



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties
Peter A. Weir, District Attorney

May 14, 2019

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

Re: Critical Incident Team Investigation 18-05 (Officer Involved Police Shooting of Joe Richard Shorty DOB 07/21/1979 on November 28, 2018)

Dear Chief McCasky:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on November 28, 2018 to investigate the fatal shooting of Joe Richard Shorty by Lakewood Agents Lovett, Abeler, and Godfrey. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. A CIRT investigation was completed for determining whether criminal charges are warranted with respect to the conduct of any of the Lakewood Agents involved in the incident.

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

CIRT investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and completed a background of Joe Richard Shorty as part of a thorough and complete investigation into this incident. The investigative file is voluminous and includes transcripts of

witness interviews, reports, diagrams, digital media containing recorded interviews, police communications, photographs, drone photographs, Denver ShotSpotter audio, and laboratory analysis.

A review of the investigative file, including all CIRT reports and documentation has been completed by my office and I, along with members of my staff, have been fully briefed regarding this incident by CIRT Commanders in charge of the investigation.

My findings, analysis, and conclusions of law with respect to the use of deadly force in this incident by Agents Lovett, Abeler, and Godfrey, as well as the use of force by Sergeant Hoover, are as follows:

Applicable Law

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

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

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

§ 18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsections (2) and (2.5) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

§18-1-901, C.R.S. Definitions

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

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

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

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

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

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

Summary of Opinion

Applying these statutes to the facts presented in this investigation, I find that the involved law enforcement officers are not subject to criminal prosecution for their actions on November 28, 2018.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. Moreover, in cases where the evidence supports an affirmative defense of self-defense or use of physical force in making an arrest, there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time Agents Lovett, Abeler, and Godfrey shot Joe Richard Shorty it was reasonable to believe that Shorty posed an imminent threat of serious bodily injury or death to them and Sergeant Hoover. The evidence also establishes that Sergeant Hoover was justified in using physical force upon Joe Richard Shorty to effect an arrest of a person and to defend himself or a third person from what he reasonably believed to be the use or imminent use of physical force. Throughout the police contact with Joe Shorty he was in possession of, and discharging, a firearm in a residential area. Joe Shorty failed to comply with repeated commands by Lakewood Police Agents to drop his gun and stop walking. There is no reasonable probability of disproving the affirmative defenses in the shooting of Joe Richard Shorty and no criminal charges are appropriate against Agents Lovett, Abeler, and Godfrey. Furthermore, Sergeant Hoover was justified in using less than lethal force against Joe Richard Shorty.

Summary of Facts

On November 28, 2018 Lakewood Police Agent Paton Lovett attempted to contact Joe Richard Shorty around W. 14th Avenue and Gray Street in the City of Lakewood. At approximately 7:16 P.M. Agent Lovett observed Joe Shorty committing violations of the Lakewood municipal code. Joe Shorty was riding a bicycle eastbound on the north side of W. 14th Avenue without required illumination, and he was in possession of a beer. Agent Lovett then observed Shorty drop his beer can to the ground and continue to ride his bike.

Initially, Agent Lovett drove parallel to Shorty while Shorty was riding his bike. Agent Lovett asked Shorty if he would stop and talk. In response, Shorty said the request was police harassment, and indicated that he would not stop for Agent Lovett.

Shorty continued to ignore Agent Lovett's requests to stop and talk. Shorty continued riding and proceeded to turn off W. 14th Avenue and into the parking lot area of the Mt. Vernon Apartments.

Once Shorty rode into the parking lot of the Mt. Vernon Apartments he got off his bike and started walking south in the Mt. Vernon parking lot. As he walked he discharged a gun in an unknown direction. The area of this initial shot was in a residential location. This first shot was verified by the Denver ShotSpotter system and later by the recovery of a shell casing. Denver ShotSpotter records show this shot was fired at 7:17:36 P.M.

At 7:18:01 P.M. Agent Lovett advised dispatch that he was attempting to contact an individual and that a shot was fired. Upon hearing Agent Lovett's initial call that a shot was fired several Lakewood Police Agents began to converge on the area where Agent Lovett stated he was following an armed subject.

Agent Lovett remained in his fully marked Lakewood patrol car and continued to follow Shorty. Agent Lovett could see that Joe Shorty was carrying a handgun in his right hand. Agent Lovett then decided to get out of his car for a tactical advantage should Shorty choose to once again use his hand gun.

Once on foot Agent Lovett maintained cover and followed Shorty as he proceeded south through Mountair Park. Shorty then began to walk east along the light rail tracks and a building, at approximately 5600 W. 13th Avenue. Once Joe Shorty reached the eastern edge of the building at 5600 W. 13th Avenue he turned north and began walking along Depew.

By this time, other Lakewood Agents arrived in the area. Shorty again discharged his handgun near the southeast corner of 5600 W. 13th Avenue. Denver ShotSpotter data reflects that this second shot was fired at 7:21:40 P.M. Shorty continued to walk eastbound on W. 13th Avenue. At this time, Sergeant Dave Hoover, who was driving an unmarked Lakewood Police Department car, pulled in behind Shorty. Sergeant Hoover used his public-address system to issue commands to Joe Shorty to stop and drop the gun. These orders were repeatedly given and were heard by several citizens who were in their homes.

As Sergeant Hoover followed Shorty, several other Lakewood Police Agents joined the pursuit. Agents used Sergeant Hoover's car for cover, as well as trees and vehicles in the area. As Shorty proceeded east on W. 13th Avenue the police repeatedly issued him commands to stop. Shorty refused to comply with any of the commands. Occasionally Shorty would look over his shoulder at the Lakewood Police Agents, but he ignored all of their orders.

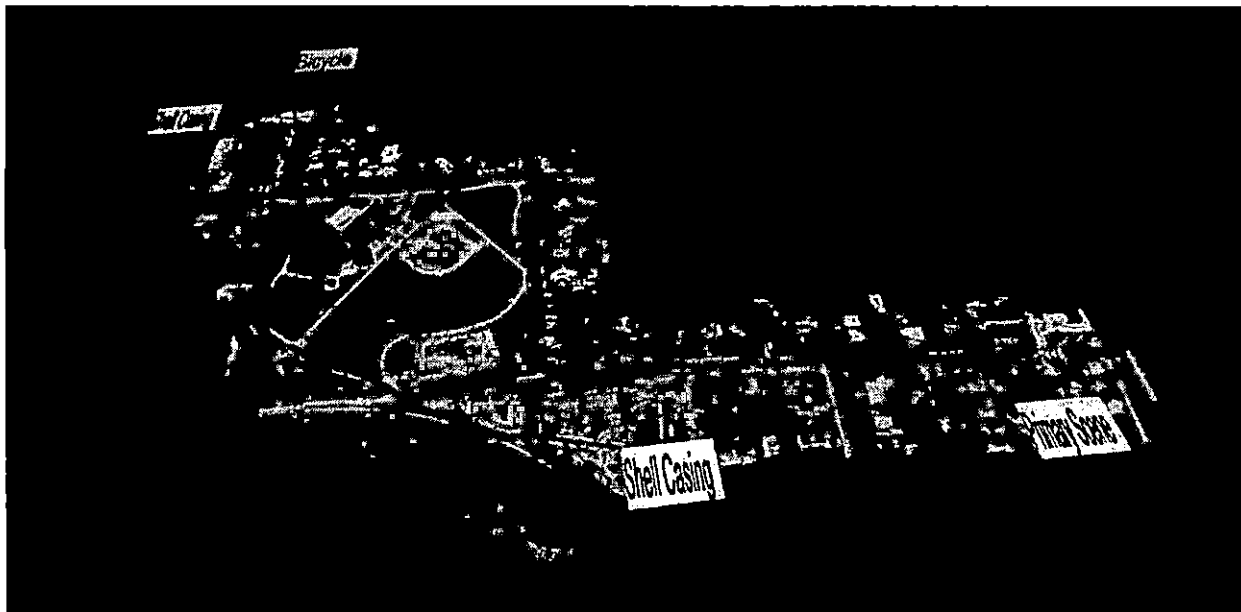
As Shorty continued eastbound, a female citizen, later identified as Rebecca Messick, was in the area. She heard the orders issued by the police agents as she was attempting to get her dog into her home. As Miss Messick stood outside her open front door, Shorty was observed to change course and walk toward her. Lakewood Police Agents told Rebecca Messick to get back inside her home and to lock the doors. Miss Messick did what she was told, and got safely inside her home. Shorty then started to head east in the direction of Sheridan Boulevard.

Lakewood Police Agents feared that if Shorty was able to get close to enough to a citizen he might seriously hurt them or take them hostage. As Shorty continued to head east on W. 13th Avenue towards Sheridan Boulevard, police agents became increasingly concerned that Shorty posed a significant threat to the public. Lakewood Agents requested that Sheridan Boulevard be closed to protect the public. Agents, however, could not be confident that no vehicles or pedestrians would come into the area. As Shorty continued to walk down W. 13th Avenue, police agents continued to issue commands. The commands included, “drop the gun” and “it does not have to end like this.”

As Shorty got close to Sheridan Boulevard, agents decided to employ a less than lethal option to neutralize him. Agents decided to strike Mr. Shorty with a police vehicle to gain control of him. At W. 13th Avenue and Ames, Sergeant Hoover began to drive his car in the direction of Shorty. As Sergeant Hoover did so, Shorty reacted by moving towards a tree and a fence that were on the corner of W. 13th Avenue and Ames. Sergeant Hoover was successful in trapping Shorty with his car. Sergeant Hoover realized he was vulnerable so long as he remained in his car so he started to get out as quickly as possible. As Sergeant Hoover was trying to get out of his car Shorty fired another round from his handgun.

In response to the shot fired by Shorty, Lakewood Police Agents returned gunfire. Shorty was struck and neutralized. Police agents immediately attempted to use a ballistic shield to check on Shorty’s welfare and render aide. They were unsuccessful. Shorty died as a result of the shooting.

The diagram below shows the path taken by Joe Shorty, the location of shell casings from rounds fired by him, and the scene of the fatal shooting:



Use of Force Officer Interview Summaries:

Agent Paton Lovett

Agent Lovett was the first police agent in contact with Joe Shorty November 28, 2018. Agent Lovett observed Joe Shorty with a can of beer in his hand and no lights on his bike. Agent Lovett was present when Shorty discharged his weapon in residential areas and followed him to the location of the police shooting.

Agent Lovett took a position on the left side of Sergeant Hoover's car to provide cover for Sergeant Hoover and fellow officers. When interviewed, Agent Lovett related, in part, the following:

- A: So we were concerned, because obviously there's a lot of - I mean it's a neighborhood. It's - it's a residential area. There's a lot of people that stay around there or people are out and about. There's several, you know, cops now that are on scene, like Sergeant Hoover. We'd gotten in behind his car. So as he's driving he has his lights illuminated, and he's giving verbal commands from the vehicle over the PA system. I know I gave him several commands, as well, saying, "Police, drop the gun," as we were still walking. He's not complying. He's still walking, still got the gun in his hand. Continued to walk, and we were bouncing from cover to the car, cover to the car as we were moving our way down the street behind him. As we started to get toward Sheridan Boulevard, which is obviously a really busy street and the traffic, so we were concerned. I was concerned about, I mean if there is a crossfire, all he would have to do is start unloading rounds in our direction.

I'm concerned A, the cops that I'm with, you know, Sergeant Hoover's in a vehicle, but you know, it's easy for rounds to go through glass, so it's a big target.

(Transcript Lovett Pg. 10 Lines 414-429)

A: Like a dead-looking tree that's right there, as well. So we were concerned 'cause he's getting real close to Sheridan and still not complying. Sergeant Caracostas said, "Hey, advise Denver, because he's not stopping. He's still going." So, uh, people were askin' about lanes of fire, because we were worried also about crossfire in case he did start shooting at us. We didn't want to have anybody else get involved or any of the traffic that's coming down or people behind us or anything like that. So he got to about here. Sergeant Hoover accelerated the vehicle, trying not to use deadly force. He tried to pin him up against the tree. From my vantage point, well when he pinned him up against the fence or the tree that was right there, I had come around to the left, 'cause I was on the left side of everybody. I come to the left, and as I was approaching, I heard another bang from the direction of where the guy was at, and everything is illuminated, but moving towards the target I can see him, I clearly see the male was pinned up against like where the vehicle was and the fence, but there's a lot of kind of like the branches and things like that, that were kinda pushed over him. So I was really kernser- concerned at that point, because, you know, there's several officers that are all standing around. You got Sergeant Hoover in a car, and for him to actually get out of the vehicle - I mean he's right in front of the guy. So the guy's hand comes up 6 inches he coulda put rounds right into Sergeant Hoover who is in the vehicle at this point. So I came around. I heard that bang. Other officers had just started to initiate contact and started shootin' at him. And then I started shootin' at him, as well. So I was worried that, you know, if we didn't use deadly force at that point that, you know. I had heard that gunshot go off, and I was worried that maybe it was directed at me or one of my teammates. I was really worried about one of my teammates, especially because we couldn't see, you know, where he was pointing at that point. We just knew he had the weapon. I had heard it go off, and I was concerned for them. So there's not really any cover in front of me or them at that point. I mean the guys are behind the car, but the guys to the exterior not really. So engaged him and then stopped shooting, you know. Used just enough to, you know, neutralize him. I didn't, you know, want him to be able to continue shooting at one of my partners. So.

(Transcript Lovett pg.11 lines 458-489)

Agent Lovett discharged a total of six rounds from his handgun.

Agent Jordan Abeler

Agent Abeler arrived in the area and parked his vehicle on Depew. He retrieved his rifle and ran east on W. 13th Avenue, where he saw fellow police agents. He joined them as they followed Shorty. Agent Abeler confirmed that Shorty had a gun and was refusing to obey commands. Agent Abeler was told by Agent Anderson "he shot at me."

Agent Abeler described the critical events as follows:

Um, after we passed Ames, um, and I was standing next to Agent (Anderson), and, uh, Agent (Anderson) told me that, uh, the suspect had shot at him. So I - I remember agent, uh, Agent (Anderson) saying, "He shot at me. He shot at me." And we were like, "Oh." And I think that, uh, at that point, we, uh, we were - we were moving up, uh, past Ames. We're hitting the Sheridan where there's a lot of traffic, foot traffic and vehicle traffic. Um, people started talking about, you know, hit him with the patrol car. "Let's, you know, we can't let him get to the street where there's people, cars and, uh, everything else." Um, and, uh, at - at some point, you know, like I said, there was people who are - who are yelling - I - I - after I heard it, I was like, yeah, it - it sounds reasonable. And so we - we were yelling, "Hit him with the patrol cars, you know, not let him get anywhere." And, uh, at that point when we were mid-block between Ames & Sheridan, Sergeant (Hoover), um, made the - at some point made the decision to that's what he was gonna do. So he accelerated. The engine revved up. And as soon as the engine revved up, the, uh, the suspect kinda turned - kinda turned, looked to see the patrol car was coming at him and made an evasive movement south. Um, and, uh, at that point when I saw him making his movement, I, uh, took a kneeling position to the, uh, to the south of the patrol car. Uh, took a kneeling position and, uh, held him at gunpoint. And, uh, Sergeant (Hoover) struck him with the patrol car. Um, the suspect ended up being pinned between, uh, it was sa- Sergeant (Hoover)'s car, a tree, suspect, fence. Um, and so once he got pinned there, I was in the kneeling position. I heard a round fire from the, uh, suspect's direction. And, uh, the initial description was that he was carrying a semiauto handgun. Um, the round that I heard fired was - was, um, you know, based on training and experience at the range and, um, just my personal experiences, I - I knew the rou- the - the sound was from a handgun. Um, and being in fear for my safety and the other agents' safety, sergeant was, you know, right here. And the guy, um, I fired my weapon at the, uh, the suspect, um, until he, you know, stopped moving and wasn't a threat anymore. And then, uh, after - after the firing was done, we moved in a - a - more a L or a better L position to keep cover on him in case he continued to move or presented another threat 'cause we still weren't sure what was - what his condition was, uh, where the gun was or anything like that. Um, so I took the position on the, uh, south side of the patrol car while other agents moved to the - were on the north side with their line of fire to the south. My line of fire was to the east. And then, uh, um, somebody responded with a - a shield. And we were able to move up and, uh, determined he wasn't moving anymore. Um, and Agent (Lone) said that he could see the gun, um, pinned between the suspect and the tree. So at that point, it was, uh, determined he was not a - not a - a immediate threat anymore. So we backed off. Um, and then, um, Agent (Legett) transported me back to the station.

(Transcript Abeler pg.5 lines 181-222)

Agent Abeler estimated that he fired 15-20 rounds. The subsequent investigation showed he fired a total of 21 rounds.

Agent Luke Godfrey

Agent Godfrey was monitoring his radio and heard that an agent was attempting a pedestrian contact and that shots were fired. He responded to the area of 14th Avenue and Depew. Once Agent Godfrey arrived in the area he could hear police giving commands to Shorty. Agent Godfrey retrieved his duty rifle.

On W. 13th Avenue, Agent Godfrey observed Shorty get “really close” to a female, Rebecca Messick. Agent Godfrey estimated that Shorty got within 10-15 feet of Miss Messick before she was able to enter her home and close the door.

Agent Godfrey was advised by fellow agents that Shorty had a gun, although he did not personally observe a firearm. Agent Godfrey trailed behind Sergeant Hoover’s vehicle as Sergeant Hoover accelerated to trap Shorty. As Agent Godfrey ran to close the distance that developed after Sergeant Hoover accelerated he heard a gunshot, which came from the location where Shorty was last seen.

After hearing the shot, Agent Godfrey dove to the ground under Sergeant Hoover’s vehicle to take cover. Agent Godfrey returned fire, as he was prone, toward the last place where he had observed Shorty. Agent Godfrey indicated that he returned fire because he believed Shorty was shooting at him, Sergeant Hoover, and fellow agents.

Agent Godfrey advised that he believed Shorty “was trying to kill me.” Once the shooting stopped, Agent Godfrey continued to hold his rifle trained on Shorty until a shield could be located.

Agent Godfrey fired a total of 27 or 28 rounds from his rifle.

Less Than Lethal Officer Sergeant Dave Hoover

Sergeant Hoover was working an extra duty assignment for RTD the date of the shooting. Upon hearing on the radio that shots had been fired, Sergeant Hoover responded, in an unmarked police vehicle, to the area of 5600 W. 13th Avenue.

Sergeant Hoover used his car to provide cover for the agents that were following Shorty. Sergeant Hoover’s car was equipped with red and blue lights and they were activated when providing cover and following Shorty. Sergeant Hoover also used his car’s public-address system to issue orders to Shorty. At one point Shorty turned and looked at Sergeant Hoover while holding the gun in his hand.

Sergeant Hoover attempted to stop Shorty by using his patrol as a less than lethal option. Sergeant Hoover was able to use his car to trap Shorty against a tree and fence. Sergeant Hoover risked his own life by maneuvering his vehicle in this manner and so close to Shorty. After pinning Shorty between a fence and tree, Sergeant Hoover opened the car door to get out of the vehicle. As he got out of the car he heard a shot, and then fell backwards. A fellow agent grabbed Sergeant Hoover and pulled him to a safer location.

Sergeant Hoover did not discharge his weapon.

Sight and sound Agents:

Agent Nathan Anderson

Agent Anderson was the first back up agent to arrive to assist Agent Lovett with this incident. When Agent Anderson arrived on scene, Shorty was walking southbound from W. 14th Avenue. Agent Anderson observed Agent Lovett following Shorty while Agent Lovett was still in his vehicle.

Agent Anderson advised that Mountair Park was pitch black, and he went to Depew Street to head off Shorty from the east. Agent Anderson parked his patrol car in the outfield of the softball field on the east side of Mountair Park.

At one point Agent Anderson heard a gunshot and saw a muzzle flash that he associated with Shorty. Agent Anderson was not sure where the gun shot went, but he did relate to fellow agents that Shorty shot at them, meaning himself and Agent Lovett. The opinion that he was shot at was based in part on the muzzle flash that was observed. Agent Anderson advised Sergeant Hoover, "Sarge, he tried to shoot us." Agent Anderson was in a cover position behind Sergeant Hoover's car at the time Sergeant Hoover used less than lethal force and, in this position, he did not believe he was able to fire his weapon safely. Agent Anderson did not fire his weapon.

Agent Kyle Sinnema

Agent Sinnema responded to the area after hearing that a shot had been fired during an attempted pedestrian contact.

Agent Sinnema personally observed Shorty wearing a dark jacket walking eastbound on W. 13th Avenue holding a black semi-automatic handgun in his right hand. Agent Sinnema observed Sergeant Hoover following Shorty as Sergeant Hoover gave commands for Shorty to "stop," and "drop the gun."

Agent Sinnema advised that he saw Sergeant Hoover's vehicle accelerate toward Shorty and Shorty continue to hold on to the pistol. Agent Sinnema saw Shorty turn back to look in the direction of Sergeant Hoover, and then jump between a tree and a fence.

Agent Sinnema was not able to determine if Shorty was struck by the vehicle or if he made it behind the tree without being struck. Immediately after Shorty got behind the tree Agent Sinnema heard a gunshot, followed by multiple other gunshots. Agent Sinnema was behind Agent Abeler and not able to safely discharge his weapon.

Lay Witnesses:

Rebecca Messick – 5495 W. 13th Avenue Lakewood CO 80214

Rebecca Messick related that she was on her way home from work in her car when she saw a police car in front of her. Miss Messick advised that it appeared to her that a police officer was trying to talk to a bicyclist on the north side of W. 14th Avenue, while both the bicyclist and police car were moving. Miss Messick indicated that this annoyed her as she was trying to get home and the police officer and bicyclist were only going 15 miles per hour. Miss Messick observed the bicyclist and officer turn north on a street that she identified as being "before the park" and "with a carwash." The street was later identified as Fenton.

As the bicyclist and officer turned, Miss Messick proceeded home. After getting home she opened the front door of her residence to let her dog out. She observed police to the west of her on W. 13th Avenue heading in an easterly direction. She also heard police saying "stop."

Then Miss Messick saw Shorty come into her yard. She heard, "police, drop the gun," and saw Shorty partially turn back toward police.

She heard police telling her to get in her house. Miss Messick was eventually able to get her dog in her house and then she locked the door and hid behind her refrigerator.

Azazel Crowley – 1297 Benton St. Lakewood CO 80214

Azazel Crowley was in his bedroom with his wife Ashley when they heard a voice that drew their attention to the window. The Crowley's bedroom faces west, and Azazel went to the window and looked outside. He observed Shorty walking east followed by a police car with its emergency lights activated. Azazel clearly heard police say, "Put the weapon down, we don't want to shoot you." Azazel characterized Shorty as appearing as though he didn't care.

Ashley Crowley – 1297 Benton St. Lakewood CO 80214

Ashley Crowley was with her husband Azazel in their west-facing bedroom when she initially heard the events. She recalled hearing police on a public-address system stating, “Put the gun down.” Ashley recalled a spotlight being on an individual the police were following. She stated he had a backpack, and it appeared he motioned to the police in a fashion that Ashley interpreted as meaning, “leave me alone.” Over the public-address system, she also heard police say, “It doesn’t have to go down like this, put the weapon down.”

Ashley then went through her home and advised the one of her two children home at the time to get in the basement. Ashley did this because she felt, based on what she observed, that shots could be fired.

Ashley stated that Shorty was subject to “plenty of irrefutable commands,” and if he had a gun he had plenty of chances to put it down and save his life.

Jason Hahl – 1275 Ames St. Lakewood CO 80214

Jason Hahl resides with Ross Ollum and Amandine Honthaas at 1275 Ames St. in Lakewood.

Jason Hahl indicated that while he was at home he heard police outside. He observed Shorty walking eastbound past mailboxes and police were telling him to stop. Hahl observed five to seven police officers behind a police car with their guns drawn.

Jason Hahl then went to the area of his front door and recalled hearing the police asking Shorty to stop walking.

Ross Ollum was also at home at the same address looking at digital photos when he heard the words “stop right there.” Mr. Ollum indicated he looked out his window and observed a police car with a spotlight on and six to eight officers behind the vehicle. The officers appeared to be squatting and using the car as cover with their weapons drawn.

Mr. Ollum described Shorty, as walking casually as if nothing was happening. When Shorty got to the intersection of W.13th Avenue and Ames, Ollum heard police direct Shorty to get on the ground. Despite this order, Shorty continued to walk east. Mr. Ollum then observed the police car accelerate, and his impression was that the vehicle hit Shorty. Mr. Ollum then heard a “pop,” then another “pop,” then maybe one more “pop” before it was clear that officers were shooting. When the shooting stopped, Mr.

Ollum heard officers yelling commands, although he could not recall what they were yelling.

The third resident of 1275 Ames Street, Amandine Honthaas, advised that she was looking at photos with her roommates Hahl and Ollum when she heard shouting.

She looked outside and saw four to five police officers behind a police car using it as a shield. Honthaas then went to a north-facing window on 13th and watched the movement of the individuals outside as they walked toward Sheridan. She saw Shorty, whom she described as wearing a light (on his head), with a backpack, in the middle of the street zigzagging, and walking slowly. She observed the police vehicle make what appeared to be a quick right turn, and then heard one gunshot.

Crime Scene Processing:

On November 28, 2018 pursuant to CIRT protocol a multi-jurisdictional team was called upon to process and collect evidence in the shooting of Joe Shorty.

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

Photographs were taken, and a FARO system was used to document the scene

It was determined that the Arvada Police Department would oversee the diagramming of the scenes.

Detective Archuleta of the Arvada Police Department found that there were four live cartridges in the magazine of Shorty's gun and the chamber was empty. The weapon, a Glock semi-automatic handgun, can hold a total of seven bullets, six in the magazine and one in the chamber.

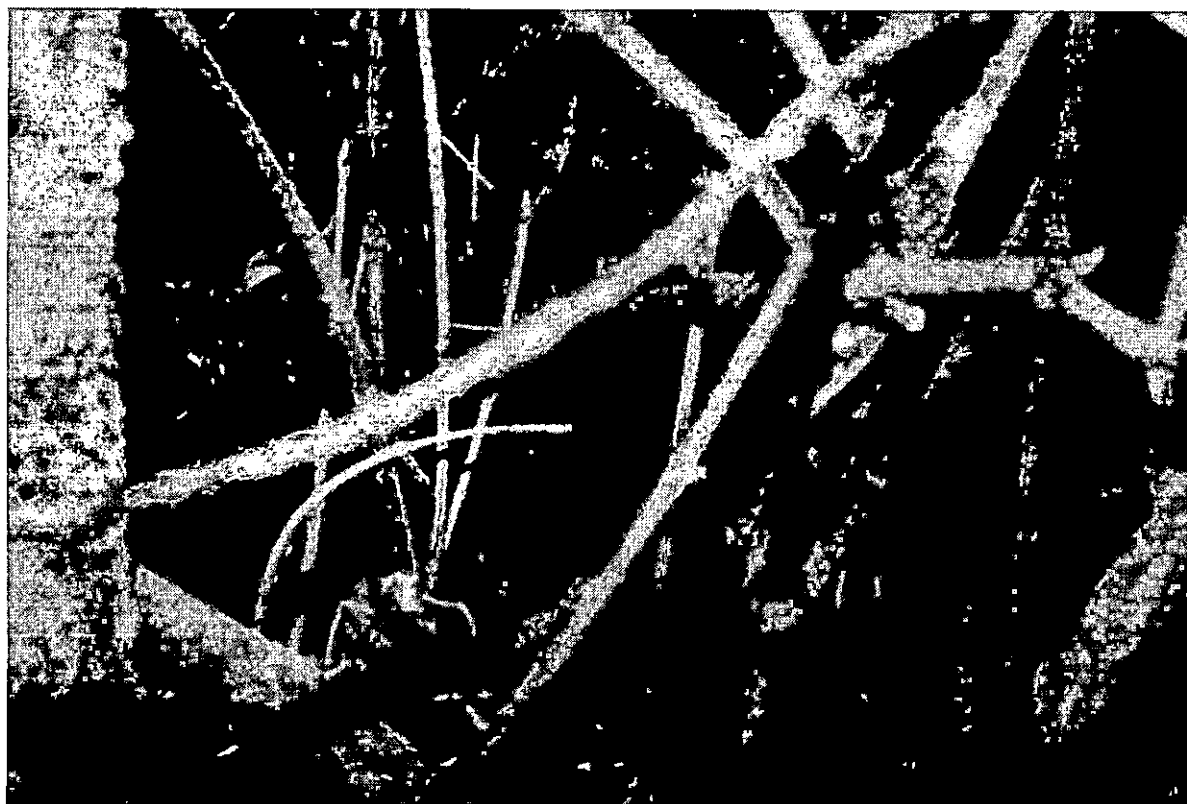
Mr. Shorty was still on scene pinned against a 6-foot wood privacy fence and a police car. Mr. Shorty was next to a bush and tree that were growing in the alleyway. Detective Archuleta used a pruning shear to remove some of the twigs and sticks from around Shorty in order better view the fence. Several defects were seen in the fence consistent with both 9-millimeter and .223 bullet strikes. An eight-inch diameter tree also appeared to have struck by several .223 bullets.

Detective Archuleta sifted through the loose material at the base of the bush/tree. The base area consisted of twigs, dried leaves, and loose soil material. The surface was raked down to hard-packed dirt and all the loose material was hand-sifted. No shell casings were located at this point. Detective Archuleta then removed handfuls of

similar material from inside the base of the bush, around the back side of the bush between the bush and the fence, and at the base of the bush on the south side. Ultimately a single 9-millimeter casing was located that matched the brand and style in the suspect's weapon.

This shell casing was subjected to laboratory testing and in a report dated February 8, 2019 this shell casing was found to have been fired from the weapon that was in Joe Richard Shorty's hand. The lab report was authored by Erin Mulligan, Firearm Analyst of the Jefferson County Regional Crime Laboratory.

Joe Shorty was dressed all in black and had a Glock handgun in his right hand. The handgun was affixed to Joe Shorty's wrist with a small rope and carabiner. Mr. Shorty also had 58 rounds of ammunition all capable of being fired from his gun.



Investigators also located two shell casings that had been fired by Shorty in the locations reported by Agent Lovett and Johnson.

A FARO 3D terrestrial scanner was used to document the scene.

Autopsy

On November 29, 2018, a Forensic autopsy was performed on Joe Richard Shorty.

Dr. Dawn Holmes Forensic Pathologist noted the following wounds and toxicological findings:

- I. Penetrating indeterminate-range gunshot wound to the right chest. The wound course is front to back, right to left, and slightly downward. The wound involves the right lung, thoracic aorta, and esophagus. A deformed small-caliber copper-jacketed lead bullet is recovered.
- II. Penetrating indeterminate-range gunshot wound to the superolateral left chest. The wound course is front to back, left to right, and slightly downward. The wound involves the left lung. A deformed small-caliber copper-jacketed lead bullet is recovered.
- III. Penetrating indeterminate-range gunshot wound to the anterolateral left chest. The wound course is front to back, along a straight path, and downward. The wound involves the left lung. A deformed small-caliber copper-jacketed lead bullet and a small copper-jacket fragment are recovered.
- IV. Through-and-through indeterminate-range gunshot wound to the anterolateral left chest. The wound course is front to back, slightly left to right, and slightly upward. The wound involves the left lung.
- V. Through-and-through indeterminate-range gunshot wound to the lateral left chest. The wound course is front to back, left to right, and slightly upward. No organs or major vessels are involved.
- VI. Through-and-through indeterminate-range gunshot wound to the left abdomen. The wound course is front to back, left to right, and slightly upward. The wound involves the left kidney, large intestine, and spleen.
- VII. Through-and-through indeterminate-range gunshot wound to the anterolateral right upper arm. The wound course is front to back, right to left, and upward. The wound involves the right humerus. A deformed small-caliber copper-jacketed lead bullet is recovered.
- VIII. Through-and-through indeterminate-range gunshot wound to the anterolateral right upper arm. The wound course is front to back, right to left, and upward. The wound involves the right humerus. A deformed medium-caliber copper-jacketed lead bullet is recovered.
- IX. Through-and-through indeterminate-range gunshot wound to the right elbow. The wound course is front to back, right to left, and upward. The wound involves the right humerus.
- X. Through-and-through indeterminate-range gunshot wound to the posterior right forearm. The wound course is slightly back to front, right to left, and upward. The wound involves the right radius.
- XI. Through-and-through indeterminate-range gunshot wound to the anteromedial left upper arm. The wound course is slightly front to back, left to right, and slightly downward. The wound involves the left humerus. There is a minute lead fragment and multiple copper-jacket fragments recovered.

- XII. Through-and-through indeterminate-range gunshot wound to the posterolateral left forearm. The wound course is back to front, left to right, and upward. The wound involves the left radius/ulna.
- XIII. Organ pallor
- XIV. Toxicological evidence of methamphetamine (1600 ng/mL), amphetamine (150 ng/mL), and ethanol (19 mg/dL) in the peripheral blood.

The gunshot wound to the lateral left chest (GSW #5) may represent a re-entrance wound associated with the gunshot wound to the anteromedial left upper arm (GSW #11); or may represent an entirely separate gunshot wound.

Warrants, Protection Order, and Background

Joe Richard Shorty did not appear to have any active warrants for his arrest and his identity was not known to officers when he was attempted to be contacted.

Mr. Shorty, however, has an extensive criminal history that prohibited him from possessing a firearm.

Mr. Shorty's criminal history included but was not limited to Felony Theft, Escape, Robbery, and Menacing.

Legal Analysis

This office's review of the shooting of Joe Richard Shorty is limited to an analysis of applicable criminal statutes and affirmative defenses which apply to the facts.

As is frequently the case, and as documented in scientific literature, individuals involved in high-stress events such as a shooting may experience wide-ranging emotions and perceptual distortions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often, recall of particular details will differ from witness to witness, and those interviewed may not recall all of the same events in the same chronological order. Witnesses have different perspectives to an event and their statements will so reflect. In this case, each of the witnesses offered versions of the event from their perspective and some minor inconsistencies are apparent. While there are some inconsistencies regarding some recollections of this incident, there are no inconsistencies which are relevant to my determination of criminal culpability. The inconsistencies here are not consequential in the analysis.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, there is no question that Agent Lovett, Abeler, and Godfrey intentionally

shot Joe Richard Shorty. Their statements and the evidence support that conclusion. The legal analysis then shifts to a consideration of Colorado law regarding the affirmative defenses and self-defense.

In Colorado, all citizens including police officers have the right to self-defense, including the right to use “deadly physical force” under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or another, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. A critical issue in self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

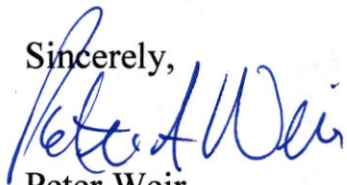
A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or is attempting to escape by the use of a deadly weapon.

Joe Richard Shorty was armed with a deadly weapon, a handgun, and he repeatedly threatened Lakewood Police Agents. Shorty’s actions placed Lakewood Police Agents and citizens in harm’s way. Joe Richard Shorty discharged his handgun three times in a densely populated area and refused lawful and direct commands of the agents to stop and drop the gun. The final shot discharged by Shorty was at a time when Lakewood Police Agents were without any meaningful cover and in a manner that reasonably placed all agents in fear for their lives. Joe Richard Shorty’s actions gave every indication he was attempting to shoot the officers. At no time did Shorty demonstrate a willingness to surrender or comply in the slightest with agents’ commands. The Denver ShotSpotter technology captured the sequence of the shots fired. It is clear that Shorty fired his weapon first, and that the agents then returned gunfire. Laboratory testing confirmed that the 9mm casing found near Shorty’s body was in fact fired from the weapon he had in his hand and secured to his arm.

I find in the review of this shooting, based upon the facts as determined in the investigation and the applicable law, that the actions taken by Agents Lovett, Abeler, and Godfrey during this incident meet the legal requirements of the affirmative defenses as contained in C.R.S. Sections 18-1-704 and 18-1-707. I am certain there is not a reasonable likelihood that the District Attorney’s office could disprove the

affirmative defenses available to Agents Lovett, Abeler, and Godfrey beyond a reasonable doubt. I also find that Sergeant Hoover's use of force was reasonable and appropriate given the actions of Joe Shorty. Therefore, I conclude that the conduct by Agents Lovett, Abeler, and Godfrey, as well as Sergeant Hoover, did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir

District Attorney

First Judicial District Attorney