

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

June 26, 2024

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting of Floyd Whiting in Northglenn on August 4, 2023.

PowerPoint:

[OISDecisionLetterPowerPoint842023.pdf](#)

BWC Video:

(Warning Graphic)

[Northglenn8423OIS.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.

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June 26, 2024

Chief Jim May
Northglenn Police Department
Justice Center, 50 W Community Center Dr.
Northglenn, CO 80234

RE: The officer-involved shooting on August 4, 2023

Dear Chief May:

This letter is a review of the 17th Judicial District Critical Incident Response Team (CIRT) investigation into the August 4, 2023, shooting of Floyd Whiting by Northglenn Police Department Officer Jose Carrasco. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by the City of Westminster Police Detectives Zeb Smeester and Ron Wolf. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Northglenn 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 officers are involved in the discharge of a firearm that results in serious bodily injury. 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.

The circumstances surrounding this incident resulted in criminal charges against Floyd Whiting. Until recently, that criminal case remained pending in Adams County District Court. Based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, we delayed public disclosure of all the facts pertinent to this aspect of the investigation to preserve the integrity of the pending case.

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 the law enforcement officer involved in this incident.

FACTUAL SUMMARY OF THE INCIDENT

Just before midnight on August 4, 2023, officers with the Northglenn Police Department were dispatched to 11611 Fowler Drive on a report of an unwanted person inside a residence. The reporting party called 911 to report that his stepmother's boyfriend, Floyd Whiting, was breaking things and causing a disturbance inside the residence. Dispatch confirmed that Mr. Whiting was not a resident of the home and that there was an active order of protection prohibiting his contact with J.C., the homeowner and stepmother of the reporting party. Mr. Whiting also had two active arrest warrants for domestic violence.

The reporting party advised that Mr. Whiting was intoxicated and would likely fight with the police upon their arrival. In addition, officers were familiar with Mr. Whiting from prior reports of domestic violence involving J.C. at the same residence where he had barricaded himself inside with a handgun. Prior to their arrival, officers learned that the reporting party's five-year-old sister was also inside the residence.

Uniformed officers approached the residence and knocked on the front door. J.C. opened the door and stated, "He's going around back," referring to Mr. Whiting. Approximately thirty seconds later, J.C. stated, "He's right there," and walked inside the home. Officer Jose Carrasco stepped into the threshold of the doorway and observed Mr. Whiting drag J.C. up the stairs of the split-level home. Mr. Whiting and J.C. appeared to engage in a physical struggle and fell to the floor at the top of the stairs. Mr. Whiting raised a long gun and pointed it toward the officers who remained standing on the lower level. Officer Carrasco drew his handgun and fired two rounds at Mr. Whiting. Mr. Whiting fell behind a wall and reappeared, still holding the gun. Officer Carrasco fired another round at Mr. Whiting, striking him in the upper portion of his left arm. Mr. Whiting complied with the officers' commands to drop the gun and he walked outside where he was arrested and later transported to the hospital for his injury.

J.C. was interviewed after the incident. She advised CIRT investigators that earlier in the evening, Mr. Whiting became angry, and she asked him to leave her residence. Mr. Whiting went to the garage, armed himself with a golf club, and repeatedly told her to call the police because he was "Ready to go." A physical altercation ensued between J.C. and Mr. Whiting, where he got on top of her and put both his hands around her neck, but then he stopped before causing her severe injury. According to J.C., during the altercation, Mr. Whiting pulled a handgun from a nightstand, but J.C. was able to wrestle it away from him and throw it in the closet. J.C. said that then the police arrived at the front door, and she told Mr. Whiting to turn himself in on his arrest warrants. She thought Mr. Whiting went out back. However, while she was speaking with the officers at the front door, she saw Mr. Whiting behind her at the top of the stairs holding a rifle. J.C. recalled telling the officers that Mr. Whiting had a gun. J.C. heard one of the officers say, "He has a gun!" She heard gunshots that she believed to be an exchange of gunfire between the officers at the front door and Mr. Whiting at the top of the stairs. J.C. thought that she was hit by one of the shots. J.C. suffered injuries from Mr. Whiting shooting her in the arm and leg with the pellet gun. She also suffered minor injuries believed to

be associated with bullet fragments from one of Officer Carrazco's shots. J.C. thought that Mr. Whiting was trying to encourage the police to shoot him.

Officer Carrazco participated in a recorded interview with CIRT investigators. Officer Carrazco recalled the dispatch report about an unwanted party identified as Floyd Whiting who was acting aggressive and hostile. He also advised that Mr. Whiting had active arrest warrants for domestic violence and two restraining orders prohibiting him from the identified residence and from having any contact with the homeowner, J.C. Officer Carrazco further recalled being advised by his patrol sergeant that during previous encounters with police, Mr. Whiting was uncooperative and refused to comply with commands to surrender.

Shortly upon his arrival, Officer Carrazco heard arguing from inside the residence. He heard J.C. tell Mr. Whiting to leave. Officers knocked on the door and met J.C., who reported that Mr. Whiting was trying to leave through the back door. Officer Carrazco walked to the side of the residence to see if he could see Mr. Whiting, but then returned to the front door because he heard J.C. say something about Mr. Whiting being inside.

While at the front door, Officer Carrazco saw Mr. Whiting walking up the stairs with J.C. behind him. It appeared to Officer Carrazco that the two were in a physical altercation. Officer Carrazco opened the door to intervene and saw them fall at the top of the stairs. Officer Carrazco saw Mr. Whiting holding what appeared to be a hunting rifle and ordered him to drop it. Officer Carrazco drew his handgun and ordered Mr. Whiting to drop the weapon. Mr. Whiting was in a seated position and raised the rifle as if he were going to shoot the officers or J.C. Officer Carrazco was scared and fired two rounds at Mr. Whiting to prevent him from shooting anyone. Mr. Whiting fell behind a wall and Officer Carrazco did not know if he struck Mr. Whiting. A moment later, Mr. Whiting emerged from behind the wall still holding the rifle in a raised position. Officer Carrazco fired an additional shot because he thought Mr. Whiting continued to present a threat to the officers or J.C. Officer Carrazco believed that he had no time to consider less lethal options to stop Mr. Whiting from shooting others. After Officer Carrazco fired a third time, Mr. Whiting dropped the gun and came out of the residence.

Criminalists assigned to the CIRT gathered evidence and processed the scene. Officer Carrazco turned over his firearm for examination and round accountability. Officer Carrazco's interview, along with an examination of the officers' firearms and the collection of evidence at the scene, led to the conclusion that Officer Carrazco fired three rounds from his handgun. One round struck Mr. Whiting in the arm, one bullet went into a wall, and the other bullet appeared to strike the metal railing of the stairs and fragmented into separate pieces. Additionally, a search of the residence revealed a long gun that was determined to be an air pellet gun. Contrary to the information provided by J.C., there was no handgun recovered on scene.



Photo of the pellet gun held by Mr. Whiting at the time of the shooting incident

The CIRT investigators reviewed the footage of each of the responding officers' body-worn cameras (BWC). In summary, the recordings reveal that three uniformed officers responded to the residence. Officer Carrazco went to the front door and knocked, while the other two took positions around the perimeter. J.C. came to the front door and said, "He's going around out back." Officer Carrazco walked to the side of the yard while another officer stayed at the front stoop with J.C. J.C. stated, "He's right there," pointed to the interior of the residence, and walked back inside the front door. Officer Carrazco came to the front door and began to follow J.C. inside. From that point, Officer Carrazco's BWC provides the best vantage point of the incident, as he was the first officer inside the residence. A large dog stood and barked at the front door entrance. A male was a few steps above J.C. as she ascended the stairs. The male and J.C. appeared to be entangled with each other and fell to the floor at the top of the stairs. One of the officers can be heard saying, "whoa, whoa, whoa" as the struggle ensued. At 00:22:37, the male lifted a long gun and pointed it at the officers who stood at the bottom of the stairs. Officer Carrazco drew his handgun and, at 00:22:38, fired two rounds in succession at the male. The male's torso fell behind a wall at the top of the stairs and only his legs could be seen from the perspective of Officer Carrazco's BWC. The legs appeared to move and, at 00:22:42, Officer Carrazco fired an additional round at the male.

Officers commanded the male to put the gun down and instructed him to get away from the gun. The male stood up, raised his hands and came down the stairs. As the male got to the front door, officers assisted him to the ground and placed him into custody. One of the officers applied a tourniquet to his arm while they awaited an ambulance.



Still image from Officer Carrazco's BWC reflecting the moment Mr. Whiting pointed a long gun at the officers

Mr. Whiting received medical treatment and was released from the hospital. He refused to give an interview with law enforcement regarding the incident. The factual circumstances surrounding this incident resulted in criminal charges filed against Mr. Whiting for menacing, attempted second degree assault, child abuse that resulted in a felony conviction for conspiracy to commit menacing.

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, 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, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force 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. 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. The law applicable to the officers' use of physical 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. (2023).

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).

Applying the legal standard in this case, the first question is whether physical force was appropriate under the statute. Officer Carrasco was assisting in the apprehension of Mr. Whiting, who was alleged to have been an unwanted party causing a disturbance inside J.C.'s residence. Further, Mr. Whiting had active protection orders prohibiting his contact with J.C. and warrants for his arrest. He was also known to have caused similar disturbances at the same residence where he was armed with a handgun and barricaded himself inside.

Officer Carrasco observed Mr. Whiting in a physical altercation with J.C. going up the stairs. He described what he believed to be a rifle held by Mr. Whiting and pointed at the officers. Based upon his observations, Officer Carrasco expressed his fear that Mr. Whiting

was going to shoot at either the officers or J.C. Officer Carrazco specifically stated that Mr. Whiting's behavior was the "scariest thing" he experienced. These observations caused Officer Carrazco to fire two times at Mr. Whiting. He stopped shooting when Mr. Whiting fell down but fired at him an additional time because he continued to perceive Mr. Whiting's actions with the gun as threatening.

Under the circumstances, Officer Carrazco's statements and observations support a reasonable belief that Mr. Whiting was armed with a deadly weapon and presented a threat to J.C. and the officers. Prior to arriving at the residence, the officers had the following information about Mr. Whiting:

- He was causing a disturbance by breaking property and fighting with J.C. inside J.C.'s residence
- He was in violation of orders of protection prohibiting him from contacting J.C.
- He had arrest warrants for domestic violence.
- He was reported to be intoxicated and would likely fight with the officers.
- He had a history of police contacts at the residence and had refused commands to surrender to officers.
- A young child remained inside the residence.

The officers arrived at the residence dressed in their standard department issued uniforms and insignia. Any reasonable person would have recognized the police presence. Within seconds of the officers' arrival, Mr. Whiting physically engaged J.C., causing them both to fall to the floor. Seconds later, Mr. Whiting sat up and drew a long gun, pointing it at the officers. Mr. Whiting's conduct toward J.C. and subsequent display of the gun, pointing it at the officers, gave the perception that he intended to use deadly force upon them. The fact that the weapon ultimately turned out to be a pellet gun does not alter this conclusion. Police officers, as any other citizen, are entitled to defend themselves and others from what they "reasonably believe" to be the use or imminent use of unlawful physical force. Certainly, Mr. Whiting's actions with the pellet gun support Officer Carrazco's reasonable belief that Mr. Whiting was armed and ready to fire a deadly weapon.

It would be unreasonable to expect the law enforcement officers here to attempt to apprehend Mr. Whiting by nonviolent means. The evidence suggests that Mr. Whiting saw the officers at the front door as he quickly moved away and appeared to be dragging J.C. up the stairwell. An aggressive dog barked at the officers at the front door. Mr. Whiting's display of what appeared to be a deadly weapon elevated the apparent risk to everyone in the area. Accordingly, the use of physical force by the officers here was justified and appropriate, not only to affect Mr. Whiting's arrest, but also to prevent the imminent threat of injury to the officers as well as to J.C. and her young child.

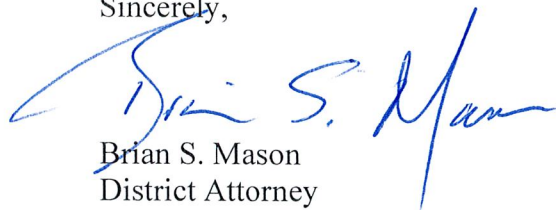
The second question is whether the degree of force was consistent with the minimization of injury to others. Again, when Mr. Whiting pulled what reasonably appeared to be a deadly weapon and pointed it at Officer Carrazco, he escalated the situation, causing the officers to act quickly. Given the urgent nature of the situation, the officers could not afford to wait to use physical force until J.C. was out of the area. Unfortunately, this use of force resulted in bodily injury not only to Mr. Whiting, but also J.C., who was in close proximity to the gunshots. However, due to the nature of the conduct involved, the bodily injury caused to J.C. appears to have been the collateral result of her proximity to Mr. Whiting at the time officers used an appropriate degree of force upon him. This injury, while unfortunate, was minimal and therefore, was the result of a degree of force consistent with the minimization of injury.

The investigation demonstrates compliance with the remaining provisions of the law as written. The officers who apprehended Mr. Whiting rendered medical aid to him and he was transported to the hospital. Further, his 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 of the reasonableness in the use of force. That is, whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Whiting posed an immediate threat to the safety of the officers or others, and that the officers used a degree of force that the officers reasonably believed to be necessary for the purpose of defending themselves or others. The facts of this investigation support the finding that any reasonable officer would have responded in the same manner as Officer Carrazco. Additionally, given the circumstances, the degree of force used by Officer Carrazco was the only reasonable alternative. I, therefore, find Officer Carrazco's actions to be justified.

Given the totality of the circumstances and evidence, the prosecution cannot prove that Officer Carrazco was not justified in using reasonable force under §18-1-707, C.R.S. (2023). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Carrazco and no charges will be filed.

Sincerely,

A handwritten signature in blue 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