded magazine in his left hand. Mr. Paul was disarmed, handcuffed, and provided medical support.

Sgt. Dunlevy helped clear the woman's house and then waited by his vehicle. Sgt. Tomasetti directed officers to clear the garage since it was his backdrop while firing upon Mr. Paul. Sgt. Bates took steps to secure the scene and ensure there were no ongoing safety issues. He also reported noticing that the people who initially caught his attention by the picket fence were no longer there, so he asked agents to find them and make sure they were safe.

CIRT detectives processed the scene, coordinated the preservation and analysis of physical evidence, and obtained statements from all witnesses who saw or heard parts of the event. LPD agents did not actively participate in the use of force investigation. CIRT investigators went through the area in and around the Fourth Avenue property, finding multiple .223, .45, and 9 millimeter casings. There were signs of bullet holes around the fencing near Mr. Paul and an empty Glock magazine as well as a loaded .380 Bersa magazine. There appeared to be a bullet defect in the driver's side door of Sgt. Bates's vehicle. The CIRT team utilized digital documentation to memorialize the scene.

After reporting their involvement pursuant to protocol, Sgt. Bates, Sgt. Tomasetti, and Sgt. Dunlevy were relieved of their firearms, transported to LPD for photographing and processing, and connected to peer support.

## **AUTOPSY REPORT FINDINGS**

Forensic Pathologist Dr. Dawn Holmes

September 19, 2020

Mr. Paul died of multiple gunshot wounds:

1. A gunshot wound to the left back, from an indeterminate range, which appears to have traveled from the back to the front, striking his left lung, thoracic vertebrae, and right lung.
2. A gunshot wound to the right lower back, from an indeterminate range, which appears to have traveled from the back to the front of his body striking his liver.
3. A gunshot wound that traveled through his right shoulder, from an indeterminate range, which appears to have traveled from the front to the back of his body without striking a major organ.
4. A gunshot wound to the right shoulder, from an indeterminate range, which appears to have traveled from the front to the back of his body, striking his left lung, thoracic vertebrae, and right lung.
5. A gunshot wound to the left upper arm, from an indeterminate range, which appears to have traveled from the arm into the left side of his chest from the back to the front, striking his left lung and heart.
6. A gunshot wound to his left arm, from an indeterminate range, which appears to have traveled from his arm into the left side of his chest, from the back to the front without striking any major organs.
7. A gunshot wound to his left elbow, from an indeterminate range, which does not clearly indicate which direction the bullet was traveling.
8. A gunshot wound to his left thigh, from an indeterminate range, which appears to have traveled from the front to the back of his body without striking a major organ or vessel.
9. A gunshot wound to his right calf, from an indeterminate range, which appears to have traveled from the back to the front of his body without striking a major organ or vessel.
10. A graze wound on the left back.
11. A graze wound on the left lower back.

Dr. Holmes also observed organ pallor and cardiovascular disease. Toxicology revealed that Mr. Paul was under the influence of alcohol and positive for amphetamine and methamphetamine.

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CIRT detectives and investigators from the Jefferson County Sheriff's Office, APD, and other agencies, interviewed Sgt. Tomasetti and Agt. Dunlevy on September 18, 2020, and Sgt. Bates on September 21, 2020. The Officers were fully cooperative and voluntarily answered all questions.

## ANALYSIS

Sgt. Bates was confronted with the following facts known to him at the time he initiated deadly force: an armed man had his arms around a woman with a gun in his hand, a neighbor was standing near the woman and armed man, the woman and neighbor appeared distressed and in need of help, and the armed man was in a residential area and fit the description of the person who ran from a shooting in the nearby Walmart parking lot. As he exited his vehicle, Sgt. Bates was fired upon, feeling the heat of bullets flying past him and something hit his face. After the armed man released the woman, he ignored commands to surrender and ran deeper into the yard, firing shots at Sgt. Bates. The man took a defensible position behind a tree as Sgt. Bates continued to give commands, which the man ignored. Sgt. Bates and other agents continued to be fired upon as they took cover behind the hot tub. In the ongoing gun battle, the man remained concealed in a defensible position while Sgt. Bates utilized his third and final magazine.

Here, Sgt. Bates was justified in using deadly force to apprehend Mr. Paul because all other means of apprehension were unreasonable given the circumstances. Mr. Paul fit the description of the man who shot and killed a person at the Walmart, physically accosted the woman, fired upon Sgt. Bates and other officers multiple times, and took a defensible position behind the tree. As such, Mr. Paul posed a continuously imminent and deadly threat to Sgt. Bates and other officers as well as others in a residential neighborhood as Mr. Paul continued to fire his weapon. No lesser use of force could reasonably ameliorate that danger.

Agt. Dunlevy was confronted with the following facts known to him at the time he initiated deadly force: Agt. Dunlevy observed Sgt. Bates being shot at by an unknown person, he knew that the Walmart shooter was on foot and heading west, which corresponded to Mr. Paul's location, and through his rifle scope, he confirmed that Mr. Paul met the suspect description. Mr. Paul fired multiple rounds at Agt. Dunlevy and other officers taking cover behind the hot tub. Mr. Paul did not respond to numerous commands. Here, Agt. Dunlevy was justified in using deadly physical force to apprehend Mr. Paul because all other means of apprehension were unreasonable given the circumstances, and Mr. Paul posed a continuously imminent and deadly threat to Agt. Dunlevy and the other officers and the residential neighborhood as Mr. Paul continued to fire his weapon. No lesser use of force could reasonably ameliorate that danger.

Sgt. Tomasetti was confronted with the following facts known to him at the time he initiated deadly force: Sgt. Tomasetti knew the man associated with the Walmart shooting was in the area, he could hear shots fired just over the fence from where he parked his truck, through the fence, he can see a man matching the Walmart shooter's description manipulating a gun and magazine. Sgt. Tomasetti saw the man rack the slide and raise his gun to fire at uniformed officers tucked behind a hot tub. Here, Sgt. Tomasetti was justified in using deadly physical force because all other means of apprehension were unreasonable given the circumstances, and Mr. Paul posed a continuous imminent and deadly threat to the officers taking cover behind the hot tub. No lesser use of force could reasonably ameliorate that danger.

## CONCLUSION

Because the Officers had an objectively reasonable belief that a lesser degree of force was inadequate to resolve the threat posed by Mr. Paul's hail of gunfire and because the Officers had objectively reasonable grounds to believe, and did believe, that they or other persons were in imminent danger of being killed or suffering serious bodily injury, shooting Mr. Paul was legally justified. No lesser use of force could reasonably ameliorate that danger. Moreover, a reasonable person, under like conditions and circumstances, at the time Mr. Paul was shot, would believe that it appeared that deadly physical force was necessary to prevent imminent deadly harm to the officers or other persons. As there is no evidence proving beyond a reasonable doubt that a legally unjustified homicide occurred, no criminal charges can or should be brought against the Officers under Colorado law.

Please do not hesitate to contact me with questions or concerns regarding my determination of this matter.

Sincerely,



Alexis D. King  
District Attorney  
First Judicial District