



**OFFICE OF THE FIRST JUDICIAL
DISTRICT ATTORNEY OF COLORADO
District Attorney Alexis King**

March 16, 2022

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

Dear Chief McCasky,

The First Judicial District Critical Incident Response Team has completed its investigation into the fatal shooting of Jason Pendergast, Jr., by Lakewood Police Sergeant Jim Jones (the "Officer") at West 3rd Place and Depew Street. Wheat Ridge Police Commander Shellie Salser presented the investigation to my office on July 21, 2021. Additional investigation was conducted by investigators in my office, and the file was completed for review on November 2, 2021.

After a thorough review and analysis of the evidence, I find that the Officer's use of deadly physical force was legally justified to defend himself and others from the threat posed by Jason Pendergast, Jr. Given my conclusion, no criminal charges will be filed against the officer. I am issuing this letter to you pursuant to § 20-1-114(1), C.R.S.

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



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

My team reviewed over 1,200 photographs and approximately 575 pages of reports by the Arvada Police Department, Jefferson County Sheriff’s Office, Wheat Ridge Police Department, Golden Police Department and our other CIRT agencies throughout the First Judicial District. I also reviewed the recorded interviews of the officers, all witnesses who heard or saw the events, and evidence collected from the scene and evaluated by independent examiners.

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

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

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

Therefore, I must determine whether, at the time the Officer shot Jason Pendergast, Jr., he had objectively reasonable grounds to believe, and did in fact believe, that he or another person was in imminent danger of being killed or suffering great bodily injury, and whether he reasonably believed a lesser degree of force was inadequate. In other words, would a reasonable person, confronted with the same facts and circumstances, believe that it was necessary to use deadly physical force to defend himself or others from

Jason Pendergast, Jr.? If so, the shooting is justified under Colorado law, and no criminal charges can or should be filed.

Facts Established by Investigation

On April 20, 2021, at about 3:30 a.m., a 911 caller reported hearing a gunshot, looking outside, and seeing a man on the ground screaming in pain. The injured man then got into a black Cadillac last seen heading eastbound. The caller also saw another person, described as 5'10", thin, and wearing a gray hoodie, run south on Benton Street.

Numerous LPD agents responded to the area, all of whom were in full police uniform and driving fully marked LPD vehicles through several inches of freshly fallen snow. The agents found an area where it appeared someone had fallen to the ground, tire tracks heading eastbound, and footprints heading south. An agent and sergeant began tracking the footprints in the snow. Sergeant Jim Jones drove into the neighborhood from the east and heard LPD was following footprints. Sergeant Jones is a 15-year veteran of LPD, with 22 years of law enforcement experience. During his time at LPD, he has served as a range instructor, SWAT team member, and juvenile crimes detective. At Depew Street and Third Place, Sergeant Jones saw what he believed to be fresh tracks in the snow. He got out of his patrol SUV and began following the footprints, but he hit a dead end.

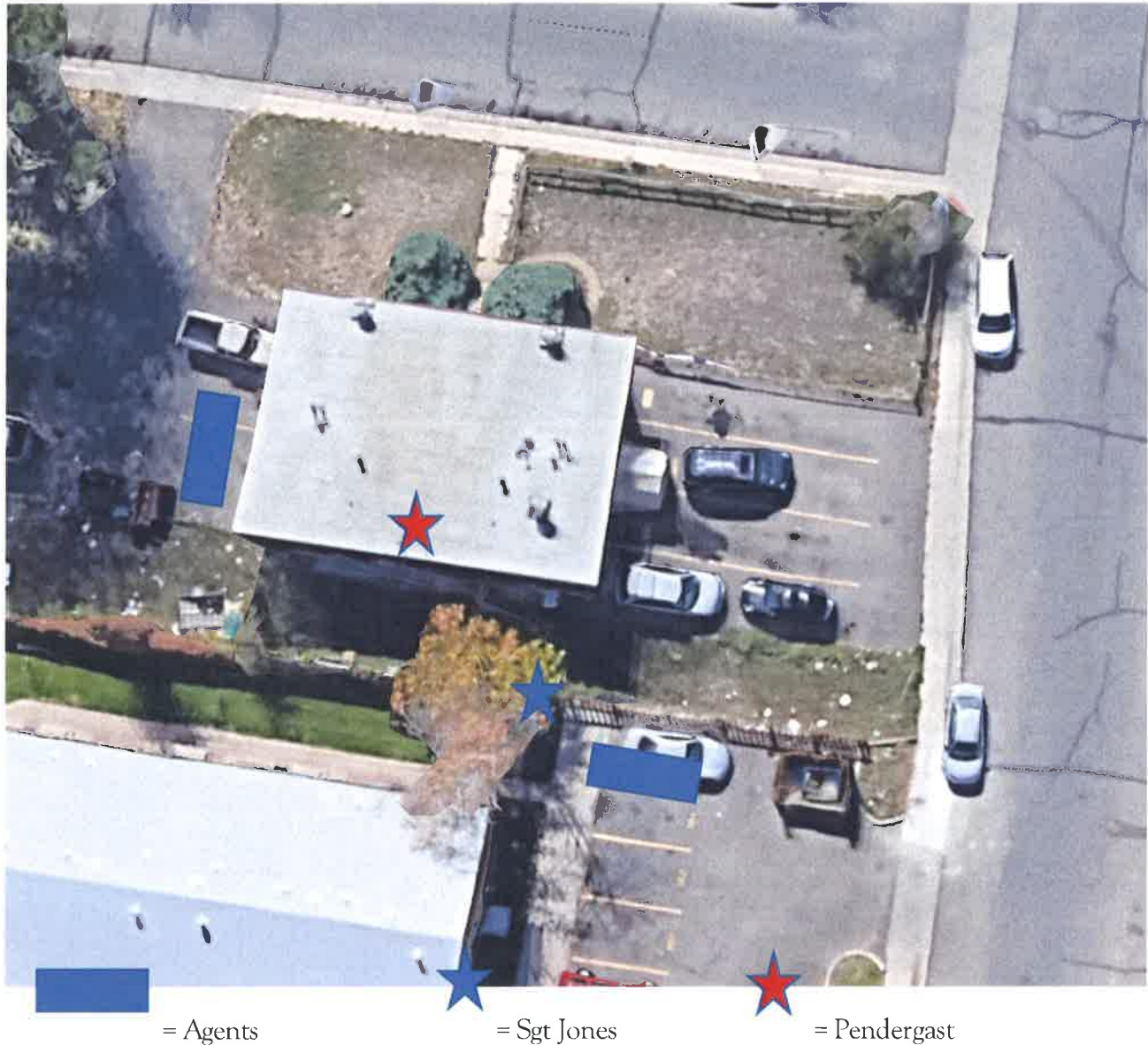
At 4:02 a.m., the agent and sergeant found a man in a garden level exterior stairwell on the west side of 5545 West Third Place, wearing a gray hoodie. They told other officers on the radio that they found the man described by the 911 caller, and he had a pistol in his right hand. The agent commanded the man, later identified as Mr. Pendergast, "Lakewood Police, come out, let me see your hands." Pendergast began making statements about being a "Blood" and that "[his] magazine [was] full, ready to go." Once the agent saw the gun in Mr. Pendergast's hand, he took cover behind his sergeant and two other agents at the northwest corner of the building.

Sergeant Jones and another agent moved behind a car in the parking lot of an adjacent apartment building to the west. Sergeant Jones could hear commands being given by LPD at the northern corner of the building and could see Mr. Pendergast in the stairwell, below ground, which only allowed him to see Mr. Pendergast from the waist up. Sergeant Jones observed Mr. Pendergast wearing a gray or white sweatshirt, with the hood up. In response to police commands, Sergeant Jones heard Mr. Pendergast say, "I'm Crenshaw Mafia and I'm strapped, let's go." Sergeant Jones understood Mr. Pendergast's comment to mean he was armed and willing to use his weapon.

Sergeant Jones evaluated his position in relation to the agents at the north corner of the building and was concerned that if LPD fired their weapons, he might be in danger from potential crossfire. Sergeant Jones changed his position, moving near a fence, and drew his weapon. While moving behind the fence addressed the crossfire issue, Sergeant Jones had no real cover, only a wooden fence. Sergeant Jones estimated he was about fifteen yards from Mr. Pendergast.

From Sergeant Jones's vantage point, he could see the back of a small apartment building with exterior doors upstairs and at the garden level with only a chain link fence perpendicular to the apartment. Sergeant Jones turned on his weapon-mounted light and began giving commands to Mr. Pendergast, like "Drop the gun. Police, drop the gun." Mr. Pendergast responded by saying something about turning off the light, and then said, "See?" Mr. Pendergast then held a black semi-automatic pistol up with his right

hand, his finger on the trigger, and put it down again for Sergeant Jones to see. Mr. Pendergast said something like, “[s]ee it’s loaded,” rotated his hand outwards, removed what appeared to be the magazine, showed Sergeant Jones, and then put it back in the gun. Sergeant Jones continued giving commands for Mr. Pendergast to drop the weapon and come out of the garden level walkway with his hands up. Three agents joined Sergeant Jones behind cars near the wooden fence.



Above is an aerial from Google earth, not from the day of the shooting, to show the buildings and layout of the scene.

While Sergeant Jones stood at the fence, he heard on his radio, at 4:06 a.m., that another sergeant was driving less lethal equipment to Sergeant Jones and had also called for SWAT and K9 assistance from other agencies. At 4:08 a.m., dispatch aired that Denver Health Medical Center had a “gunshot wound walk in.” At 4:21 a.m., dispatch aired that there was surveillance of a black Cadillac dropping the injured man with a gunshot wound off at Denver Health.

As Sergeant Jones continued to tell Mr. Pendergast to put the gun down and come out, Mr. Pendergast responded, "I'm not coming out." Mr. Pendergast also said something about not going back to prison. Sergeant Jones and others heard Mr. Pendergast call people on his cell phone, at one point addressing "Ma" and at another point a girlfriend. Sergeant Jones heard him say, "You know what I did; I can't go back," and further, "[t]hey're gonna have to kill me or I'm gonna kill myself." Sergeant Jones heard a female on the phone crying and begging Mr. Pendergast, "Just put the gun down, do what police tell you." Sergeant Jones heard Mr. Pendergast respond, "The police have me surrounded; I don't have any way out."

Mr. Pendergast was not responding to the officers' commands, and he continued to pace back and forth in front of the apartment doors and windows. Then, Sergeant Jones saw Mr. Pendergast put both hands on the gun at about a forty-five-degree angle from his body. Sergeant Jones believed Mr. Pendergast was now in a better position to fire his handgun, heightening Sergeant Jones's concern that Mr. Pendergast was going to use his firearm. At 4:18 a.m., agents aired that Mr. Pendergast had put the gun to his head but did not fire.

Officers continued to yell commands at Mr. Pendergast. At one point, Mr. Pendergast put his phone down on the retaining wall and started coming up the stairs to ground level. Sergeant Jones again told Mr. Pendergast to, "Put the gun down, put your hands up, get down on the ground." Mr. Pendergast responded that he could not do that and, "[t]his thing is loaded." Mr. Pendergast stood on the top stair and pulled out the magazine again, rolled his hand to the side, and showed Sergeant Jones the magazine. Sergeant Jones was close enough to Mr. Pendergast to see that the magazine was indeed loaded.

Mr. Pendergast walked back down the stairs and continued to pace. Mr. Pendergast then opened one of the two screen doors in the stairwell, which enter the apartments, and tried to open the solid exterior door. Sergeant Jones told him, "Do not go in that door or you'll be shot." Between the time Mr. Pendergast was on the top stair and the time he went to the door; Sergeant Jones noticed a curtain move in one of the apartments and believed there were people inside.

Sergeant Jones watched Mr. Pendergast pace a little more but then turn slowly and walk back up the stairs. Mr. Pendergast changed his hand placement and instead of holding the gun on the side of his thigh, he moved it to the front of his body. Sergeant Jones could clearly see Mr. Pendergast's finger on the trigger, and he held the gun high on the gun grip, with his thumb out at an angle. Sergeant Jones recognized the grip as used by someone who intended to fire a gun one-handed. Mr. Pendergast was not speaking and had a fixed, thousand-yard stare off to the direction he was now bladed, or slightly angled away, from Sergeant Jones.

Mr. Pendergast slowly worked his neck gaiter up over his nose, then turned his gaze to Sergeant Jones. Sergeant Jones said, "What's going on? We don't have to do this, let's drop the gun." Mr. Pendergast took

a couple of slow steps towards Sergeant Jones who made clear, "Do not come any closer or you'll be shot." Mr. Pendergast continued walking toward him. Sergeant Jones, concerned about the apartments behind Mr. Pendergast, took what he believed were two shots downward, below Mr. Pendergast's waist area. Mr. Pendergast appeared to lower his position, and Sergeant Jones didn't know whether he was falling or taking a knee. Sergeant Jones heard another pop and believed Mr. Pendergast was firing at him. Sergeant Jones fired again. Sergeant Jones believed he fired four rounds in total but said it could have been five. Shots were fired at about 4:23 a.m. and LPD had been watching, listening, and commanding Mr. Pendergast for twenty-one minutes.

Agents approached Mr. Pendergast and saw the gun in Mr. Pendergast's right hand at his waist. An agent took the gun and placed it behind him in the snow. Another agent moved the gun to a nearby planter. Agents immediately called for West Metro Fire Department and began administering first aid. Sergeant Jones and other involved agents returned to LPD. At the station, Sergeant Jones and agents who witnessed the shooting were connected to peer support, photographed, and interviewed by CIRT investigators. All were fully cooperative and voluntarily answered questions. Sergeant Jones was also connected to his attorney. Sergeant Jones's Glock 34, 9mm firearm was collected. Sergeant Jones carried three magazines with a capacity for seventeen rounds in each magazine; however, he only loads them with sixteen. Sergeant Jones's two extra magazines were found to have sixteen rounds in them. His gun had one in the chamber and eleven in the magazine. This would indicate that if he was right, and he had sixteen in the magazine and one in the chamber, that he fired five rounds.

The Scene

CIRT detectives processed the scene, coordinated the preservation and analysis of physical evidence, and obtained statements from all community witnesses who saw or heard parts of the event. LPD offered criminalist support, with oversight from CIRT, and bilingual agents assisted CIRT with interviews of the folks living in the apartment building where Mr. Pendergast was found.

At the scene, Mr. Pendergast's weapon, a Beretta .40, was collected with one round in the chamber and three in the magazine. One .40 caliber casing was located near where Mr. Pendergast fell. Four 9mm casings were located around the wood fence in the area where Sergeant Jones had been standing when he fired.



Exterior of apartments, stairs leading to garden level door (center), bathroom window (right), potted plants (far right).



Bathroom interior showing damage to medicine cabinet where Sgt. Jones's round entered and damage to wall where an additional round entered.



A trajectory rod showing the path of one of Sgt. Jones's rounds as it moved from right to left. The chain link fence is visible in the background.



Damage to the brick from a possible round.

A bullet hole was located in a ground level bathroom window of the apartment that Pendergast walked past toward Sergeant Jones. One round was found to have entered the side of a medicine cabinet and remained inside the cabinet. A second hole, believed to be a bullet hole, was located in the wall of the bathroom adjacent to the door. Another round traveled through one planter and into another where it was found and collected. Additionally, a defect in the brick wall of the apartment building was located. A fragment of a copper jacket was found on the ground directly below it.

The CIRT team utilized digital documentation to memorialize the scene. Ballistics examination was conducted by the Jefferson County Regional Crime Laboratory (JCRCL). The four 9mm casings found at the scene displayed similar class characteristics to the test fires from Sergeant Jones's Glock. The bullet from Mr. Pendergast's right back and the copper jacket from his left shoulder also display similar class characteristics to the test fires from Sergeant Jones's Glock. The fired .40 casing from the scene, and one fired bullet fragment from the inside of Pendergast's hoodie, display similar class characteristics to the test-fired components from Mr. Pendergast's Beretta. The bullet/fragments from the medicine cabinet, planter, and Mr. Pendergast's left back had insufficient characteristics to determine the caliber or source.

Analysis

Sergeant Jones was aware that Mr. Pendergast was a suspect in a shooting and had been tracked from the scene to the garden level apartments. Sergeant Jones also knew that the likely victim of Mr. Pendergast's shooting was at Denver Health with a gunshot wound. LPD tried many times to reason with Mr. Pendergast and command him to drop his firearm. Sergeant Jones also heard Mr. Pendergast talk to two people by phone who were also urging him to put his gun down and do what police say. Mr. Pendergast posed a risk to others once Sergeant Jones knew people were inside the apartment, and that Mr. Pendergast opened the door to consider going inside. Mr. Pendergast verbalized he was either going to shoot himself or police were going to shoot him and briefly placed his gun to his

The Autopsy

An autopsy was conducted on Mr. Pendergast by Forensic Pathologist Dr. John Carver on April 21, 2022, and attended by CIRT investigators, with results as follows:

1. Gunshot wound, indeterminate range, entrance right temple, exit right parietal scalp near midline. Trajectory was right to left, front to back and up.
2. Gunshot wound, indeterminate range, entrance top of left shoulder, with no exit. A jacket fragment was recovered from left shoulder, bullet fragment adjacent to thoracic spine. Trajectory was sharply downward, slightly front to back, and slightly left to right.
3. Gunshot wound, indeterminate range, entrance right upper chest, with no exit. A deformed jacketed bullet was recovered from the lower back. Trajectory was front to back, sharply downward, and slightly right to left.
4. Blood samples were sent to NMS labs, and based on the results, Dr. Carver found Mr. Pendergast was intoxicated with methamphetamine and fentanyl at the time of his death.

At the time of autopsy there were also three metal fragments located inside of Mr. Pendergast's hoodie. Dr. Carver found the cause of death is multiple gunshot wounds and ruled manner of death a homicide. The ballistics information and other evidence was presented to Dr. Carver for further review, and he opined that Mr. Pendergast was shot twice in the torso by Sergeant Jones, and that the gunshot wound to the head was self-inflicted.

own head before coming out of the stairwell. Once Mr. Pendergast came up to ground level and toward Sergeant Jones, showed off his loaded magazine, and walking towards Sergeant Jones, ignoring all commands to stop and drop his weapon.

After twenty minutes of engagement between Mr. Pendergast and LPD, Sergeant Jones had an objectively reasonable belief that a lesser degree of force was inadequate to resolve the threat posed by Mr. Pendergast, given his overt threats to officers and himself, his body language, his use of a firearm, and the danger posed to apartment occupants. Because Sergeant Jones had objectively reasonable grounds to believe, and did believe, that he or other persons were in imminent danger of being killed or suffering serious bodily injury, shooting Mr. Pendergast was legally justified. No lesser use of force could reasonably ameliorate that danger. Moreover, a reasonable person, under like conditions and circumstances, at the time Mr. Pendergast was shot, would believe that it appeared that deadly physical force was necessary to prevent imminent deadly harm to the agents or other persons. As there is no evidence proving, beyond a reasonable doubt, that a legally unjustified homicide occurred, no criminal charges can or should be brought against Sergeant Jones under Colorado law.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Alexis D. King". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Alexis D. King
District Attorney
First Judicial District