



OFFICE OF THE DISTRICT ATTORNEY
JOHN KELLNER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

November 9, 2021

Chief of Police Vanessa Wilson
Aurora Police Department
15001 East Alameda Parkway
Aurora, Colorado 80012

RE: Officer-Involved Shooting at 15296 East Hampden Avenue on July 12, 2021

Dear Chief Wilson,

On July 12th, 2021, the 18th Judicial District Critical Incident Response Team (CIRT) responded to investigate an officer-involved shooting in the city of Aurora, state of Colorado.

At 12:06 a.m. that morning, the Aurora Police Department (APD) received a call from a young woman who reported that her ex-boyfriend, Jeremiah Dean, had stolen her cell phone and then tried to cause a car accident. Three responding APD officers met the victim and her friend at a 7-11 convenience store located at 15296 East Hampden Avenue.

While speaking with the officers, Mr. Dean called the victim's friend and agreed to come to the 7-11 and possibly return the stolen phone. The police officers moved their patrol cars to an adjacent parking lot so that they would not be seen by Mr. Dean. They intended to arrest him for a domestic violence-related theft and violating a protection order prohibiting Mr. Dean from having contact with the victim.

Mr. Dean and an unknown passenger arrived at the 7-11 and – without getting out of the car – began speaking to the victim. While they were talking, the officers began walking towards Mr. Dean's car. Mr. Dean became aware of the approaching officers and abruptly reversed his car out of the parking space. As he reversed, he turned the car hard to one side and very nearly struck Officer Settles, who was afoot.

Officer Settles jumped out of the way of Mr. Dean's car and drew his duty weapon. Officer Settles fired one round at Mr. Dean as the car briefly came to a stop next to the officer. The car then accelerated forward and sped out of the parking lot. Officer Settles was the only officer to fire a weapon.

Mr. Dean and his vehicle were not immediately found, but he turned himself into the Arapahoe County Detention Center several days later. He had a wound from a bullet-graze located just under his chin.

I reviewed all of the evidence provided by the 18th Judicial District's Critical Incident Response Team to determine whether there was any illegal use of force by Officer Settles.

SUMMARY

Applying the law to the facts of this incident, as described below, I conclude that Officer Settles was legally justified in attempting to use lethal force against Mr. Dean. The officer's use of force was reasonable, necessary, and appropriate in order for Officer Settles to defend himself and his fellow officers from the imminent threat posed by Mr. Dean on July 12th, 2021.

STATUTORY FRAMEWORK

C.R.S. § 16-2.5-301 governs investigations into police officer-involved shootings. This statute provides, in relevant part: "Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district." C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by the 18th Judicial District Critical Incident Response Team (CIRT). The lead investigator was Agent Joe Ryan Hartley of the 18th Judicial District Attorney's Office. Other investigators participated from the District Attorney's Office as well as numerous police agencies and sheriff's offices throughout the jurisdiction.

C.R.S. § 20-1-114 provides, in relevant part: "The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request." C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18th Judicial District, and includes the basis of the decision not to charge the involved officer with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I reviewed all materials provided by the lead investigator and members of the CIRT, including body-worn camera video, dispatch notes, radio traffic, interviews of the involved officers, all

reports regarding interviews with witnesses, and photographs of the scene. Additionally, on the morning of this officer-involved shooting, I responded to the scene of the incident to observe and provide advice to the investigation.

SUMMARY OF THE FACTS

On July 12th, 2021, at 12:06 a.m., the Aurora Police Department's Dispatch Center received a 911 call from [REDACTED]. Ms. [REDACTED] reported that her ex-boyfriend, Jeremiah Dean, had stolen her cell phone and attempted to cause a car accident. ([REDACTED] called Dispatch from a phone belonging to her friend, [REDACTED]).

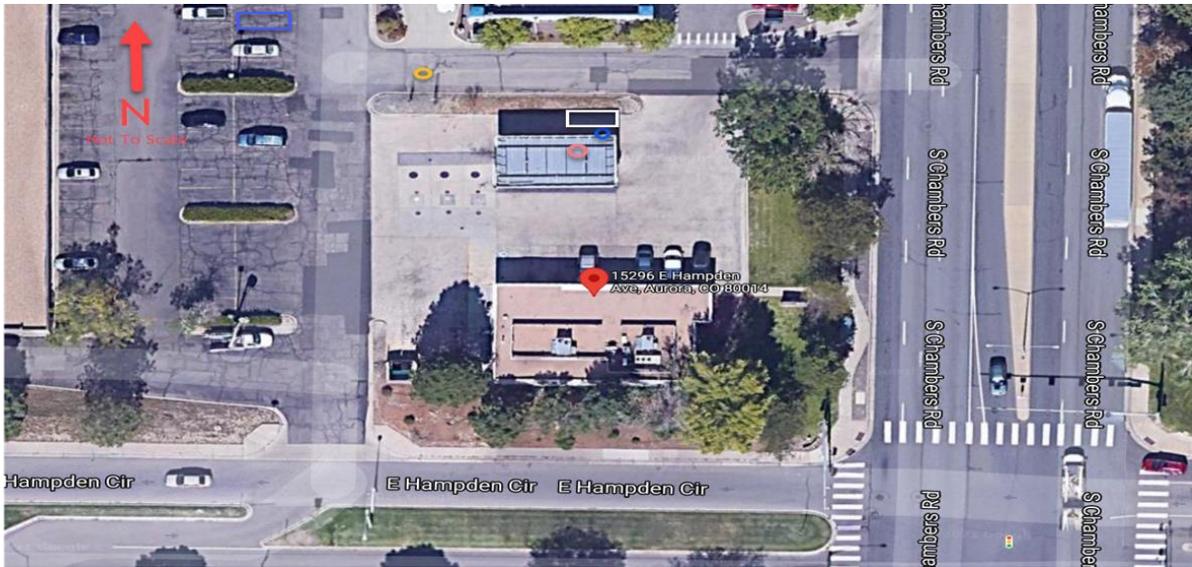
Officer Tien Nguyen was the first officer to respond to the call. He located Ms. [REDACTED], who was a passenger in a gray Kia Soul driven by Ms. [REDACTED], and asked the two women to move their vehicle to the 7-11 store at 15296 East Hampden Avenue to discuss the incident. Once in the parking lot of the 7-11 store, Ms. [REDACTED] and Ms. [REDACTED] were met by Officer Nguyen, as well as Officers Esme Benhadou and Bryce Settles. All officers were dressed in their police uniforms and driving marked patrol cars.

[REDACTED] told the officers that, earlier in the evening, she and Ms. [REDACTED] met up with Mr. Dean and another male she did not know at a park somewhere off of Quincy Avenue in Aurora. While hanging out at the park, Mr. Dean stole her phone from her purse. Mr. Dean and his friend left the park at that time. Mr. Dean was driving a white sedan with tinted windows.

After Mr. Dean left the park, Ms. [REDACTED] said that she spoke to Mr. Dean from Ms. [REDACTED]'s phone and told him she wanted her phone back. Mr. Dean briefly returned and, when Ms. [REDACTED] wouldn't tell him the passcode to her phone, he refused to return it. He also drove at Ms. [REDACTED]'s car with his own as if to hit it. After a little while, Ms. [REDACTED] called the police.

While speaking with the officers, Ms. [REDACTED] and Ms. [REDACTED] received a call from Mr. Dean. It was decided by Officer Settles to attempt to see if Ms. [REDACTED] could talk Mr. Dean into coming to the 7-11 to return the phone. Mr. Dean eventually agreed to come to the 7-11 and meet with Ms. [REDACTED]. Officers Settles, Benhadou, and Nguyen all moved their patrol cars from the well-lit 7-11 parking lot to a darker parking lot nearby, in an attempt to not be seen by Mr. Dean when he arrived.

At 12:28 a.m., a white sedan with tinted windows parked in front of the 7-11. Ms. [REDACTED] exited the Ms. [REDACTED]'s Kia Soul and began speaking with the occupants of the car. Mr. Dean was the driver and there was also a front-seat passenger who has never been identified. At this time, Officers Settles and Nguyen began walking into the 7-11 parking lot and approaching Mr. Dean's car from the side and rear. Officer Benhadou was a little behind the other officers.



Google Earth image of the 7-11 store. The yellow, red and blue circles approximately indicate where Officers Benhadou, Nguyen and Officer Settles (respectively) were on foot when the white sedan nearly struck Settles.

As Officers Settles and Nguyen approached under flood lights above the gas pumps, the white sedan suddenly backed out of the parking space. Reversing fast, the white sedan made an abrupt westbound turn toward Officer Settles. He had to leap out of the way to avoid being struck by the reversing car. The car braked to a stop for just a moment with the open front passenger window of the vehicle next to Officer Settles. Settles drew his weapon, shouted “Out,” and fired his weapon toward Mr. Dean, the driver of the vehicle.



Still image from Officer Settle's body-worn camera.

After Officer Settles fired a single round, the white sedan then raced forward and out of the 7-11 parking lot. At 12:30 a.m., it was aired over the police radio that the driver of the car attempted to run over an officer.

Officers Nguyen, Settles, and Benhadou went back to their patrol cars and attempted to locate the white sedan. Other officers responded and assisted in the search but were unable to locate the car that evening.

Hospitals in the area were notified. It was later determined that the white sedan was a 2000 white Ford Taurus, Colorado license plate [REDACTED], belonging to Jeremiah Dean.

Later that same day, at 1:33 p.m., Aurora Police Department Investigator Molly Harris was informed that Attorney Stephen Burstein, who stated he was representing Mr. Dean, called to say that Mr. Dean needed medical treatment and wanted to turn himself in.

Two hours later, officers located Mr. Dean's white sedan at 3182 South Norfolk Street. The vehicle was eventually searched and it contained an amount of blood, which indicated that someone in the car was possibly injured. There appeared to be a bullet exit hole on the driver's door, just above the handle.



On July 14, 2021, Mr. Dean turned himself at the Arapahoe County Sheriff's Office. Mr. Dean did not wish to be interviewed at that time. Investigators later documented that he had a wound that appeared to be a graze from a bullet just under his chin. Mr. Dean has been charged with Theft, Reckless Driving and Reckless Endangerment for this incident.

APPLICABLE LAW

The ethical obligation of prosecutors and the policy of the District Attorney's Office is to only prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime, and 2) there is a reasonable likelihood of conviction at trial. This is a higher standard than the probable cause standard used by police officers making initial charging and arrest decisions. Criminal liability is established when there is a good faith basis to believe the individual committed the crime, and there is sufficient evidence to prove all of the elements of the crime beyond a reasonable doubt, to include the criminal conduct and the criminal mental state. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt.

The District Attorney's review of an officer-involved shooting event is guided by the statutes pertaining to the affirmative defenses applicable to use of force by peace officers, specifically C.R.S. § 18-1-707:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When 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.

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force; (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person; (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision 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.

ANALYSIS AND CONCLUSION

The question presented to the District Attorney's Office for the 18th Judicial District is whether Officer Settles reasonably believed his attempted use of deadly physical force was necessary to defend himself and/or others from what he believed to be the imminent use of deadly physical force by Mr. Dean.

In an interview shortly after the incident, Ms. [REDACTED] described how she was speaking to Mr. Dean and his unidentified friend in the 7-11 parking lot. She was standing outside Mr. Dean's car, speaking to him through the open driver's window and demanding her phone. She stated that "the cops were like sneaking up" and then Mr. Dean's friend said, "The cops are coming, bro," and that was when they backed up toward the officers. Ms. [REDACTED] told investigators that she wasn't sure if it was the police or the occupants in the car who fired the shot.

Ms. [REDACTED] was also interviewed shortly after the incident. She stated that, while in the 7-11 parking and as the officers approached, Mr. Dean's unidentified friend asked Ms. [REDACTED] why she kept "looking around." She heard the friend do something that made a noise like he was charging a handgun. The friend then told Mr. Dean to "back up, back up, back up" because the "cops" were coming. Ms. [REDACTED] told investigators that the car backed-up "fast" and almost ran

over one officer. She then heard a gunshot and believed that Mr. Dean or his friend had fired at the uniformed police officers. Ms. ██████ said, "I thought the officer got hit," referring to Officer Settles almost being struck by Mr. Dean's car.

Officer Benhadou was interviewed two days later, on July 14th. At the moment of the shooting she was approaching the 7-11 parking lot from where she and the other officers had concealed their marked patrol cars. Officer Benhadou was a little behind Officers Nguyen and Settles. She told investigators that, as Officers Nguyen and Settles approached the white sedan, the driver must have seen them coming. The driver backed up, "speeding in a crazy way," toward them. She initially thought the car struck Officer Settles and believed it tried to hit him due to the speed with which it reversed and how it reversed "weird" in the direction of Officer Settles.

Officer Nguyen was also interviewed on July 14th. He told investigators that he saw Ms. ██████ and Ms. ██████ talking to the occupants of the white sedan. He and Officer Settles began approaching on foot, with Officer Settles ahead of him, when the car started to back out "in a very aggressive manner" and the driver "stepped on the gas pretty good." As the vehicle backed toward them, Officer Nguyen said that he saw that Officer Settles had drawn his weapon and he drew his, too. Officer Nguyen said that he was not in fear for his life at this point because he was not in the reversing car's path but Officer Settles was in the path. As Officer Settles moved out of the way, Officer Nguyen heard a "boom," and stated it was a gunshot. Initially, he was not sure who fired – the occupants of the car or Officer Settles – and he thought the car had hit Settles. Officer Nguyen described how he believed the driver intentionally backed at Officer Settles, as there was no reason for the driver to back all the distance towards Settles when it could have just backed up a few feet and then driven out of the 7-11 parking lot.

Officer Settles was also interviewed on July 14th. He explained how he believed he had probable cause to arrest Mr. Dean for stealing his girlfriend's cell phone. When Mr. Dean agreed to come to the 7-11 parking lot, he and the other officers concealed their cars and themselves in a nearby parking lot. When the white sedan arrived, and the occupants were speaking with Ms. ██████ and Ms. ██████, he and Officer Nguyen approached the car on foot. Officer Settles believed that Mr. Dean saw them coming. He intended to let the car leave, as the charges weren't that serious. But the driver of the sedan reversed directly toward him, and not towards the driveway where it could have exited the parking lot. Officer Settles said he moved laterally to get out of the way but the driver "accelerated toward me and cut harder than he originally was." He moved out of the way while drawing his gun and avoided being struck by just a "few inches." He fired one round into the vehicle as it came to a brief stop before it accelerated out of the parking lot. His intent in firing was to neutralize the threat to his life, as the driver of the car tried to kill him. He was also in fear for the safety of the other officers on foot in the parking lot. Because he didn't want to hit the passenger, he only fired the one round at the driver. The car drove forward and he believed the threat to himself and the other officers had dissipated.

The body-worn cameras of the officers were consistent with the statements made by all those interviewed.

Officer Settles' action in firing at Mr. Dean, the driver of the white sedan, was reasonable and justified based on Mr. Dean's apparent sudden attempt to strike Officer Settles with his reversing

car. Mr. Dean, by his actions, appeared willing to seriously injure or kill an officer, presumed in order to escape arrest. Mr. Dean's own actions were the proximate cause for the immediate and attempted use of deadly force by the officer. Officer Settles fired at Mr. Dean believing his life was in danger due to the threat posed by Mr. Dean.

I find that Officer Settles reasonably believed that Mr. Dean posed an imminent threat of deadly physical force to himself and Officers Nguyen and Benhadou. Officer Settles did not have the time or the ability to use lesser force or even warn Mr. Dean of his intent to respond with deadly force. Officer Settles was justified in attempting to use deadly physical force against Mr. Dean to defend himself from the unlawful, imminent and actual use of deadly physical force against him. Officer Settles did not commit any crime and criminal charges will not be filed against him.

Clinton McKinzie
Chief Deputy District Attorney
18th Judicial District