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May 26, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the Officer-Involved Shooting in Aurora on July 6, 2021.

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District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

*AdamsBroomfieldDA.org, Facebook: [@da17colorado](https://www.facebook.com/da17colorado) Twitter: [@da17colorado](https://twitter.com/da17colorado)
Instagram: [@da17colorado](https://www.instagram.com/da17colorado) YouTube: [ColoradoDA17](https://www.youtube.com/ColoradoDA17)*



May 25, 2022

Acting Police Chief Chris Juul
Aurora Police Department
15001 E. Alameda Drive
Aurora, CO 80012

Re: The investigation of the officer-involved shooting of Shannon Owens, occurring on July 6, 2021, in the City of Aurora and in Adams County, Colorado

Dear Acting Police Chief Juul:

The 17th Judicial District Critical Incident Response Team (CIRT) was called upon to review an officer-involved incident involving an Aurora Police Department Officer and a civilian that occurred on July 6, 2021. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation into this matter. Thornton Police Department Detectives Doug Parker and Casey Browning led the investigation and presented the factual findings to my office. The other investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Aurora Police Department. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a summary of the facts and materials that the CIRT presented for review.

The investigation of this incident resulted in criminal charges against a civilian which, as of the date of this letter, are still pending in Adams County District Court. Individuals charged with any crime retain a presumption of innocence until the final resolution of the case. Consequently, based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, this letter does not reveal all of the facts pertinent to the investigation. Furthermore, in an effort to preserve the integrity of the pending case, the record of this investigation will remain restricted from public access until the conclusion of the criminal proceedings. Once the pending cases associated with this matter have been resolved, the record and any video evidence will be made available.

The District Attorney's review is strictly limited to determining whether any criminal charges should be filed against the involved officer. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a unanimous jury. Here, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified under Colorado law. This independent investigation and review are not intended to take the place of an internal affairs investigation by your agency.

As such, my review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and applicable law, there is no reasonable likelihood of proving that the involved officer committed any crime. Therefore, no criminal charges will be filed against the officer.

SUMMARY OF FACTS¹

On July 6, 2021, the FBI-Rocky Mountain Safe Streets Task Force, working with Denver-Metro law enforcement agencies, were assigned to locate and arrest Shannon Owens. Mr. Owens was sought in connection with a number of arrest warrants, including a failure to appear on an attempted murder charge from Denver, and two warrants (Denver and federal court) for possessing firearms. The fugitive team tracked Mr. Owens' movements around the Denver metro area assisted by information collected from a court-approved search warrant that revealed location data from his cell phone. The fugitive team assembled to locate and arrest Mr. Owens was fully advised of Mr. Owens history and the existing warrant for firearms-related offenses.

At approximately 5:30 p.m., the fugitive team positively identified Mr. Owens at the Wolf's Motor Inn located at 15691 E. Colfax Avenue. At that time, the team saw Mr. Owens appearing to argue with an adult female in the parking lot. Eventually, Mr. Owens and the adult female entered room 224 of the Wolf's Motor Inn.

Without further information, the arrest team was concerned that the adult female might be a hostage. Given the dynamic and potentially dangerous situation, the arrest team called for additional resources, including the Aurora Police Department (APD) and Arapahoe County Sheriff's Office (ACSO) SWAT teams. The arrest team then called room 224 and an adult female answered. She told the law enforcement officer that Mr. Owens fled out the back window. The officer confronted the female with the truthfulness of her story and she handed the phone to Mr. Owens. The officer had a telephone conversation with Mr. Owens in an effort to get Mr. Owens to safely surrender. Mr. Owens refused.

At approximately 7:50 p.m., the arrest team obtained a search warrant for Mr. Owens that would allow entry into room 224 to arrest Mr. Owens. For several hours, the arrest team attempted to coax Mr. Owens from the room, including the use of loudspeakers, talking to him on the phone, contacting Mr. Owens' sister and brother-in-law, and talking to the female, who officers still believed was a hostage inside the room. The other rooms at Wolf's Motor Inn were evacuated.

The APD and ACSO SWAT teams developed a tactical plan to rescue the female, while continuing efforts to negotiate with Mr. Owens. As the barricade approached five hours, the assembled team decided to enter room 224 to arrest Mr. Owens and safely secure the adult female. The SWAT team elected to use a "kinetic water breach" on the walls of the motel rooms adjacent to room 224. A kinetic water breach is a tactical device that is designed to

¹ The Statement of Facts culls details from the overall investigation and is presented largely in chronological order.

detonate a bag of saline solution through the drywall and create a hole in the wall. The objective of the breach was to allow observation inside room 224 as officers simultaneously entered the room from the front door to safely secure the scene.

SWAT assembled an entry team near the door into room 224. APD SWAT team Officer Oscar Pena was part of a team of law enforcement officers in room 225. At approximately 10:04 p.m., a “noise flash diversion device” was deployed at the front door. The purpose of this device, commonly referred to as a “flash-bang,” is to distract the individuals inside that may present a threat to any person upon the officers’ forcible entry into the motel room. Immediately after the “flash-bang” was deployed, a gunshot was fired from the back of room 224 where Mr. Owens was believed to be located. The gunshot coming from room 224 was heard by multiple officers and captured on the audio of the body-worn cameras worn by responding officers.

Officer Pena and other officers heard the gunshot and broadcast the information over the radio to all officers. Officers quickly made entry into room 224 as the kinetic water breaches detonated on either side of the room.² Officer Pena rushed to the wall port and peered into room 224. Officer Pena described what he saw: “I am looking through the hole I see [Mr. Owens] laying down on the ground and he’s got a gun and it is pointed right at my gunport, right at me, clearly I can see a black semi-automatic handgun pointed right at me... he pointed a gun right at me.” Officer Pena explained that at that moment, he believed that Mr. Owens had shot the hostage. He was also concerned that Mr. Owens would shoot officers if they came into room 224. Given Officer Pena’s extensive training and experience in hostage rescue operations, he was concerned that if he did not perform his responsibilities, the hostage or other officers could be killed. Further, Officer Pena feared for his own safety, as he had his face and arm in the wall port, open in the direction Mr. Owens was pointing his handgun. Officer Pena also described seeing the female “intertwined” with Mr. Owens. Officer Pena concluded that he had no other options. He decided to stop the threat of force by Mr. Owens by aiming his handgun and firing it at Mr. Owens’ lower body. Officer Pena fired three times, striking Mr. Owens twice, once in the left knee and once in the left back. Mr. Owens dropped his handgun and Officer Pena stopped shooting. Other officers apprehended Mr. Owens and secured the female.

Several of the law enforcement officers involved in this operation, including Officer Pena, were equipped with body-worn cameras. Given the size and location of the hole in the wall, Officer Pena’s BWC did not provide a view of the incident through the wall port. Other video evidence depicts Officer Pena approach the wall port and twice command Mr. Owens to show his hands before Officer Pena fired his handgun. The BWC footage collected from other officers involved in this operation also corroborated Officer Pena’s report.

Officers found a Ruger 9 mm handgun near where Mr. Owens was arrested, with one bullet and the chamber and loaded magazine with eleven rounds of ammunition. A bullet hole was found on the interior of room 224.³

² The other wall port in room 223 failed as it was blocked by internal construction in the wall.

³ Given the condition and use of the room 224 at Wolf’s Motor Inn, it could not be determined if the bullet hole was caused by Mr. Owens or from some other event.

The adult female was interviewed and denied that she was a hostage. She also denied ever seeing Mr. Owens with a gun. She acknowledged knowing that the officers were outside of the motel room, announcing their presence and making repeated requests to surrender.

LEGAL AUTHORITY

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officer. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Criminal liability is established only if it is proved beyond a reasonable doubt that all elements of a criminal offense have been committed and it is proved that the offense was committed without legal justification, as set forth in Colorado statutes.

Under Colorado law, a law enforcement officer may use physical force in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person. However, physical force may be used only if nonviolent means would be ineffective and must use only that degree of force consistent with the minimization of injury to others. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use physical force in self-defense is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified.

As the United States Supreme Court in the case of *Graham v. Connor* has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to effect an arrest and/or to defend himself or another person.

Further, Colorado law recognizes that all people are lawfully allowed to rely and act upon a situation where a prudent person would reasonably believe, erroneously or not, that action was necessary. It is immaterial whether the suspect was actually trying to injure the officer or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

ANALYSIS

Applying the legal standard to the particular facts of this case, I first find that the use of physical force to arrest Mr. Owens was appropriate. The fugitive and arrest teams were engaged in the effort to apprehend Mr. Owens on outstanding arrest warrants. The law enforcement officers identified themselves and made multiple efforts to end the encounter without using physical force. Mr. Owens refused to comply with the commands to surrender himself for a period of several hours. The presence of the adult female further complicated the circumstances of his arrest. Despite the female's later statement that she was not held against her will, it was not unreasonable for the officers to be concerned for her safety, particularly

after hearing the gunshot. Given these circumstances, the officers were legally justified in using physical force in effecting a lawful arrest of Mr. Owens.

The officers also used a degree of force consistent with minimization of injury to others. At the time the officers made entry into room 224, they reasonably believed that an adult female was at risk. The officers developed a tactical plan that would allow them an opportunity to view inside the room at the time they entered. This plan was designed to minimize injury not only to the adult female, but also to Mr. Owens. During the execution of the entry, officers heard a gunshot that further led them to believe that lives were at risk. Officer Pena observed Mr. Owens point a gun at him and concluded there were no options other than to shoot at Mr. Owens to eliminate the threat to himself and others.

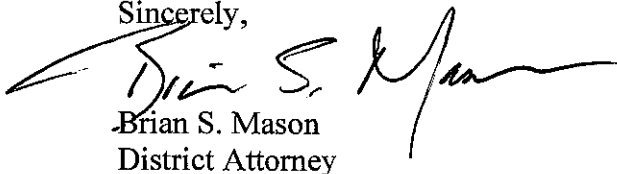
The final question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Owens posed an immediate threat to the safety of others such that the use of physical force was necessary. As stated, it was reasonable for the officers to believe that the female was a hostage. Accordingly, the tactical operation included a plan to secure Mr. Owens' arrest without harm to the female. At the time the officers heard a gunshot, they believed that a firearm was involved, further supporting a conclusion the officers reasonably believed that Mr. Owens presented a safety threat.

At the time Officer Pena fired his weapon, he saw Mr. Owens point a 9mm handgun directly at him. Officer Pena's decision to shoot Mr. Owens was made in an effort to eliminate the risk of injury to himself, the female, and the other arresting officers. I find Officer Pena's decision to be justified.

Under these circumstances, the prosecution cannot prove that Officer Pena was not justified in using reasonable physical force under §18-1-707, C.R.S. (2020). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against APD Officer Pena for firing his weapon at Shannon Owens and injuring him.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Brian S. Mason
District Attorney