

BRIAN S. MASON
District Attorney



COLORADO'S 17TH JUDICIAL DISTRICT
Adams and Broomfield Counties

For Immediate Release:
Director of Communications
da17media@da17.state.co.us
(303) 835-5639

Chris Hopper
chopper@da17.state.co.us

August 6, 2024

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting of Frank Powels in Broomfield on January 10, 2024.

PowerPoint:

https://17judicial-my.sharepoint.com/personal/chopper_da17_state_co_us/Documents/Desktop/OIS/OISDecisionLetterPowerPoint11024.pdf

BWC Video:

(Warning Graphic)
[OISBWC11024.mp4](#)

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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)*



August 6, 2024

Chief Enea Hempelmann
Broomfield Police Department
7 Descombes Drive
Broomfield, CO 80020

RE: The officer-involved shooting of Frank Powels on January 10, 2024

Dear Chief Hempelmann:

This letter is a review of the criminal investigation into the January 10, 2024 shooting of Frank Powels by Broomfield Police Department Officer Shane Mortenson. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by Adams County Sheriff's Department Detectives Tara Scully and James Graham. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Broomfield 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 bases for a District Attorney's decision relative to the filing of criminal charges when officers are involved in the discharge of a firearm that results in serious bodily injury or death. As such, this 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. The 17th Judicial District Attorney's 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 against the involved officer. Therefore, no criminal charges will be filed against Officer Mortenson, the law enforcement officer involved in this incident.

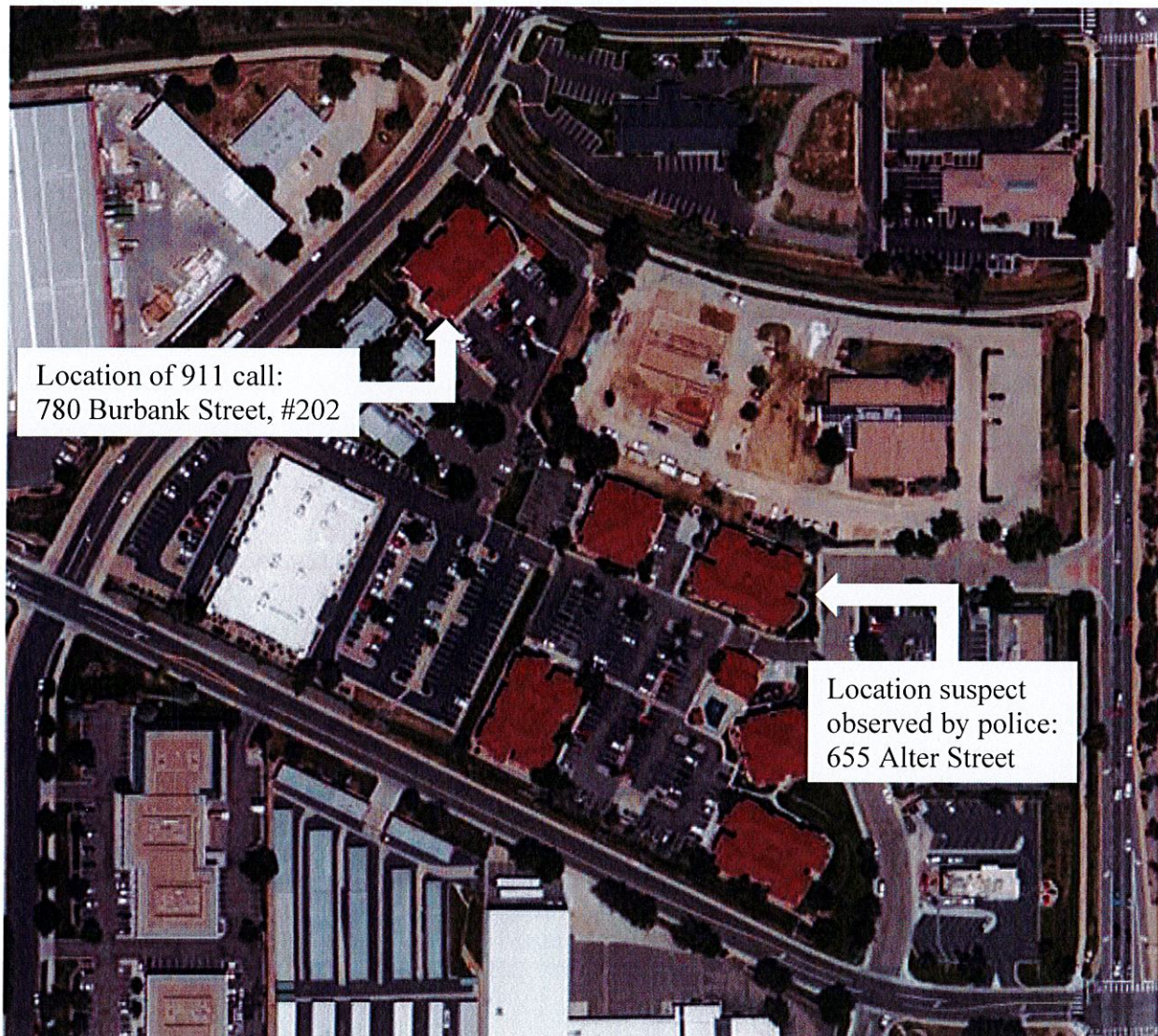
FACTUAL SUMMARY OF THE INCIDENT

On January 10, 2024, at 8:41 p.m., Broomfield police officers responded to multiple 911 calls reporting a domestic disturbance located at 780 Burbank Street, apartment #202. The initial 911 caller identified herself as Z.F.-W., who stated that she needed “help immediately.” Z.F.-W. reported that her mother, E.W., was outside of their apartment fighting with her ex-boyfriend. She also reported that she could hear it getting physical, and she believed her mother was hurt. She identified the suspect as Frank Powels, her mom’s ex-boyfriend.

E.W. also called 911 to report that she was the victim of the domestic disturbance. During this call, E.W. reported that Mr. Powels hit her on the back of the head with a wooden stool, causing her to bleed. She also reported that Mr. Powel hit her with his fists. She described Mr. Powels as a black male wearing a black hoodie and blue jeans. She told dispatch that she was unsure if he was still on scene but confirmed that his black Chevy Impala was still parked in front of the building.

At 8:45 p.m., officers arrived at the location of the apartment complex and found Mr. Powels’s vehicle. Dispatch broadcasted a radio message to available patrol officers a description of the suspect as an African American male wearing a black “Colorado” hoodie and jeans. Dispatch also reported that the suspect had committed the crime of third-degree assault. A short time later, dispatch aired a message that the suspect had committed “felony assault charges.”

Multiple uniformed Broomfield police officers responded to the area to assist in the search for the suspect. The apartment complex consists of multiple building structures where the front doors to the apartments are accessible within a breezeway-type hallway that is open to the exterior. At 9:04 p.m., Officer Kyle Timmerman reported that he spotted a male in light jeans and a black hoodie who “looked like he was in a hurry” going into an apartment building different than the location from which the call originated, but within the same complex located at either 655 or 665 Alter Street. Two minutes later, Officer Shane Mortenson reported seeing a male matching the description of the suspect on the first floor of the apartment building at 655 Alter Street. The suspect stood at the opposite end of the exterior breezeway from Officer Mortenson, as Officer Mortenson called out, “Police, stop!”



Aerial photo of the buildings and relevant locations within the apartment complex.

The suspect initially walked away but then suddenly turned and walked toward Officer Mortenson. As the suspect approached, he picked up his pace while holding what appeared to be a sharpened linear object. Officer Mortenson drew his firearm and retreated backwards with his firearm pointed at the suspect. The suspect continued walking in a fast-paced manner toward Officer Mortenson, rapidly closing the distance. As the suspect got within a few feet, Officer Mortenson fired four rounds at the suspect, striking him and causing him to fall to the ground. The suspect received medical attention and was transported to the hospital where he was later pronounced dead. Subsequently, the suspect's identity was confirmed to be Frank Powels.

CIRT investigators interviewed E.W., the woman who called the police reporting that she was the victim of the domestic violence incident. She was the resident of 780 Burbank Street, apartment #202, and had been in a relationship with Mr. Powels for five months. E.W. reported that Mr. Powels came over earlier that evening and they had an argument about changing the cooking grease. Mr. Powels got upset and left the apartment. When he returned, E.W. walked

out of her apartment to confront Mr. Powels. According to E.W., Mr. Powels yelled at her and demanded that she give him her phone and her keys. Fearing Mr. Powels, E.W. knocked on a nearby apartment door, seeking help from a neighbor. Mr. Powels punched E.W. with his fists while she used her arms and hands to defend herself. Mr. Powels also struck her in the head and back with a wooden stool that was near the neighbor's door. The neighbor came out and Mr. Powels threatened them, saying, "You want to be a part of this? You want me to beat your ass too?" Mr. Powels eventually left on foot, taking E.W.'s phone with him. That was the last time she saw Mr. Powels.

E.W. told the investigators that a few months prior, she separated from Mr. Powels following a domestic incident which resulted in the filing of criminal charges against Mr. Powels. After some time, she reunited with Mr. Powels and allowed him back to her apartment. E.W. also reported noticing signs that Mr. Powels suffered from mental health issues during their relationship, and that she saw paperwork from a mental health evaluation of Mr. Powels that confirmed her beliefs.

E.W. reported that Mr. Powels had multiple warrants for his arrest. E.W. stated that when Mr. Powels was drinking alcohol, he would frequently tell her about his interactions with police. She recalled Mr. Powels saying that he would "give [the police] a run for their money," and "if [the police] ever come to me, then I'm going to give it my all, I'm not going down without a fight." She interpreted his statement about giving the police "a run for their money" as his intention to force an officer to shoot and kill him. She stated that he also talked about suicide, specifically mentioning crashing a car to end his life. She further reported that Mr. Powels repeatedly stated that "he was pretty much ready to die" and that he had discussed his funeral in hypothetical terms.

Officer Mortenson also participated in a recorded interview with CIRT investigators. He recalled hearing the initial call regarding a physical assault involving domestic violence over the radio, but he did not immediately respond because he was working on another call. Officer Mortenson was aware that the suspect of the incident fled the scene on foot. He was also aware of the prior incident of domestic violence at this same location in October. At the time he responded to that incident, Officer Mortenson recalled the suspect making retaliatory threats to the victim that he would be back for her.

On the evening of the shooting incident, Officer Mortenson responded to the location of the 911 call to help fellow officers locate the suspect. He drove a marked patrol car and wore an official uniform for the City of Broomfield Police Department. Prior to his arrival, dispatch provided him with a physical description of Mr. Powels and the clothing he was reported to be wearing. Once on scene, Officer Mortenson accompanied another officer who operated a drone to assist with searching for the suspect.

Other officers reported that they spotted the suspect near an apartment building in the same complex, one block east of the area of the 911 call. Officer Mortenson went to that location and observed a male who matched the description of Mr. Powels. Officer Mortenson reported that when he saw the suspect, the suspect was looking away from him. Officer Mortenson called out to the suspect, "Police, Stop!" Initially, the suspect ignored the command

and proceeded to walk the opposite direction from Officer Mortenson. Officer Mortenson noticed what appeared to be a stick in the suspect's hand that appeared "sharpened" on the end. Officer Mortenson estimated the stick to be about four feet long. Officer Mortenson called out to the suspect and gave him a second command to stop. The suspect turned toward Officer Mortenson while still holding the sharpened stick. The suspect appeared agitated and said something, but Officer Mortenson did not hear what he said. Officer Mortenson drew his firearm from his holster. Officer Mortenson reported that when he drew his firearm, the suspect said, "What, are you going to shoot me?" Officer Mortenson gave the suspect an additional command to stop.

The suspect quickly walked toward Officer Mortenson while holding the stick in his right hand. Officer Mortenson recalled seeing the sharpened end pointed at him as the suspect advanced at a rapid pace. Officer Mortenson stated that the suspect seemed intent on ignoring police commands and harming him with the weapon. Officer Mortenson backpedaled and pointed his gun at the suspect, believing that the suspect was going to stab him with the stick. As the suspect quickly closed in on him, Officer Mortenson fired four rounds at the suspect, causing him to fall to the ground. Officer Mortenson expressed his belief, in the moment, that the suspect was going to kill him. Officer Mortenson estimated that the suspect got to within four feet of him when he fired his weapon. He believed he fired three or four shots and stopped firing because the suspect stopped advancing toward him. Officer Mortenson considered utilizing his Taser as a less lethal alternative, but explained that there was no time for him to deploy it effectively under the circumstances.

Criminalists assigned to the CIRT gathered evidence and processed the scene. A broken wooden broomstick was discovered in two pieces in the breezeway of the first floor of 655 Alter Street. The top portion of the broomstick was located on the ground near Mr. Powels' final resting place. The object measured a total of 35 inches long and appeared to have a sharpened end. The sweep of the broom remained on the other broken portion of the broomstick. The bottom portion was located in the stairwell near where Officer Mortenson first observed Mr. Powels. During a canvass of the area, a resident of apartment #101 on the east end of the breezeway reported that her broom was missing from where she left it in the hallway outside of her apartment.

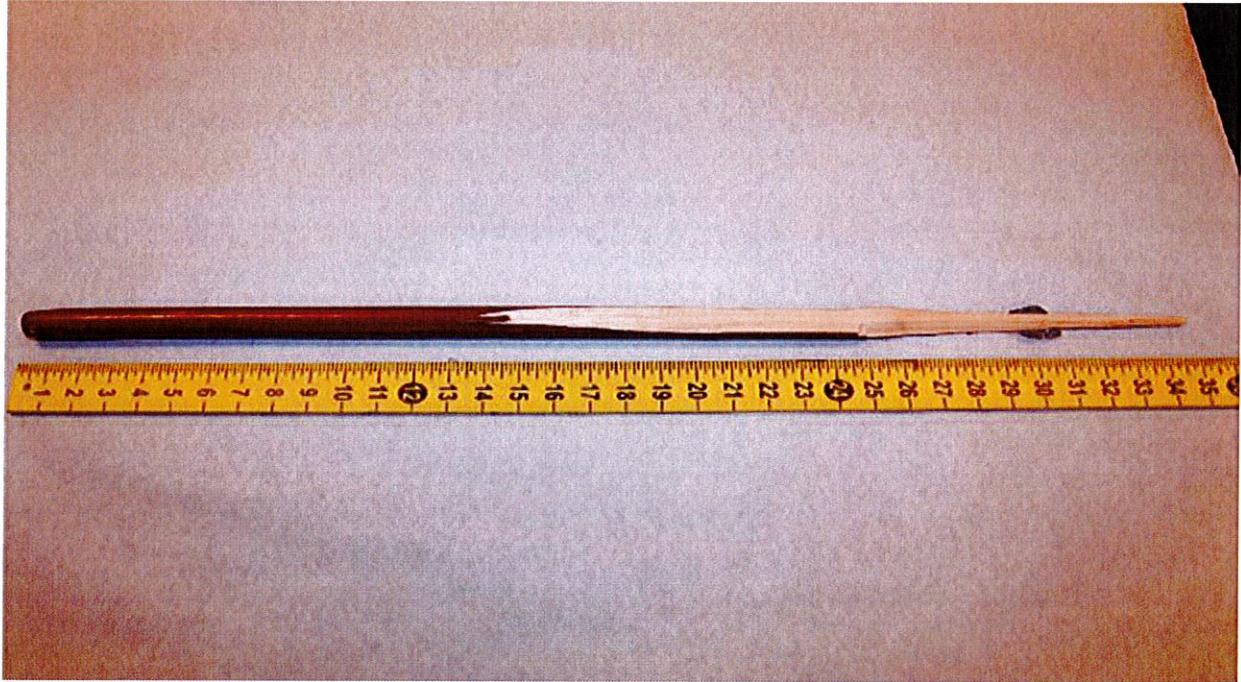


Photo depicting top portion of broken broomstick held by Mr. Powels.



Photo depicting bottom portion of broken broomstick.

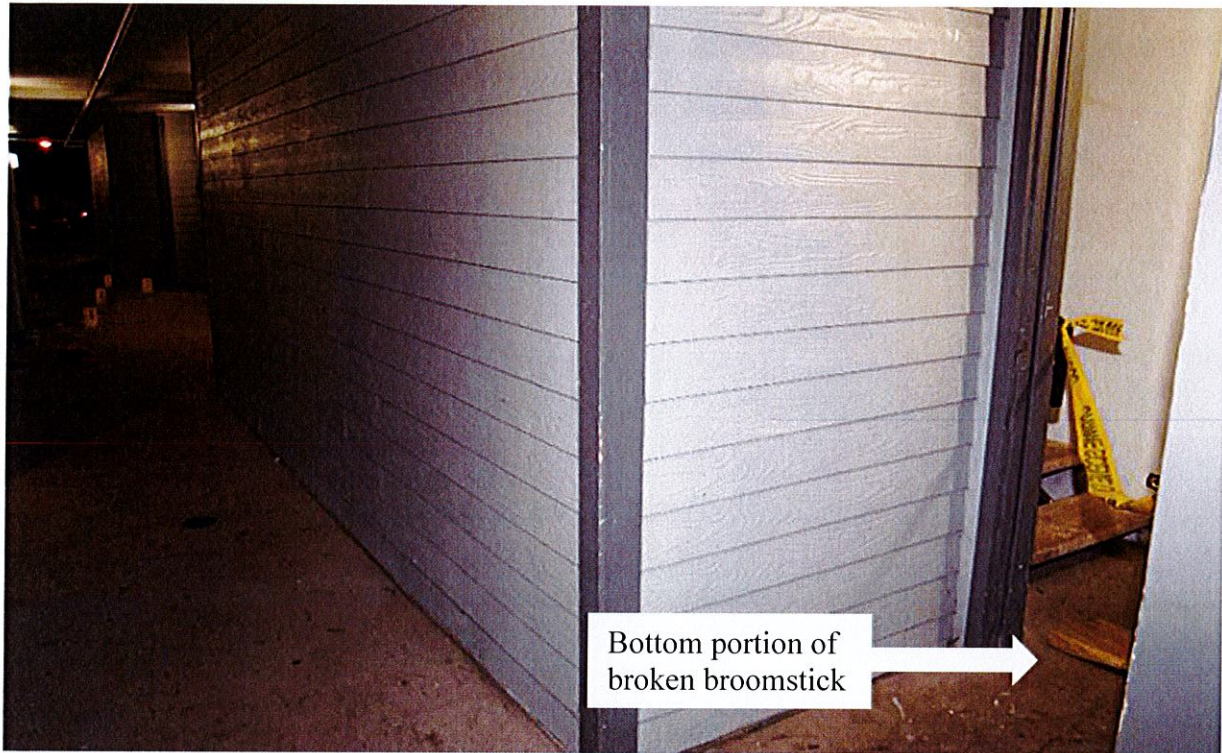
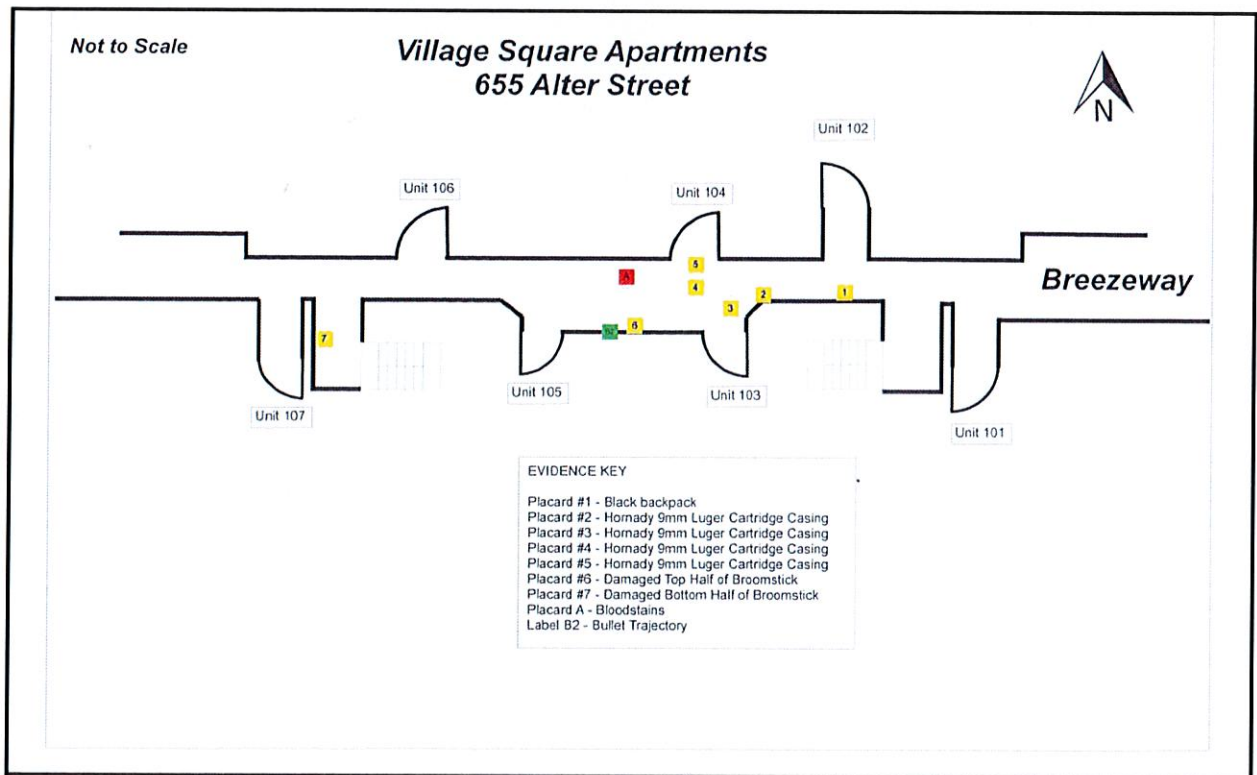


Photo from west end of breezeway at 655 Alter Street looking southeast, depicting location of broom in relation to other items of evidence located east down the breezeway.



Scene sketch.

Detectives located a wooden stool outside of 780 Burbank Street, apartment #206, just down the hallway from apartment #202 where E.W. lived. The seat of the stool appeared broken, and the broken piece was found nearby. The residents of the apartment were interviewed by CIRT investigators and identified as the initial 911 callers who reported the domestic assault. They described hearing a male and female yelling at each other. The residents looked out the peephole and recognized the female as their neighbor. She was outside of their apartment pounding on their door, “yelling for her life,” asking for help and pleading the male to stop. The male stood behind the female and repeatedly hit her with the wooden stool that sat outside of their apartment. The residents did not open their door because they were in fear of the male.



Photos depicting the broken wooden stool found outside 780 Burbank Street, apartment #206.

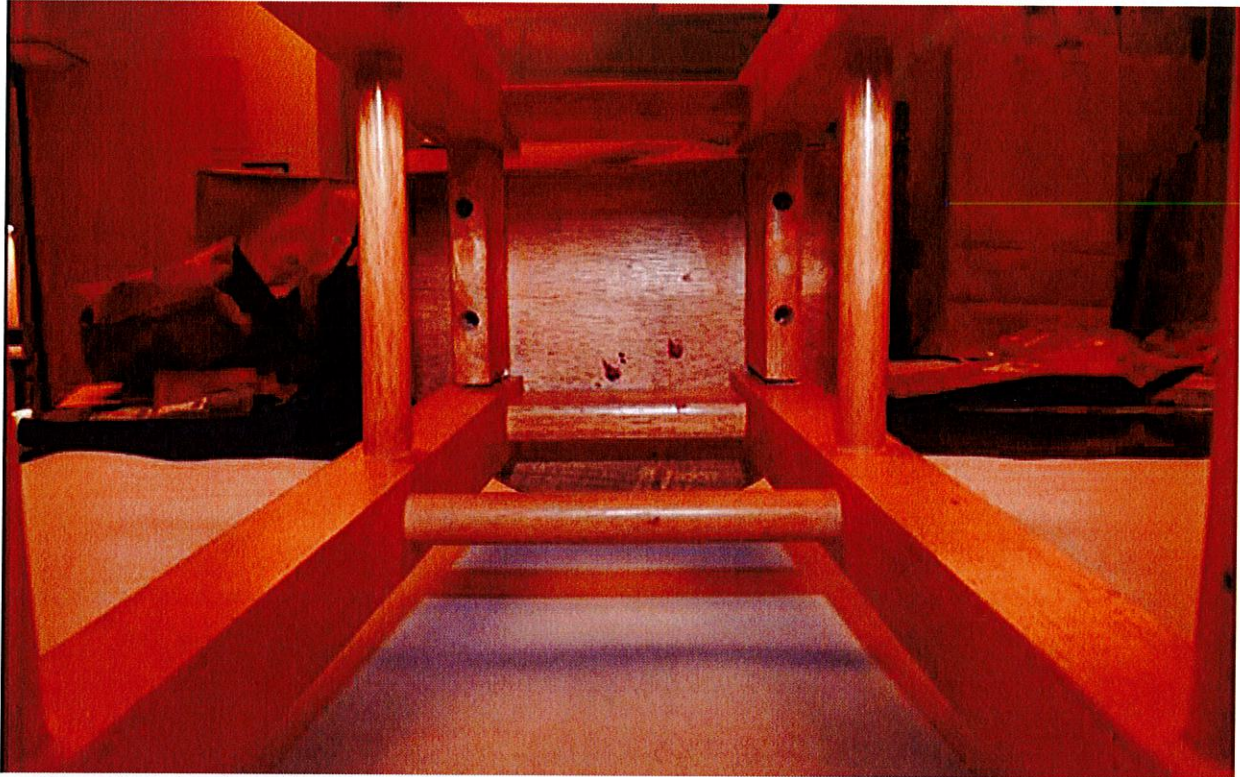
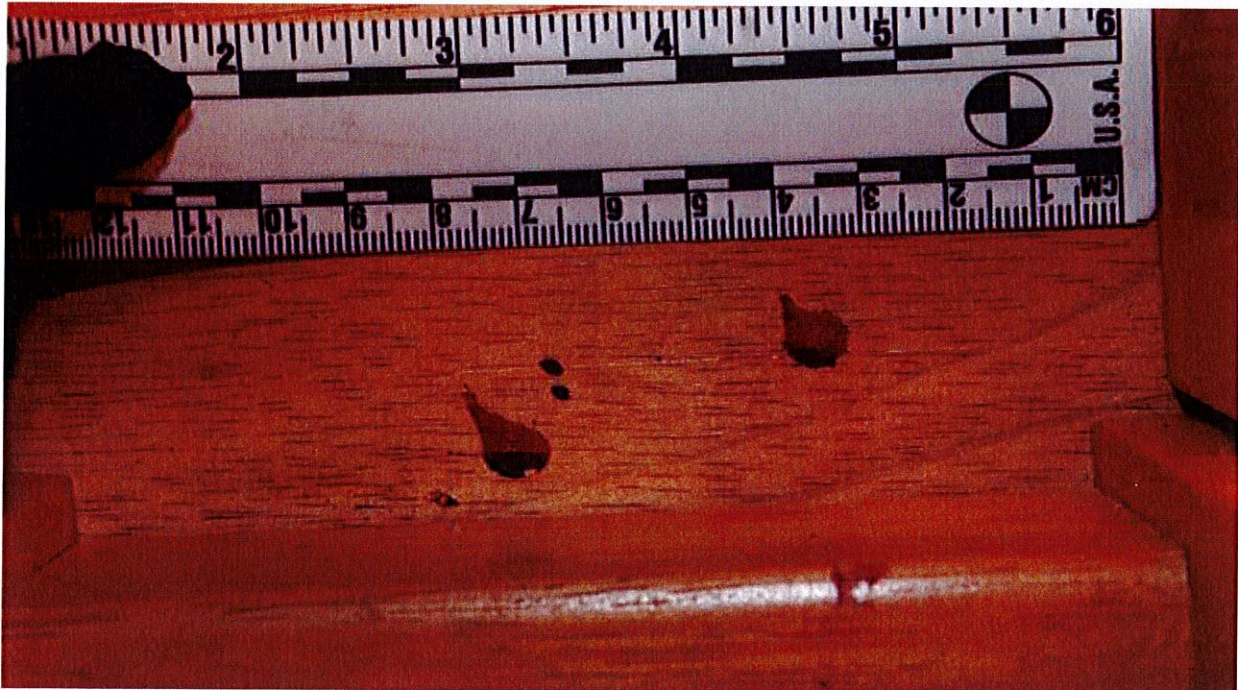


Photo depicting the underside of the broken wooden stool found outside 780 Burbank Street, apartment #206, depicting suspected blood.



Up close photo depicting suspected blood from the underside of the broken stool found outside 780 Burbank Street, apartment #206.

Officer Mortenson turned over his firearm for examination and round accountability.

Officer Mortenson's interview, along with an examination of the officer's firearm, the collection of evidence at the scene, and Officer Mortenson's body-worn camera (BWC), led to the conclusion that Officer Mortenson fired four rounds from his handgun.

The autopsy of Mr. Powels revealed four gunshot wounds to his chest and a graze wound to his left hand. The pathologist concluded the cause of death to be multiple gunshot wounds. Postmortem toxicology reflected that Mr. Powels had a blood alcohol content of .177g/100ml ethanol and a THC content of 1.1ng/ml.

CIRT investigators reviewed the footage of each of the responding officers' BWC. The timestamps on all BWC were not accurate, and appear to reflect a time 7 hours ahead of mountain standard time. Officer Mortenson's BWC was the only BWC to capture video of the incident. Additionally, no audio exists within the first minute of the video activation due to the settings on the BWC. Consequently, because the entire incident occurs within a minute of Officer Mortenson's activation of his camera, there is no audio to accompany the video of the incident.

Officer Mortenson activated his BWC as he got out of his vehicle on the east side of 655 Alter Street. According to the dispatch record, he arrived at this location at 9:05:35 p.m., although the BWC timestamp shows 04:05:35 a.m. The earliest observation of Mr. Powels on Officer Mortenson's BWC is approximately 37 seconds after Officer Mortenson arrived on scene, which would have been 9:06:13 p.m.



Still image from Officer Mortenson's BWC depicting Mr. Powels on the west end of the breezeway of 655 Alter Street. At this moment, Officer Mortenson is standing at the east entry to the breezeway.

From the dispatch record, Officer Mortenson aired his observation of the suspect at 9:06:26 p.m., reporting that he was “in contact” with the suspect. Officer Mortenson walks west down the breezeway toward Mr. Powels, and Mr. Powels appears to walk away from Officer Mortenson. At 9:06:22 p.m., Mr. Powels turns back around and starts to quickly walk east toward Officer Mortenson. As Mr. Powel draws near, he is observed holding a linear object that appears to have a sharpened end.



Still image from Officer Mortenson's BWC depicting Mr. Powels facing Officer Mortenson and beginning to run toward Officer Mortenson holding a linear object with a sharp end.

In response to Mr. Powels's approach, Officer Mortenson immediately drew his firearm, pointed it at Mr. Powels, and retreated backward. Mr. Powels continued charging toward Officer Mortenson as Officer Mortenson backpedaled down the hallway for 6 seconds until Officer Mortenson fired his weapon at 9:06:28 p.m. It appears from the BWC that four shots were fired in immediate succession within one second.



Still image from Officer Mortenson's BWC depicting Mr. Powels advancing toward Officer Mortenson with the linear object in his hand.



Still image from Officer Mortenson's BWC depicting Mr. Powels continuing to advance towards Officer Mortenson holding the linear object in his right hand and raising his left hand towards Officer Mortenson.



Still image from Officer Mortenson's BWC depicting Mr. Powels continuing to advance towards Officer Mortenson holding the linear object in his right hand.



Still image from Officer Mortenson's BWC depicting the moment Officer Mortenson fired the first of four shots at Mr. Powels.



Still image from Officer Mortenson's BWC depicting the moment Officer Mortenson fired the last of four shots at Mr. Powels

Eight seconds after the shots were fired, the BWC audio activates and Officer Mortenson is heard calling out "shots fired." The entire encounter from the time Mr. Powels is first observed on the BWC to the time that shots are fired is 15 seconds. Six seconds of time elapsed between the moment Mr. Powels quickly advanced toward Officer Mortenson and the time Officer Mortenson fired his weapon. Other officers arrived on scene and began to provide emergency medical assistance to Mr. Powels.

LEGAL ANALYSIS

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the law enforcement officer 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, 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. (2024), and that subsection provides:

(4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly force if the peace officer 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).

In this case, there is no dispute that Officer Mortenson discharged his firearm four times at Frank Powels causing his death. The legal question presented by the facts of this case is whether Officer Mortenson's use of deadly force was both reasonable and necessary. Applying the proper legal standards to the facts and circumstances of this case, the issue is whether an objectively reasonable officer would have concluded that Frank Powels posed an immediate threat to the safety of the officer or another person such that the use of deadly force was necessary to prevent serious injury or death.

Here, Officer Mortenson located Mr. Powels at the end of a breezeway, and he was aware that Mr. Powels was alleged to have just committed a felony domestic assault. When Officer Mortenson first contacted Mr. Powels, he was disobeyed commands, appeared agitated, armed himself with a sharpened object as a weapon, and quickly approached the officer in a sudden and aggressive fashion while holding the weapon. Officer Mortenson's BWC footage, while lacking audio during the critical time of the encounter, nevertheless provides harrowing evidence of the nature and seriousness of the incident.

Even when Officer Mortenson gave continued commands to stop, drew his firearm and pointed it, Mr. Powels ignored the commands and continued to aggressively pursue Officer Mortenson. As Mr. Powels quickly approached, he challenged the show of authority by stating, "What, are you going to shoot me?" He further held the sharpened object and brandished it in a manner as to point the sharp end toward Officer Mortenson. These facts support a conclusion

that an objectively reasonable officer would have concluded that Mr. Powels posed an immediate threat of safety to Officer Mortenson or anyone else in the vicinity. Officer Mortenson's response of backpedaling for six seconds further confirms that he held a reasonable belief that Mr. Powels behavior presented a threat to him.

In addition, the evidence also supports a conclusion that the use of deadly force was necessary to prevent Mr. Powels from inflicting serious bodily injury or death upon Officer Mortenson. Mr. Powels's aggressive demeanor, refusal to follow commands, and rapid pursuit of Officer Mortenson while armed with a large sharpened object demonstrated Mr. Powels' intent to use unlawful and dangerous force against Officer Mortenson. The entire encounter elapsed in a period of 6 seconds between the time that Mr. Powels began to pursue Officer Mortenson and the time that Officer Mortenson discharged his firearm. Mr. Powels charged toward Officer Mortenson without hesitation, and Officer Mortenson stated that he did not believe that he had enough time to switch from his firearm to his Taser given Mr. Powels's rapid advance upon him. Indeed, Mr. Powels only stopped his advance towards Officer Mortenson when the gunshots were fired.

Finally, though the law does not require him to retreat from the threat, Officer Mortenson demonstrated a degree of restraint in considering alternatives to deadly force. First, he tried to back away from Mr. Powels. The BWC reflects Officer Mortenson continued to backpedal as Mr. Powels quickly drew near him while armed with the large linear object appearing to be a deadly weapon. Officer Mortenson had limited movement within the breezeway area other than backward. During these short moments, Officer Mortenson described giving repeated commands and evaluating the use of other less lethal alternatives. Unfortunately, Mr. Powels' conduct of ignoring commands and rapidly pursuing the officer with a weapon caused Officer Mortenson to make a split-second decision to react with deadly force to protect himself and others from a dangerous situation. Given all the circumstances, I find Officer Mortenson's decision to be reasonable.

CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved Officer Mortenson was not justified in using reasonable force under §18-1-707, C.R.S. (2024). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Shane Mortenson for firing his weapon at Frank Powels and causing his death.

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

Sincerely,



Brian S. Mason
District Attorney