



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

April 14, 2020

Lakewood Police Department
Dan McCasky, Chief of Police
Lakewood Police Department
Lakewood, CO 80226

RE: Officer Involved Shooting incident involving Sgt. Mark Direzza on December 19, 2019, CIRT # 2019-09.

Dear Chief McCasky,

On December 19, 2019, the Jefferson County Critical Incident Response Team was called to respond to an officer involved shooting that resulted in fatal injuries to Jason Waterhouse, dob 12/22/1970. This incident occurred at 2450 Youngsfield Street in Lakewood, Colorado. My office has now reviewed the 1st Judicial District Critical Incident Response Team's submitted reports regarding this incident. Senior Chief Deputy District Attorney Eva Wilson responded to the scene and observed interviews of the involved officers and other witnesses. Members of my staff and I were present for a briefing presented by CIRT members on March 16, 2020 at the District Attorney's office. At that time, my office was presented with all reports regarding this particular incident.

APPLICABLE LAW

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

§ 18-1-407, C.R.S. Affirmative defense

(1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

§ 18-1-710, C.R.S. Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

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

- (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 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.

SUMMARY OF OPINION

Applying these legal standards to the facts presented through this investigation, I find that Sgt. Mark Direzza was justified in his use of deadly physical force upon Jason Waterhouse.

The following is a brief factual summary of the relevant events of this incident compiled from a review of the reports and interviews done by the CIRT, observations of the scene and the CIRT presentation.

RELEVANT FACTS

On December 19, 2019, at 3:19pm, the Jefferson County Regional Dispatch Center received a call from a bondsperson named Faye Rovira. Ms. Rovira reported that she was on the phone with Heather Lopez who lived at 2450 Youngsfield Street. Heather was the sister of Jason Waterhouse. Ms. Rovira knew Waterhouse, as she had recently bonded him out of jail. Ms. Lopez reported to Ms. Rovira and the dispatcher that Waterhouse had barricaded himself in a closet under the stairs, that he had a hammer and that he was hitting things. Ms. Rovira stated that Heather took a “shiv” away from him which Heather described as a screwdriver with a blade. She said he had been throwing things at her and that he had been acting erratic since the previous evening. Heather also stated that he was on alcohol and “maybe something else” and that his drug of choice was methamphetamine. She stated that he was hearing voices and that he thought someone was coming to hurt him. Heather stated there were no guns in the house as she was on parole. During this conversation, Ms. Lopez stated that the two juveniles in the home had left and she and her two adult cousins were out of the home and sitting in a grey-blue minivan parked in front the residence. As

she was still on the phone with dispatch, Ms. Lopez stated that she saw Jason come out of the house with a hammer but then he went back inside the residence. Ms. Lopez stated that Jason was the only person in the house and that police had arrived at the residence.

Lakewood Police agents were dispatched to the residence and Ms. Lopez was contacted outside the home at 3:34pm. Agents Cook and Hagerman were the first to arrive at the home. Ms. Lopez told Agent Cook that her brother had been in jail and that he had thrown a rock through a window and assaulted a cop previously. Ms. Lopez indicated that Waterhouse had not injured anyone at her home but he had been breaking things with a hammer that day. Officers indicated that Ms. Lopez stated that her brother thought people were after him, that he had been hiding in a closet and had armed himself with a homemade shive. He had threatened her the previous evening but he had not been armed with a hammer then and was only damaging things. She stated that she was not afraid of him. Officers asked Ms. Lopez if she wanted her brother charged for damaging her property which would be a criminal mischief charge. She stated that she wanted him charged to get him out of her house, taken to jail and to get the bond revoked. She gave the officers permission to go into her house.

Other officers arrived along with Sgt. Ebeling and they surrounded the house. A less lethal weapon was called for and a shotgun was loaded with "super sock" ammunition/bean bags was brought to the scene. A plan was devised and at 4:22pm, officers began giving verbal commands ordering Waterhouse to come outside. Waterhouse did not comply and did not leave the basement. Officers then entered the home and cleared the first floor. They could hear Waterhouse moving around and banging loudly in the basement and he was continuously ordered to come upstairs. Officers described hearing and seeing dry wall falling in the stairwell, loud banging on the basement ceiling and feeling the floor beneath them shake. Officers remained on the main floor and Sgt. Ebeling continued to negotiate with the suspect who would intermittently communicate with them. He would say he would come to the base of the stairs but then refuse to do so. The suspect made bizarre statements, cursed, stated that he didn't believe they were police and that people were out to get him. Sgt. Ebeling did not want to send officers down into the basement so they tried a different tactic. Agent O'Hayre brought in his K9 to bark and the officers threatened to deploy the dog if Waterhouse did not come up. Waterhouse did not comply or respond so the dog was taken out of the residence. After continued negotiation attempts, Agent Hagerman heard Waterhouse yell that he wanted to get hurt and "Come downstairs, I got something for you" and "If you come down here, shit's gonna fly." Waterhouse continued to ask for a cigarette and one was retrieved from Ms. Lopez which was then thrown down the stairs.

Because of the lack of compliance, it was decided that pepper balls would be shot into the basement from the north basement window to attempt to force Waterhouse upstairs. Ms. Lopez was informed about this plan by Agent Ebeling and she gave permission for them to break the window.

At 5:17pm, officers at the front of the house saw and smelled smoke coming from basement. Sgt. Ebeling asked if fire rescue was still staged close by because he was concerned about the smoke.

At 5:21pm, Agent Bassett deployed 14 pepper ball shots into the basement and there was no verbal or other response from Waterhouse. After a few seconds, police heard him coughing.

The smoke continued to increase from the basement and officers at the top of the stairs could see smoke coming through a hole in the stair drywall. Based on the threat of fire and Waterhouse's continued refusal to come up the stairs, at 5:23pm, agents made their way down the stairs into the

basement. While the lights were on upstairs, the basement was dark and very smoky. Officers fanned out to the left (north) and to the right (south) at the bottom of the stairs. It was determined that Waterhouse had broken through the wall in the north bedroom and had gained access to the south bedroom from underneath the stairs. Officers could hear him and they saw smoke pouring out heavily from the back-bedroom area. As they attempted to open the door to the south bedroom, Waterhouse kept slamming it shut preventing them from entering and detaining him. K9 Agent O'Hayre was approximately 4 feet from the bottom of the stairs with his dog and they were facing the door to the south bedroom with the dog barking in bursts. Officers were yelling commands towards that door for the suspect to show his hands. K9 O'Hayre said Agent Yoxheimer was next to him with his Taser deployed and next was Agent Williams with his less lethal shotgun deployed. K9 O'Hayre heard an agent state "he has a six-foot-long stick" as they were attempting to gain access to the bedroom.

As the smoke increased, the heat was also building in the basement. Orders were given for the officers to evacuate and many of them were coughing due to the thick smoke. As they went up the stairs in tactical fashion, Agent Hagerman was third from last and Agent Williams and Sgt. Direzza were the last two in the basement. Both Agent Williams and Sgt. Direzza were facing the door which Waterhouse had been holding shut. Waterhouse suddenly came bursting through the door right towards them and both officers shot him - Agent Williams was armed with a less lethal 40 mm, 12-gauge shotgun which shot "super sock" rounds/beanbags and he fired 3 times. Sgt. Direzza was armed with his handgun and he also fired 3 times. Agent Hagerman heard a crash and several loud bangs which he thought was the less lethal shotgun so he turned around and saw the male suspect on the ground. He saw flames coming out of the wallboard cracks so with the other officers, he grabbed Waterhouse to drag him out up the stairs and outside the home. WMFD personnel were immediately called from their staging spot to provide medical aid to Waterhouse and to control the fire. WMFD personnel responded and engines were brought in to put out the fire. Waterhouse was alive on scene and was transported to St. Anthony Hospital where he died from a single gunshot wound. Multiple agents were treated for smoke inhalation on scene and at the Lakewood Police Department.

All agents and supervisors on scene were interviewed by members of the CIRT that evening. The witnesses were consistent on all significant details. The relevant portions of certain statements for purposes of context and to determine whether criminal charges are appropriate are listed below.

LPD Sergeant Eric Ebeling has worked for LPD for over 26 years and has been a sergeant for over 10 years. He has been a negotiator for over 20 years and is the sergeant over the West Metro SWAT Negotiators Team. Sgt. Ebeling responded to this incident and provided the less lethal weapon to Agent Williams. He also met with the sister of the suspect who provided the information that her brother was out of control, swinging a hammer and destroying her basement. She also told him that the previous night, he had been causing problems and that he had fastened a knife onto a stick but that she was able to grab the stick from him and break it. She agreed that she wanted to pursue charges against her brother for the damage he had caused to her home. She indicated that her brother was paranoid and thought people were after him. She agreed to allow police to enter her home.

Sgt. Ebeling described that he could hear a very heavy object banging on things inside the house. Sgt. Ebeling staged at the front door behind Agent Ross who held a shield, Agent Williams with the less lethal shotgun and Agent Hagerman with his duty weapon. Sgt. Ebeling led the announcements with Waterhouse and told him they were police and asked him to please come up and talk with

them. No response other than continued heavy hammering ensued. After several minutes, they entered and cleared the house. Sgt. Ebeling continued to try to negotiate with Waterhouse by offering him food and water and used different tactics to try to get him to come upstairs but Whitehouse continued to aggressively bang on the floor and walls of the basement. Sgt. Ebeling did not know what object Waterhouse was using but he believed it could be a sledgehammer because of how he could see, hear and feel the floor lift every time Waterhouse would strike the basement ceiling. Because of the lack of cooperation by Waterhouse, Sgt. Ebeling discussed with the others the possibility of deploying pepper rounds into the basement to force the suspect upstairs. An LPD Agent was sent outside to get a layout of the basement to help them plan where to deploy the pepper and Ms. Lopez drew out the floor plan by hand for them.

During this time, Waterhouse began to ask for a cigarette. He was told that if he came out, they would give him one but he did not emerge. Eventually, Sgt. Ebeling went to Ms. Lopez and got a cigarette from her. He then called out to Waterhouse that if he dropped what he had in his hands, he would give Waterhouse the cigarette. No results came from that request so Sgt. Eberling threw the cigarette down the stairs, told Waterhouse where the cigarette was and that if he came out and got the cigarette, they could talk. Waterhouse remained barricaded.

An additional tactic that was attempted was to utilize the K-9 officer to have his dog bark in the office. He told Waterhouse that he was being given lawful orders to come out and that if he did not come out, that they would release the dog into the basement to bring him out. They had the dog bark several times but Waterhouse did not respond. The dog was taken back outside.

Sgt. Ebeling estimated that at this point in time, they had been negotiating with Waterhouse for an hour and fifteen minutes. Sgt. Ebeling had noticed that in looking down the staircase, the wall to the left of the stairs kept flexing and moving so they believed the suspect was in that room. After another half an hour with no successful response from Waterhouse, Sgt. Ebeling smelled smoke. Sgt. Mark Direzza was now on scene and Sgt. Ebeling told him about the situation and that they were now going to deploy the pepper balls. Ms. Lopez was also told that they were going to have to break a window for the pepper balls and she indicated she understood.

Sgt. Ebeling gave the order for the pepper balls to be deployed. He heard coughing and banging from what sounded like the back room. Sgt. Ebeling was concerned about leaving Waterhouse in the residence and having his sister return to the residence with him there so they decided to go down into the basement to retrieve the suspect. Sgt. Ebeling was armed with his taser and he described how the officers fanned out in various positions as they got to the bottom of the steps. He stated that other officers saw the suspect open the door on the right side. Officers ordered him to come out and show his hands but the suspect slammed the door shut. Officers tried to pull the door open and every time they got it partially open, the suspect pulled it shut.

At that time, Sgt. Ebeling noted that the smoke was starting to increase and he saw flames glowing on the wall along the stairway. He saw a billow of smoke where the door was that the suspect was pulling shut. Due to the smoke and the fire, Sgt. Ebeling told all the officers that they needed to get out of the basement. The officers started moving up the stairs as he pushed them up. He saw flames and "a real intense glowing" and a lot of smoke on the west wall of the stairs as they climbed. Sgt. Direzza was behind him when he heard gunshots which he thought sounded like less lethal rounds. He saw the suspect at the bottom of the stairs and he went down and grabbed one of the suspect's arms and told others to grab him and get him up the stairs. Sgt. Ebeling said he was concerned because of the amount of smoke and the inability to see. Until he saw blood on the front

of the suspect's shirt when they got him outside, he did not think that any lethal rounds had been fired. Sgt. Mark Direzza came over to him and told him he had fired his weapon at the suspect. Emergency and fire personnel responded to assist with the suspect and to put out the fire. Officers also received medical attention on scene due to their smoke inhalation. Sgt. Ebeling indicated that Lakewood Police did not deploy any flash bangs or other devices which could have caused the fire.

LPD Sergeant Mark Direzza was working as a Patrol Sergeant on the date of this incident. He also is a SWAT supervisor. He was at the Lakewood Police Department when he heard Sgt. Ebeling request someone who was less lethal certified to respond to 2450 Youngfield and he sent one of his officers to respond. He also responded to the address after communicating further with Sgt. Ebeling. He learned that there was a person who was a suspect in a criminal mischief who had been doing damage to his sister's property with a hammer. He was told that the suspect was downstairs in the basement making loud, banging noises and he was refusing to come upstairs. He learned that they had been negotiating with the suspect for a period of time. Sgt. Ebeling told him that the suspect was potentially high on meth. Sgt. Direzza considered whether SWAT needed to respond but Sgt. Ebeling indicated they were going to try to persuade the suspect to exit by breaking one of the basement windows to introduce pepperball. Based on that scenario, Sgt. Direzza decided to provide additional support so he drove to the residence.

When he arrived, Sgt. Ebeling showed him a sketch of the downstairs area and described the suspect's conduct and their belief that he was somewhere on the western side of the basement, either in one of the western rooms or under the stairway. They discussed the suspect being armed with a hammer and that the negotiations had only resulted in him saying he would come out but then did not and that he continued to bang and pound on things downstairs. Sgt. Direzza could hear the suspect yelling in the basement but he could not hear specifically what he was saying. Sgt. Direzza spoke to the K-9 handler, Agent O'Hayre, to see if he was comfortable deploying his dog to attempt an apprehension of the suspect but Agent O'Hayre was not as he was concerned that his dog could get hit by the hammer. Sgt. Direzza continued to discuss with Sgt. Ebeling how to take the suspect into custody when officers started to report that they smelled smoke coming from the basement. This added an additional concern that they were running out of time to get the suspect out. Sgt. Direzza described that they needed to get the suspect into custody before whatever was burning became too big a threat to law enforcement such that they could not enter and retrieve him. He indicated that the fire department would not be able to come up and do anything with the fire so they had to at least attempt contact. He indicated that if they could enter safely, perhaps the suspect would comply once they got into position which would deny him free reign of the basement. During this time, the pepperball was deployed.

Shortly after that, when the suspect failed to emerge, they decided to go down the stairs to try to take the suspect into custody. Sgt. Direzza believed six or seven officers went downstairs and he knew one officer had a Taser, one had a hand gun and one had a less lethal shotgun. He could not recall if the K-9 officer came downstairs. He and Sgt. Ebeling also went downstairs and the two of them went to the left of the stairway to cover that door. The rest of the agents went to the right side which was the family room area. Sgt. Direzza was armed with his service weapon which is a Glock 9mm and Sgt. Ebeling had his Taser. As they went to the door in the north room, they could see that the suspect was not in that room. He could hear the officers in the family room area giving commands and he yelled to them that the suspect must be in that bedroom on the south side. At one point in time, he saw the officers at the door to that bedroom and he saw the door slam shut from someone inside the bedroom pushing it shut. He saw the officers trying to open the door and heard one of them say that the suspect had a billy club in his hands.

Sgt. Direzza indicated that the smoke in the basement was really starting to build and it was getting very irritating, causing the officers to cough. He believed that his officers were now in danger because of the fire so he ordered everyone to get out. He moved back towards the stairs and saw Agent Williams who was still covering the south bedroom door, which the suspect had last been seen slamming shut, with his less lethal shotgun. He tapped Agent Williams on the shoulder and said "I'm the last man. You need to get out." Sgt. Direzza wanted to make sure his team got out in front of him safely. Sgt. Direzza was concerned about getting all his officers up the narrow stair case quickly due to the small space and he was concerned that the suspect could come out and attack them as they were trying to get up the stairs. As his officers were going up the stairs, he provided cover on the door with his handgun and saw orange light which he attributed to flames through a gap under the door. As he was backing up laterally to the staircase, the door popped open and a man came bursting out the door with a 4 to 5-foot-long wooden stick in his hands pointed towards Sgt. Driezza. The man was headed straight for Sgt. Direzza. Sgt. Direzza believed at that moment that the man was going to try to kill or seriously injure him. He also thought about his officers going up the stairs with their backs turned away from the basement. The man was close enough to Sgt. Direzza that he felt the stick brush up against his wrist. Sgt. Direzza rapidly fired what he believed to be 3 or 4 rounds at the center mass of the man who he estimated to be six or seven feet away from him. Sgt. Direzza said it all happened very quickly and the man was on top of him very fast. Sgt. Direzza said that after he fired, that the man dropped where he was and that he was no longer a threat. Sgt. Direzza saw the pole on the ground. He said two other officers turned and grabbed the suspect to pull him upstairs and Sgt. Direzza grabbed the suspect's legs. As they went up the stairs, Sgt. Direzza described that the smoke was continuing to build and he saw flames behind the staircase. Once they got outside, he saw blood on the suspect and he told Sgt. Ebeling that there was an officer involved shooting, that shots were fired and that they needed "fire"/the fire department to come in and deal with the fire and the suspect. He then separated himself from the scene and went and sat in his vehicle. He saw other officers helping with the suspect and saw the fire department rolling up. Agent Bassett came to him to keep him separate from the others.

Sgt. Direzza indicated that throughout the incident, he had been considering what could happen if the suspect was not compliant and/or was aggressive. He believed that the chances were good the suspect would be armed with a weapon due to the banging and damage he had caused. He knew that there were other tools in the basement and that one of the officers had just said that the suspect had a billy club which he presumed was similar to a baton. He had hoped that they would be in a position to use a Taser on the person to gain compliance. However, when it became clear that the building was burning and that the officers were in danger, the plan changed to an urgent need to get the officers out of the basement and out of the building. He was worried about them being trapped in a burning building. When the man came out so quickly, he felt the man was coming towards him aggressively with the weapon which made him very fearful so he fired. He also believed the man could disable them long enough to keep them in the burning building if he was not stopped.

Sgt. Direzza was asked if any one fired other rounds of any type including less lethal while they were in the basement. He stated that he did not remember hearing any rounds fired or anyone saying that any rounds were fired. He indicated that he was not sure where the other agents were specifically when he was covering the door but that he knew there were some people on the stairs walking out. He said his whole focus was on the door and he was not sure what was next to him or behind him.

Sgt. Direzza was also asked why when the officers were smelling smoke, instead of going downstairs to try to take the suspect into custody, they didn't instead call the fire department who was staged nearby to come in and put out the fire. Sgt. Direzza explained that the fire department would not come in to take care of the fire with an armed suspect inside of the structure. They would consider the person an active threat and they would just let the building burn until it became a threat to the structures around the building. He felt that attempting face-to-face contact with the suspect by his agents gave them a better chance of taking the suspect safely into custody.

LPD Agent Chase Williams was working the swing shift on December 19th and heard the call for a less-lethal certified officer to respond to the scene. Agent Williams is certified for less-lethal so he informed Sgt. Direzza he would take the call and respond. Upon arrival, Agent Williams met with Sgt. Ebeling who gave him a less lethal-shotgun to utilize. The shotgun was loaded with "super soft rounds" commonly known as beanbags. During the drive and upon arrival, Agent Williams viewed information about the situation from reading the CAD screen on his car computer. He learned that a male named Jason had been destroying a home and was possibly armed with a hammer. When he got out of his patrol car, he could hear loud and repetitive banging from inside the home. He spoke with other agents who told him that the suspect had likely been on meth for hours, that he was likely armed with a hammer and that he had recently been released from jail. Jason was the brother of the owner of the residence and he was uncooperative and would not come out of the home. At that time, Sgt. Ebeling was giving commands through the closed screen door and the rest of the team was still outside the residence. The decision was made to enter and Agent Williams joined the team. Agent Williams noted that the house was shaking from the pounding causing pictures on the walls to move and fall to the floor. The first floor was cleared and they staged at the top of the stairs. Sgt. Ebeling was negotiating with the suspect and was very cordial with him while trying different tactics to get him to come upstairs. However, the pounding continued and Agent Williams heard drywall crumbling and glass breaking. He also heard the suspect asking for cigarettes, telling them to leave and asking where the police were. Agent Williams discussed the dog barking, the throwing of the cigarette down the stairs by Sgt. Ebeling and the decision to deploy the pepper balls to flush the suspect out. As he was poised at the top of the stairs with the other agents, Agent Williams also noticed the drywall on the left side of the stairwell started to be pushed inward from being hit. It was apparent that the suspect was moving around and hitting various areas. It was also clear that the suspect was using some physical object to destroy things based on how things were shaking.

Agent Williams then smelled something burning and the agents began to discuss this. He said the "tone changed" among them because this situation now was "really not good". They also started to see grey smoke which darkened quickly. He could still hear the suspect moving in the basement but the pounding had stopped. Sgt. Direzza had arrived by this point in time and Sgt. Ebeling told the team they were going downstairs. Agent Williams indicated that as they went down the stairs, the smoke hit them and they immediately started coughing and choking. He said it was very scary and he questioned their safety. He believed that they needed to get the suspect out right then if they were going to get him at all.

They spread out through the basement as they did not know where the suspect was located. He noted that the smoke was now black and he was coughing and having a hard time breathing. He was crouching down with the less-lethal shotgun and there was someone off to his left who he guessed was Sgt. Direzza. He saw a pistol in his peripheral vision. To his right, someone held a yellow taser. He saw flames jumping out of the punched-out drywall on the stairs and he could feel heat on his face. He then saw a large section of drywall in the room he was watching (the south

bedroom) crash inward. He saw this through the door which was open at about a 45-degree angle. He saw something like a large pipe which was black in color and being waved around. He heard a man screaming and believed it was Jason. He heard Jason yell "Fuck you!" He heard banging and then the whole wall crashed down and he saw a figure crawling out into the bedroom area. Agent Williams yelled to the other agents "He's coming out here." Agent O'Hare was to his right with his pistol covering the door when Jason fully entered the bedroom. Agent O'Hare was trying to keep the bedroom door open but Jason slammed it shut. Agent Williams had his less lethal shotgun trained on the door while Agent O'Hare was trying to open it again. However, the door was slammed close by the suspect. Agent Williams said that flames were shooting out and while this only took seconds, it was terrifying. Agent Williams started backing away from the door and he told the officer with the Taser to back up as well. He saw Sgt. Direzza to his left. He then heard someone say to "Get out!" and he looked to his right and saw 2 or 3 agents running up the stairs as the flames from the fire were "jettisoning out" from where the drywall was punched in under the stairs.

Agent Williams saw the door open and a man in all black came crashing out of the room screaming an obscenity. He could not see the man's right hand but he was running directly at Agent Williams. Agent Williams shot him with the less-lethal shotgun. He thought he hit him center-mass. He racked the shotgun and shot him again. This time, the suspect turned to his left and went down but Agent Williams still couldn't see his right hand. Agent Williams was unsure if he still had the long cylindrical device in his hand or not. He remembered thinking that the suspect was still armed with a deadly weapon. The suspect was at the base of the stairs but Agent Williams still couldn't see his right hand. He saw him move his right arm and he told him to stop moving. He did not stop and Agent Williams shot him a third time with the less-lethal shotgun. He believed the suspect was crouching and he hit him at center-mass. He then remembered screaming for someone to come down and grab the suspect. He recalled the heat was almost unbearable and he was crouched down to avoid the smoke. He recalled grabbing Jason with the help of others and taking him upstairs. He said the smoke was so thick, he could barely see his feet. He believed Sgt. Direzza was behind him helping move Jason. When he got upstairs, he let go of Jason at the door with three other agents there. He ran outside almost to the street still holding the shotgun. He remembered gasping for air for at least 30-45 seconds. He saw a fire truck come to the scene just seconds after he came out of the house. He remembered hearing an agent talking on his phone saying "Shots fired, shots fired." He thought that was odd because all he knew about were his shots with the less-lethal shotgun. He then saw that the suspect had an active bleed in his lower right abdomen and he asked another agent if the suspect had been shot. The agent said yes. Agent Williams then saw Sgt. Direzza walking to his patrol car looking very pale and Agent Williams presumed that Sgt. Direzza had shot the suspect as he remembers him having his pistol out while in the basement.

Agent Williams said he did not see or hear Sgt. Direzza fire his weapon. He said his shotgun is very loud inside a house and he can remember the sound of his shots and the racking of the shotgun. Agent Williams believed that the sound of his shotgun could have covered the sound of a pistol. Agent Williams indicated that he was very fearful for his life because of the suspect's actions and he did not know if they would be able to get out of the house. When the suspect came out of the room, he thought the suspect was armed because he could not see his right hand. He said the suspect didn't react to the first shot but after the second, he turned and went to his knees. He said it took nearly thirty seconds to get the suspect up the stairs and it was terrifying because of the smoke and the fire and he couldn't breathe well. Agent Williams hair was visibly singed on the left side of his head from the fire.

LPD Agent Yoxheimer was part of the entry team and he left his shield outside when they decided to go down the stairs. He was armed with a taser. He indicated that the smoke was getting heavier and heavier and agents were coughing. He could also smell the pepper from the pepper balls. He indicated that they needed to act more quickly because of the amount of smoke building up in the basement. In looking towards the south bedroom, he saw drywall being punched in by what appeared to be a 5 or 6-foot pole. He saw someone climbing through the dry wall and he told other officers that. He saw the door shut to the bedroom and he pulled out his taser. He started loudly yelling, "Jason – come out - let me see your hands." He said the smoke was turning black and he thought that they needed to get the door open to get the guy out. He tried to push the door back open but the suspect slammed it shut. He told the others he needed to get his shield in case the suspect had weapons so he went upstairs and he heard someone yell "Everyone get out". He then heard 3-4 soft shots like pepper ball shots and then 2-3 loud shots. He grabbed his shield but everyone was coming up the stairs although it was hard to see them through the smoke. He grabbed the 1st agent up the stairs and pulled him toward the front door. He could barely see anything but he helped them get the suspect outside. He saw black smoke pouring out the front door. He then took out his cuffs and handcuffed the suspect. As he did so, he saw some blood and he asked if someone shot. Agent Williams said that he fired less lethal and Sgt. Direzza said he also shot. They helped to put the suspect on the gurney and Agent Yoxheimer removed the cuffs. West Metro medical personnel provided him oxygen as he could not stop coughing from the smoke.

LPD Agent Bassett responded to the incident and he was not part of the entry team. He heard the suspect beating against concrete with a hard object. He eventually was tasked with deploying the pepper balls into the basement in order to get voluntary compliance by the suspect. He intentionally aimed at hard objects like furniture and aimed low to get the balls to break and disperse the pepper. As he was shooting the rounds into the basement, he yelled "Jason, give it up." He never saw the suspect or heard any response. While he had smelled smoke earlier, when he came around to the front of the residence, he saw that the smoke had turned black and he could feel heat from a fire. He was outside the residence and he heard "Show us your hands" yelled twice. He then heard 1 gunshot. After the agents were out and the suspect was on the snow, he tried to take photos of the address but it was covered with black smoke.

LPD Agent Zach Cook was on duty in his patrol vehicle when he heard this call from dispatch. Agent Cook responded to the call since he was close and he was the first officer on scene. He spoke to a woman who said her brother had barricaded himself with a hammer or a long stick. She indicated he had a history of abusing alcohol and meth. She said there were no guns in the house but he had a make-shift shiv. Agent Cook heard banging from inside the home. Agent Hagerman and Agent Yoxheimer arrived plus other agents shortly thereafter. Agent Cook went to the north side of the house and remained there. He and other agents were able to clear the northeast basement window to view the basement. Agent Cook described not being able to see the suspect but he could see the base of the staircase, what looked like a rec room with beds and a room that wrapped around behind the staircase. Another window was also opened so that Agent Bassett could use that space to fire the pepper balls. As agents entered the basement area, he could not see the suspect but he could hear rustling in the back (west side bedroom area). He stated that the smoke in the basement was starting to get worse and even though he was outside the house, he was coughing from it too. He indicated that the door by the staircase (south side) would close and open and close and open. He remembered seeing a long stick and hearing Agent Hagerman say "Show me your hands, show me your hands." He then saw the door close again and he saw a red glow. He described that the

smoke was very bad and he heard agents coughing. He then saw agents starting to go back up the stairs as if there was another danger. He could not remember the order of who went up but he saw that Sgt. Direzza was still towards the middle of the room. He thought that there was only one other person in front of Sgt. Direzza. He was at the basement window, on his stomach with his taser out trying to provide cover and he saw the door “whipped open” and the suspect came running out. He did not see anything in his hands and he heard 3 pops. He said it looked like the suspect was right in front of Sgt. Direzza. He stated it looked like the suspect was getting ready to “button hook” going up the staircase. He stated that the shots didn’t seem that loud and at first, he couldn’t tell if it was an actual gunshot. He stated that it only took a matter of a second or two after the door was open and the suspect was running. He did not see muzzle flashes but he saw Sgt. Direzza’s hands out in a firing motion and heard 3 pops. He saw the suspect fall to the floor.

Agent Cook did not indicate anything about where Agent Williams was during the shooting and did not describe seeing anyone else shooting at the suspect.

In summary, officers on scene described hearing the following:

Agent Williams – 3 less lethal from his shotgun

Sgt. Direzza – 3-4 shots from his pistol

Sgt. Ebeling – 4 pops, thought it was less-lethal

Agent Hagerman – loud crash followed by several loud bangs from less-lethal

Agent Laforgia – 3 shots

Agent O’Hayre – 3 gunshots which he described as pistol rounds

Agent Yoxheimer – 3-4 soft shots like pepper ball shots, then 2-3 loud shots

Agent Ross – 3 pops – either gunshots or less lethal

Agent Bassett – 1 shot

Agent Cook – 3 pops fired by Sgt. Direzza

Two lay witnesses, Anthony Sandoval and Christopher Sandoval were visiting the residence on December 19, 2019 and had been there for a few days. They were both interviewed by CIRT members and were asked about Jason’s behavior leading up to this incident. Anthony Sandoval described Jason as acting “off”. He was distraught and acting paranoid. He was present when Jason barricaded himself in the basement and he was banging on things. He did not know what implement he was using to bang on things. He believed that alcohol was responsible for Jason’s behavior on December 19th although he had not seen him drink since December 18th. Christopher Sandoval stated that Jason was quieter and more reserved than normal. He stated he was acting paranoid. He stated he had observed Jason smoking marijuana and that he had “touched some meth”. He described him as a closet drinker who has his own stash. He stated that at about midnight on the 19th, Jason locked himself in Jasmine’s bedroom in the basement. (This is the bedroom referred to as the south bedroom throughout this report). Jasmine is Heather Lopez’s daughter. Jasmine was in the bedroom at that time. They had recently remodeled the basement and the door frame to Jasmine’s room was not completely secure. Eventually, Jason opened the door and Jasmine went to her mother’s bedroom which is also in the basement. Jason then went back into Jasmine’s room and locked the door. He then barricaded himself in her bedroom by blocking the doorway with a dresser and threw all her clothes at the door. Jason kept saying “They are going to come for me. Why are you making them come for me?” Christopher was asked by the CIRT investigator who “they” were. Christopher said that he overheard Heather saying that she may revoke Jason’s bond and he thought she had told that to Jason. Jason eventually opened the door and sat on the basement couch. He had a club on the couch with him and he was holding a

utility knife. He was not pointing the knife at anyone. Jason then went to Heather's bedroom which is next to a storage room in the basement and locked the door. Heather had to kick the door open to get inside and she kicked Jason out of the room. He then went back to sit on the couch. Christopher then went upstairs as this was the second time Jason had barricaded himself and he was too "edgy" to be around. When Christopher later tried to go back downstairs to watch TV, the door at the top of the stairs was locked. He pounded on the door but Heather and Jasmine were asleep. He texted Heather that Jason had locked the door to the basement and she came up and opened the door.

When he went back downstairs, he saw Jason go into Heather's room with a hammer. Jason went underneath the stairs and started pounding. He then grabbed a piece of wood and tried to barricade himself under the stairs. By this time, the sun was coming up. Heather told Christopher that Jason had stated "they're not going to get me; they're going to have to come get me". Christopher could hear Jason stating, "Let them come for me, let them come for me." Christopher stated that several friends came to attempt to get Jason out from underneath the stairs. However, Jason continued his pounding. Heather contacted Jason's bondsman and the Lakewood police were contacted as a result. Christopher indicated that once the police arrived, that it seemed like they took a long time trying to get Jason out of the house. He stated that the police regularly checked with them to get further information about Jason and any potential weapons. He also recalled a police sergeant asking for a cigarette to give to Jason. He was in the car in the Masonic temple parking lot and in their vehicle at that point.

Heather Lopez was interviewed by CIRT investigators after the incident. Her recounting of what occurred leading up to the police arriving was very similar to what she initially told the Lakewood agents. She did add that when the Lakewood officer asked her for a cigarette to give to her brother, that she gave the officer a cigarette and a lighter. That is inconsistent with Sgt. Ebeling's statement that he received a single cigarette from Ms. Lopez. All the statements indicate that only one cigarette was thrown down the stairs. Ms. Lopez described to CIRT investigators that she felt the officers should have maced or used a Taser on her brother and that they did not need to shoot him.

Forensic Pathologist Dr. John Carver conducted an autopsy on Jason Waterhouse on December 20, 2019. Dr. Carver noted that Waterhouse had contusion to his left abdomen which was 5 inches long and 3 inches wide. He also noted that Waterhouse had sustained one bullet strike in his lower right back which exited his left chest. The bullet was angled back to front, right to left and upwards. The bullet perforated his liver and the right heart ventricle. Waterhouse was hit by only one round fired by Sgt. Direzza. The toxicology report in this matter revealed that the decedent had 170 ng/mL of amphetamine and 1500 ng/mL of methamphetamine in his peripheral blood. The report from NMS Labs interprets these toxicology results in the following manner:

1. Amphetamine - Peripheral Blood:

Amphetamine (Adderall, Dexedrine) is a Schedule II phenethylamine CNS-stimulant. It is used therapeutically in the treatment of narcolepsy and obesity and also in the treatment of hyperactivity in children. Amphetamine has a high potential for abuse. When used in therapy, initial doses should be small and increased gradually. In the treatment of narcolepsy, amphetamine is administered in daily divided doses of 5 to 60 mg. For obesity and children with attention deficits, usual dosage is 5 or 10 mg daily.

Following a single oral dose of 10 mg amphetamine sulfate, a reported peak blood concentration of 40 ng/mL was reached at 2 hr. Following a single 30 mg dose to adults, an average peak plasma

level of 100 ng/mL was reported at 2.5 hr. A steady-state blood level of 2000 - 3000 ng/mL was reported in an addict who consumed approximately 1000 mg daily.

Overdose with amphetamine can produce restlessness, hyperthermia, convulsions, hallucinations, respiratory and/or cardiac failure. Reported blood concentrations in amphetamine-related fatalities ranged from 500 - 41000 ng/mL (mean, 9000 ng/mL). Amphetamine is also a metabolite of methamphetamine, benzphetamine and selegiline.

2. Methamphetamine - Peripheral Blood:

d-Methamphetamine is a DEA schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions. Chemically, there are two forms (isomers) of methamphetamine: l- and d-methamphetamine. The l-isomer is used in non-prescription inhalers as a decongestant and has weak CNS-stimulatory activity. The d-isomer has been used therapeutically as an anorexigenic agent in the treatment of obesity and has potent CNS-, cardiac- and circulatory-stimulatory activity. Amphetamine and norephedrine (phenylpropanolamine) are metabolites of methamphetamine. d-Methamphetamine is an abused substance because of its stimulatory effects and is also addictive.

A peak blood concentration of methamphetamine of 20 ng/mL was reported at 2.5 hr after an oral dosage of 12.5 mg. Blood levels of 200 - 600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.

West Metro Fire responded to this incident and put out the fire. Fire Investigator Tim Driscoll authored an arson report. He noted that they arrived on scene at 3:43pm and staged due to the active crime in progress. When they were called in, they contained the fire in the residence. He and other fire personnel then did the investigation of the scene. They noted that the top 6 stair treads were damaged and the top 4-5 stair treads were "spongy" and had been compromised during the fire. The fire investigators used caution to stay to the outside edges of the stair treads in order to get down to the basement. They noted the areas hit by the pepper balls and found no signs of fire damage in that area. There was no evidence that the pepper balls were the ignition source of this fire.

Inv. Driscoll's analysis showed that the fire originated in the basement of the structure under the stairs and it was caused by the intentional act of using an open flame to ignite items stored in the basement. The items lit included clothing items that were hanging and cardboard boxes that were piled under the stairs. The fire then spread to the wood framing and wooden stair treads and supports. The fire moved from under the stairs into the south bedroom.

Numerous photographs were taken of the interior of the residence. Physical evidence was also documented, photographed and seized pursuant to warrant. A floorplan which is not to scale indicates the location of certain evidence and is attached to this review for demonstrative purposes.

In the presentation by CIRT Investigator Elias Alberti of the Jefferson County Sheriff's Office to the District Attorney's Office, Investigator Alberti indicated how Waterhouse came to be shot in the back when both Agent Williams and Sgt. Direzza stated that they shot at Waterhouse's center mass. The conclusion of the CIRT investigators is based upon the information obtained from the eye and ear interviews and the medical evidence from the autopsy which revealed a rectangular contusion on the suspect's left abdominal area and the angle of the bullet. The CIRT investigators believe that Waterhouse was hit almost simultaneously by both officers. However, the evidence suggests that Waterhouse was hit first by the less lethal bean bag which caused the contusion on the left abdomen. That hit then spun Waterhouse which is referenced by Agent Williams indicating that the suspect turned in a crouching manner after his second less lethal shot. As Waterhouse turned, he

was struck by one of the bullets fired by Sgt. Direzza. This explains how Waterhouse was struck in the back with the bullet travelling in an upward and right to left manner.

LEGAL ANALYSIS

We find in our review of this shooting that the conduct of Sgt. Direzza was not criminal.

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.

It is the conclusion of my office, based upon the applicable law and the facts and circumstances of this case, that Sgt. Direzza's actions during this incident meet the legal requirements of the affirmative defense of self-defense as contained in §18-1-704 (1)(2)(a).

This shooting took place in a very dangerous and tense situation. Law enforcement officers had been attempting to get Jason Waterhouse to leave the basement of his sister's home for over one hour. They had been calling to him, offering him food and drink, ordering him, threatening to send a police dog to get him out, providing him a cigarette and trying to negotiate with him in order to avoid any physical confrontation. Based upon the information from his sister and their own observations, Jason Waterhouse was armed with some type of hammer or heavy physical object which he was using to destroy the basement of the home. He had been described as paranoid and possibly drunk and/or high on methamphetamine. He was not behaving rationally with the officers and he was not responsive to their offers or commands other than to request cigarettes. In hopes of driving him out of the basement to contain him, they used a non-lethal method of firing in pepper balls to make him sufficiently uncomfortable that he would leave the basement on his own. That did not work. Law enforcement had not determined that it was necessary to go into the basement and take the suspect into custody but Jason Waterhouse forced their hand by lighting the basement on fire. When that occurred, the Lakewood officers had limited choices. They could sit back and watch the fire burn which might or might not cause the suspect to finally come out. Or they could enter the home to try to save his life by getting him finally out of the basement. They chose to put themselves in danger to try to rescue Waterhouse and this situation still ended tragically.

When the basement was on fire and filling with smoke, Waterhouse was breaking through the wall under the stairs into the southwest bedroom. Despite numerous yelled commands by several officers for the suspect to show his hands, Waterhouse continuously slammed the bedroom door shut on the officers to prevent them from entering the room and to prevent them from taking him into custody. Sgt. Direzza heard someone yell that the suspect had a club in his hands which increased the danger he posed to all the officers in the crowded basement. As the fire and smoke worsened, Sgt. Direzza had to prioritize the safety of his officers and he ordered them all to leave the basement. Sgt. Direzza had his handgun out and was focused on the door that he knew stood

between himself and the suspect. He was covering that door so that his officers could turn their backs to the door and make it up the stairs to safety. His plan was to be the last one out of the basement and he was so focused on the door that he did not realize that Agent Williams was between him and the staircase, also focused on the door. When the door opened and the suspect charged out directly towards him with what he described as a long pole in his hand, Sgt. Direzza immediately feared for his life and the life of the officers climbing up the staircase where a fire was burning directly below them. He was also instantly afraid that somehow the suspect could trap him and his officers in the burning basement and he feared being attacked by this individual who he knew had been aggressively destroying parts of the basement for hours with some type of hammer or other object. It was reasonable for Sgt. Direzza to believe that a lesser degree of force was inadequate and he had reasonable grounds to believe, and he did believe, that he and his officers were in imminent danger of being killed or of receiving serious bodily injury.

Based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense were satisfied by Sgt. Direzza's actions, that he was clearly justified in his use of deadly physical force in this case and that his conduct did not violate any criminal statutes.

Sincerely,

A handwritten signature in blue ink that reads "Peter A. Weir". The signature is written in a cursive style with a large initial "P".

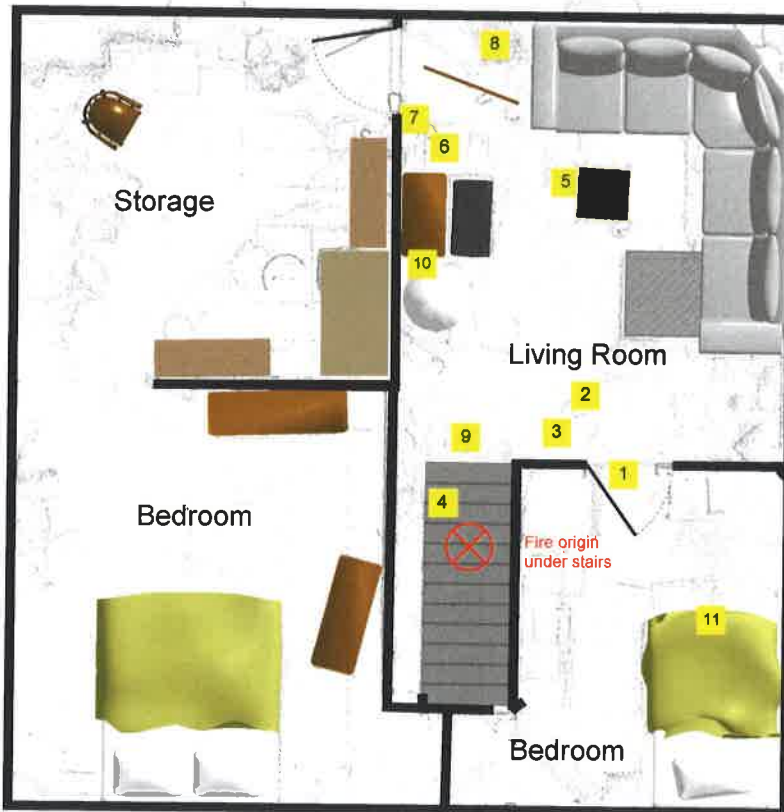
Peter Weir
1st Judicial District Attorney

cc: CIRT Commander Brad Vredenburg

For Demonstrative
Purposes Only



Not to Scale



Legend:

- 1) Fired bullet
- 2) Beanbag round
- 3) Beanbag round
- 4) Shot shell
- 5) Hammer
- 6) Cartridge case
- 7) Cartridge case
- 8) Wooden rod
- 9) Shot shell
- 10) Cartridge case
- 11) Fired bullet

LK19-143391
CSA Olander #6382
CSA Weadock #6387

2450 Youngfield Street
Lakewood, CO