

BRIAN S. MASON
District Attorney



COLORADO'S 17TH JUDICIAL DISTRICT
Adams and Broomfield Counties

For Immediate Release:
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June 28, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to an officer-involved shooting in Adams County on August 11, 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.

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June 27, 2022

Sheriff Rick Reigenborn
Adams County Sheriff
4430 S Adams County Pkwy 1st Floor, Suite W5400
Brighton, CO 80601

Re: The officer-involved shooting of Mr. Bruce Thurby, occurring on August 11, 2021

Dear Sheriff Reigenborn:

This letter is a review of the 17th Judicial District Critical Incident Response Team (CIRT) investigation into the August 10, 2021 shooting death of Bruce Thurby. The investigation into the incident was led by Westminster Police Department Detective Matt Calhoun and Aurora Police Department Detective Darien Hunt. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the involved officer from the Adams County Sheriff's Office. The investigation consisted of law enforcement reports, audio and video recorded interviews, body-worn cameras, photographs, and diagrams of the crime scene. 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 District Attorney's Office review is limited to determining whether any criminal charges should be filed against the involved officer for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all the elements of a crime beyond a reasonable doubt. The prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, the District Attorney's Office review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt as it relates to the law enforcement officer involved in this incident. Therefore, there will be no criminal charges filed against the officer involved.

OVERVIEW OF THE INCIDENT

On August 10, 2021, a woman reported to Lafayette Police Department that she was kidnaped and held hostage for days by her ex-boyfriend, Bruce Thurby. The investigation was turned over

to the Aurora Police Department and members of a combined-agency fugitive task force to locate and apprehend Mr. Thurby. The following day, on August 11, 2021, investigators located Mr. Thurby driving his Saab vehicle and maintained surveillance of him over a period of about five hours. Mr. Thurby led the investigators throughout the Denver metropolitan area, occasionally driving erratically, as if he knew he was being followed. Mr. Thurby eventually parked and got out of his vehicle near a used car lot at the intersection of 70th Avenue and Pecos Street. Mr. Thurby entered into vehicles and acted as if he were attempting to steal one from the lot. Law enforcement officers approached Mr. Thurby to arrest him. Mr. Thurby saw the officers and ran from them while holding a semi-automatic handgun. Several Adams County Sheriff's Deputies, led by Adams County Sheriff's Deputy Scott Kierstead, followed Mr. Thurby into an open bay door to the garage. Mr. Thurby turned back toward Deputy Kierstead, displaying the gun in his hand. Deputy Kierstead fired his handgun at Mr. Thurby, causing him to fall to the floor. Deputy Kierstead approached Mr. Thurby, commanding him to not move. Mr. Thurby ignored the commands and reached for his handgun. Deputy Kierstead discharged two additional rounds from his firearm, striking Mr. Thurby in the head, causing his death.

BACKGROUND CRIMINAL INVESTIGATION

On August 10, 2021, law enforcement officers for the City of Lafayette Police Department were dispatched to locate a woman who was on foot in Boulder County. The woman reported that she had been the victim of an incident of domestic violence by her ex-boyfriend, Bruce Thurby. The woman had bruises all over her body. She stated that on August 7, 2021, Mr. Thurby forced himself into her apartment in the City of Aurora. He was armed with a handgun and made her get into his vehicle. She reported that Mr. Thurby took her phone and drove her around the Denver metropolitan area for three days. He repeatedly threatened her and assaulted her over the course of this period. Mr. Thurby was involved in hit and run incidents and fled from the police in his vehicle. The woman was able to escape from Mr. Thurby's vehicle while he was inside a gas station. Mr. Thurby came outside pointing the gun at her and tried to keep her from getting away. The woman believed that she recognized the gun as a Taurus 9mm semi-automatic handgun that she previously purchased for her protection. She was afraid that Mr. Thurby was going to kill her. She gave officers information as to where he might be found. She advised that he was wearing a bullet proof vest and that he had threatened to "shoot it out" with police if contacted.

Because the incident began in Aurora and Mr. Thurby was believed to be located there, the investigation was referred to the Aurora Police Department. The FBI Safe Streets Task Force and other metro-area fugitive teams assisted with the investigation by initiating a surveillance operation.

FACTUAL SUMMARY OF THE INCIDENT

Officers with the Aurora Police Department shared the background criminal investigation with the fugitive task force conducting surveillance on Mr. Thurby. The investigation included information identifying Mr. Thurby, along with the fact that he was suspected to be armed with a 9mm semi-automatic handgun, was believed to be wearing body armor, and had threatened to have a shootout if contacted by the police. Midday on August 11, 2021, investigators located

Mr. Thurby driving the black Saab and followed him for several hours throughout the Denver metropolitan area. The undercover mobile surveillance ultimately led to unincorporated Adams County. At approximately 3:15 p.m., Mr. Thurby parked his Saab on the northwest corner of the intersection of 70th Avenue and Pecos Street. He remained in the vehicle for about an hour. The fugitive team called upon the Adams County Sheriff's Office SWAT to assist with apprehending Mr. Thurby.

Around 5:00 p.m., Mr. Thurby drove around the immediate area and then parked in the same general location as before. He got out of the Saab and walked toward a used car lot, where he attempted to get inside several different vehicles parked in the lot. Investigators believed Mr. Thurby was attempting to steal one of the vehicles. At that point, Deputy Scott Kierstead and several other Adams County Sheriff's Office SWAT Deputies moved in to arrest Mr. Thurby while he was on foot. The deputies wore tactical vests conspicuously marked "SHERIFF" on the front and back, along with a badge insignia on the front. The deputies gave multiple verbal commands, "Police, stop!" Mr. Thurby saw the deputies approach and ran south in the middle of Pecos Street into oncoming traffic. He was holding a black semi-automatic handgun in his hand. He ran to an open garage bay door of an automotive repair shop located on the northeast corner of 70th Avenue and Pecos Street. The deputies followed with their weapons drawn.

Deputy Kierstead made eye contact with Mr. Thurby and saw the black handgun in Mr. Thurby's hand. Mr. Thurby was looking around as he held the gun. Deputy Kierstead yelled "Gun! Gun! Gun!" because there were a number of other officers and civilians in the immediate area. He was concerned for the safety of the people nearby, as it appeared that Mr. Thurby was pointing his weapon at them. Deputy Kierstead had his weapon drawn as he entered the garage bay, thinking that Mr. Thurby presented a threat to everyone in the vicinity. He knew that three or four other deputies were following behind him.



Image of automotive shop, open garage bay door where Mr. Thurby ran inside.

Deputy Kierstead led the foot pursuit into the garage bay. Deputy Kierstead entered the garage in a shooting position, knowing that Mr. Thurby was armed inside. The garage consisted of a single auto bay with a hoist in the raised position. As Deputy Kierstead took a few steps inside the bay, he observed Mr. Thurby on the left side of the bay, at the opposite end of the lift. Deputy Kierstead yelled, "Police, stop!" Mr. Thurby turned back toward Deputy Kierstead while holding the semi-automatic handgun. Fearing that Mr. Thurby would shoot him or someone else, Deputy Kierstead aimed his firearm "center mass" at Mr. Thurby's body and fired it three times. Deputy Kierstead was approximately twenty feet away at the time he fired his weapon. Mr. Thurby fell to the ground on his stomach with his hands out flat. Deputy Kierstead did not know if he struck Mr. Thurby, but he appeared to be alive. Deputy Kierstead saw the barrel of the handgun sticking out from beneath Mr. Thurby's upper body. Deputy Kierstead approached Mr. Thurby and instructed him, "Don't move." Mr. Thurby immediately reached for the firearm. Fearing that Mr. Thurby would grab the gun and shoot him, Deputy Kierstead fired two more rounds aimed at Mr. Thurby's head. Mr. Thurby stopped moving. The other deputies arrived and started providing medical aid to Mr. Thurby. Deputy Kierstead was approximately fifteen feet from Mr. Thurby when he fired the second round of shots.

The other deputies who were part of the chase reported seeing Mr. Thurby holding a black semi-automatic handgun and pointing it at people as he ran into the garage. Several of them entered the garage behind Deputy Kierstead. The deputies heard commands and heard multiple shots fired. However, given their vantage points and the narrow space of the garage bay, none of these

deputies had a clear view of Mr. Thurby inside of the garage. None of the other deputies fired their weapons. All of the deputies expressed concerns for public safety, particularly given the fact that Mr. Thurby was armed and had previously stated he would “shoot it out” with police if given the chance.

Two witnesses were inside the shop when Mr. Thurby ran inside. Both witnesses saw Mr. Thurby holding the gun. One was running away when he heard the gunshots. The other said that he saw the police officer shoot at Mr. Thurby, but did not see what Mr. Thurby was doing prior to the shots. He heard the police officer yell a command, but it was in English, and he did not understand it. There were several civilians present outside the automotive shop and in the nearby parking lots. While none of these witnesses saw the shooting incident, many of them described seeing the police chase Mr. Thurby into the garage. Several witnesses heard the police yelling about a gun and commands to “Stop!” These witnesses expressed fear for their lives, as they saw Mr. Thurby running with a gun in his hand.

Crime scene investigators collected evidence from the scene of the incident. The scene consisted of a single garage bay with a vehicle raised up on an automotive lift. Mr. Thurby was found deceased at the front end of the lift.



Image of Deputy Kierstead's vantage point inside the garage bay.

Mr. Thurby was discovered wearing a bullet proof vest. A 9mm handgun was found near Mr. Thurby's head. The gun had one live round in the chamber. The magazine was found on the floor displaced from the gun, loaded with thirteen bullets. Five 9mm shell casings were

collected on the floor of the garage. Multiple defects, believed to have been caused by bullet impacts, were observed along the wall of the garage. The directionality of these impacts were consistent with the rounds fired from Deputy Kierstead's weapon. Crime scene investigators examined Deputy Kierstead's weapon and performed a round accountability. This examination compared to the evidence at the scene led to the conclusion that Deputy Kierstead fired five rounds from his 9mm semi-automatic handgun.

On August 13, 2021, a forensic pathologist performed the autopsy of Mr. Thurby. Mr. Thurby suffered two gunshot wounds to the head, with no evidence of close-range firing. The pathologist determined that the cause of death was multiple gunshot wounds. Toxicology results revealed a positive drug screen for methamphetamines and fentanyl.

LEGAL ANALYSIS

As was 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 when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. Consequently, in order to file a criminal charge, the District Attorney's Office must be able to prove beyond a reasonable doubt that the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

Under Colorado law, a law enforcement officer may use an amount of force, including deadly physical force, that is necessary and reasonable. 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 reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers' use of force at the time of this incident is found at §18-1-707(4.5), C.R.S. (2021), and that subsection provides:

(4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officers has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

The United States Supreme Court has set forth a standard of "objective reasonableness" in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer's use of force must (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (2) be judged from the perspective of an objectively reasonable officer on the scene "in light of the facts and

circumstances confronting them, without regard to [his] underlying intent or motivation.” Further, the United States Supreme Court notes, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Here, there is no question that Deputy Kierstead discharged his firearm at Mr. Thurby, causing his death. Applying the legal standard in this case, the question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Bruce Thurby posed an immediate threat to the safety of the officers such that the use of deadly physical force was necessary and justified under the law.

Deputy Kierstead and the surveillance team engaged in a somewhat extensive effort to apprehend Mr. Thurby without incident. The previous investigation revealed information that Mr. Thurby was armed with a 9mm handgun and had threatened to “shoot it out” with police if contacted. There was also information that he had engaged in hit and run incidents and eluded police with his vehicle. Deputy Kierstead was familiar with the possible risk Mr. Thurby presented to officers and the public. When Mr. Thurby got out of his car, Deputy Kierstead and the team made the decision to arrest him before he got back inside a vehicle to minimize the potential threat.

The deputies wore tactical gear with law enforcement insignia, clearly identified themselves as police, and commanded Mr. Thurby to stop. Mr. Thurby ignored the commands and ran holding a 9mm semi-automatic handgun in his hand. Deputy Kierstead saw many civilians outside the automotive shop and saw Mr. Thurby pointing the gun as he looked around. Deputy Kierstead was concerned that Mr. Thurby’s actions presented a credible threat to both the law enforcement officers and civilians in the area. Despite being aware of this information, Deputy Kierstead did not immediately resort to violence. Rather, Deputy Kierstead courageously pursued Mr. Thurby into the open garage to protect any civilians that may be inside. When he encountered Mr. Thurby, he called out, “Police, stop!” in an effort to take Mr. Thurby into custody without incident.

Within a distance of about twenty feet, Deputy Kierstead saw Mr. Thurby turn his body while holding the handgun. In that moment, Deputy Kierstead feared that Mr. Thurby would fire the gun at him or someone else. Mr. Thurby’s refusal to obey police commands to stop while displaying a weapon supports Deputy Kierstead’s reasonable belief that he was in imminent danger of being killed or receiving serious bodily injury. Deputy Kierstead stated that he first aimed “center mass” and fired his weapon three times, causing Mr. Thurby to fall to the ground. As Deputy Kierstead approached Mr. Thurby, he saw the gun within Mr. Thurby’s reach. Mr. Thurby’s action of reaching for the weapon immediately after Deputy Kierstead instructed him not to move further supports Deputy Kierstead’s reasonable belief that he was in danger of being shot. Additionally, evidence of Mr. Thurby’s refusal to obey reasonable commands, his threats to “shoot it out” with police, his display of a weapon, and his body armor supports a finding that Deputy Kierstead reasonably believed that a lesser degree of force was inadequate. Under these circumstances, there is no evidence to suggest that an objectively reasonable officer would have

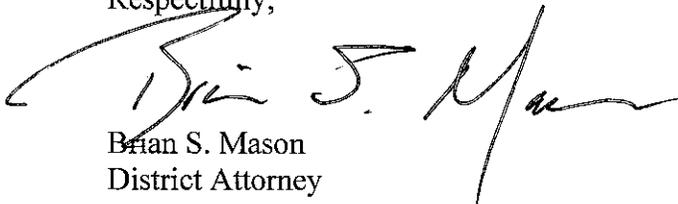
acted differently than Deputy Kierstead in this instance. I find Deputy Kierstead's actions to be justified.

CONCLUSION

I find Deputy Kierstead's decision to fire his weapon at Mr. Thurby to be justified. Under the totality of the circumstances and evidence gathered in this investigation, the prosecution cannot prove that the involved officer was not justified in using reasonable force under §18-1-707, C.R.S. (2021). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Deputy Kierstead for firing his weapon at Mr. Bruce Thurby and causing his death.

Please feel free to contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian S. Mason". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian S. Mason
District Attorney