



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties
Alexis D. King, District Attorney

September 14, 2021

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

Re: CIRT 21-01, the shooting of Mr. Walvatne-Donahey

Dear Chief McCasky,

The First Judicial District Critical Incident Response Team has completed its investigation into the January 12, 2021, fatal shooting of Ty Walvatne-Donahey, by Lakewood Police Department Agents Place, Capolungo, Hagerman, and Alfano (the "Officers") on Glenn Dee Drive. Jefferson County Sheriff's Office Commander Del Kleinschmidt presented the investigation to me and Assistant District Attorneys Jennifer Rhoads and Amanda Gall, among other CIRT members, on April 15, 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 Ty Walvatne-Donahey. 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.

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 perform critical duties related to the CIRT investigation. The CIRT team promptly responded to investigate, led by Commander Kleinschmidt. 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 Kleinschmidt briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

I reviewed over 1,000 photographs and approximately 650 pages of reports by the Arvada Police Department, Jefferson County Sheriff's Office, Wheat Ridge Police Department and our other CIRT agencies throughout the First Judicial District. I also reviewed the recorded interviews of the Officers, all witnesses who heard or saw the events, and evidence collected from the scene and evaluated by independent examiners.

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 they 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 are examples of 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. C.R.S. §18-1-707(4.5). Acting in self-defense or defense of others is subject to the same analysis. C.R.S. §18-1-704(1)-(2). By law, in deciding whether the Officers were justified in acting in self-defense or defense of others, it does not matter whether Ty Walvatne-Donahey 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 Ty Walvatne-Donahey, 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 Ty Walvatne-Donahey? If so, the shooting is justified under Colorado law and no criminal charges can be filed.

Facts Established by Investigation

On the morning of January 12, 2021, around noon, Agt. Place was called out to Prestige Imports, a car lot on the north side of Colfax by Garrison, because a man was walking through the lot lifting up door handles, trying to get into the parked cars. Agt. Place is a veteran officer with over eighteen years of experience at LPD. That morning he was in the middle of his shift in full uniform and driving a fully marked LPD vehicle.

When Agt. Place arrived and spoke to employees, they said the man lifting door handles was white, about six feet tall, wearing purple shoes, khaki pants, a dark jacket and winter hat. Employees saw the man head to the Trail's End Motel ("Motel"), directly east of Prestige Imports, before Agt. Place arrived. The employees seemed to think the man was associated with a silver Kia in the Motel's parking lot. When Agt. Place looked over to the Motel, the Kia was parked outside Room 25 and had its flashers on. Agt. Place was joined by Agt. Capolongo, a twenty-eight year veteran of LPD, who was also in full uniform and driving a marked police car. Together, they walked over to the Motel and found the Kia in good condition in comparison to many of the cars often found at the Motel. Agts. Place

and Capolongo found that the car was not reported stolen and noticed a man walk up a stairway, from below grade, through a breezeway, and away from them. Agt. Place did not get a good look at the man; his focus remained on the car. However, Agt. Capolongo believed the man fit the description, including the purple shoes, but could not figure out where he went.

Employees from Prestige Imports waived Agt. Place down again and said the man who walked past him and Agt. Capolongo was the same person who was pulling door handles. Though Agt. Place was unsure, the employee insisted it was the same person. Agts. Place and Capolongo decided to walk around the Motel and look for the man who passed them, but it was like he disappeared. Agts. Place and Capolongo stopped by the Motel's office and, upon inquiry, the manager was not familiar with the Kia or the man.

Stymied, Agt. Place got into his patrol car and drove eastbound on Colfax, looking for the man. Unable to locate him, Agt. Place accessed the traffic cameras on his car laptop. Looking at footage from a few minutes earlier, Agt. Place saw a man fitting the description in the breezeway, going around the front of the Motel and out onto Colfax. But due to the poor quality of the camera, Agt. Place was unable to see where the man went next. Agts. Place and Capolongo returned to the Motel and wondered whether the man was hiding in the Motel's garages. Agts. Place and Capolongo asked the manager about the garages. They found the garages secure as Agt. Prien arrived to assist.

At about 12:42 p.m., dispatch received a call that there was a robbery at the Safeway on the south side of Colfax, just across from the Motel. Having heard that Agts. Place and Capolongo were out at the Motel, the robbery call grabbed the attention of Agt. Hagerman who was doing paperwork in a parking lot and available to respond to the call. Agt. Hagerman has eight years of experience with LPD and was in uniform and a marked car. The robbery call also drew the attention of Agt. Alfano, an officer with eight years of experience at LPD. Unlike Agt. Hagerman, Agt. Alfano was assigned to the Community Action Team and works to address quality of life issues like supporting the unhoused and folks dealing with mental health instability. As such, Agt. Alfano was in an unmarked truck and wearing khaki pants and a vest with LPD insignia. In the same area as the robbery, Agt. Alfano arrived and parked on the east side of Safeway.

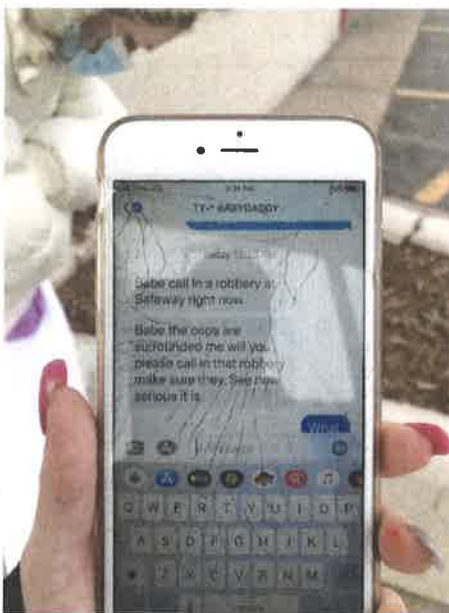
Agts. Place and Prien decide to walk over to the Safeway while Agt. Capolongo drove his marked car. While heading to Safeway, Agt. Place learned more about the robbery call: it came from outside the store, the caller hung up, and it was a "911 phone" so dispatch could not call back. When Agents arrived at Safeway and start talking to people, there was no sign of a robbery and employees said everything was fine. Agents share this status with dispatch at 12:47 p.m.



View from Prestige Imports where Ty Walvatne-Donahay was seen.



Kia with flashers on at the Trail's End Motel.



Text shared by woman who was asked by Ty Walvatne-Donahay to call in a robbery at Safeway.

Agt. Place and Agt. Capolungo instinctively wondered whether the robbery call was a diversion by the man who was checking doorhandles at Prestige Imports. For Agt. Place, the timing and manner of the call was too convenient. They turned their attention north, back across Colfax, to the Motel. Less than a minute after their update from Safeway was shared with dispatch, Agt. Place told dispatch that he saw a man emerge from the Motel's breezeway, round the corner where the patrol cars remained parked, then change direction and head east, running toward the Big O Tires store. Though Agts. Place and Capolungo were about 100-150 yards away, they could see the man appeared to be a white male wearing khaki pants and a black jacket. Agt. Capolungo noticed that the man seemed to be on the phone and his body movement appeared frantic.

Agt. Place watched the man cut north along the east side of Big O Tires and then run into the business. Agt. Place shared his observations on the radio as he and Agt. Capolungo walked briskly to Big O Tires. Agt. Millard had also arrived, and he and Agt. Hagerman decided to drive directly to Big O Tires. Agt. Alfano drove too, parking on the east side of the building, and he could see the man before he went into Big O Tires. Agt. Place arrived first on foot, ahead of Agt. Capolungo, and saw the man inside the mechanic's area. Agt. Place stepped into the same area and his vision was impacted as he went from bright sun to the dark interior. Agt. Capolungo saw the man milling about the store and stepped inside with Agt. Place. From his car, Agt. Alfano could also see the man and the agents inside.

Inside Big O Tires, Agt. Place yelled at the man "Stop, I need to talk to you," and "Police, show me your hands." Agt. Place did not have his gun drawn and the man looked like he was on the phone. Despite Agt. Place's requests, the man did not respond at all. Instead, the man sprinted out of the garage to the north along a residential side street, Glenn Dee. Agts. Place, Prien, and Capolungo started running after the man and were joined by Agts. Alfano and Millard. Agt. Capolungo continued to yell "stop" but the man ignored him as agents took off on foot. Agt. Millard ran with his taser in hand and yelled to the man that he was going to be tased and the man replied, "No." Agt. Hagerman fell in behind them, still driving his patrol car.

While Agts. Place, Alfano, and Capolungo were running, they saw the man clutching something tightly in his jacket, waistband, or pants pocket with his right hand. Because of man's body language, Agts. Capolungo Place were both worried that the man was carrying a gun. Agt. Place voiced this concern and told the other officers to watch the man's hands. Though Agt. Place was worried and considered unholstering his gun, he decided to leave it on his hip so he could run faster. Agt. Capolungo left his gun holstered as well. Agt. Hagerman turned on his lights and chirped the siren a couple of times, hoping to convince the man that he could not outrun the patrol car. Agt. Schimmels pulled her car onto Glenn Dee, behind Agt. Hagerman, and followed him down the street and eastbound into the driveway of a house.



Big O Tires from the south garage door looking through the northeast door towards Glenn Dee.



Mr. Walvatne-Donahy running north on Glenn Dee with LPD in pursuit.



Driveway of Glenn Dee home with Agt. Hagerman's patrol vehicle.



View from in front of patrol vehicle, house on the left, garage to the right.

Because of a large tree, Agts. Place, Capolungo, and Hagerman lost sight of the man for what felt like a half second as the man turned off Glen Dee into the driveway. Concerned, Agts. Place and Capolungo unholstered their firearms. As Agt. Place came around the tree, other officers were standing with their weapons drawn. Agt. Prien has his taser drawn. The man was 15-30 feet from the officers, and Agt. Hagerman's patrol car was behind them, leaving no cover. Agt. Hagerman left his lights blinking and got out of his car with his gun drawn and pointed at the man. Agt. Alfano also had his gun drawn. The man was backed against a tall privacy fence, the house to his right and a garage to his left, at first, the agents thought the man was looking for a way out, perhaps through a gate or over the fence.

Agts. Place and Alfano did not initially see the man's gun until they joined the line of officers in the driveway. Agt. Alfano recalled walking towards the man to take him into custody when other officers yelled at him that the man had a gun. With the fence at his back and blocked into the driveway, the man held the gun to his head, his body language animated and chaotic. Officers yelled at him to "drop the gun" repeatedly but the man did not respond to the commands. Agt. Hagerman was not yelling commands because others already were; instead, he watched closely for any sign of surrender or indication that the man did not want this situation to continue. Though the man did not move from his spot, his motions were messy and unstable. The man yelled, "Shoot me, I'm gonna kill myself" and "kill me" while agents continued to call for the man to drop his gun. The man continued to ignore commands.

Agts. Schimmels and Prien watched the man's gun and saw the man move the barrel of the gun from his head, down toward the officers. Agt. Prien decided to switch from his taser to his gun but in that moment, he heard a shot from behind him. Agt. Prien did not fire his duty weapon as he was transitioning during the exchange of fire. Like Agt. Prien, Agt. Millard stepped back and behind a bush to switch from his Taser to his firearm but before he unholstered, he heard shots fired. Agt. Schimmels heard guns fire before she could react.

As the other officers reconsidered whether to use their firearm, Agt. Place decided to fire his weapon, as he believed it would have taken only a split second for the man to fire on the agents. Agt. Place fired a single round, and heard a round come from the man, so Agt. Place continued to fire until the man fell on the ground.

Agt. Capolungo also noticed that the muzzle of the man's firearm, which had been tipped up toward the sky next to the man's head was now coming away from his head and lowering towards the line of agents. Agt. Capolungo decided to fire, and heard a round come from the man, seeing what looked like recoil in the man's right hand. Agt. Capolungo flinched at the sound and continued to shoot until the



Ty Walvatne-Donahey's phone, gun, and shoe located next to privacy fence.



Markers showing where Ty Walvatne-Donahey's gunfire hit the garage.

man was on the ground. Agt. Capolungo recalled that his decision to shoot and seeing the man's recoil was almost simultaneous.

Agt. Hagerman saw the gun move from the man's temple and heard a pop. Believing that the man had fired a round into the air, Agt. Hagerman decided to fire at the man until he was down on the ground. Agt. Alfano heard gunfire from the line of officers and then saw the man's gun come forward, holding it sideways and firing a round toward the officers. Agt. Alfano returned fire until the man was on the ground. Dispatch recorded shots fired at 12:49 p.m., less than a minute after the man ran from the Big O Tires store.

Once down, all the officers approached the man, located his firearm, a Smith & Wesson M&P Shield 9mm, and gave emergency medical support. Agt. Place assisted by keeping the man's airway open until paramedics arrived. Agts. Hagerman and Alfano focused applied pressure to the chest injuries. Agt. Capolungo assisted with rendering aid. Agt. Schimmels looked over the fence and saw the homeowner standing behind it; she asked him to go inside until an officer could talk to him. Sgt. Caracostas determined who had fired their service weapons and removed them from the scene.

The Scene

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 house on Glenn Dec. They found multiple .45 and 9 millimeter casings. There were signs of bullet holes around the fencing near Ty Walvatne-Donahey, and a Smith & Wesson M&P Shield 9mm. There appeared to be a bullet defect in the home's garage that came from where Ty Walvatne-Donahey stood. The CIRT team utilized digital documentation to memorialize the scene.

At LPD, the Officers were relieved of their firearms, transported, photographed, processed, and connected to peer support. CIRT detectives and investigators interviewed the Officers on January 12, 2021. The Officers were fully cooperative and voluntarily answered all questions.

Further investigation revealed a recovered two 9mm rounds which were likely fired by Ty Walvatne-Donahey. The gun was stolen in late December. The Kia at the Motel was stolen on January 12, 2021, but the information had not been posted yet on law enforcement databases.

Autopsy

Conducted on January 14, 2021, by Forensic Pathologist Dr. Carver in the presence of CIRT team members.

1. Gunshot wound of right lateral thigh, indeterminate range
2. Gunshot wound of posterior right calf, indeterminate range
3. Gunshot wound of posterior left thigh, indeterminate range
4. Gunshot wound of anterior right thigh, indeterminate range
5. Gunshot wound of the top of left shoulder, indeterminate range
6. Gunshot wound of right upper arm, indeterminate range
7. Gunshot wound of the right buttock, indeterminate range
8. Gunshot wound of right chest, indeterminate range
9. Gunshot wound of the right chest, indeterminate range
10. Gunshot wound of posterior right shoulder, indeterminate range
11. Gunshot wound of right back, indeterminate range

A blood sample was forwarded to NMS Labs, which completed a toxicology report. Mr. Walvatne-Donahey was positive for amphetamine, methamphetamine, methadone, EDDP (methadone metabolite), morphine, fentanyl, and norfentanyl.

Analysis

Though Agt. Place was back and forth across Colfax for about forty minutes before finding Ty Walvatne-Donahey, the handful of minutes between locating Mr. Walvatne-Donahey and coming into contact with him were fraught with danger to himself, fellow officers, and the community. Mr. Walvatne-Donahey had come to law enforcement's attention for attempting to trespass into vehicles on the Prestige Import car lot. He then managed to evade detection for 40 minutes and as law enforcement suspected, likely catalyzed the robbery call at Safeway. Once he was finally spotted on his way into Big O Tires, he refused to respond to law enforcement, who were not using or attempting to use force, and took off running, chased by at least five officers and a patrol car.

The danger he presented was not known until about forty seconds before he was shot as he ran up the street, desperately gripping an object by his hip. Once he turned into the driveway of a home and became cornered against a privacy fence, his gun was visible. The combination of the gun, his statements to officers, body language, and lack of compliance made this a deadly situation not only for Agt. Place but the other officers standing in front of the man, as well as neighborhood residents. Agt. Place's decision to fire, based on the known facts, amount to a reasonable belief that any lesser use of force would have been inadequate to ameliorate the imminent danger posed by Mr. Walvatne-Donahey.

Agt. Capolungo was with Agt. Place from the beginning and had first-hand knowledge of the events leading up to his decision to shoot Ty Walvatne-Donahey. Unlike Agt. Place, Agt. Capolungo had a vantage point that showed Mr. Walvatne-Donahey move the gun from near his temple, down toward the Officers when Agt. Capolungo decided to fire his weapon. He then observed the man's arm absorb the recoil as he fired. Agt. Capolungo flinched in response given the distance between him and Mr. Walvatne-Donahey and continued to fire until Mr. Walvatne-Donahey was on the ground. Agt. Capolungo's direct knowledge of the events leading up to the confrontation and observations of Mr. Walvatne-Donahey changing the position of the firearm amount to a reasonable belief that an imminent risk to officers and those in the neighborhood existed, and ultimately, that any lesser use of force would have been inadequate to ameliorate the danger posed by Mr. Walvatne-Donahey.

Agt. Hagerman joined the effort after hearing about the false Safeway robbery. He had a unique view as the driver of the patrol car that went from Big O Tires to the residence on Glenn Dee. Like the other agents, he came around the corner to find Mr. Walvatne-Donahey cornered in the driveway of a house. Agt. Hagerman immediately saw the firearm, heard the man's words, and still watched for any sign of compliance or surrender. Like Agt. Capolungo, he was able to see Mr. Walvatne-Donahey pull the gun away from his head at which point Agt. Hagerman heard a pop before deciding to fire his weapon. Agt. Hagerman used reasonable force to mitigate the imminent danger presented by Mr. Walvatne-Donahey.

Like Agt. Hagerman, Agt. Alfano came to the Safeway but quickly drove over to Big O Tires to assist. Agt. Alfano had a unique view as he was able to see Agt. Place's attempt to contact Mr. Walvatne-Donahey inside the tire store without a weapon drawn or reason to believe Mr. Walvatne-Donahey posed any significant danger. When Agt. Alfano followed Mr. Walvatne-Donahey to the residential driveway, he had his weapon drawn but considered walking up to and arresting Mr. Walvatne-Donahey before other officers warned him that they could see a gun. Agt. Alfano then stepped back with the other officers, heard the man's statements, watched his body movements, and tried to get him to drop the gun, before he heard a shot from those next to him. He then saw Mr. Walvatne-Donahey bring his gun forward and sideways, shooting at the Officers, before Agt. Alfano decided to fire his weapon. Agt. Alfano used reasonable force against Mr. Walvatne-Donahey's decision to fire his weapon.

Because each Officer's objectively reasonable belief that a lesser degree of force was inadequate to resolve the imminent threat posed by Mr. Walvatne-Donahey's statements, body language, and use of a firearm, and because the Officers had objectively reasonable grounds to believe, and did believe, that they and other persons were in imminent danger of being killed or suffering serious bodily injury, shooting Mr. Walvatne-Donahey 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. Walvatne-Donahey 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,

A handwritten signature in blue ink that reads "Alexis D. King". The signature is written in a cursive, flowing style.

Alexis D. King
District Attorney
First Judicial District