



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

October 7, 2016

Acting Chief Dan McCaskey
Lakewood Police Department
Lakewood, CO

RE: Officer Involved Shooting incident involving Agent Devon Trimmer on August 1, 2016, CIRT # 2016-03.

Dear Chief McCaskey,

On August 1, 2015, the Jefferson County Critical Incident Response Team was called to respond to an officer involved shooting that resulted in non-critical injuries to Eric St. George, DOB 7/31/77 . This incident occurred in the parking lot of 8139 West Eastman Place in Lakewood. 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 August 22, 2016 at the District Attorney's office. At that time, my office was presented with all reports regarding this particular incident. Senior Chief Deputy District Attorney Eva Wilson has been involved in the CIRT file review.

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 Agent Devon Trimmer was justified in her use of reasonable and appropriate physical force upon Eric St. George.

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

RELEVANT FACTS

At 10:12 pm on July 31, 2016, Lakewood Dispatch was transferred a 911 call from Emily Elliott. Ms. Elliott was very upset and tearful as she reported being shot at by a client after she left his residence. This individual was identified as Eric and Ms. Elliott gave a physical description of him and the address of 8139 West Eastman Place, Building 7, Apt. 103.

Ms. Elliott works for a business called Denver Ladies and she provides legal services as an escort for that company. She was dispatched to the above address at the resident's request and as she was performing her services, the male resident kept trying to touch her inappropriately. She left the residence as a result of his conduct. The resident ran after her and fired a gun up in the air and then at her as she approached her car. Ms. Elliott was not hit but she was on the phone with her service

telling them of the issues with the client when he ran after her and fired shots. The recording later received from the service confirmed her description of the incident.

Lakewood Agents were dispatched to the area. Agent Brennan and Agent Trimmer were on patrol and in uniform and were the first to arrive. Upon arrival, Agent Brennan called Ms. Elliott to get more information about her encounter that evening which provided greater detail about the interior of the apartment and the suspect. The Agents were able to confirm that the address Ms. Elliott had visited that evening listed to Eric St. George and they also located a vehicle in the area which listed to St. George. They did a brief canvas and located a neighbor who reported hearing something earlier that may have been gunshots. Sergeants Maines and Muller arrived on the scene to assist and Sgt. Maines walked around the apartment building in an effort to determine which apartment windows belonged to St. George. Based on the information provided by Ms. Elliott, suspect St. George's apartment was located. A decision was made by law enforcement to attempt to request that the suspect come out of the residence. Agent Brennan and Sgt. Muller were positioned at the southwest side of the apartment building and Agent Trimmer and Sgt. Maines eventually moved to the northeast corner of the building. The two groups of agents were in communication with one another throughout this event.

Agent Brennan obtained the phone number for the resident from the escort service and called into the residence but his call went to voice mail. Agent Brennan left a message, identifying himself as the Lakewood Police Department and indicated that he needed to speak with Eric and he provided a callback number. Agent Brennan then called again and a male answered. Agent Brennan identified himself and told the male he needed to speak with him and wanted him to come outside. The male answered "what?" Agent Brennan repeated his request several times and the male kept responding "what?" Agent Brennan asked the male if he understood his question and the male said "no". Agent Brennan continued speaking with the male but the male did not answer any of Agent Brennan's questions. Agent Brennan repeatedly identified himself as Lakewood Police. After continued silence by the man, Agent Brennan hung up and called back into the residence. This call again went to voicemail.

Next, Lakewood Sgt. Muller called into the residence three separate times and identified himself as Lakewood Police and told the man who answered that they were outside and they wanted him to come out so they could talk to him about an incident that occurred that night with a girl in the parking lot. The male denied that anything had happened and indicated something to the effect that he did not believe that the police were outside. Sgt. Muller told him that they were outside and they knew he was in his residence and that they wanted to talk to him about what had occurred earlier. The male stated something to the effect that he had something for them in his hand and that he sounded threatening as he said this. The male then hung up. Sgt. Muller told Agent Brennan about this statement. In his CIRT interview, Sgt. Muller stated that the male sounded intoxicated and was having difficulty following the conversation.

During this time, Agent Trimmer and Sgt. Maines had moved from the south side of the building and walked past the north side which gave them a view of the suspect's apartment. Through the window, they could see a white male with dark brown hair and also saw a tent and an aquarium in the apartment which were items that Ms. Elliott had told the police were in the residence. The unit's back door opened onto a grassy area that was bordered by a fence on the north side. The north side of the apartment complex was very dark and the only lighting came from a patio light outside the suspect apartment and the interior lights of that apartment. Agent Trimmer and Sgt. Maines stationed themselves on the northeast corner side of the building in an effort to watch the

north side and the suspect's back door. Based on radio traffic, they knew their fellow officers were attempting to make contact with the suspect by phone. As they were standing there, the lights from the suspect's apartment and patio area were turned off.

Agent Trimmer and Sgt. Maines saw a male exit the back door of the residence. Agent Trimmer noticed light from his cell phone which he appeared to be talking into, although she could not hear the conversation. The individual then went back into his apartment and Sgt. Maines heard the door lock. A few moments later, Agent Trimmer heard Agent Brennan air that the male was threatening over the phone and that he had something in his hand. The officers then heard the back door open and the sound of a racking of a firearm.

Due to the suspect's apparent possession of a firearm, Agent Trimmer and Sgt. Maines moved to the east side of the building, around the corner from the back door of the suspect's residence and took cover on the south side of a pick-up truck parked in front of a garage. Sgt. Maines aired on the radio over the emergency channel that the suspect had a gun and that they needed more cars to come to the scene. Since the south and west sides were being covered by Agent Brennan and Sgt. Muller, Sgt. Maines was concerned about the suspect's whereabouts on the north side, which they no longer could view from their vantage point. Sgt. Maines told Agent Trimmer to stay behind the truck as he moved to the east to circle an adjacent building and come back around on the north side. This would position him so that he could view the suspect's yard from the north to monitor any movements being made by the suspect.

Agent Trimmer described the lighting in the parking lot as providing good visibility. Agent Trimmer heard Sgt. Maines air that he could see the male walking around the back yard towards her direction and that it appeared that he had a gun. Agent Trimmer drew her weapon but was concerned about her position next to the vehicle so she ducked down behind the pick-up truck. She heard footsteps on gravel and she saw the suspect walk directly in front of her, coming from the north. The suspect was 20 – 25 feet directly east of her and nothing stood between them. Agent Trimmer could see him clearly and she saw that he was armed with a shotgun which he pointed at her and fired. Agent Trimmer was not hit and she immediately returned fire with her handgun. She quickly retreated towards the front of the vehicle close to the garage to obtain better cover. She heard the racking of a shotgun and then saw that the suspect was mirroring her movements as she tried to distance herself from him by heading to the north. He then fired another shot at her again and she returned fire. She was unsure if he fired a third shot at her or not but she fired an additional shot at him. She then lost sight of him but heard him rack his shotgun again. She also heard Agent Maines air on the radio that the suspect was down.

In a CIRT interview later that morning, Agent Trimmer stated that when the suspect shot at her, the shotgun barrel was pointed directly at her and she did not know how he did not hit her with his first shot. It happened so quickly that she did not have time to verbally challenge him prior to him shooting at her. She believed that the suspect was going to kill her.

Sgt. Maines described seeing the suspect walking east on the north side of the building and then taking a hard right turn heading south which caused Sgt. Maines to lose sight of him. In just a couple of seconds, he heard a big boom, some little booms and another big boom. He was unsure as to the total number of shots but he could clearly tell that one of the weapons was a handgun and the gun making the big booms was something much larger than a handgun. Sgt. Maines ran up to a bush on the corner and saw the suspect moving northwest towards his backyard. He then put his gun up and turned the light on towards the suspect. The suspect then shot directly at him. Sgt.

Maines saw a muzzle flash and could tell that the suspect was “hip shooting” a shotgun. Sgt. Maines did not return fire but ducked behind a bush. As he looked out, he saw the suspect lying on the ground but the suspect then fired again at him, hitting the leaves on the bush that he is behind. Sgt. Maines fell down on the ground in order to get a better shooting position and as he rolled out from under the bush, the suspect was gone and he heard the sound of a door shutting. Sgt. Maines aired for more officers to respond and also requested SWAT’s assistance. As officers arrived, more shots were heard being fired from within the apartment. Further investigation revealed that these were additional shots fired by the suspect.

The suspect eventually surrendered to law enforcement after calling 911 requesting medical assistance for his gunshot wounds. The suspect sustained two gunshot wounds, one to each leg. He was interviewed at the hospital where he first claimed he was at his apartment by himself that evening and that he had no knowledge of the circumstances regarding being shot. However, during a two hour interview, he eventually gave additional details regarding the incident. With regards to Miss Elliott, he denied having any inappropriate contact with her and also denied threatening, brandishing a firearm or discharging a firearm towards her. As to the shooting at the officers, he described receiving threatening text messages from a number unfamiliar to him which caused him to arm himself with a shotgun for protection. He heard a noise and he looked out his front and back doors. He held his shogun down to his side pointed at the ground and had only taken a few steps from his back door when an unknown person shot him in the leg. He thought that as he fell to the ground, he may have gotten off one round. He said he did not see who shot him and did know that police were outside. He stated several times that if the police had called him and identified themselves, he would have come out without incident. He stated that he been drinking that evening but he denied being intoxicated. Sgt. Maines described smelling alcohol on the suspect as he was being arrested. His speech was slightly slurred at the time of his interview but he was able to clearly and coherently communicate with the detectives at length. His blood alcohol level at 7:05 am was a .139 with two subsequent blood draws, the final one being a .118.

A review of Agent Trimmer’s weapon, magazines and the physical evidence at the scene revealed that she fired three 9mm Luger rounds that evening. Sgt. Maines did not fire his weapon nor did any other officers. The suspect was armed with a Mossberg 12 gauge shotgun outside the residence. 5 spent shotgun shells, 3 shot cups and 3 live shotgun shells were located in the east parking lot and the grassy areas between the lot and the suspect’s residence. A blood trail left by the suspect was evident between the lot and the back door of his residence. A .380 Ruger handgun and a spent .380 shell casing were located at the front of the residence. A spent .380 shell casing was located in the general proximity where Ms. Elliott’s vehicle had been parked. There were four bullet holes located in the residence including in the bathroom ceiling, the hallway ceiling trim, the closet door in the hallway and the ceiling of the breezeway just outside the front door. Multiple holes, appearing to be from shotgun blasts, were located above and behind the pickup in the siding of the east side of building 7.

LEGAL ANALYSIS

We find in our review of this shooting that the conduct of Agent Trimmer was not criminal.

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

Eric St. George fired a shotgun at Agent Trimmer from a distance of 20 to 25 feet. It was entirely appropriate for her to defend herself by shooting back at him. St. George was armed with a deadly weapon and fired at this police officer without justification or excuse. Agent Trimmer had the authority to legally confront him but she was not doing so. There was no apparent threat to him of any sort. Instead, she was hiding behind a vehicle in an effort to conceal herself and to not confront St. George until back-up arrived to assist in this serious situation. However, for whatever reason, St. George determined to ignore repeated law enforcement requests to come out of his residence and speak with officers about the shooting incident with Ms. Elliott. Instead, he shut off the lights, armed himself with a shotgun, came out of his residence and attempted to kill one police officer and then another. Thankfully, his shots went high and wide and the officers' lives were spared. While Agent Trimmer did not use deadly physical force against St. George, she would have been entirely justified in doing so. Eric St. George is fortunate that Agent Trimmer's bullets only struck his legs and that he did not lose his life on that night.

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

Sincerely,



Peter Weir

1st Judicial District Attorney

cc: CIRT Commander Mark Cooney