



August 15, 2019

Chief Tim Carlson
Westminster Police Department
9110 Yates Street
Westminster, CO 80031

Re: Investigation of the officer-involved shooting of Kevin Beasley Jr., DOB 07/28/1995,
on April 26, 2019, in Westminster, Colorado.

Dear Chief Carlson:

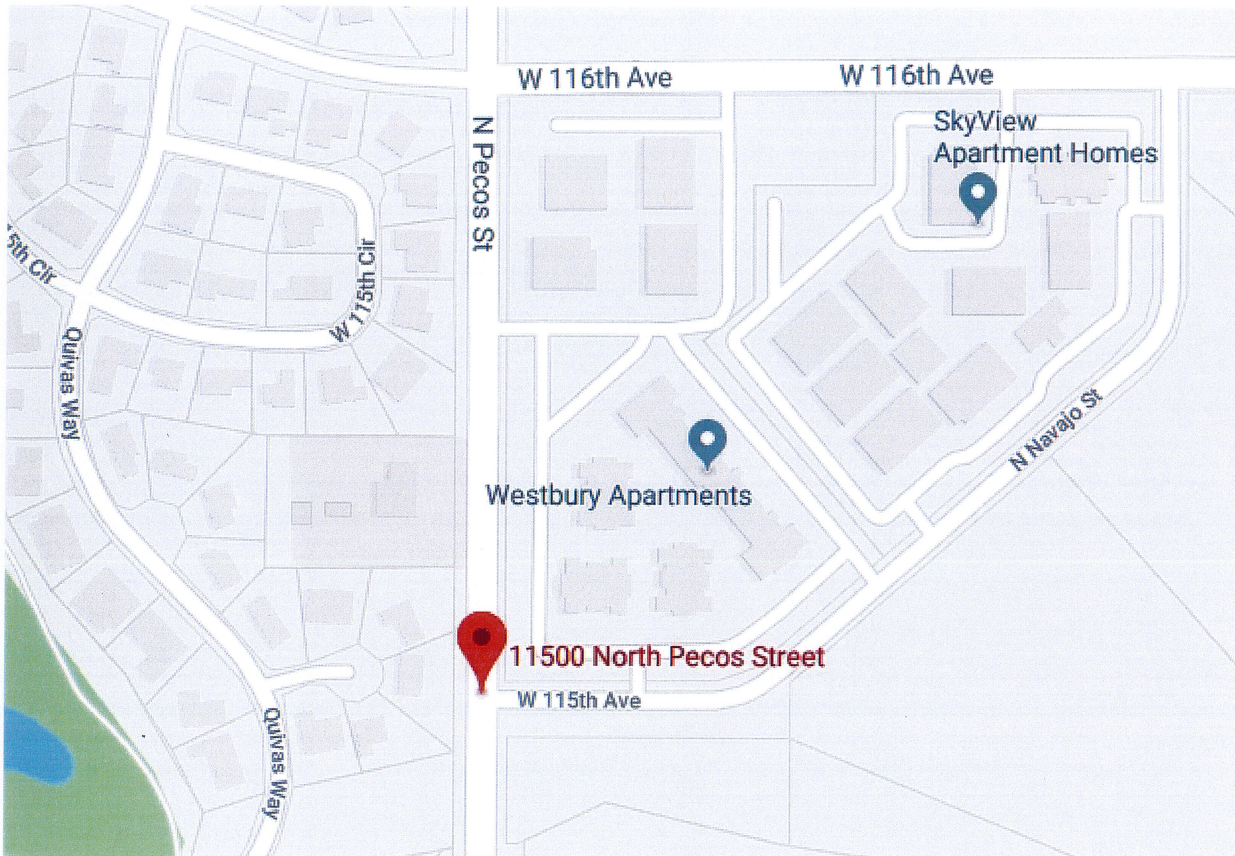
The investigation and legal analysis of the officer-involved shooting of Kevin Beasley Jr. occurring in Westminster on April 26, 2019 is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted this investigation. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. On July 2, 2019, Thornton Police Department Detective Fred Longobricco presented the CIIT factual findings of the investigation to my office. The CIIT presented police reports, videos, audio interviews, and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation was thorough and complete.

This review is strictly limited to determining whether criminal charges are warranted against the involved officer based on the CIIT investigation. 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 review expressly does not evaluate the appropriateness of the actions of the involved officer, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency are sufficient. That evaluation is left to each individual agency.

As further set forth herein, based upon the evidence presented and applicable law, there is no reasonable likelihood of success of proving that the involved officer committed any crime beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against the officer involved in this incident.

STATEMENT OF FACTS¹

On April 26, 2019, at about 12:30 p.m. witnesses saw an unknown man, later identified as Kevin Beasley Jr., in the street near the intersection of 115th Avenue and Pecos Street in Westminster, Colorado. Three Westbury Apartments employees, I.C.², S.M., and A.Z., were outside preparing to eat lunch when Mr. Beasley approached them, “acting very weird.” A.Z. said given Mr. Beasley’s demeanor and conduct “he looked like he was on drugs.” All three witnesses described Mr. Beasley acting erratic, yelling, and “causing a commotion.” At this point, S.M. said she was “terrified” and was concerned for their safety and the safety of the Westbury residents. S.M. told Mr. Beasley to leave the Westbury property and contacted a nearby private security guard, J.M. A.Z. called 911 and Mr. Beasley slowly left the property walking to the west.



While leaving the property, Mr. Beasley started throwing “pretty large size rocks” in the direction of the Westbury employees. The three employees and the security guard continued to watch Mr. Beasley while waiting for the police to respond. Other witnesses in the area had also observed Mr. Beasley and they too watched him. Several witnesses reported that Mr. Beasley then approached B.R., a nearby pedestrian who was pushing a cart on the west side of Pecos Street. B.R. reported that Mr. Beasley was “yelling and screaming” at him, threatening to attack and kill B.R. Mr. Beasley also tried to take B.R.’s cell phone. Another nearby witness, C.S., said she was very concerned for B.R. as Mr. Beasley was “combative and aggressive” towards B.R. B.R. dissuaded Mr. Beasley and Mr. Beasley then turned his attention to a motorist who was passing by him.

¹ The Statement of Facts are culled from the overall CIIT investigation and is presented here largely in chronological order.

² I use initials to maintain the privacy of the citizen-witnesses.

J.V. was driving her black SUV on Pecos Street when Mr. Beasley walked into the street. The passenger in the SUV described Mr. Beasley as “upset” and “trying to pick a fight” J.V. swerved to miss hitting him, and then Mr. Beasley struck the SUV window with his hand. A.Z. continued to watch and observed Mr. Beasley “hitting cars and continuing to throw rocks.”

A third person called 911 and reported at 12:36 p.m. that Mr. Beasley was “throwing and kicking things and confronting people” and he was “getting increasingly violent.”



To assist the police, I.C. captured some video of Mr. Beasley before the police arrived.

A Westbury resident, R.R., was driving her car onto Pecos when Mr. Beasley approached her car and he tried to open her car door. R.R. reported that she feared for her safety and believed Mr. Beasley would “choke” her if he got into her car. R.R. was able to escape and continued to watch Mr. Beasley as a Westminster Police Officer arrived at the scene.

Westminster Police Officer Richard Fletcher responded to multiple 911 calls and arrived in the 11500 block of Pecos at approximately 12:38 p.m. There were at least eight citizen eyewitness³ to the events that followed. When Officer Fletcher arrived, A.Z. said that Mr. Beasley “started coming towards the cop car kind of at a fast pace...” A.S. said he saw Mr. Beasley and “he just went off on the

³ There is no Body Worn Camera footage or other video of the encounter between Mr. Beasley and Officer Fletcher.

police officer.” I.C. reported that within “two or three seconds” of the officer’s arrival, Mr. Beasley advanced on the officer even before he was out of his police car and “almost instantly” attacked Officer Fletcher. N.D. described the actions of Mr. Beasley as an unprovoked attack on the officer. S.M. reported that before advancing on the officer she saw Mr. Beasley going into his backpack “and grabbed I don’t know what out of his backpack.” R.R. also saw Mr. Beasley in his backpack and thought he may have retrieved a gun.⁴



This aerial photograph shows Officer Fletcher’s police car and the highlighted area shows the approximate location of the encounter. To the bottom of the photo, as shown by the arrow, indicates the approximate location of Mr. Beasley’s first encounter with the Westbury employees.

Prior to his arrival, dispatch had advised Officer Fletcher that the suspect appeared intoxicated, had been throwing rocks, and started assaulting people in the area. Witnesses directed Officer Fletcher to Mr. Beasley, where he was seen “rummaging in his backpack.” Officer Fletcher reported in his video recorded interview that he stopped his police car and Mr. Beasley was aggressively “walking towards me pretty fast” and “very intent...on coming to me.” Officer Fletcher gave Mr. Beasley several commands to stop. Mr. Beasley ignored the commands, and continued toward Officer Fletcher with clenched fists, and aggressively threatened Officer Fletcher. Officer Fletcher told Mr. Beasley to stop and that he was under arrest.

Mr. Beasley remained noncompliant and Officer Fletcher attempted to restrain him by grabbing his arm. When Mr. Beasley pulled away, Officer Fletcher’s balance changed and he wound up in a position below and was looking up at Mr. Beasley. Officer Fletcher reported that at this time Mr. Beasley began repeatedly punching him in the head and face. Officer Fletcher considered using his taser to subdue Mr. Beasley but he was not positioned to do so. Officer Fletcher reported that Mr.

⁴ No gun associated with Mr. Beasley was recovered.

Beasley's blows to his head caused ringing in his ears and Officer Fletcher thought he might "pass out." At this point, Officer Fletcher said his "biggest fear was that I'm gonna lose consciousness, he can continue his assault, he's gonna take my gun, he's gonna shoot me..."

The eyewitnesses also saw Mr. Beasley's attack on Officer Fletcher. S.M. said, "And we're like oh, my God, the cop's still ... trying to hold onto his arm and they kind of wrestled. The, the cop slipped and the guy was still punching the cop." "That guy was just hitting him. He was pounding on his face." Likewise, R.R. reported "this guy started rushing the cop and then they were just throwing fists at each other but the guy started it first and then that's when the cop ended up on the grass on the ground." J.M., the private security guard who was contacted and watched the events unfold said, "[Mr. Beasley] started fighting first and the officer just tried to take him down."

During this altercation, Mr. Beasley also went for Officer Fletcher's gun. Officer Fletcher reported he could feel Mr. Beasley's hands make contact with his holstered gun. Dazed from the assault and fearing Mr. Beasley would disarm him, Officer Fletcher reported he was scared for his life and was thinking about his kids. He stated, "I'm thinking he's gonna knock me out, I'm already dazed. The guy is gonna take the gun."

Eyewitness J.M. said he saw Mr. Beasley's hand on the officer's gun and "he was trying to pull it out." Eyewitness I.C. also described Mr. Beasley attempting to disarm Officer Fletcher. Eyewitness S.M. saw Mr. Beasley trying to reach for Officer Fletcher's "belt or gun." Eyewitness N.D. summarized the events that "this officer was fearing for his life. He was fearing for his life. You just knew it. You just knew it."

Officer Fletcher said that he then removed his firearm from his holster thinking if he could get Mr. Beasley at gun point, maybe he would comply with his orders. Officer Fletcher said that Mr. Beasley then goes for his gun and he did not want Mr. Beasley to take his gun away. At about 12:39 p.m., less than two minutes after his arrival, Officer Fletcher shoots Mr. Beasley twice.



From the video taken by I.C. after other officers arrived, it shows the final location of Mr. Beasley on the ground.

Kevin Beasley Jr. died as a result of the shooting. On April 29, 2019, Dr. Cina of the Adams-Broomfield Counties Corner's Office performed the autopsy. It was determined that Mr. Beasley was shot twice: one gunshot wound to the right side and front of the neck, the bullet path had a slightly upward path. The other gunshot wound was to the right side of the upper back and it also had a slightly upward path. Mr. Beasley's toxicology tests were positive for cannabinoids and benzodiazepines.

Officer Fletcher was transported to St. Anthony's North Hospital and treated for his injuries. During the following investigation, photographs were taken of the visible injuries to Officer Fletcher's head.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined in a criminal statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. Applicable here are two areas of Colorado law: (1) the justification of using physical force in defense of a person; and, (2) the lawful use of physical force in making an arrest or preventing an escape.

Use of Physical Force in Defense of a Person

The justification of using physical force in self-defense is described in §18-1-704, C.R.S. (2018). As pertinent to this case, §18-1-704 (1) provides:

... 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.

The use of deadly physical force "may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury." Section 18-1-704(2)(a), C.R.S. (2018). Further, Colorado law allows for the use of deadly physical force "if the other person is committing or reasonably appears about to commit....assault as defined in....section 18-3-203." Section 18-1-704(2)(c), C.R.S. (2018).

One type of second degree assault, as provided in 18-3-203, occurs when:

With intent to prevent one whom he or she knows, or should know, to be a peace officer... from performing a lawful duty, he or she intentionally causes bodily injury.

Section 18-3-203(1)(c), C.R.S. (2018). "Bodily injury means physical pain..." Section 18-1-901(3)(c), C.R.S. (2018).

The Lawful Use of Physical Force in Making an Arrest or Preventing an Escape

The justification for a peace officer's use of physical force while attempting to make an arrest or preventing an escape is set forth in §18-1-707, C.R.S. (2018). As pertinent to this case, §18-1-707(1) provides:

[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 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.

Further, as applicable to the result in this case, §18-1-707(2), C.R.S. (2018) provides:

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.

When a police officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using extreme physical force. Tennessee v. Garner, 471 U.S. 1 (1985). This constitutional law is codified in Colorado by §16-3-101(2), C.R.S. (2018), which further authorizes police officers “all necessary and reasonable force may be used in making an arrest.”

APPLICATION OF LAW

The foregoing justifications, defense of a person and use of force in making an arrest are “affirmative defenses.” Section 18-1-710, C.R.S. (2018). This means that a person accused of a crime for using these types of force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the issue here is whether there is enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt that Officer Fletcher acted without lawful justification.

Here, the issues in this case are whether the use of deadly physical force by Officer Fletcher was justified and whether the force used was appropriate. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989). 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 their firearm to effect an arrest and/or to defend themselves and arguably witnesses in the area to stop the threat that Kevin Beasley Jr. presented.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The 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).

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat the officer faces. Illinois v. Lafayette, 462 U.S. 640 (1983); Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994). The 9th Circuit Court of Appeals has stated:

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

Scott v. Henrich, *supra*, 39 F.3d at 915.

CONCLUSION

Under the particular facts of this case, the actions of Officer Richard Fletcher are legally justified under Colorado law and United States Supreme Court precedent. Under §§18-1-704(2)(a), and (2)(c), Officer Fletcher was justified in using deadly physical force. First, under 18-1-704(2)(a), multiple eyewitnesses corroborate Officer Fletcher's report that Mr. Beasley's immediate attack on Officer Fletcher and support the objectively reasonable conclusion that Officer Fletcher was "in imminent danger of being killed or of receiving great bodily injury." Officer Fletcher and numerous eyewitness said that in addition to assaulting Officer Fletcher, Mr. Beasley also attempted to disarm Officer Fletcher. Thus, Officer Fletcher is justified under Colorado law, §18-1-704(2)(a), to use deadly physical force to defend himself.

Additionally, Colorado law, §18-1-704(2)(c), further allows the use of deadly physical force if Mr. Beasley was “committing or reasonably appears about to commit....assault.” The evidence is overwhelming that Mr. Beasley unlawfully committed a second degree assault against Officer Fletcher. This allows for the justification of using deadly physical force in response to the assault.

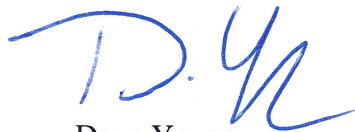
A third justification recognized by Colorado law, §18-1-707(2)(b)(III), allows Officer Fletcher’s use of deadly force. Here, Mr. Beasley was seen by witnesses attempting to disarm Officer Fletcher. From the totality of the circumstances it is reasonable to conclude that Officer Fletcher defended “himself ... from what he reasonably believed to be the use or imminent use of deadly physical force.” Section 18-707(2)(a), C.R.S. (2018).

The consistency and certainty of the multiple independent eyewitness reports support the foregoing conclusions. One example, of many, is the statement of R.R. who concluded “I feel that the cop was just protecting himself from this man... and I think the cop did the right thing.” In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing affirmative defenses.

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Richard Fletcher for discharging his weapon in the fatal shooting of Kevin Beasley Jr. on April 26, 2019.

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

Sincerely,



Dave Young
District Attorney
17th Judicial District
Adams and Broomfield Counties