



OFFICE OF THE DISTRICT ATTORNEY

JOHN KELLNER, DISTRICT ATTORNEY

18TH JUDICIAL DISTRICT

SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

December 28, 2021

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

Re: Officer-involved shooting on July 20, 2021 at 2392 South Xanadu Way

Dear Chief Wilson,

On July 20, 2021, the 18th Judicial District's Critical Incident Response Team responded to investigate an officer-involved shooting at 2392 South Xanadu Way in Aurora, Colorado. The incident began at 12:30 pm that same day when a woman called 911 to report that the father of her children was "going crazy" and had been shooting a gun inside their townhouse. Within minutes, officers from the Aurora Police Department arrived at the scene. They found the suspect, Issa Carson, on the sidewalk in front of the townhouse. Mr. Carson was armed with a handgun which he pointed at the police officers. The officers drew their own weapons and repeatedly called for Mr. Carson to put his gun down. Mr. Carson fired one round, which struck a neighbor's front door. Two officers returned fire with their handguns. The officers fired a total of eight rounds, one of which struck Mr. Carson. The officers were then able to take Mr. Carson into custody. They immediately began rendering emergency aid to him.

Mr. Carson survived. He was subsequently charged with several crimes.

I reviewed all of the evidence provided by the 18th Judicial District's Critical Incident Response Team (CIRT) in order to determine whether there was any illegal use of force by the two officers who fired their weapons.

SUMMARY

Applying the law to the facts of this incident, as described below, I conclude that the officers were legally justified in attempting to use lethal force against Mr. Carson. The officers' use of force was reasonable, necessary, and appropriate in order for them to defend themselves and others from the threat posed by Mr. Carson.

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 officer was Investigator Shannon Brukbacher with the Parker Police Department. 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 officers with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

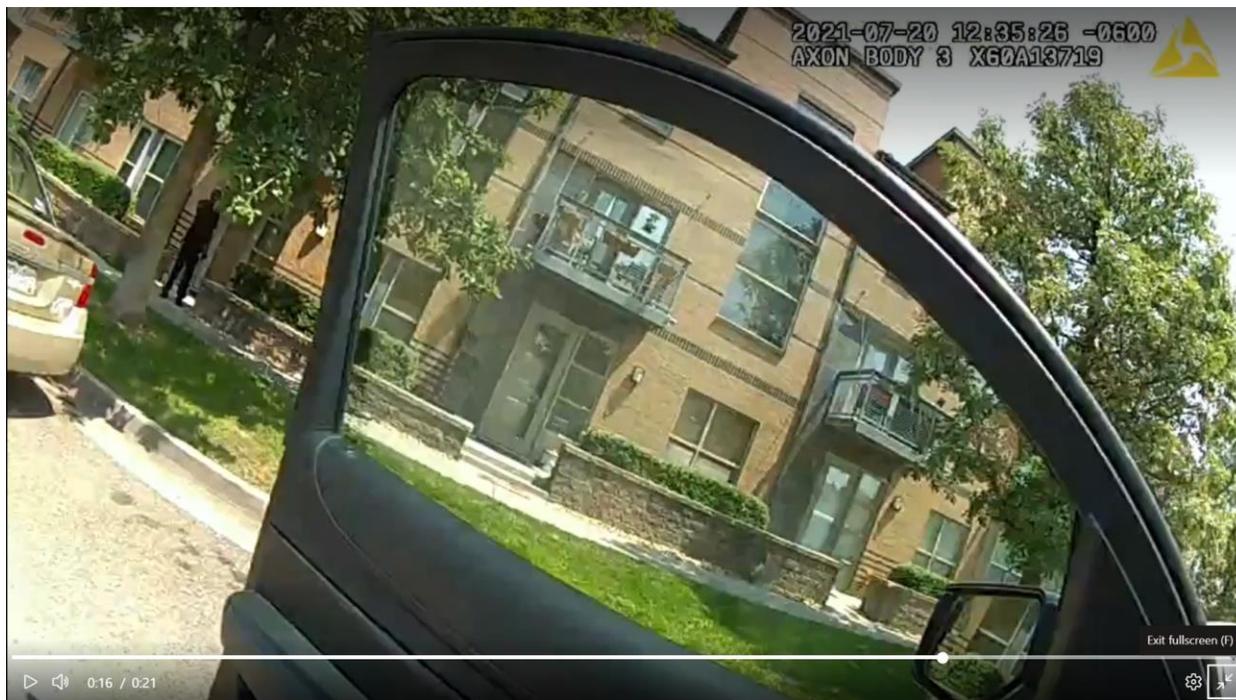
I reviewed all materials provided by the lead investigators and members of the CIRT, including body-worn camera video, surveillance video, dispatch notes, radio traffic, interviews of the involved officers, all reports regarding interviews with witnesses, and photographs of the scene. Additionally, I personally responded to the scene of the incident to observe and provide advice to the investigation.

SUMMARY OF THE FACTS

On July 20, 2021, at approximately 12:30 p.m., ██████████ called 911. She told police dispatchers that Issa Carson, her roommate and the father of her children, was in their townhouse at 2392 South Xanadu Way (in Aurora, Colorado). She said that he was armed with a handgun. ██████████ further stated that Mr. Carson had fired the gun a couple of times. She didn’t know what he was shooting at. She stated that she believed Mr. Carson was having a mental breakdown. She took one child from the house and fled while continuing to talk to police dispatchers.

According to the radio traffic and video from body-worn cameras, uniformed APD Officers Steve Garcia and Stephen Holweger arrived at roughly the same time within five minutes of ██████████ first calling for help. Both officers were in full uniform and were driving separate marked

police SUVs. They saw Mr. Carson on the sidewalk in front of the row of townhouses. As Officer Garcia got out of his patrol car, he saw Mr. Carson point a handgun at him. Officer Holweger could see Mr. Carson pointing the gun at them even before he stopped his patrol car.



Still photograph from Officer Garcia's body-worn camera showing Mr. Carson pointing a gun at him.

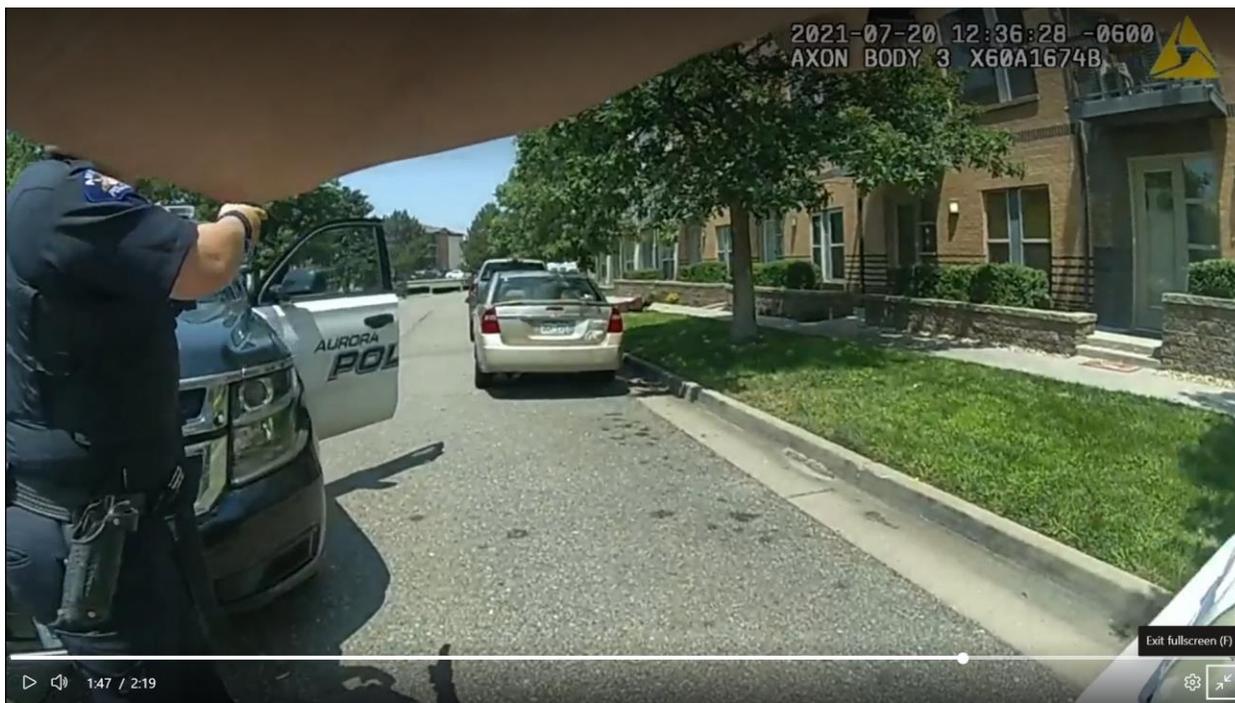
Officer Garcia called out on the radio that “He’s pointing a gun at me,” as he drew his own handgun and sprinted for cover behind Officer Holweger’s car, which was parked further away from where Mr. Carson stood. Mr. Carson continued to point the gun at Officer Garcia, and then pointed it again at Officer Holweger. Shouting for Mr. Carson to “Put down the gun, sir,” the officers moved closer to Mr. Carson while being careful to keep parked cars between themselves and Mr. Carson (as protection or “cover” if he fired at them). They continued to shout for Mr. Carson to put down his gun.

Mr. Carson stepped toward the doorway of the neighboring townhouse, alternatively pointing his gun at the door and then at the officers in the street.



Still photograph showing Mr. Carson pointing a handgun at the officers.

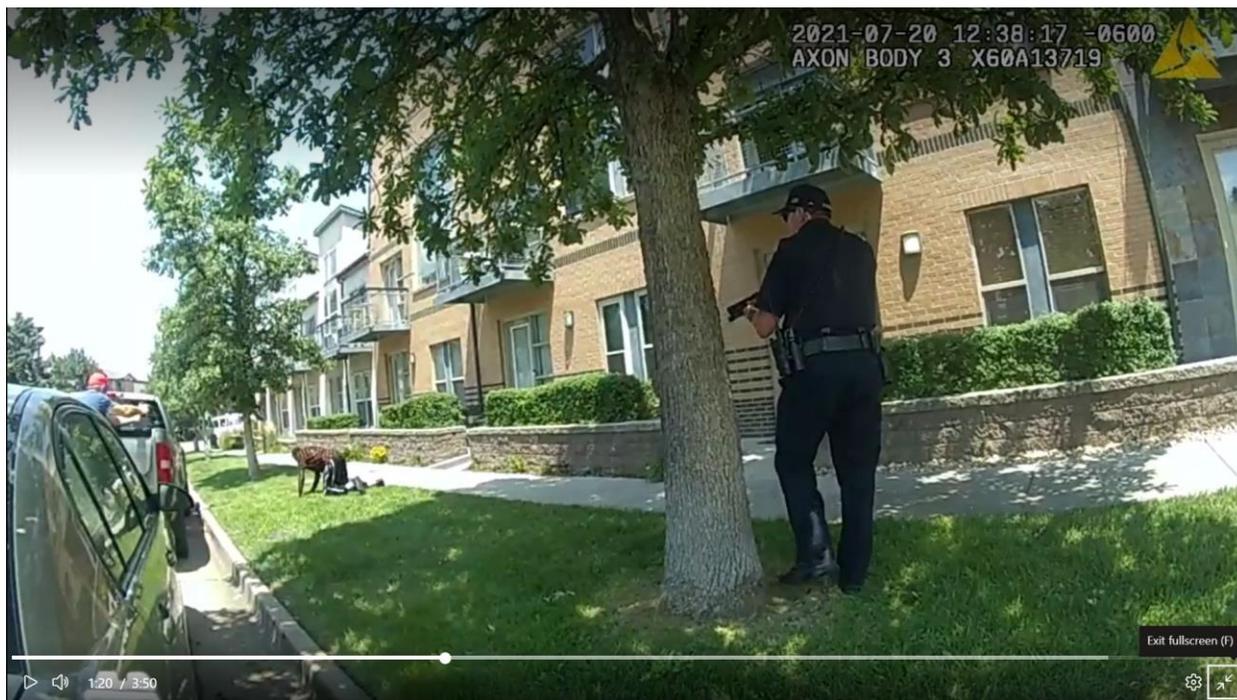
The officers continued to shout with increasing alarm, “No No No!” and “Put the gun down!” Mr. Carson then fired his gun. At this point, Officer Garcia fired his handgun at Mr. Carson twice, and Officer Holweger fired six times. Mr. Carson fell to the ground on the grass in front of the townhouse.



Still photograph showing Mr. Carson falling to the ground after he was struck by the officers' gunfire.

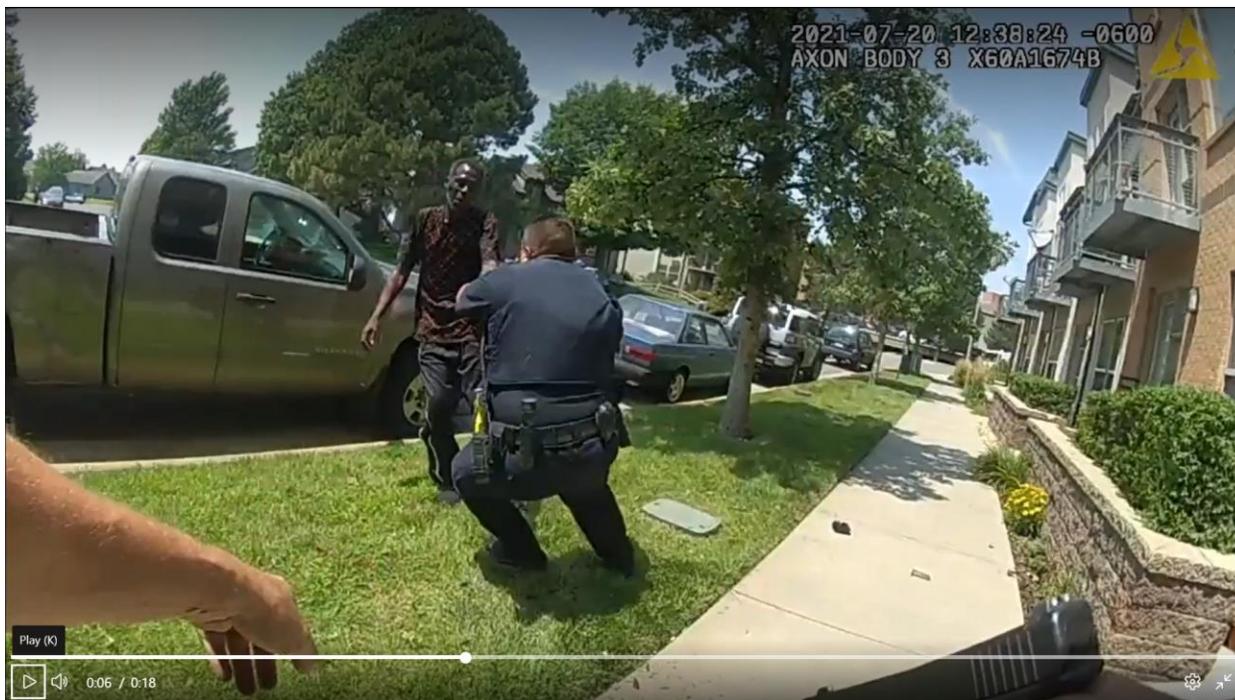
The officers approached, using a tree's trunk and parked cars for cover. They yelled for Mr. Carson to "Stay down!" and "Don't move!" Mr. Carson began struggling as if he was trying to get back to his feet. The officers called to each other, asking if they could see Mr. Carson's gun. Neither could.

APD Officer Frank Fania arrived in plainclothes and joined the two other officers holding Mr. Carson at gunpoint. They were still unable to see if Mr. Carson held a gun. Officer Fania called to Mr. Carson, "Show me your hands. Put your hands out, buddy." The three officers made a plan to approach and apprehend Mr. Carson as he continued to roll on the grass. Before they could execute it, though, Mr. Carson – ignoring repeated commands to stay on the ground – climbed to his feet.



Still photograph from Officer Garcia's body-worn camera. Mr. Carson can be seen climbing back to his feet despite orders to stay on the ground.

The officers, now seeing that he no longer held the gun, swiftly approached. Officer Garcia grabbed Mr. Carson and pulled him to the ground. Mr. Carson's lower left ankle twisted in the grass and appeared to break.



Still photograph from Officer Holweger's body-worn camera. This shows Officer Garcia preparing to pull Mr. Carson to the ground. Mr. Carson's handgun and magazine are visible on the sidewalk.

At this point other uniformed officers arrived. As the officers handcuffed him, it was evident that Mr. Carson was bleeding from what appeared to be a gunshot wound to his midsection. Officer Garcia stood guard over Mr. Carson's gun where it lay on the sidewalk. Other officers arrived as Mr. Carson shouted incoherently. He was ultimately handcuffed. The officers called for medical assistance and began to render aid.

It was later determined that Mr. Carson had been struck in his torso by a single gunshot. He also suffered a broken leg when he was taken to the ground. Upon his release from the hospital, Mr. Carson was charged with Attempted Murder – Extreme Indifference, Possession of a Weapon by a Previous Offender, Menacing, and Illegal Discharge of a Weapon into a Dwelling.

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 arrest decisions. Criminal liability for charging 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 Officers Garcia and Holweger reasonably believed their use of deadly physical force was necessary to defend themselves or others from what they believed to be the imminent use of deadly physical force by Mr. Carson.

Officer Holweger described what had happened during the incident in an interview with CIRT investigators. His statements are consistent with the video recorded from his body-worn camera.

Officer Holweger stated that he and Officer Garcia responded to a call for service where it was reported that a man was firing a gun inside a townhouse. The two officers were in full uniform and driving separate marked police SUVs. As they arrived at the address, Officer Holweger saw a man – later identified as Mr. Carson – holding a handgun while standing in front of a neighboring townhouse. As Officer Holweger approached in his police SUV, Mr. Carson raised the gun and pointed it at him. Officer Holweger drew his own gun as he drove a few houses past Mr. Carson and parked in the street. Mr. Carson was still pointing the gun at him. Holweger saw Mr. Carson also point the gun at Officer Garcia, who parked closer to Mr. Carson. Holweger got out of his car with his own gun drawn while yelling for Mr. Carson to “Drop the gun!” and shouting for Officer Garcia to take cover. Officer Holweger took cover behind a nearby parked car and Officer Garcia ran to join him.

Officer Holweger stated that he felt threatened and was scared for himself and Officer Garcia. He heard Mr. Carson fire the gun and didn’t know which of them he was firing at, or if he was firing at someone else. Officer Holweger believed that Mr. Carson was going to shoot them. He recalled firing his gun some six times at Mr. Carson. He heard Officer Garcia’s gun also fire twice near him. He saw Mr. Carson drop to the ground. Officer Holweger and Officer Garcia moved closer to try and apprehend Mr. Carson and render aid. Officer Holweger recalled reloading his gun with a new magazine as he took cover behind a tree closer to Mr. Carson but he did not fire again. Mr. Carson got back to his feet despite repeated commands to stay on the ground. Officer Garcia was able to pull Mr. Carson back onto the ground. Other officers arrived and took Mr. Carson into custody.

Officer Garcia was also interviewed by CIRT investigators. His statements were consistent with the video from his body-worn camera. Like Officer Holweger, Officer Garcia was in full police uniform and driving a marked police SUV.

Officer Garcia stated that he was notified of a possible domestic violence incident with shots fired. Upon receiving the call over his police radio, Officer Garcia left the traffic stop he was conducting and drove to the scene. He was aware that other officers were in the area, including a plain clothes officer. Officer Garcia was the first to arrive. He saw a male on the sidewalk – later identified as Mr. Carson. Officer Garcia got out of his car to tell Mr. Carson that he should leave the area. Mr. Carson then pointed a handgun directly at him. Officer Garcia stated he was in fear for his life and thought, “This is going to hurt.” Officer Garcia ran around his car seeking cover, and then ran across the street to warn Officer Holweger and seek cover behind his Officer Holweger’s car. As he ran, he could see Mr. Carson continuing to point the gun at him. He also saw Mr. Carson move the gun to point it at Officer Holweger.

Officer Garcia stated that, after repeatedly shouting for Mr. Carson to “Drop the gun,” he and Officer Holweger cautiously approached. They tried to keep parked vehicles between themselves and Mr. Carson. Officer Garcia noticed there were people in one of the parked cars. As he was trying to warn these people, he heard a gunshot. Officer Garcia believed the suspect had fired. Both he and Officer Holweger fired at Mr. Carson. He observed Mr. Carson fall to the ground but could not see if Mr. Carson still held a gun.

Despite repeated commands from Officer Garcia, Officer Holweger, and a plainclothes officer who arrived at about this time, Mr. Carson got to his feet. Once Officer Garcia saw that Mr. Carson no longer had a gun in his hand, he moved forward and took Mr. Carson to the ground. At this point Officer Garcia noticed that Mr. Carson's gun was on the ground a few feet away. Officer Garcia stood over it while other officers arrived to handcuff Mr. Carson then render medical assistance.

Officer Garcia described feeling panicked during the incident. He said he feared for his life during the incident, and that he was afraid he "wasn't going to make it home."

Mr. Carson was also interviewed by CIRT investigators while he was in the hospital following the shooting. At times he made no sense and spoke in an unknown language. Many of his responses were unintelligible to the investigators. At other times Mr. Carson seemed lucid, and managed to relate to the investigators that he didn't recall the incident.

██████████, Mr. Carson's roommate and the mother of his children, reported to police and CIRT investigators that Mr. Carson had been acting strange for days and would sometimes speak in an unknown language. She believed he was suffering from some kind of mental breakdown. She had seen him holding his handgun on the morning of the shooting and she had argued with him about it. She took their daughter and fled the house when Mr. Carson began firing the gun in an upstairs room. She then called police. Investigators later found bullet holes in a wall, a mirror, a ceiling and in a Bible located next to Mr. Carson's bed.

The next-door neighbor, ██████████, told investigators that she could hear someone crying in the top-floor bathroom in the townhouse next door. She and her roommate listened to the crying and indecipherable speech for twenty to twenty-five minutes before she banged on the wall, hoping the noise would stop. A little while later ██████████ heard a single "pop" which she thought may have been something falling over in her medicine cabinet. (It was later determined that Mr. Carson had fired into her wall). After that, ██████████ went downstairs then heard the gunfire outside.

██████████ had a Ring camera mounted outside her front door. The video showed Mr. Carson coming to her door not long after she had banged on the wall. Mr. Carson tried to open ██████████'s door by turning the handle and then attempted to kick it open. Mr. Carson was speaking "gibberish" in a high-pitched voice. A bullet hole was later found in ██████████'s door. It is believed Mr. Carson turned and fired at her door after pointing his gun at the police officers, but this is not captured by the Ring camera. (The Ring camera only captured thirty-second intervals).

It was subsequently learned that eight days earlier, on July 12, 2021, Mr. Carson was contacted by the Arapahoe County Sheriff's Office after witnesses reported that he was walking in traffic near Parker Road and Mexico Avenue. When contacted, Mr. Carson told the deputies that they were going to have to shoot him. There was a struggle and Mr. Carson falsely claimed that he had one deputy's gun. After being taken into custody for a mental health hold, mental health professionals evaluated Mr. Carson and deemed him not to be a threat to himself or others. Mr. Carson was ultimately given a ride home and released on a summons.

Officer Garcia's and Officer Holweger's actions in firing their handguns at Mr. Carson were reasonable and justified based on Mr. Carson repeatedly pointing a gun at them, ignoring their commands to drop the gun, and ultimately firing a round into the door of a townhouse. Mr. Carson, by his actions, appeared willing to seriously injure or kill the officers or others in the vicinity. Mr. Carson's actions were the proximate cause for the immediate and attempted use of deadly force by the officers. The officers fired at Mr. Carson to defend themselves and others.

I find that Officer Garcia and Officer Holweger reasonably believed that Mr. Carson posed an imminent threat of deadly physical force to the officers. The officers did not have the time or the ability to use lesser force or even warn Mr. Carson of their intent to respond with deadly force. Officer Garcia and Officer Holweger were justified in attempting to use deadly physical force against Mr. Carson to defend themselves from the unlawful, imminent and attempted use of deadly physical force against them. Officer Garcia and Officer Holweger did not commit any crime and criminal charges will not be filed against them.

Clinton McKinzie

Chief Deputy District Attorney

18th Judicial District