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May 12, 2017

Chief John Collins
Englewood Police Department
3615 S. Elati St.
Englewood, Colorado 80110

Re: Officer involved shooting of Michael Kocher – CRT case number 17-1

Dear Chief Collins:

On March 3, 2017, the 18th Judicial District Critical Response Team (“CRT”) was called out on an officer-involved shooting in Englewood, Arapahoe County, Colorado. Michael Kocher was killed during the shooting.

EXECUTIVE SUMMARY

Based on the law and the facts of this incident, I conclude that Master Patrol Officer Ryan Kaspar was justified in using deadly force to defend himself and others.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

My review of the officer-involved shooting included Arapahoe County Sheriff (ACSO) Investigator Roger Landeis’s summary, reports of officers/deputies and district attorney investigators involved, written witness statements, Michael Kocher’s social media posts, drone video, and 911 tapes. Additionally, I was personally present at the scene, which I viewed prior to any evidence being moved. I also attended CRT briefings the afternoon/evening of March 3rd at the Englewood Police Department.

SUMMARY OF THE FACTS

Initial Information Obtained by Police

At approximately 2:13 p.m., March 3, 2017, the Englewood Police officers were notified by [redacted] that Michael Kocher was threatening to kill her friends, and that police needed to respond immediately. At the time of the contact [redacted] was crying hysterically and contacted Englewood officers Christian Contos, Kevin Hartman, and Sergeant Kelly Martin, all of whom met [redacted] at the Breakfast on Broadway, 2901 S. Broadway in Englewood.

[redacted] reported she and Kocher had a relationship in the past and Kocher wanted to have a romantic relationship with her. She turned him down telling him she didn't want to have that type of relationship with him. Kocher was into drugs and robberies and she wanted out of that lifestyle. Kocher learned that she had been having a romantic relationship with two other males who were a part of the group she and Kocher hung out with. Kocher texted her saying he was "coming over" and was "going in" and she had to "meet him there" or he was going to kill her friends. From [redacted], Officers Contos and Kevin Hartmann learned that she had seen Kocher with a handgun as recently as the previous week and he was on drugs.

While officers were speaking to [redacted] she received a text message containing a picture of the street sign of Bannock and Bates with the words "timeline, timeline, timeline, I'm going to go in if you don't show up, you need to be here." Kocher gave her a six minute time limit. Police also learned that Kocher had nationwide felony (dangerous drugs) and misdemeanor (FTA Assault) warrants for his arrest.

As police were responding to 2895 S. Bannock St. where [redacted]'s friends were, Commander Vance Fender saw Kocher sitting on the south side of W. Bates Ave., directly across the street from the Bannock St. address. It appeared that Kocher saw another officer in the area and he ran across the street and kicked in the door at the rear of 2895 S. Bannock St. Officer Dan Sheley engaged in a foot pursuit of Kocher as he was running towards 2895 S. Bannock and Officer Sheley saw Kocher run down the stairs into the house. Officer Sheley and Officer Sam Ayres gave verbal commands for Kocher to come out of the house, and Kocher replied that he was not coming out and that "it will not end well." [redacted] had told police Kocher had told her that he intended to kill people inside the house to make her feel badly.

Events During Negotiations

At that point officers took positions of cover behind a fence to the rear of the house. Police had [redacted] text [redacted] and [redacted], residents inside the house, in an attempt to determine their location within the house. [redacted] then received a telephone call from Kocher using [redacted]'s phone. Police observed someone's hands inside the house and ordered that person out. [redacted] ran from the house to the officers.

As this was happening other officers observed a backpack where Kocher had been sitting across the street from the house. They looked in the backpack and found a partially empty box of .357 magnum handgun cartridges.

As officers were negotiating with Kocher for his surrender, house resident [redacted] fled from the house. [redacted] told officers she had been awakened by a gun pressed to her head by Kocher. Kocher told her to leave the house. She had not previously been acquainted with Kocher.

Additional facts police learned during negotiations:

- [redacted] had seen Kocher with a revolver and he had threatened to kill people in the past;
- Kocher had made statements that he would rather kill himself than return to prison;
- [redacted] too, had been awakened by Kocher pointing a revolver at his face and yelling at him;
- [redacted] and [redacted] stated Kocher was a dishonorably discharged veteran who had a history of mental instability and violence.

Police talked with [redacted] and learned other people were still inside the house. Police also learned that Kocher had stated numerous times that he intended to kill [redacted] a hostage he was holding.

Officers learned that Kocher was former military and was familiar with police tactics. Kocher made demands for alcohol and cocaine, and gave deadlines for them to be provided to him.

Police SWAT officers took various positions around the house, including a sniper position. Sniper officer Brian Martinez had a limited view into the house, and at one point saw Kocher go upstairs with [redacted]. Officers asked Kocher to speak to [redacted] who told them Kocher had a gun to his head and he felt certain he was going to die.

As police negotiators continued talking on the phone to Kocher he became increasingly agitated. At one point Kocher advised the officers that he could see them and he demanded that they move or he would shoot the hostage. Some of the officers moved but others were unable to do so, so Kocher stated he would kill himself or the hostage. Kocher told officers they had 90 seconds to move or he would start shooting.

Shortly thereafter, SWAT officer Ryan Kaspar saw Kocher, who was 6'7", standing below the steps on the lower level of the house.¹ Officer Kaspar and others were shown a photograph of Kocher so they would be able to distinguish Kocher from [redacted]. To Kocher's left was [redacted] who is much shorter. Kaspar saw [redacted] abruptly move to his left. At the same time Kaspar saw Kocher's right upper arm moving upwards, and at that instant Kaspar fired a single shot from his AR-15 striking Kocher in the head, killing him.

Based on the consistent witness statements and other evidence in this case, had Michael Kocher surrendered or been captured alive prior to being fatally shot, he would be facing charge including First Degree Burglary (F3), multiple counts of Kidnapping (F2), Felony Menacing (F5), and False Imprisonment (M3).

¹ The steps are immediately inside the rear door of the house where Kocher initially ran. They lead to a garden level basement. As Kocher and Swilley stood on the floor of the basement looking out the rear door Officer Kaspar could see their upper bodies.

FOLLOW UP

The below-listed facts were not known to the officers at the time of the shooting.

Subsequent to the shooting on March 3, 2017, police learned of Kocher's thoughts about dying. On social media he posted, among other things, the following:

- "When they come for me I'll be sitting at my desk with a gun in my hand and a bullet proof vest singing my my my how the time does fly when you know you're gonna die at the end of the night." (posted March 3 at 6:48 a.m.)
- "In the last 18 months I have lost everything, and everyone, that has ever mattered to me. My own fault, but no less devastating. I keep making decisions that lead me toward a singular, explosive, path. I have nothing left to live for. Nothing left to lose. Nothing left to hope for. Nothing left. Nothing to prove." (posted February 25 at 2:42 p.m.)
- "I am pretty sure that my lifelong subconscious death wish has taken over my conscious brain. I have been making the most interesting decisions lately." (posted February 23 at 8:38 p.m.)

When police debriefed _____ after the incident, he told police that while Kocher was holding _____, Kocher had asked _____ to call Kocher's mother to tell her goodbye. Additionally _____ in his written statement told police "[H]e seemed content on the fact that he wasn't going to get through this and didn't want to kill me but would be ending his life today."

Englewood police learned that the night before Kocher took hostages in Englewood he had robbed a liquor store in Denver. In video surveillance of that robbery Kocher was wearing the same clothes he wore when taking the hostages in Englewood, and had used the same handgun in the robbery he used in the Englewood incident. A bottle of Svedka strawberry lemonade vodka he took in the robbery was the same as was recovered from his backpack at the Englewood incident.

_____ told Englewood police that Kocher had told her that two weeks earlier he had robbed a liquor store. He was the suspect in a liquor store robbery in the city of Lone Tree at about that same timeframe.

The handgun used in the Denver liquor store robbery and in the Englewood incident on March 3rd had been reported stolen on August 24th in a vehicle trespass in Douglas County.

The autopsy report for Kocher states "[T]oxicology revealed elevated levels of alcohol in the blood (158 mg/dL) and vitreous fluid (238 mg/dL) and cocaine/cocaine metabolites in the blood and urine."

APPLICABLE LAW

Section 18-1-704(2) C.R.S. states:

Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has 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 18-1-707 C.R.S. states:

(2) A peace officer is justified in using deadly physical force upon another person...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:

(1) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon:

Deadly physical force “means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” Section 18-9-901(3)(d) C.R.S.

ANALYSIS AND CONCLUSION

Here, Englewood police officers had information from multiple sources that Michael Kocher had threatened to kill several people and then himself. First he contacted, [redacted]², telling her to meet him at a residence in Englewood. He told her that if she did not respond within his specified time he was going to kill her friends who live there. [redacted] met with police near the residence and informed them of Kocher’s threats and his timeline. As police were arriving, they observed Kocher run into the residence.

Police then set up at the residence and ordered Kocher out. Kocher replied that he was not coming out and that “it will not end well.” [redacted] told police Kocher had told her that he intended to kill people inside the house to make her feel badly. She also told police she had recently seen Kocher with a gun. As this was happening other officers observed a backpack where Kocher had been sitting across the street from the house. They looked in the backpack and found a partially empty box of .357 magnum handgun cartridges.

² A person with whom Kocher wanted a romantic relationship, but she did not want that type of relationship.

As officers were negotiating with Kocher for his surrender, house residents _____ and _____ fled from the house. They told officers they had been awakened by Kocher pointing a gun at their heads.

For almost two hours police negotiated with Kocher in an attempt to have him release his remaining hostage, _____ and to surrender. Several times Kocher told police he would do neither. He made several demands, including that police provide alcohol to him, that they provide cocaine to him, and that they move from their positions at the house. During those negotiations Kocher gave time limits for police to comply with his demands, and as they failed to do so he became increasingly agitated, emphasizing that he would shoot officers and or kill _____ and then himself. Officers asked Kocher to speak on the telephone to _____, who told them Kocher had a gun to his head and he felt certain he was going to die.

Kocher told officers they had 90 seconds to move or he would start shooting. Shortly thereafter, SWAT officer Ryan Kaspar saw Kocher standing below the steps on the lower level of the house. To Kocher's left was _____. Kaspar saw _____ abruptly move to his left. At the same time Kaspar saw Kocher's right upper arm moving upwards, and at that instant Kaspar fired a single shot from his AR-15 striking Kocher in the head, killing him.

Based on the law and the facts summarized above, including what Officer Kaspar knew at the time he fired a single shot at Kocher, I find that Officer Kaspar reasonably believed that officers' lives and _____'s life were in imminent danger. Moreover, I find, based on the law and the facts, that Officer Ryan Kaspar was justified in using deadly force to defend himself and others.

Respectfully,



Larry Bailey
Deputy District Attorney