

BRIAN S. MASON
District Attorney



COLORADO'S 17TH JUDICIAL DISTRICT
Adams and Broomfield Counties

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June 23, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to an officer-involved shooting in Commerce City on August 3, 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 22, 2022

Chief Clint Nichols
Commerce City Police Department
7887 E. 60th Ave.
Commerce City, CO 80022

RE: The officer-involved shooting of Andrew Reineke, occurring on August 3, 2021

Dear Chief Nichols:

This letter is a review of the 17th Judicial District Critical Incident Response Team (CIRT) investigation into the August 3, 2021 police-involved shooting of Andrew Reineke. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by Westminster Detectives Reggie English and Mike Lynch. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Commerce City 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, along with my pertinent legal conclusions.

This review is mandated by Colorado law which requires the public release of a report explaining findings and the basis for a District Attorney's decision relative to the filing of criminal charges when an officer is involved in a shooting that results in serious bodily injury. As such, this review is limited to determining whether any criminal charges should be filed against the involved officers 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. The 17th Judicial District Attorney's review does not evaluate compliance with departmental policies, standards, or procedures.

The circumstances surrounding 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 a crime retain a presumption of innocence until the final resolution of the case. Therefore, despite the law requiring public disclosure of decisions with respect to the filing of charges against an officer, there is great interest in preserving the integrity of the pending criminal case. Consequently, and based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, this letter does not reveal all the facts pertinent to the entire investigation. Furthermore, 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. The record and any video evidence of this investigation will not be made available until there is a disposition of the pending case associated with this matter.

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 against the involved officers. Therefore, no criminal charges will be filed against the law enforcement officers involved in this incident.

FACTUAL SUMMARY OF THE INCIDENT

At 5:20 p.m. on August 3, 2021, multiple officers with the City of Commerce City responded to a dispatch call of shots fired at 7160 Grape Street. Upon arrival, officers identified a deceased male with multiple gunshot wounds. Witnesses at the scene identified a person of interest and directed the officers to nearby Fairfax Park.

Uniformed officers went to Fairfax Park and found the witness to the shooting incident. The witness identified Andrew Reineke as the shooting suspect and described him to the officers. Within an hour of the original dispatch call, Officer Don Calvano searched the area for the suspect or evidence associated with the incident. While searching the alley between Forest Street and Fairfax Street, Officer Calvano heard gunshots from close range. He was not injured, but quickly realized that a bullet perforated the sleeve of his uniform. He relayed to his fellow officers over the radio that he was shot by gunfire and went back to his patrol car located near the intersection of at 69th Street and Fairfax Street.

Several other uniformed officers formed a perimeter around the area and began to search for the suspect. These officers shared their observations over the radio. Officers reported seeing the shooter in the backyard of a nearby residence located at 6900 Fairfax Street. As Officer Calvano positioned himself near the reported location, he saw the suspect. The suspect fired additional rounds at Officer Calvano, again missing him. Officer Calvano returned fire with his rifle. He fired nine times before the rifle malfunctioned. By the time Officer Calvano fixed the malfunction, he could no longer see the suspect. Though Officer Calvano was also armed with a 9mm semi-automatic handgun, he did not fire it during the encounter. Officer Calvano reported over the radio that the suspect fired multiple rounds at him.

Detective Cody Nau was also positioned at the suspect's reported location. He was on the opposite side of the residence from Officer Calvano. Seconds after the exchange of gunfire between the suspect and Officer Calvano, Detective Nau saw the suspect emerge from behind the residence. He saw the suspect raise a firearm and point it at him. Detective Nau aimed his Glock 9mm semi-automatic handgun at the suspect and fired two times but missed. The suspect turned and ran.

Officer Marie Anders and Sergeant Megan Cordova drove the area in a marked patrol car searching for the suspect. They parked at the west corner of the intersection of 69th Avenue and Fairfax Drive. The officers heard over the radio that an Adams County Sheriff's Deputy vehicle was struck by gunfire somewhere on Fairfax Drive. They heard multiple shots fired and thought that their patrol vehicle was also hit. They got out of the car and took cover. The

officers both saw the suspect climb over a privacy fence onto the driveway of the residence nearby. The suspect was armed with a black handgun. The officers called out to the suspect to put his hands up. The suspect noticed the officers, raised the handgun and pointed it at them. Officer Anders fired one round from a .223 caliber rifle that she obtained from Sergeant Cordova's patrol car. Officer Anders' rifle malfunctioned after she fired one round. Sergeant Cordova fired two rounds from her Glock 9mm semi-automatic handgun.

Officer Michael Gray and Sergeant Nicholas Arias positioned their marked patrol vehicle in the parking lot of Fairfax Park next to a uniformed Adams County Sheriff's Deputy who was already parked there. The deputy reported to them that the suspect shot at his vehicle several times. Sergeant Arias provided cover for the deputy, while Officer Gray stood behind his vehicle in the parking lot and heard shots fired. Officer Gray and Sergeant Arias believed the suspect was engaged in a gun battle with the officers to the west of their location, so they turned their attention in that direction. The officers saw the suspect climb a fence while holding a handgun. The suspect got hung up on the fence for a moment. Officer Gray believed that the suspect was going to shoot at the officers again, so he fired his POF USA 5.56 caliber rifle six times at the suspect. Sergeant Arias saw the suspect point his gun in their direction. Sergeant Arias fired at the suspect two times from his Sig Sauer 9mm semi-automatic handgun. Shortly after this round of gunfire, officers reported over the radio that the suspect was down.

Officers apprehended the suspect in the driveway of 6900 Fairfax Drive and rendered medical aid. The suspect was later identified as Andrew Reineke. Mr. Reineke suffered gunshot wounds to his arms and legs as a result of the incident.



Aerial photo overview of locations of dispatch call and suspect's arrest.



Aerial photo locations of involved officers and suspect's arrest.

There was an extensive work done with respect to the investigation of the scenes and collection of evidence for both the homicide and officer-involved portions of this investigation. The investigation also includes civilian witness interviews. Several of these witnesses observed the suspect armed with a handgun and further described their encounter with him in the neighborhood prior to his arrest.

The involved officers turned over their weapons for examination and round accountability. In addition, each of the involved officers participated in a recorded interview with CIRT investigators. Because the underlying criminal case remains pending, this review provides a summary of those interviews only as it relates to the legal decision to not file criminal charges against the officers.

LEGAL ANALYSIS

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the law enforcement officers involved in this incident. 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 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 officers' 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, only when it is reasonable and appropriate under the circumstances. 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.

In this case, the law applicable to the officers' use of force at the time of this incident requires that

[w]hen physical force is used, a peace officer shall:

- (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- (b) Use only a degree of force consistent with the minimization of injury to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

§18-1-707(2), C.R.S. (2021).

Applying the legal standard in this case, the first question is whether physical force was appropriate under the statute. Law enforcement officers pursued Mr. Reineke in connection with a series of violent offenses. The officers initially sought to contact him for his suspected involvement in a homicide. The officers developed an additional interest in apprehending Mr. Reineke on suspicion that he fired a gun at a uniformed officer in a residential neighborhood. As the search for Mr. Reineke continued, Mr. Reineke appeared to evade the officers' contact and threatened officers with a firearm. Clearly, under these circumstances, nonviolent means of apprehending Mr. Reineke proved to be ineffective. Regardless, the law enforcement officers did not use deadly physical force on Mr. Reineke. For these reasons, and under the

circumstances of this case, the use of physical force was indeed appropriate not only to effect Mr. Reineke's arrest, but also to prevent the imminent threat of injury to the officer or another person.

The second question is whether the degree of force was consistent with the minimization of injury to others. Mr. Reineke is alleged to have fired a weapon upon an unsuspecting uniformed police officer. He then fired a second round of shots when the officer pursued him. Other officers in the area observed Mr. Reineke displaying a handgun as he evaded their contact. Accordingly, Mr. Reineke's behavior presented a threat to anyone in the immediate vicinity. Unfortunately, the officers had to escalate the degree of force, but clearly did so only as a result of Mr. Reineke's use of a weapon. This degree of force proved to be necessary to apprehend Mr. Reineke without further injury to others.

The investigation demonstrates compliance with the remaining provisions of the law as written. The officers who apprehended Mr. Reineke rendered medical aid to him immediately when he was contacted. Further, Mr. Reineke's relatives were notified of the incident during the ensuing investigation.

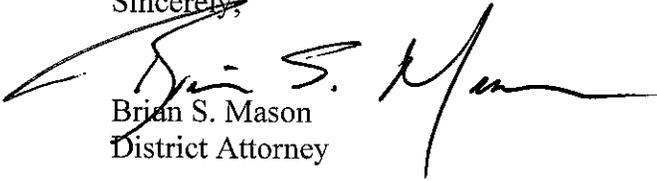
Though not specifically required by the language of the statute applicable here, proper application of the law of self defense must answer the question whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Reineke posed an immediate threat to the safety of the officer or others, and that the officer used a degree of force that the officer reasonably believed to be necessary for the purpose of defending himself or others. The facts of this investigation reveal that a uniformed police officer, Officer Calvano, was shot at while walking down an alley in a residential neighborhood. He took cover and reported the incident to his fellow officers. Officer Calvano and other officers then commenced the task of searching for and apprehending the potential suspect. Officer Calvano spotted the individual armed with a handgun who shot at him a second time. Officer Calvano stated that he felt vulnerable and convinced that the shooter was trying to harm him. He returned fire to stop the threat.

The other involved officers were positioned around the perimeter of the two shooting incidents that appeared to target Officer Calvano. These officers received a description of the suspect. They also knew that he was armed with a deadly weapon and was suspected of shooting at a civilian and a uniformed officer. At various times throughout the search, these officers saw Mr. Reineke armed with a handgun as he attempted to evade arrest. The suspect disregarded the officers' multiple commands to cease fire and raise his hands. Each of the officers who fired their weapons explained that Mr. Reineke's actions caused them fear for their own lives, as well as the lives of their partners involved in the effort to apprehend him. The facts of the investigation support a conclusion that, at the time the officers used force upon Mr. Reineke, the officers reasonably believed that Mr. Reineke presented a threat to themselves as well as the other civilians in the area. These facts further support a conclusion that the officers reasonably believed that the degree of force they employed was necessary to prevent the risk of harm presented by Mr. Reineke. Under the circumstances, the use of a less lethal force was not a reasonable alternative.

I find the actions of these officers to be justified, necessary and appropriate. Consequently, given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were 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 Commerce City Police Officers Don Calvano, Detective Cody Nau, Officer Marie Anders, Sergeant Megan Cordova, Officer Michael Gray, and Sergeant Nicholas Arias.

Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Sincerely,

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