



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

February 24, 2020

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

Jefferson County Sheriffs Department
Jeff Shrader, Sheriff
200 Jefferson County Pkwy.
Golden, Co. 80401

Golden Police Department
Bill Kilpatrick, Chief of Police 911
10th St. Golden, Co. 80401

**Re: Critical Incident Team Investigation 19-04 (Barricaded suspect,
John Alfonso Cruz on July 12th and 13th, 2019)**

Dear Chiefs and Sheriff:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on July 12th and 13th, 2019 to investigate the attempted shooting of John Alfonso Cruz by members of the Jefferson County Regional SWAT team. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. A CIRT investigation was completed for determining whether criminal charges are warranted with respect to the conduct of any officers involved in the incident.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney and a Chief Deputy District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. I should note at the time members of my staff responded the condition of the armed suspect, John Alfonso Cruz, was unknown and the barricade situation was ongoing

for many hours. Eventually Mr. Cruz surrendered to authorities, namely members of the West Metro SWAT Team. The West Metro SWAT team was called in to relieve the Jefferson County Regional SWAT Team because the situation remained unresolved for an extended period.

CIRT investigators interviewed witnesses, law enforcement and civilians, processed the scene of the shooting, and completed a background of John Alfonso Cruz as part of a thorough investigation into this incident. The investigative file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital media containing recorded interviews, drone footage, police communications, and photographs, related to the incident.

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 attempted use of deadly force in this incident are as follows:

Applicable Law

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

§ 18-1-704, C.R.S. Use of physical force in defense of a person

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

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

§ 18-1-707, 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

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 18-1701 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 July 12, 2019. While the entire situation spanned two calendar days the actions in question took place on July 12, 2019.

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

The evidence in this case establishes that at the time Deputies Bybee and Brown and Officer Hetrick discharged their weapons it was reasonable to believe that Mr. Cruz posed an imminent threat of death or serious bodily injury to the Law Enforcement Officers and the public. The evidence also establishes that members of the Jefferson County Regional SWAT Team were justified in attempting to use deadly force upon John Alfonso Cruz to apprehend a person whom was evading arrest. Furthermore, Mr. Cruz targeted officers by shooting at officers and officers only responded with attempted deadly force after being shot at.

Therefore, there is no reasonable probability of disproving the affirmative defenses in the attempted shooting of John Alfonso Cruz and criminal charges against Deputies Bybee and Brown and Officer Hetrick.

Summary of Facts

On July 12, 2019 at approximately 0738, a reporting party advised Jeffcom (911) that a neighbor located at 2570 Fenton St. Edgewater shot at her and the shooter was known to have weapons. Further information was provided that the suspect, later identified as John Alfonso Cruz, previously had shot at neighbors and was therefore known to the Edgewater Police Department and considered potentially dangerous.

Members of the Edgewater police department responded to the area of 2570 Fenton St., Edgewater. Edgewater police officers were able to secure the release of the

suspect's parents however, the suspect remained inside the dwelling refusing to surrender as ordered by law enforcement. Edgewater police officers did not attempt to approach the suspect or the dwelling in light of significant officer safety issues. The suspect John Cruz was known to have a significant cache of weapons and was also reported to be under the influence of drugs.

Edgewater Police Department requested the Jefferson County Regional SWAT team respond to the location of Fenton Street to peacefully and safely place Mr. Cruz under arrest.

A lengthy "standoff" ensued with a second SWAT team having to be called in to relieve the Jefferson County Regional SWAT team. The second SWAT team was needed due to the length of the operation and the suspect's failure to comply with numerous lawful orders. Additional law enforcement resources were provided by various Denver Metro law enforcement agencies. Despite extensive less than lethal tactics the suspect persisted in failing to comply with lawful orders.

During the operation law enforcement used a Bearcat to approach the dwelling via the driveway. During the course of officers' attempts to arrest Mr. Cruz they were met with a barrage of gunfire. Mr. Cruz shot directly at officers with one round striking the Bearcat and shattering a window on the passenger side directly in line with the head of Sgt. Donahue of the Golden Police Department. The window prevented the bullet from striking the head of Sgt. Donahue but compromised the integrity of the window. In response, officers returned fire.

The suspect was not hit by any gunfire and he sustained no injuries as the result of bullets fired by law enforcement. The fact that suspect John Alfonso Cruz did not sustain any injuries was not known at the time the Jefferson County Regional SWAT team was relieved of their positions.

The events of July 12th and July 13, 2019 spanned numerous hours. This office's review will focus directly on circumstances surrounding law enforcements attempted use of deadly force against Mr. Cruz.

Attempted use of Deadly Force

The Jefferson County Regional SAWT team assembled near the target house occupied by Mr Cruz. Once assembled the SWAT team was briefed on pertinent information regarding Mr. Cruz including the number of weapons he was believed to have as well as the potential Mr. Cruz was under the influence of drugs, most likely Methamphetamines. Note, subsequent testing revealed in fact Mr. Cruz had substantial methamphetamines in his system as well as numerous weapons and ammunition.

An arrest team was put in place in an effort to take Mr. Cruz into custody. The arrest team approached Mr. Cruz's home by driving into the driveway area in a bladed (angled) fashion. The arrest team was contained in a Bearcat vehicle. The Bearcat has

protective armor and bullet resistant glass. The arrest team consisted of a total of seven (7) officers. Once in position the arrest team began making numerous and constant announcements to Mr. Cruz. The announcements were directed to Mr. Cruz by name and advised Mr. Cruz that he was under arrest and come out of the house with his hands up. Sgt. Donahue, from his position in the front passenger seat, used the public address unit to ensure Mr. Cruz was clearly aware that law enforcement was present to take him into custody. Fellow officers confirmed from blocks away that they could, in fact hear the announcements.

Failing numerous attempts to get Mr. Cruz to comply, Deputy Calley deployed a 40-millimeter foam baton round into a window on the front side of the residence. The foam baton is a less than lethal breaching device that is designed to breach a window by putting a hole in the glass and eliminating window glare or reflection. The deployment of the foam baton is also used to gauge compliance when, as in this situation, the suspect remains non-compliant. In order to deploy the foam baton Deputy Calley had to expose himself to potential gun fire. Deputy Bybee provided lethal cover for Deputy Calley.

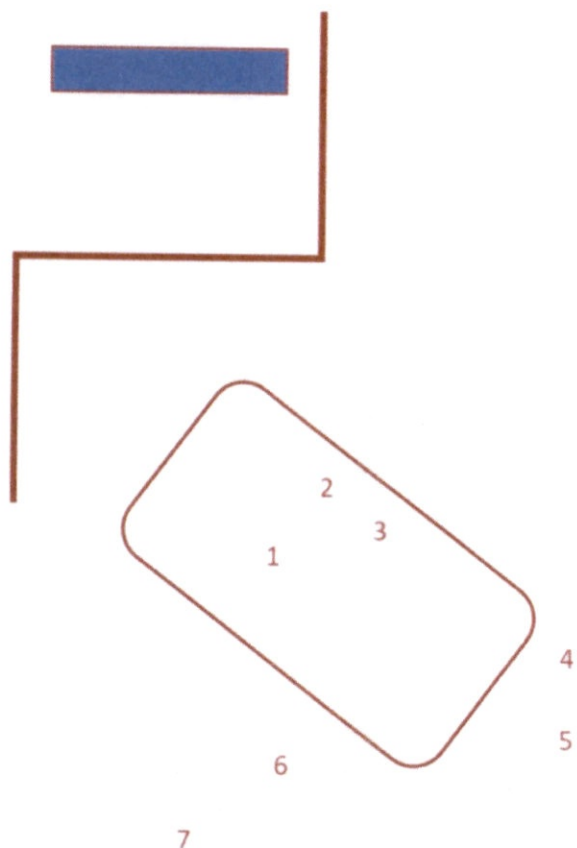
After the foam rounds were deployed several gunshots from inside the target home were heard. The estimated number of shots were between four to six and officers believed the gun fire was coming from a hand gun. No officers returned fire because no target/threat was visible. Announcements to Mr. Cruz continued, pleading for him to surrender.

Mr. Cruz continued to ignore orders and officers then deployed various types of gas in attempt to drive Mr. Cruz from the residence and gain compliance. After gas was deployed into the residence, a short pause ensued followed by more shots being fired inside the dwelling. This time however, the gunshots were noticeably louder consistent with rifle rounds.

Commands for Mr. Cruz to come out continued even after the rifle rounds were heard. Rather than surrendering, Mr. Cruz is observed at a large window in the carport moving blinds to the side. Mr. Cruz has a helmet consistent with a motorcycle helmet on and a tee-shirt. After moving the blinds to one side with both hands Mr. Cruz pulls out a rifle and begins firing at officers. One round strikes the window directly adjacent to Sgt. Donahue's head fracturing the window. At the time Mr. Cruz begins shooting Deputy Bybee is exposed as he is positioned on the passenger side of the Bearcat and directly in the line of fire. In response Deputy Bybee, now having a target and being directly threatened, returns fire attempting to strike Mr. Cruz.

Deputy Brown and Officer Hetrick at the time the shooting begins were positioned at the rear of the Bearcat. Observing the bullet shatter the Bearcat window and being aware that fellow officer Deputy Bybee was in an exposed position, Deputy Brown and Officer Hetrick went to the driver's side of the Bearcat to lay down suppression fire. Suppression fire was an attempt to compel Mr. Cruz to stop shooting at officers.

The suppression fire was successful as Mr. Cruz dove back into the dwelling unharmed.



1. Dep. Timothy Drieth
2. Sgt. Mark Donahue
3. Dep. Chad Bingham
4. Dep. Jordan Bybee
5. Dep. Ryan Colley
6. Sgt. Ian Hetrick
7. Dep. Anthony Brown



Legal Analysis

This office's review of the attempted shooting of John Alfonso Cruz 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 details will differ from witness to witness, and those interviewed may not recall all 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. Furthermore, this office's review was aided by drone footage that captured the actual events in question.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, the officer who arguably discharged his weapon in attempt to strike Mr. Cruz was Deputy Bybee. The other officers who shot, Officer Hetrick and Deputy Brown, discharged their weapons not to strike Mr. Cruz but rather to suppress a threat that was actively trying to shoot fellow officers. The officers' statements and the evidence support that conclusion. John Alfonso Cruz refused lawful and direct commands of the officers and responded by shooting directly at officers. The legal analysis therefore must take into consideration Colorado law regarding the affirmative defenses and self-defense.

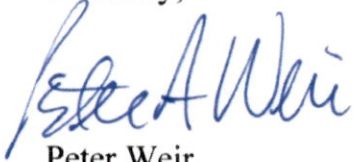
In Colorado, all citizens including police officers have the right to self-defense, including the right to use "deadly physical force" under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or another,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

A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or is attempting to escape by the use of a deadly weapon.

John Alfonso Cruz was armed with a deadly weapon, and he used that weapon in a clear attempt to shoot police officers. Law enforcement gave Cruz clear commands to surrender and comply. Those commands were ignored. The officers were reasonably in fear for their own lives and the lives of one another. The officers were also attempting to apprehend John Alfonso Cruz having been advised that Mr. Cruz shot at a citizen. Consequently, it was not unreasonable for Deputies Bybee and Brown and Officer Hetrick to respond to the threats and actions by Mr. Cruz in the manner that they did.

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 Deputies Bybee and Brown and Officer Hetrick during this incident meet the legal requirements of the affirmative defenses as contained in C.R.S. Sections 18-1-704 and 18-1-707. I am certain there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defenses available beyond a reasonable doubt. Therefore, I conclude that the conduct by Deputies Bybee and Brown and Officer Hetrick did not violate any criminal statutes nor involve criminal conduct.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter Weir". The signature is fluid and cursive, with a large initial "P" and "W".

Peter Weir
District Attorney
1st Judicial District