



OFFICE OF THE DISTRICT ATTORNEY

JOHN KELLNER, DISTRICT ATTORNEY

18TH JUDICIAL DISTRICT

SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

November 8, 2021

Chief of Police Vanessa Wilson

Aurora Police Department

15001 East Alameda Parkway

Aurora, Colorado 80012

RE: Use of less-than-lethal force on June 28th, 2021, by Aurora Police Department officers

Dear Chief Wilson,

On June 30th, 2021, the Arapahoe County Sheriff's Office (ACSO) responded to an agency-assist request made by the Aurora Police Department. The request was for ACSO to investigate the use of force by Aurora Police Department (APD) officers during the arrest of a domestic violence suspect. The incident occurred on June 28th, 2021, at InTown Suites, 14090 E. Evans Avenue, in the City of Aurora.

The use of force involved in the case was the discharge of a Taser and two less-lethal shotgun rounds (often referred to as "beanbag rounds") at a suspect who was resisting arrest. Ordinarily, the deployment of such less-lethal devices does not result in serious bodily injury or death. In this case, however, the suspect suffered serious bodily injury when one of the two less-lethal beanbag rounds pierced his skin and entered his abdominal cavity.

I reviewed all of the evidence provided by Arapahoe County Sheriff's Office Investigator Mark Bojczuk to determine whether there was any illegal use of force. This evidence included video from several officers' body-worn cameras, surveillance video from the hotel, photographs, interviews with the suspect and the officers, and numerous written reports.

SUMMARY

Applying the law to the facts of this incident, as described below, I conclude that Sergeant Brandon Samuels and Officer Steven Gerdjikian were legally justified in using force against the suspect, Shawn Meredith. Their use of force was reasonable, necessary and appropriate in order

for the officers to defend themselves and their fellow officers from the imminent threat posed by Mr. Meredith. The officers involved were seeking to use the minimal amount of force necessary to protect themselves and Mr. Meredith.

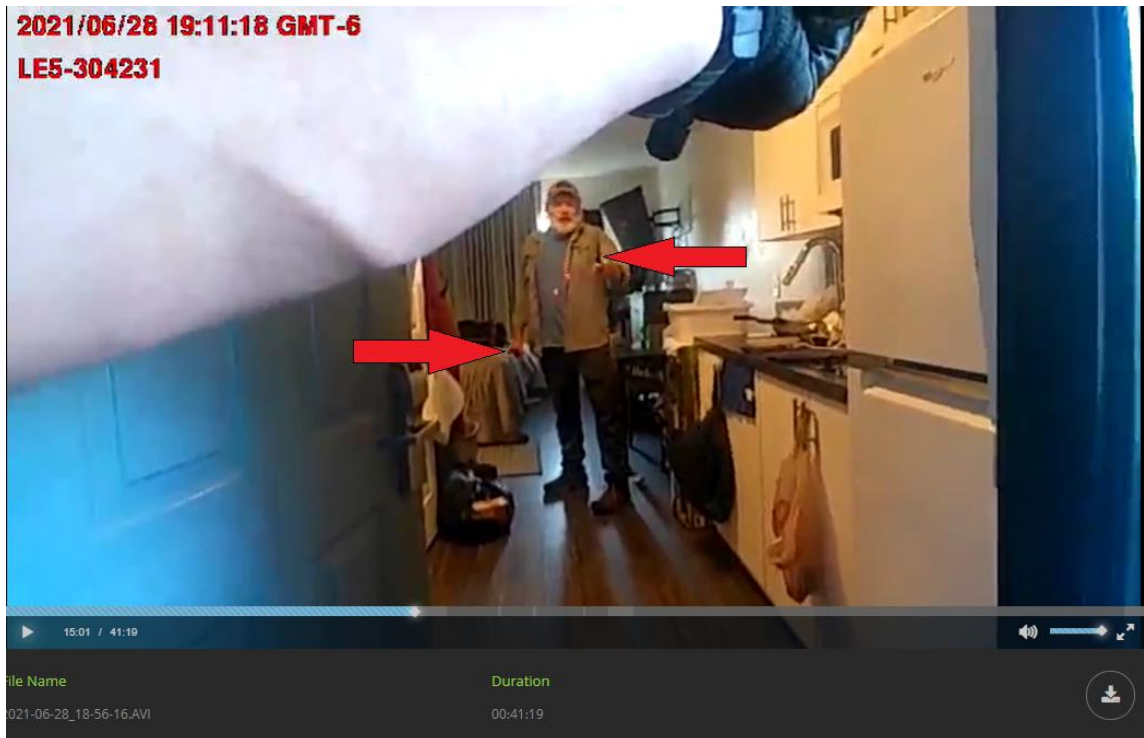
FACTS

On June 28, 2021, at 6:14 p.m., ██████████ called the Aurora Police Department (APD) and reported that she had been assaulted by her boyfriend, Shawn Meredith, at the InTown Suites at 14090 E. Evans Ave., in room 241, which is in Aurora, Colorado. Officers Matthew Crewse, Steven Evans and Steven Gerdjikian responded and spoke with Ms. ██████████ in the lobby. She had scratches on her forehead and cheeks as well as scrapes on her back. She told the uniformed officers that Mr. Meredith was armed with what she called “bang sticks” and might fight with them.

The officers determined that there was probable cause to arrest Mr. Meredith for Third Degree Assault based on the visible injuries to Ms. ██████████ and her statement about what had occurred. (State law requires an arrest or the seeking of an arrest warrant in such circumstances.) Knocking on Room 241 at 6:57 p.m., the officers called out, “Aurora Police. Come to the door.” Mr. Meredith’s response was muffled by the closed door, but it was clear he was refusing to open the door. When told that he was under arrest for domestic violence and assault, Mr. Meredith clearly responded, “I will not go to jail.” The officers considered leaving and seeking an arrest warrant, but they wanted to ensure Ms. ██████████ could safely retrieve her belongings from the room.

For roughly 15 minutes the officers attempted to persuade Mr. Meredith to open the door. He refused all entreaties and direct orders. Sergeant Brandon Samuels arrived and took the lead in trying to get Mr. Meredith to surrender. The officers tried to open the door with Ms. ██████████’s card-key, but it did not work. Ms. ██████████ went to the front desk to get another key. At 7:10 p.m., Ms. ██████████ returned with the hotel manager. The manager had a master key and attempted to unlock the door. When the door didn’t open, the manager abruptly put his shoulder to the door and forced it open. The officers moved the manager quickly out of the way (they had not requested him to force the door – only to unlock it).

Mr. Meredith stood in the middle of the hotel room, facing the officers in the doorway. Sergeant Samuels positioned himself to one side of the doorway, Officer Evans on the other, and Officer Gerkikian stood between them. Sergeant Samuels ordered Mr. Meredith to take his hands out of his pockets. When Mr. Meredith complied, he held a collapsible baton in each hand. He extended the batons as if preparing to fight the officers.



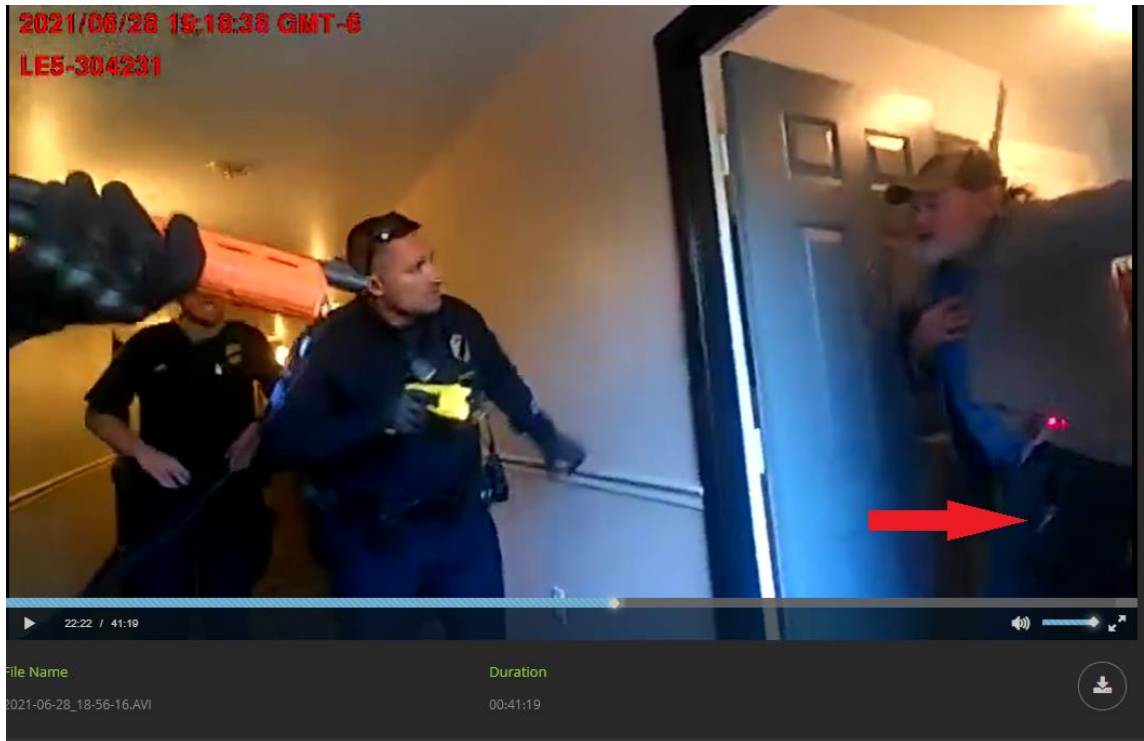
The officers called for Mr. Meredith to drop the batons at least 12 times. Mr. Meredith finally put down the batons but still refused to come out of the room. The officers believed it would be dangerous for all if they had to enter the room. For another five minutes the officers attempted to persuade Mr. Meredith to come out. Mr. Meredith continued to refuse, arguing with the officers and threatening to further “arm” himself while looking around the room. Officer Gerkjikian was handed a less-lethal shotgun (a regular shotgun, but colored bright orange to denote that it should never be loaded with lethal ammunition) by Officer Crewse, who had retrieved the shotgun from Sergeant Samuel’s patrol car.

Officers Evans and Sergeant Samuels continued to order Mr. Meredith to come to the door. Mr. Meredith told the officers to “Back up, because this will not turn nice.” The officers did not enter the room and remained in the hallway. Finally, after several more minutes, Mr. Meredith slowly approached the door but refused to step out. He placed his left hand on top of the refrigerator by the door. This concerned the officers, as they could not see if there was a possible weapon there. The officers could, however, see that Mr. Meredith had a knife clipped to his left front pants pocket.

At this point, Officer Gerdjikian loaded a beanbag round into the less-lethal shotgun’s chamber and pointed it at Mr. Meredith. Officer Gerdjikian told him, “Don’t do it, if you make a movement for that I’m going to hit you with a less-lethal bean bag.” Mr. Meredith replied, “I don’t give a shit about those,” indicating the shotgun.

Mr. Meredith continued to refuse to exit the room. He said that he was considering his “options.” After more arguing with the officers, and continually moving his right hand near the knife

despite orders to the contrary, Mr. Meredith took a quick step toward Sergeant Samuels. The sergeant, who was holding a Taser, fired it at Mr. Meredith's torso. The electric charge from the probes had no apparent effect on Mr. Meredith.



Both Sergeant Samuels and Officer Gerdjikian ordered Mr. Meredith to get on the ground, but he did not comply. Officer Gerjikian fired a beanbag round from the less-lethal shotgun at Mr. Meredith's stomach. This, too, appeared to have no effect. Despite additional repeated commands for Mr. Meredith to get on the ground and not move his hand toward the knife, Mr. Meredith remained standing and moved his right hand as if he was going to reach for the knife.

Officer Gerdjikian fired a second beanbag round from the shotgun. Mr. Meredith remained standing. Officer Evans took the knife from Mr. Meredith's pocket as he and Sergeant Samuels pulled him from the doorway and onto the floor in the hallway. Mr. Meredith resisted being handcuffed by pulling his hands under his chest. (A second knife was discovered in his shirt pocket). Sergeant Samuels deployed his Taser again directly to Mr. Meredith's back. Mr. Meredith continued to argue, protesting, "Take it, take it, I said several times take it. I didn't reach for shit, I said take it, I put my hand out." During the struggle, Mr. Meredith began having trouble speaking and stopped moving. The officers began life-saving procedures and radioed for medical assistance.

Ultimately, Mr. Meredith was transported by ambulance to the hospital for his medical issues. At the hospital it was discovered that one of the beanbag rounds had entered his abdominal cavity, causing serious bodily injury. Surgery was required to remove it. Mr. Meredith was charged with Assault in the Third Degree for the injuries he caused to Ms. [REDACTED].

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 Gerdjikian's use of force – by firing the less-lethal shotgun twice at Mr. Meredith's torso – was a reasonable use of force, consistent with the minimization of injury to others

It is clear that the officers were not intending to use deadly force. Rather than drawing and firing their handguns, Sergeant Samuels chose instead to deploy a Taser and Officer Gerdjikian deployed the less-lethal shotgun. Neither device is designed – or was used – to cause death or serious bodily injury.

The less-lethal shotgun used in this incident was a 12-gauge shotgun. The shotgun's barrel and stock are colored bright orange to ensure it is only to be loaded with less-lethal rounds.

APD uses ammunition from Combined Tactical Systems (CTS.) Investigator Bojczuk reviewed the product specifications sheet that identified the ammunition as 12 gauge "Super-Shock Bean Bags." The specification sheet for these rounds shows an effective range of up to 25 meters or 75 feet and does not list a minimum distance. It shows a projectile weight of 40 grams with a velocity of 270-290 feet per second. There is a section at the bottom of this spec sheet that notes: "The Model 2581 Super-Sock® is in its deployed state immediately upon exiting the barrel. It does not require a minimum range to 'unfold' or 'stabilize.'"

In this incident, however, the spent shell casings from the two rounds fired at Mr. Meredith were not from CTS. Investigator Bojczuk identified the manufacturer of the spent rounds as Safariland Defense Technology 12 gauge Drag Stabilized rounds. A specifications sheet for this type of less-lethal ammunition lists a minimum safe distance of 20 feet or 6.1 meters and a maximum effective range of 75 feet or 22.9 meters. It lists a projectile weight of 40 grams and a velocity of 270 feet per second.

Officer Gerdjikian was only a few feet away when he fired the less-lethal shotgun two times at Mr. Meredith. He could not get any further away as he was confined by the hallway's wall at his back. (There was a door to a stairway behind Officer Gerdjikian, but it was occupied by an intoxicated man who was attempting to interfere in the arrest.)



(Photograph of the hallway and the less-lethal shotgun. Mr. Meredith's door is on the left.)

It is beyond the scope of this review to determine how the Safariland Defense Technology rounds came to be in a less-lethal shotgun that is normally used with Combined Tactical System rounds. The investigation did find that the less-lethal shotgun that was handed to Officer Gerdikian contained eight Safariland Defense Technology rounds and one Combined Tactical System round.

Investigator Bojczuk interviewed Officer Gerdjikian and learned that the officer attended a course in 2014 to qualify to use a less-lethal shotgun. Every year since then he re-qualified to maintain his certification. Officer Gerdjikian was uncertain about the brand or manufacturer of ammunition used in the less-lethal shotguns by APD. However, APD officers are trained that they can safely fire less-lethal rounds from “point-blank up to 25 meters or so.” Investigator Bojczuk reviewed the training materials that APD uses for certification with less-lethal shotguns. The training specified that the “optimal range” for bean bag rounds is between 15 and 60 feet, but notes that one slide states:

“CTS has NO minimum safe distance for all Impact rounds except the 40mm 4557 HV(20ft.)”

The training materials mentions two types of rounds – CTS and another type made by West Coast – but makes no mention of rounds manufactured by Safariland.

Gerdjikian further explained to Investigator Bojczuk that APD officers are not assigned a particular less-lethal shotgun but certified officers can check them out and every patrol supervisor carries one in their patrol car.

During this incident, Officer Gerdjikian stated that he had initially drawn his handgun when Mr. Meredith took out and extended the two collapsible batons. He requested via his radio that Officer Crewse retrieve the less-lethal shotgun from Sergeant Samuel's patrol car. Officer Gerdjikian said he holstered the handgun and accepted the shotgun from Officer Crewse – noting that it was orange and, in fact, a less-lethal shotgun.

Eventually, Mr. Meredith put down the batons but still would not cooperate. Officer Gerdjikian could see the clip of a knife in Mr. Meredith's pocket and thought Mr. Meredith seemed intoxicated. Officer Gerdjikian racked the slide of the less-lethal shotgun to load it with what he described as a "sock round." At one point he told Mr. Meredith that he would shoot him with the less-lethal shotgun, and Mr. Meredith replied that he knew that, and that they hurt, and said he used to be a "test-dummy" for those.

Officer Gerdjikian told Investigator Bojczuk that when Mr. Meredith finally came to the door, he kept moving his hands toward the knife in his pocket. Officer Gerdjikian stated that if Mr. Meredith attacked the officers, the officers did not have enough room to respond and prevent a stabbing. He fired the first round with the less-lethal shotgun when he saw Mr. Meredith's right hand "dive" toward his waist, where the knife was clipped. He aimed for Mr. Meredith's pelvic girdle. Officer Gerdjikian said he fired the second round after Mr. Meredith made a movement that he interpreted as trying to grab Sergeant Samuels – the nearest officer – and pull him into the hotel room. He feared this would put Sergeant Samuels in further danger. Officer Gerdjikian stated that his intention throughout this incident was to use the lowest level of force possible. He didn't learn until the next day that one of the rounds had penetrated Mr. Meredith's abdomen.

ACSO Investigator Bojczuk interviewed Mr. Meredith while he was still in the hospital. Mr. Meredith stated that he had been drinking that day and had consumed marijuana edibles. He denied intentionally harming Ms. [REDACTED] and denied intending to harm the officers. He stated that he had the batons in his pockets for use at his job as a truck driver. He only took them out to show the officers that they weren't guns, and they "accidentally" extended. He stated he also had two knives on his person, which he tried to give the officers.

Mr. Meredith stated that he was preoccupied with a phone call when the police came to the door of his hotel room. He asked them for more time to respond but they wouldn't give it to him. He estimated that he argued with the officers for between 30 minutes and an hour. Mr. Meredith said he didn't want to fight with the officers, but when he said he was mulling his "options," it meant he was deciding whether to "create an all-out war." He told Investigator Bojczuk that he was trying to do the right thing and "not get pummeled." He further explained that he was asking the officers to "please take" his knives. He knew that if he reached for them he would be Tased or shot with the less-lethal shotgun. He was aware it was a less-lethal shotgun. Mr. Meredith said he was Tased, shot twice with the less-lethal shotgun, and thrown across the hallway where he hit his head and passed out.

Investgator Bojczuk also interviewed Sergeant Samuels, Officer Evans and Officer Crewse. Their statements were consistent with each other and also consistent with the videos from their body-worn cameras. These three officers all felt that something was wrong with Mr. Meredith, even after he put down the batons. He talked about “arming himself” and kept looking around the room. The officers believed it would increase the danger to them and Mr. Meredith if they entered the small hotel room to arrest him.

The video from the cameras worn by the officers revealed that Mr. Meredith was given the following announcements and commands:

- Officers made 23 direct and specific requests/commands to open the door prior to the hotel manager forcing the door open.
- Officers made 14 direct and specific commands to drop the batons prior to Mr. Meredith complying.
- Officers made 31 direct and specific pleas and requests for Mr. Meredith to come out of the room.
- Officers made six commands to get on the ground after Sergeant Samuels fired his Taser.
- Officers made three commands to not reach for the knife prior to Officer Gerdjikian firing the less-lethal shotgun rounds.
- Sergeant Samuels gave two clear commands for Mr. Meredith to remove his hands from underneath him before he utilized a drive stun of the Taser.

The officers attempted to use nonviolent means for a significant period of time before they resorted to the use of physical force. Mr. Meredith, by his actions, compelled the officers to use physical force to arrest him. The officers reasonably believed that Mr. Meredith was a threat to them, as Mr. Meredith had taken a fighting stance with two metal batons, made comments about further “arming” himself, and clearly had a knife in his pocket that he repeatedly reached for. The officers responded with a degree of force consistent with the intent to minimize any potential injury to Mr. Meredith and themselves. Further, the officers ensured that Mr. Meredith received immediate medical attention when it became evident that he was injured.

Sergeant Samuels was justified in deploying his Taser. Officer Gerdjikian was justified in firing the less-lethal shotgun. Neither officer committed any crime. No charges will be filed against them.

Clinton McKinzie
Chief Deputy District Attorney
18th Judicial District