



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

June 20, 2024

Sheriff Marinelli
200 Jefferson County Parkway
Golden, CO
80401

Re: *Deputy Involved Shooting, March 22, 2023, at 5378 West Brittany Way*

Dear Sheriff Marinelli,

The First Judicial District Critical Incident Response Team has completed its investigation into the shooting at Michael L. Whittington by Jefferson County Sheriff's Deputy Hollopeter (the "Deputy") on March 22, 2023, around 6:55 a.m., located at 5378 West Brittany Way in unincorporated Jefferson County. CIRT Commander Baros of the Arvada Police Department presented the investigation to my office on May 18, 2023. The companion criminal case involving Mr. Whittington was resolved in February 2024.

After a thorough review and analysis of the evidence, I find that the Deputy's use of deadly physical force was legally justified to defend himself and others from the threat posed by Mr. Whittington. Given my conclusion, no criminal charges will be filed against the Deputy. 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 protect the integrity of the investigation by exercising independent judgment in conducting a thorough investigation. To maintain transparency and reduce conflicts of interest, officers from the involved agency do not perform critical duties related to the investigation.

Here, the Jefferson County Sheriff's Office ("JCSO") immediately activated the CIRT team to investigate the use of deadly force by the Deputy. Consistent with CIRT policy, JCSO did not participate in the substantive portions of the CIRT investigation. The CIRT team promptly responded to investigate, led by Commander Baros. Under his direction, the CIRT team processed the scene, completed interviews with those who saw or heard the events, and preserved necessary evidence. The involved Deputy provided voluntary statements and submitted to questioning. These



interviews were recorded, reviewed as part of the investigation, and included within the file. Commander Baros and his lead investigator briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

My team reviewed over 1,500 photographs and approximately 400 pages of reports by the Lakewood Police Department, Arvada Police Department, Wheat Ridge Police Department, Golden Police Department, and CIRT agencies throughout the First Judicial District. I reviewed the interviews of the officers and witnesses who heard or saw the events and the evidence collected from the scene and evaluated by independent examiners.

As District Attorney, my role is to determine whether the Deputy 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 Deputy.

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 attempts to shoot at another person, resulting in no injury to the person, they commit the crime of attempted murder unless a legally recognized justification exists. If a justification exists, the shooter is not criminally liable. Generally, acting in self-defense or self-defense of others is one such justification. These defenses are available to all Coloradoans, including the Deputy. A deputy is also specifically authorized to use deadly 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 Deputy was justified in acting in self-defense or defense of others, it does not matter whether Mr. Whittington was actually trying to injure the Deputy 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 Deputy at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time the Deputy shot at Mr. Whittington, 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 Mr. Whittington? If so, the shooting is justified under Colorado law, and no criminal charges can or should be filed.

Facts Established by Investigation

On March 22, 2023, at approximately 6:41 a.m., two Jefferson County Deputies were dispatched to an occupied suspicious Lincoln Navigator, parked in a cul-de-sac which is closest to 5378 West Brittany Way unincorporated Jefferson County. They arrived at about 6:52 a.m. Deputy Jason Hollopeter added himself to the call and responded to assist, arriving just after the other two deputies. The driver of the

Navigator was reported to be unconscious and slumped over the wheel. When the first deputy arrived, the reporting party, who lived on the cul-de-sac, directed him to the Navigator. The first deputy walked around the Navigator, and noted the vehicle had significant damage on the passenger side. An out of state temporary license plate was attached to the vehicle, and the VIN in the windshield was covered, which led deputies to believe it could be stolen. At 6:53 a.m., deputies asked dispatch to clear the temporary tag in search of additional information.

Inside the Navigator there was a white or Hispanic male estimated to be between 30 and 50 years old, wearing a black jacket with a hat. The man was slumped forward in the driver seat. The deputies could see that the keys were in the ignition, but the Navigator was not running. The deputies also considered the potential for the driver to be under the influence.

The deputies formulated a plan, whereby they would pinch the Navigator in with their patrol vehicles. The second deputy's vehicle was used in the front, and the vehicles of the first deputy and Hollopeter were used to the rear. The front patrol vehicle was very close, appearing to be touching bumper to bumper. The rear patrol vehicles parked closely but were not touching the Navigator. The patrol vehicles were marked and clearly identifiable as law enforcement, though no overhead lights or sirens were activated. The deputies did not discuss what action they would take if the pinched Navigator started to move.

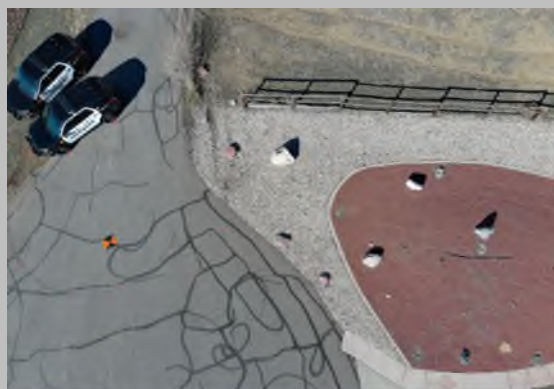
Once the patrol vehicles were in place, the first deputy knocked on the front windshield of the Navigator, verbally identified himself, and told the driver to open the door, while shining a flashlight into the vehicle. The deputies were standing around the driver's door, all in full uniform and easily identifiable as law enforcement. The driver sat up, looked at deputies, appeared startled, turned the vehicle on, put the vehicle in reverse, and then rammed the patrol vehicles to the rear. The driver paused, shifted into drive and then rammed the front patrol vehicle. The driver reversed again and rammed the rear patrol vehicles before freeing himself, escaping the pinch of the patrol vehicles. The second deputy could not see the driver's right hand, and believed it was possible he had a gun. All three deputies retreated to get out of the way of the fleeing Navigator. Deputies drew their firearms and continued to give the driver commands to stop driving and to show his hands. The suspect vehicle broke free from between the patrol vehicles, and as it moved past the patrol vehicles the two deputies moved out of the path of the vehicle as it began to accelerate away from them.



Snapshots from BWC to give reference to the pinch maneuver.



Position of patrol vehicles after the ramming and suspect vehicle freed itself.



The landscaping area where Deputy Hollopeter retreated and subsequently fired from.

Deputy Hollopeter also moved away from the suspect vehicle, quickly retreating to a landscaped area to the north of the cul-de-sac. Deputy Hollopeter was the only deputy to run northward, and he found himself in a bed of slippery rocks and landscaping boulders. By this time, the Navigator began making a U-turn through the cul-de-sac. Part way through the turn, Deputy Hollopeter watched the Navigator straighten its tires and began driving directly toward him. As the Navigator drove toward Deputy Hollopeter, he felt like it was coming at him fast and he was going to be struck. Once Deputy Hollopeter made it to a landscaped area on the north side of the cul-de-sac, the Navigator continued to accelerate toward him, so he fired his handgun when the Navigator was approximately 5 to 10 feet away from him.

According to the radio logs, a deputy aired that shots were fired at 6:55 a.m. Deputy Hollopeter said he fired his handgun three times at the approaching Navigator to force the vehicle to stop or turn away from him. Deputy Hollopeter was unable to acquire a good sight picture due to how fast the Navigator was closing in on him. The Navigator then ran over some landscaping near Deputy Hollopeter and made the turn toward the roadway. The Navigator went off

the roadway on the other side, then returned to the roadway before fleeing the area to the north. Two hours later, the Navigator was recovered unoccupied, in the 6000 block of West Prentice Avenue in Denver. The driver was seen on several home video surveillances leaving the area where the Navigator was recovered but was not located by law enforcement.

The Scene

CIRT detectives and analysts processed the scene, coordinated the preservation and analysis of physical evidence, and obtained statements from all witnesses who saw or heard parts of the event.

CIRT investigators utilized digital documentation to memorialize the scene, which corroborated the statements provided by the deputies.

The Jefferson County Regional Crime Laboratory (JCRCCL) examined, and upon review of the firearms by the CIRT team, it was determined that Deputy Hollopeter fired three rounds. The other two deputies did not fire their weapons.

The Navigator was impounded and processed for evidence. DNA evidence from the interior of the Navigator identified Mr. Whittington. His appearance was also consistent with surveillance footage of the suspect leaving the area of where the Navigator was located. He was identified as a person of interest in this case and an active Attempt to Locate was entered into CCIC.

Mr. Whittington was later arrested by Edgewater Police on May 23, 2023, for crimes unrelated to this CIRT. He was later charged with offenses related to this encounter with law enforcement.

Analysis

When Deputy Hollopeter arrived at the cul-de-sac, he and the other deputies had reason to believe that they were dealing with a stolen car and possibly an intoxicated driver. Once they formulated a plan to minimize the risks posed by the Navigator, namely, to pinch the car before rousting the driver, the deputies took the initial steps to safely contact the driver of the Navigator. Despite the deputies' efforts, they quickly lost control of the scene, falling back to avoid the fleeing Navigator. While the deputies scattered, Deputy Hollopeter retreated across the only exit to the cul-de-sac. The Navigator swept around, making a U-turn back towards the road. As Deputy Hollopeter continued out of the paved cul-de-sac and onto the rocky area, he saw the Navigator's wheels straighten and seemingly come towards him. To protect himself from the oncoming Navigator, Deputy Hollopeter decided to shoot at the Navigator.

Given the information known to Deputy Hollopeter, he had objectively reasonable grounds to believe that he was in imminent danger of being killed or suffering serious bodily injury if struck by the Navigator and further, that he believed that he was in imminent danger, and had an objectively reasonable belief that a lesser degree of force against the Navigator and its driver was inadequate. A reasonable person in Deputy Hollopeter's position, under like conditions and circumstances, would believe that deadly physical force was necessary to try to prevent imminent harm. As there is no evidence proving, beyond a reasonable doubt, that a legally unjustified attempted homicide occurred, no criminal charges can or should be brought against Deputy Hollopeter under Colorado law.

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

Sincerely,



Alexis King
District Attorney
First Judicial District
Colorado



Photo of Navigator documenting location of impact from Hollopeter's rounds.