



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

July 13, 2020

Lakewood Police Department
Dan McCasky, Chief of Police
4455 S. Allison Parkway
Lakewood, CO 80226

Re: Critical Incident Team Investigation 19-08 (Officer Involved Police Shooting of John Luce DOB 05/29/1997 on November 11, 2019)

Dear Chief McCasky:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on November 11, 2019 to investigate the fatal shooting of John Luce by Lakewood Agent Saul Palomo. 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 of the Lakewood Agents involved in the incident.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. They observed key interviews of witnesses including Agents Palomo, Edelen, Henaire, and Wright.

CIRT investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and completed a background of John Luce as part of a thorough and complete investigation into this incident. The investigative file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital media containing recorded interviews, police communications, photographs, and laboratory analysis.

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 in this incident by Agent Saul Palomo:

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

(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 officer is not subject to criminal prosecution for his actions on November 11, 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 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 Agent Palomo shot John Luce it was reasonable to believe that Luce posed an imminent threat of death or serious bodily injury to Lakewood Agent Palomo. Furthermore, Agent Palomo was attempting to effect an arrest of John Luce who was known to have an active felony warrant for Second Degree Assault with a Deadly Weapon. John Luce was given direct orders from Lakewood agents that he was under arrest to comply with the agent's orders. John Luce, rather than comply with Agents' orders squeezed, through a small utility room window where he was confronted by Agent Palomo. John Luce was once again given direct orders to submit to lawful orders. John Luce produced what reasonably appeared to be handgun and pointed the weapon at Agent Palomo. John Luce also advised Agent Palomo that Agent Palomo would have to kill him.

Therefore, there is no reasonable probability of disproving the affirmative defenses in the shooting of John Luce and no criminal charges are appropriate against Agent Palomo.

Summary of Facts

November 11, 2019 Jefferson County Regional Communication Center received a phone call from Allison Eye advising that the father of one of her daughters, John Luce, had a felony warrant for his arrest and Luce was currently located at 1520 S. Harlan Street in the city of Lakewood. Allison Eye was able to provide John Luce's date of birth and she further indicated her current fiancé, Mark Gronquist, texted her to alert her that John Luce was present at the residence.

Dispatch in turned notified agents of Mr. Luce's presence at 1520 Harlan St., Lakewood. Agent Palomo was on duty at the time of the call and in a marked Lakewood Police vehicle. Agent Palomo was in full uniform with visible markings indicating he was law enforcement. At the time Agent Palomo received the information from dispatch he was stationary completing unassociated reports. Agent Palomo took the opportunity to "run" John Luce through his onboard computer.

Agent Palomo was able to confirm that Luce had a felony warrant for his arrest for the crime of assault in the second degree with a deadly weapon. Agent Palomo was also observed an associated photo of John Luce.

Lakewood agents, including Agent Palomo responded to the area of 1520 S. Harlan St. where they discussed amongst themselves a lowkey approach to get Mr. Luce into custody. As Agent Palomo, Agent Henaire, and Agent Wright were discussing the pertinent call information, a male generally fitting suspect Luce's description started a vehicle that was parked in front of 1520 S. Harlan Street. Agents walked up to the male who was identified as Mark Gronquist. Mr. Gronquist lives at 1520 S. Harlan and is the fiancé of Allison Eye. Agents inquired of Mr. Gronquist if Mr. Luce was present in the dwelling. Mr. Gronquist affirmed that John Luce was in fact present and he was last observed by Mr. Gronquist to be in the basement of the home.

Agent Palomo, Agent Henaire, and Agent Wright approached the front of 1520 S. Harlan. The agents knocked on the door. John Luce's mother Justine Ewing answered the door. Justine Ewing was aware that police were looking for her son John Luce and she was also aware that John Luce had a warrant for his arrest.

When agents inquired of Ms. Ewing regarding the presence of John Luce, she inquired if police had a warrant to search the home. Justine Ewing was advised by the agents that agents did not in fact have a warrant. Miss Ewing gestured in a fashion that clearly indicated that the suspect was indeed in the home.

Miss Ewing granted consent for the agents to look in the house for John Luce. Miss Ewing at that point motioned to the agents to head to the backyard to cut off her son's escape route.

Agent Palomo proceeded to the backyard by traveling around the driveway and through a gate in the back. At the same time agent Palomo was heading into the backyard, Agents Wright and Henaire entered the home. Agent Wright and Agent Henaire proceeded to a set of stairs that led to the basement. Agents Henaire and Shelby, who were now joined by Agent Adelen, immediately began to give commands to John Luce. John Luce's father was at the bottom of the stairs and indicated that he had not seen his son.

Ms. Ewing, after allowing agents to enter the home, retired to a back bedroom with two young children. Ms. Ewing turned the music volume up to drown what was happening or about to happen.

As Agent Henaire and Agent Wright were giving commands to John Luce, Agent Palomo had made his way to the backyard. Once in the backyard, Agent Palomo

starting hearing rustling noises coming from a window well. John Luce appeared in the window well after squeezing through a narrow window. Agent Palomo gave John Luce to direct commands to give up and surrender. John Luce stood up in the window well and indicated to agent Palomo that he would have to kill him. John Luce raised his right arm up in a horizontal direction. In his right-hand John Luce had what clearly appeared to be a hand gun. Initially the gun was not pointed directly at Agent Palomo. John Luce, however, moved his right hand to a position where the gun was pointed directly at agent Palomo. Agent Palomo was able to see the hole of the barrel pointed directly at him. The gun did not have any markings that would indicate the it was anything other than a real handgun. At this point, Agent Palomo discharged his weapon four times striking John Luce three times. Agent Palomo and fellow agents immediately began life saving measure and emergency medical personal were summoned. Despite life saving measures John Luce passed away.

Use of Force Officer Interview Summary: Agent Saul Palomo

Agent Saul Palomo agreed to a voluntary interview following the shooting of John Luce. The interview was conducted by trained CIRT investigators and it was observed by members of my staff including a Senior Chief Deputy District attorney.

Of note; when Agent Palomo describes his realization that the object John Luce had in his hand was not in fact a real gun, Agent Palomo became visibly upset and shaken.

A transcript Agent Palomo's interview was prepared and selected texts are included:

In this first quote, Agent Palomo described who was the lead on the call, Agent Shelby, and what he did in response.

Agent Saul Palomo: "Um, she was primary agent. Uh, she was assigned to it and then I was secondary meaning I was her back up but that we were both responding. Uh, dispatch said that the male had multiple warrants, uh, out of jurisdiction and jurisdictional, uh, warrants. Uh, felony warrants, uh, I think there was a mention about a 5 thousand dollar bond as well. So, um, at the time, 3-7-12 was with me at the Link. I don't know his name. He's fairly new, uff, uh, the last academy. Um, he asked if she should be, if he should go as well and, uh, due to the, the person of interest having multiple warrants, I said yeah. Let's go. Go with, uh, go with me and got into my car, uh, signed in. Er, actually I didn't sign in. I clicked on

the map to see where, where the area, the house was, the address was. Realized it was fairly close to there. Um, and then I, I ran the, the male's information, uh, through N-C-I-C, uh, C-C-I-C to see what the warrants were for and how he looked like. Uh, I received a response, um, I got a picture of the, uh, the white male, uh, and on the, on the picture, he had a light colored beard on him and he, wuh, I saw a warrant, a felony warrant for an assault and I saw another, uh, warrant, a felony warrant for, uh, I think it had a 5 thousand dollar bond. But there were multiple warrants so that's what I can see. So I drive towards the, the address. I park about a block away and I wait for, uh, 3-7-12 to pull up behind me and I get out of my vehicle. I get off, get out of my vehicle, approach, um, 3-7-12's passenger side to, to see how he **** to approach the situation and that's when he let me know that he also sent me a picture of the guy. So I confirmed it by looking at my phone and so it was, like, the same guy on NCIC and the same guy, the picture that he sent me. Uh, two different pictures but same person.” (transcript pg.12)

Agent Palomo continues to describe what transpires after he arrived on scene. The numbers provided are call signs 3-7-22 for Agent Shelby Wright, 3-7-12 is Agent Jacob Edelen, and 3-7-11 is Agent Henaire. During his interview Agent Palomo mixes up the call signs for Agent Henaire and Agent Edelen.

“Um, and then 3-7-22 called on scene, uh, just north of, I believe, of the address. So we decided to go over to where she was on the north side of the address; on, uh, West Florida. Um, we parked where there, where we think, uh, the house wouldn't be able to have any visibility of our vehicles. Kind of used, like, a stealth approach. Suh, um, we meet up in the driveway to the, to the house north of the location of interest and myself and 3-7-22 look at each other in confusion as to is the reporting party saying that the suspect is there or is the fiancé saying that the suspect is there. So I asked dispatch to give me the phone number so I can call the reporting party to get some clarification on this and as dispatch was giving the, the name of Alison and the number, um, one of those, the, tuh, two agents that I was with said that it was a male, um, exiting the house. Uh, male was white. He appeared to have been, uh, the suspect that we know as John. Um, and he went into an S-U-V that was parked directly in front of the house. Uh, I believe he turned on the vehicle. Uh, the vehicle had already been running because the ice and all that was already scraped off. Um, and I was gonna go back to my patrol vehicle because I was gonna, struh, try to see if I can, uh, have P-C for, uh, a stop. If it, cuh, if to see if that was John or not and I was walkin' back to my patrol vehicle. The other agent told me that, uh, the male went inside. I don't remember if he said he ran inside or, wuh, walked back into the house. So at that point, I walked back to where the agents were. Uh, we then approached the house from, uh, the yard and that male came out. The male was wearing, like, a green camouflage, um, jacket with, like, a beanie. I forgot if, ih, I think it was orange. I'm not, cuh, I can't remember correctly. Um, I think I asked

him if, if he was John and he said no. That he was the fiancé and I asked to see his ID and he took out his ID and he handed it to 3-7-12 and he told me that it wasn't John. I asked him where, uh, John was and he said he's inside in the basement. Uh, I asked, uh, I don't know the guy's name. I asked him if we can go into the house and he said it's not my house. I don't wanna get involved with this. I asked who house is it? Whose house, um, who'd it belong to and he said it belonged to, um, his, um, mother-in-law's house. So we let him go. Um, uh, we then, myself and Shelby, basically get on both sides of the, the, the front door. The front door and the spring door were closed so I can hear kids inside and, uh, I ring the doorbell and the door opened in a way where I can't see directly into the house but Shelby was able to. So she, she, uh, asked us, the female, I think she told this, the female who opened the door that I later was, uh, an older female. I didn't get her name. Uh, tell her that we have information that there's a guy by the name of John **** who has, uh, uh, warrants and, at that point, um, the lady stared at us. Uh, she looked over her shoulder to her right, uh, and then looked back at us and she, she seemed scared and she said tell me you have a warrant, uh, to, to come into my house. And I look at Shelby, um, we're not gonna ****. I didn't say that but I kinda nodded my head as in no and, uh, she mentioned it again and the lady looked back over and I said, so, can we come in your house? And she repeated it, I believe and she said, tell me you have a warrant to come into my house. Well, I'm asking you if we could go into your house and at that point, I heard, I heard kids but I also heard heavy footsteps behind her and she kept lookin' over her shoulder and then she mentioned something about, uh, he's going outside the back door. So myself and 3-7-22 went around the how, the south side of the house. I realized there was a, um, a door on the south side. Um, there was a garage door on the southwest side. Shelby remained at the front door speaking to the female while I went to the south and tried to see if the guy was actually leaving the residence through the back yard. Um, I realized there was a sliding back door on the southeast side of the residence. So while I stayed there, um, um, **** the house; **** other yard in the neighboring, hah, yard. Um, and then on the radio, I hear Shelby say, we have consent to go into the house and I, I got on the mic and, basically, I asked, I was like, do we have consent to go into the house? And at that same time, I heard 3-7-12, like, sorry I don't know his name." (transcript pgs. 13-14)

Agent Palomo continues to describe what he was hearing and seeing from his position in the backyard. Agent Palomo then describes why he discharged his weapon.

“ it, it had appeared that he sounded like he was in the house and I could heard him saying, uh, come out with your hands up. We have, uh, the building surrounded, and he repeated that multiple times and I could hear him from inside while I was outside

and I started hearing noise in the back side, on the other side of this, this wall. Um, the noise was from a, like a metal rattling that was coming from one of the windows and I tried describing it the best I can. It was a, like a metal, I don't know what it is, it's like when you plant a plant or seed the vines hold onto it and it's like, he didn't know what I'm talking about, but that was rattling. So I went to see the possibility of it was him trying to get out or if it was an animal but I wanted to confirm that and so I went around the, um, there's a, the patio there. There are some bricks there. So I went around and, uh, I saw a male getting out of the window, the basement window. He was in a window well, um, and I aired it out that the male was coming out the back. He looked at me and when he looked at me, I recognized the male to be John, uh, Luz based on the DMV pictures and on the picture that 3-7-12 sent me, uh, white male with a light colored beard, uh, small beard not a lot. He did have a thick, uh, black jacket, or a dark colored jacket and at that point, um, he looked at me. He was, his back or his left side was towards my direction. Um, he looked at me, came back down, he reached down so his hands had disappeared from my view, uh, so I said, um, um, uh, put your hands up. Let me see your hands. Um, and sorry prior to that, let me take that back a little bit. Um, trying to investigate what the sound was, uh, if it was him. I drew my weapon and due to the, uh, the amount of warrants that this male has with felony warrants and assault being one of the warrants, drew my weapon and my plan was if it was the male was to prone him out in the back yard and then handcuff him from there, but, uh, back to when I saw him, his hands coming down and you know going out of my vision and sight. Um, I told him let me, uh, let me see your hands. Put your hands up and then he reached down he says no you're gonna have to shoot me, um, and, and at that point, uh, he presented a firearm, um, uh, he, first he waved it at what I thought was in the direction of southbound, south of the house and up in the yard so towards the back patio. He shh, he did one of this and I could clearly see it was a black handgun, uh, there's no doubt about it. It was a black handgun and then he was, started pointing it my direction and then as I was standing in front of him, I had my gun pulling it in his, uh, direction, um, kind of in the right position pointing downwards first and I saw the gun being pointed at me. I could see the, the muzzle of the, of the, of the gun. I could see the black hole. I couldn't see clearly down the barrel, but I could see the muzzle in my direction. Um, at that point, um, realizing it was a gun, I, I feared, I really did think he was gonna shoot me, so, um, I didn't want to get injured so I, uh, my goal was to shoot back first then I shot back, uh, I aimed up towards his, uh, uh, center mass area and shot three to four rounds. Uh, I saw that the gun fell in my last shot and, uh, at that point I stopped shooting. He kind of just fell backward, um, at that point, uh, uh, he just writhed. I don't know who pulled him out of the window well, um, and handcuffed him, um, but then I realized that he was, he was having a hard time, uh, breathing and his breathing would stop. So, uh, I, I told somebody to take off the handcuffs, but nobody did, so I took out my pen, um, I, I unhandcuffed I believe it was his, his left hand and I rolled him over to his back and I started, uh, compressions, I started CPR

and I told somebody air that out and I was doing CPR I think more agents were arriving and I told somebody to secure the weapon because it was close to the winder well, window well and we had included the, the basement..." (transcript pgs. 14-16)

"So, it was, it was, uh, he, I asked him to see his hands first. Uh, put your hands up. Let me see your hands. And that's when he started making the movement to try to go back in there. I said, no, get out here now and then he said, no, you're gonna have to shoot me." (transcript pg. 35)

Sight and sound Agents:

Agent Shelby Wright and Agent Cody Henaire: Agent Wright was dispatched to 1520 South Harlan street for an attempt to locate on a male named John Luce, who had two "Code fives" outstanding arrest warrants.

Agent Wright indicated that the call notes were somewhat confusing as to who was calling and who lived in the home. As a result, when agents arrived at the home they took the time to discuss their own understanding of the call and who the house belonged to. Agent Palomo then attempted to call the reporting party, however she, Allison Eye, did not answer the phone. Agents Wright, Henaire, and Palomo's attention were drawn to an individual who was getting into a vehicle at the home. The agents approached the person who identified himself as Mark Gronquist. Mr. Gronquist advised agents that John Luce was in fact inside the house and in the basement.

Agent Wright, accompanied by Agents Henaire and Palomo, went to the front door to attempt to contact John Luce. The agents rang the doorbell and knocked on the front door.

Justine Ewing, John Luce's mother, answered the door at which time Agent Wright identified herself to Ms. Ewing. Agent Wright advised Ms. Ewing that the agents are looking for John Luce because he had two warrants for his arrest.

Justine confirmed that John Luce was inside the house. Justine further advised agents that she did not have to let agents into the house and Agent Wright confirmed that Ms. Ewing did not have to let law enforcement into her home. Justine then asked the agents, "But if you had a warrant I could let you in." Justine then followed by asking the Agents, "Why don't you tell me you have one tell me you have a warrant." Agents Wright, Henaire and Palomo declined to indicate that they had a search warrant because in fact they did not.

Ms. Ewing then leaned forward and whispered to the agents as she was pointing telling them to "Go around the back." At that point, Agent Palomo and Agent Henaire started to head in the direction of the backyard.

John Luce's mother, Justine Ewing, then asked Agent Wright if she had a piece of paper and Agent Wright pulled out her notebook, showed it to her and said, "I got a lot of pieces of paper." Miss Ewing then states, "Okay you can come in." Consent to enter the home is confirmed by Agent Wright who then communicates to Agents Henaire and Palomo the fact that consent was granted.

Agent Henaire then goes back to the front door with Agent Wright and they enter the home together. The agents are directed by Ms. Ewing to stairs that access the basement.

Agent Wright and Agent Henaire identify themselves as police officers and Agent Henaire yells, "John you have active warrants for your arrest come out with your hands up nothing in your hands."

John Luce's father, Peter Ewing, who was in the basement pointed or gestured with his hand and fingers and stated either, "He's around there." or "He's behind the door."

Agent Henaire continued to give commands for John Luce to come out with hands up. Agent Henaire begins to hear yelling coming from the backyard and he recognizes the voice as Agent Palomo. At this point, Agent Wright and Agent Henaire proceed to the backyard. The agents hear gun shots prior to being able to gain access to the back yard.

Agent Jacob Edelen: Agent Edelen did not initially accompany agents Henaire, Wright, and Palomo into the home. At the time Agent Edelen approached the home Agent Henaire and Agent Wright had already been invited into the house.

Agent Edelen was separately invited into the home by Ms. Ewing. Upon entering Agent Edelen sees Agent Henaire looking down a hallway just inside the house. From his position Agent Edelen was unable to see what Agent Henaire was looking at but Agent Henaire advised Agent Edelen that the wanted individual was downstairs. Agent Edelen drew his weapon and held his weapon at his side while Agent Henaire gave commands from the top of the basement stairs.

Agent Edelen heard Agent Palomo yell, "He's coming out the back."

Agents Edelen, Henaire, and Wright proceeded to the backyard of the house where Agent Edelen advised that he could once again hear Agent Palomo's voice followed

by "bang, bang, bang." Agent Edelen then looked out a window and saw Agent Palomo backing up, "as rounds were coming out of his gun."

Lay Witnesses:

Justine Ewing: Justine is John Luce's mother and she resided at 1520 S. Harlan street. Ms. Ewing advised CIRT investigators that she picked up the defendant the night before the shooting and brought him back to her home. Ms. Ewing indicated that she was aware that the defendant had a warrant for his arrest.

Ms. Ewing further confirmed that she was the individual who answered the door for the Lakewood agents and that she in fact allowed agents enter to her home. After agents were allowed into her home, Ms. Ewing advised that she proceeded to a back bedroom with two small children. Ms. Ewing turned music up loud, so she did not hear what was about to happen knowing her son had a gun and that he indicated he would not go back to jail preferring "suicide by cop".

Ms. Ewing advised CIRT investigators that she was aware that her son was armed with a B.B gun and not a real gun, however, she did not share this critical information with any of the agents present. Ms. Ewing also did not share with any agents on scene that her son had expressed his desire not to be taken into custody and that he would prefer "suicide by cop".

During her interview Ms. Ewing, when referring to her son, indicated that "everyone makes their own choices".

Allison Eye: Ms. Eye was the individual who summoned law enforcement to 1520 S. Harlan on November 11, 2019. Allison had a prior relationship with Mr. Luce. She resided at 1520 S. Harlan Street with her Fiancé' Mr. Gronquist.

Miss Eye told CIRT investigators that John Luce had run from law enforcement on three prior occasions and that she knew he would do something stupid. This information was not shared with law enforcement prior to the shooting.

Ms. Eye was aware that John Luce had stated that he would shoot it out with police and that he was not going to be taken into custody. This information was also not law enforcement prior to the confrontation.

Ms. Eye told CIRT investigators that she been in contact with another ex-girlfriend of John Luce Makayla Miller. Miss Miller is the named victim of the John Luce's criminal case out of Montrose County, Colorado.

Ms. Miller shared with Allison Eye that John Luce had told her that he would not go back to jail and that he would rather die by suicide by cop. Text messages confirming this information were obtained as part of this investigation. Law enforcement officers were again not aware of this information prior to the confrontation with John Luce on November 11, 2019.

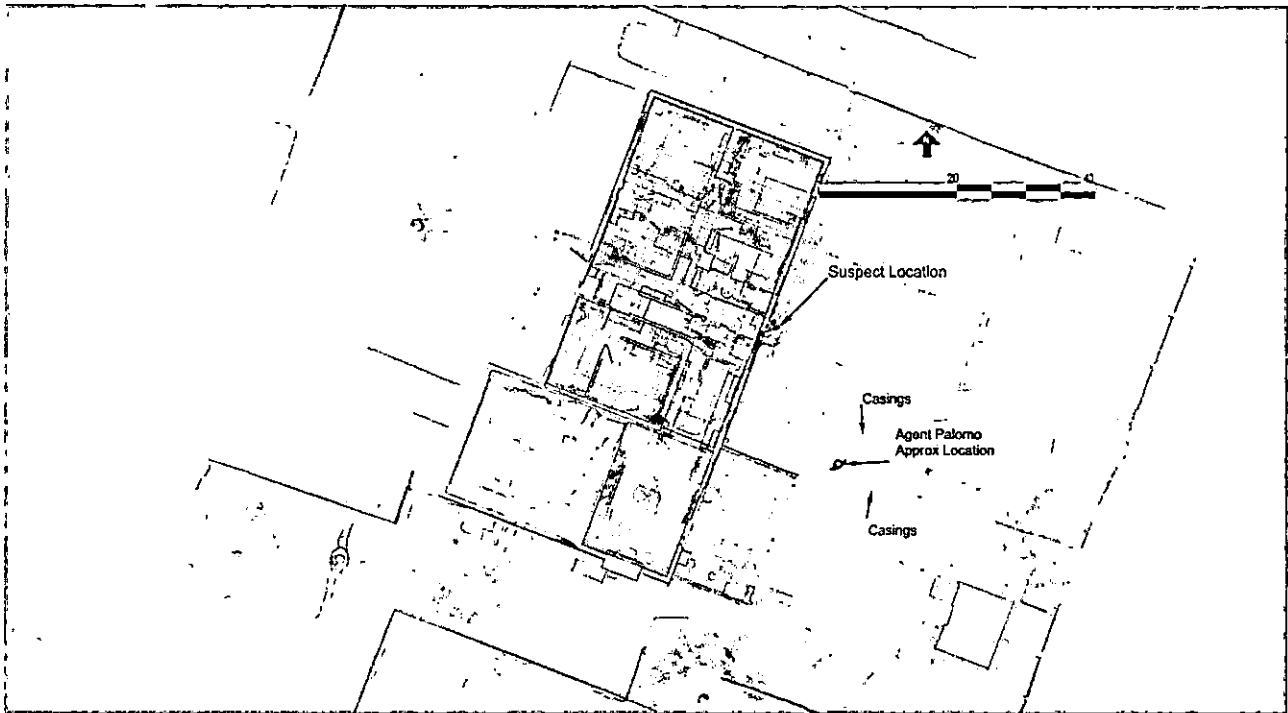
Crime Scene Processing:

On November 21, 2019 pursuant to CIRT protocol a multi-jurisdictional team was called upon to process and collect evidence in the shooting of John Luce.

Officers, agents, and crime scene technicians employed the latest technology available.

Hundreds of photographs were taken, a metal detector was utilized as well as the FARO system.

It was determined that the Arvada Police Department would oversee the diagramming of the scene. Below is a computer generated diagram that depicts the positioning, distance of John Luce, and Agent Palomo, and the location of the fired shell casings.



Autopsy

An autopsy was conducted on November 12, 2019. The autopsy was performed by Forensic Pathologist Dr. John D. Carver. The autopsy was attended by members of the CIRT team who oversaw the collection of evidence and photography. Additional members of the Lakewood Police Department were in attendance including a major crimes detective and a criminalist.

Dr. Carver's findings relevant for purposes of this office's decision are as follows:

DIAGNOSES:

- I. Gunshot wound of head, indeterminate range
 - a. Entrance: Left frontal scalp within hairline
 - b. Associated injuries: Limited to penetration of scalp; no underlying skull fracture or intracranial injuries
 - c. Exit: None
 - d. Recovery: Flattened, medium caliber lead bullet from central forehead
 - e. Trajectory: Front to back, perhaps slightly left to right, and slightly down

- II. Gunshot wound of left arm and chest, indeterminate range
 - a. Entrance: Posterior surface of left upper arm with exit and reentry in left axilla
 - b. Associated injuries: Fractures of left first costosternal joint and sternum; laceration of ascending aorta with mediastinal hemorrhage; perforation of right upper and middle lobes and penetration of right lower lobe; hemopericardium (100 mL); right hemothorax (2660 mL)
 - c. Exit: None
 - d. Recovery: Deformed, jacketed medium caliber bullet from right lower lobe
 - e. Trajectory: Left to right, down, and no discernible back/front deviation

III. Perforating gunshot wound of left hand and wrist, indeterminate range

- a. Entrance: Outside base of left hand
- b. Associated injuries: Perforation of left wrist
- c. Exit: Inner surface of left lower forearm
- d. Recovery: None
- e. Trajectory: Back to front, up, and with no right/left deviation

TOXICOLOGY:

REFERENCE LABORATORY: NMS Labs

Blood delta-9 THC: 3.1 ng/mL; delta-9 carboxy THC: 20 ng/mL

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance.

OPINION:

The cause of death is multiple gunshot wounds.

The manner of death is homicide.

EVIDENCE OF INJURY

I. Gunshot wound of head, indeterminate range

A scant amount of dried blood is over the forehead and within the anterior hairline. Over the left frontal skull, just within the hairline and 1 cm to the left of anterior midline, is a gunshot entry wound consisting of a slightly ragged, roughly circular, 4 mm central defect, with 1 mm frayed marginal abrasion and 2 mm peripheral rim of dried purple skin. No soot, searing, gunpowder particles, or contusion are on the skin surrounding the entrance wound.

This projectile did not penetrate the skull and did not fracture the skull. It flattened against the external table of the frontal bone. A deformed, medium caliber lead bullet was recovered 1 1/4" to the right, and slightly down from the entrance defect. The wound trajectory appears to be front to back, slightly left to right, and slightly down.

II. Gunshot wound of left upper arm and chest, indeterminate range

Centered 15" down from the vertex is a gunshot entry wound over the posterior surface of the left upper arm. It consists of a flame-shaped central defect measuring 1.0 x 0.5 cm. There is some purple drying of the skin surrounding the entrance wound and tissue shelving on the lateral edges of the defect.

Exit and reentry wounds are within the left axilla. An exit consisting of a 1.5 cm stellate laceration is in the center of the axilla. A reentry wound is in the left upper chest, just slightly anterior to the axillary midline. It consists of a second, somewhat stellate laceration with surrounding faint pink-purple contusion, and a 1 cm x 3 mm dried purple abrasion from the 7 o'clock to 9 o'clock positions.

The hemorrhagic wound path passes through the soft tissue and skeletal muscle of the left upper chest below the level of the clavicle. It fractures the sternum at the left first sternoclavicular joint and exits the posterior side of the sternum. There is abundant anterior mediastinal hemorrhage. The wound path lacerates the ascending aorta. 100 mL of liquid and clotted blood are within the pericardial sac. 2660 mL are in the right pleural cavity. The wound path then enters the medial aspect of the right upper lobe, proceeds downward through the hilum, exits the right middle lobe, and then penetrates the anteromedial surface of the right lower lobe. Recovered from the soft tissue of the right lower lobe of the lung is a deformed, jacketed medium caliber bullet. Some contusion involves the anterior aspect of the upper lobe of the left lung, but the projectile did not enter the left pleural cavity.

The wound path is left to right, down, and with no discernible front/back deviation

III. Perforating gunshot wound of left hand/wrist, indeterminate range

The entrance is over the back of the left hand and is centered 35" down from the vertex. It is an oval defect in the epidermis measuring 1.2 x 6 mm. There is some tissue shelving along the lower edges of the defect, and there is some faint pink-purple surrounding contusion.

The exit is centered 32" down from the vertex. It is a

stellate laceration on the inner surface of the left wrist, with focal dark purple drying of the edges of the laceration.

No detailed dissection was performed of the left wrist. The wound path likely damaged blood vessels within the left wrist. No bony fractures were palpated.

The wound trajectory is front to back, up, and with no right/left deviation.

Warrants

John David Luce DOB 05/29/1997 on November 11, 2019 had an active nationwide no bond warrant for his arrest. John Luce was wanted for 2nd degree assault with a deadly weapon (DTE10/18/19; OCA 19-23862) and contempt of court out of Montrose Colorado (DTE 08/06/10: OCA 5C161677)

Legal Analysis

This office's review of the shooting of John Luce 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 and detectives assigned to the CIRT, there is no question that Agent Palomo shot John Luce. Agent Palomo's statements and the evidence support that conclusion. John Luce refused lawful and direct commands of the agents to surrender and finally by Agent Palomo to drop his

weapon and surrender. John Luce not only failed to comply with agent's orders but, he in response, raised his arm with what reasonably appeared to be a handgun and pointed it directly at Agent Palomo. John Luce's actions gave every indication he was going to shoot Agent Palomo and not submit to direct and unequivocal commands. The legal analysis then shifts to a consideration of 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.

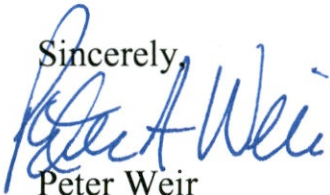
A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; 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 Luce was armed with what reasonably appeared to be a deadly weapon, to wit; a handgun, and he threatened Lakewood Agent Palomo. At no time did Luce demonstrate a willingness to surrender or comply in the slightest with agent's commands. To the contrary, Luce continued to ignore agents as he proceeded to climb out of a window well. After John Luce squeezed out of the window he continued to ignore commands. Luce told agent Palomo that he would have to kill him and then John Luce raised his right arm with what reasonably appeared to be a gun and pointed it directly at agent Palomo.

The item in John Luce's hand was recovered outside of the window well indicating that the weapon was extended away from Luce's body. One bullet strike to Luce was into the backside of Luce's left hand and the bullet traveled slightly up Luce's arm exiting the inside of Luce's forearm. The wound indicates that the arm when struck was in a perpendicular position to the ground.

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 Agent Palomo 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 to Agent Palomo beyond a reasonable doubt. Therefore, I conclude that the conduct by Agent Palomo did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir

District Attorney

First Judicial District Attorney