



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

TO: Sheriff David Walcher, Arapahoe County Sheriff's Office; Colonel Scott Hernandez, Colorado State Patrol.

FROM: Brian Sugioka, Chief Deputy District Attorney, 18th Judicial District Attorney's Office

DATE: July 5, 2017

RE: CRT case 2017-02, CSP case 3D-17-0203, ACSO case 17-8008:

Dear Sheriff Walcher and Colonel Hernandez,

Consistent with my duties as a member of the 18th Judicial District Critical Incident Team, I have completed my review of the Officer Involved Shooting that occurred on March 3, 2017 near mile marker 340 on I-70 in Elbert County. Investigators Beverly Wilson from the Parker Police Department and John Incampo from the 18th Judicial District Attorney's Office are the lead investigators. I have been asked to review the conduct of the peace officers¹ who discharged their weapons in that incident to determine if they acted in compliance with the law. For the reasons set forth below, it is my opinion that the officers acted in accordance with the laws governing use of physical force in self-defense or defense of another person or persons.

MATERIALS REVIEWED

I have reviewed video recorded interviews of Arapahoe County Sheriff's Office (ACSO) Deputies Norris, Lofland and Zimmerman, and of Colorado State Patrol (CSP) Troopers Boyle, Scherrer, and Sgt. Carr, and was present for some of those interviews. I have also reviewed reports, photographs, diagrams, 911 and dispatch recordings, and available videos from dash-mounted cameras in several vehicles.

Neither ACSO nor CSP utilized body-cameras at the time of this incident. Dash-camera footage from Scherrer and Carr's vehicles was available and I reviewed it. Boyle had a vehicle equipped with a dash-cam, but due to a technical fault it did not activate during the incident, as explained in greater detail below. None of the ACSO vehicles had dash-cameras.

FACTUAL SUMMARY

On March 3, 2017, at 11:13 p.m., law enforcement received a REDDI (Report Every Drunk Driver Immediately) report from two separate motorists, describing a vehicle driving very

¹ Three of the individuals involved were Colorado State Troopers, and two were Arapahoe County Sheriff's Deputies. For ease of reference, I refer to these individuals as "the officers" when discussing them collectively, and refer to them by their correct title when discussing them individually.

erratically between the Byers and Deer Trail exits on eastbound I-70 in unincorporated Arapahoe County. The vehicle was described as a black Ford Focus, with Colorado License Plate [REDACTED]. (This vehicle will be referred to throughout this letter as the "Focus"). The Focus was described as swerving, speeding, and almost striking other vehicles. ACSO Deputy Jacob Lofland and CSP Trooper Brady Scherrer responded to the REDDI report. The computer indicated that the license plate was registered to Jasmine Faith Delores Johnson. Shortly after the REDDI report, at 11:15 pm, as Lofland and Scherrer were responding, ACSO dispatchers received a call from a woman identifying herself as "Jasmine Johnson". Johnson told the dispatcher that she was driving around in her vehicle armed with a gun, a machete, and an AK-47, and that she was "on her way to kill cops". There were several subsequent phone conversations between Johnson and ACSO Deputy Dossett where she reiterated those statements. Johnson's speech was slow, slurred, and somewhat confused, and she sounded like she was intoxicated.

Deputy Lofland observed the Focus on the shoulder of eastbound I-70, near mile marker 340, located in Elbert County. He approached the vehicle from behind in his vehicle, with his lights activated. The Focus then attempted to cross the grass median towards the westbound lanes of I-70, but became immobilized with airbag deployment due to striking the raised side of a ditch while driving across the median. The Focus stopped near the center of the grassy median area, facing eastbound.

Deputy Lofland was informed of the REDDI report and the phone call from "Jasmine Johnson", so he waited for Troopers Boyle and Scherrer to arrive before attempting to approach the Focus. Scherrer and Boyle arrived several minutes later and Lofland updated them on the information he had learned from dispatch about the connection between the phone call and the REDDI report and the statements by Johnson about her intentions to kill police. At this point, Trooper Boyle's vehicle was behind the Focus and slightly to its left, while Lofland and Scherrer's vehicles were behind and to the right. In order to get a better view of the driver's side both Lofland and Boyle utilized Boyle's vehicle for cover, and thus had a clear view of the driver's side. Scherrer was offset to the right and did not have as clear a view.

The officers arrived at approximately 11:34 p.m. The officers repeatedly gave Johnson² commands to get out of the vehicle and show her hands. At approximately 11:41, Johnson cracked open the driver's side door and pointed a black object at the officers, and told them to "go away". Lofland believed it to be a gun, and announced this to the other officers. No shots were fired at that point. Lofland retrieved his department-issued AR-15 rifle and used Boyle's vehicle as cover. The AR-15 was equipped with an Aimpoint "red dot" sight, which does not magnify, but does provide a red aiming point on the sight.

At this point, and throughout the contact with Johnson, the Focus was illuminated with a spotlight from Boyle's vehicle. Spotlights from at least one other vehicle were also used, although due to the angle at which the other vehicle was parked it was not able to fully illuminate

² After the fact, the driver was affirmatively identified as Johnson. For convenience, she will be referred to as Johnson throughout this report, even though the officers at the time had not been able to confirm her identity through personal contact.

the driver's side area of the Focus. There was very little ambient light and it was quite dark except for the illumination caused by the spotlights.

The officers continued to give commands for Johnson to get out of the car and show her hands, but she did not comply. She continued to make comments such as "fuck you", and "I'm going to kill you". At approximately 11:43, Johnson rolled down her window or cracked her door again, and pointed a black object at the officers. Lofland believed the object to be a gun, and Boyle also described the object as a black semi-automatic handgun. One officer (believed to be Lofland), gave a command for her to drop the gun. Lofland then fired one round from the AR-15 at Johnson. Based on Scherrer's viewpoint, offset further to the right, he was unable to see the object in Johnson's hands. The following graphic depicts the location of Boyle, Lofland and Scherrer and their vehicles in relation to the suspect vehicle during the majority of the incident:



After the first shot was fired, ACSO Deputy Dossett managed to contact Johnson again by phone. Johnson indicated she had not been hit, but had an AK-47 on her lap. She was asked to put her hands out the window and get out of the car, but she refused.

In his recorded interview, Lofland described the object as a larger-framed, black, square handgun, similar to a Glock. Lofland indicated Johnson pointed the gun directly at him, and he could see it clearly through his weapon sight. Lofland indicated he feared for both his life and that of his fellow officers at the time he first saw the gun and when he fired. Lofland indicated he felt the same fear each time he fired his weapon during the incident.

The officers continued giving commands to the driver to show her hands and get out of the vehicle, telling her that they wanted to help her and did not want to hurt her. Johnson remained seated in the driver's seat and did not comply. At approximately 11:46 p.m., Johnson

rolled down her window and flipped off the officers with her middle finger extended. She then pointed a black object at the officers, which both Lofland and Boyle described as a gun. Lofland and Boyle then fired multiple rounds at Johnson. Scherrer still did not fire, as again he was not able to see a gun from his viewpoint.

In his interview, Boyle indicated he was aware from speaking to Lofland that Johnson had said she was armed with an AK-47 and intended to kill police officers. On each occasion when Johnson pointed the object out of the door or window, Boyle indicated he identified it as a black, semi-automatic handgun. He could see the barrel of the gun, and described it as being pointed straight at him. Boyle indicated that based on Johnson's statements and actions, he believed he and his fellow officers were in imminent danger of being killed. Boyle indicated these factors were present each time he made the decision to shoot.

At 11:51, Boyle and Lofland observed Johnson put her hand out the window. At this point, Lofland and Boyle each fired one round. Again, based on their location, Lofland and Boyle were the only two officers in a position to clearly see the driver's side door and window area. The available audio recording is not specific as to exactly what the officers saw at that moment, and their interviews do not discuss this discharge specifically. However, judging from the subsequent recorded conversation and the interviews of Boyle and Lofland, it appears Johnson again pointed the object out the window at the officers.

The officers continued to order Johnson to surrender. At 11:54, Johnson again pointed what appeared to be a gun out the window at the officers, and Boyle and Lofland again fired multiple rounds at the vehicle. All officers on scene continued to give Johnson commands, telling her they want to help her, and to get out of the car and show her hands. Johnson responded with "fuck you" and "leave me alone".

Following the fourth volley of shots, Johnson was observed moving around inside the vehicle and she continued to yell profanities and threats at the officers. The officers continued to give commands for her to drop the weapon and show her hands.

Johnson was contacted again via phone by Dossett shortly after the fourth volley of shots. Johnson said she had been shot in the arm. She indicated the police did not care about her because she was black. Dossett again tried to convince her to get out of the car and surrender, and she again refused. She made statements to the effect that the police should "come at her" and "come get her". There were additional calls to Johnson's phone but she did not answer.

ACSO Deputy Carroll and his assigned K9, Thor, had arrived at 11:52 p.m. Shortly after midnight, Carroll deployed the dog on a lead and repeatedly commanded the dog to bark in order to make Johnson aware that a dog was on-scene. Shortly thereafter, officers told Johnson via the loudspeaker that they were going to deploy the dog if she did not surrender. Johnson responded that if they sent the dog, she would kill it. The dog was not released.

CSP Sergeant Carr arrived on scene at approximately 11:59 p.m. He took up a position to the right rear of Scherrer's vehicle and deployed a shotgun loaded with slugs.

Deputy Norris arrived on-scene at approximately 12:05 a.m. Norris deployed his AR-15 rifle and took up a position behind the opened front door of Trooper Boyle's vehicle.

All of the officers continued to give commands to Johnson to surrender, show her hands, and get out of the vehicle. These commands were issued both by shouting and via the loudspeaker mounted on one of the CSP vehicles. Johnson did not comply with any of the commands. Occasionally she moved around inside the vehicle, and then popped the trunk lid open at approximately 12:05. This partially obscured the view inside the vehicle from the rear, where the officers were deployed.

At 12:13 a.m. on March 4, Johnson again pointed the object out the window. An officer (believed to be Lofland or Boyle), yelled "gun!" - this was immediately followed by multiple shots from Lofland, Boyle, Scherrer and Norris, and a single shot from Carr.

In his recorded interview, Trooper Scherrer stated that he observed Johnson holding an object at the time of the first two shots, but was not able to see what the object was so he did not shoot. At the time of the final round of shots, Scherrer had shifted his position to his left, such that he had a better angle and was now able to see the driver's side of the vehicle more clearly. Scherrer indicated that immediately prior to the final volley of shots he was able to "clearly identify" the object in Johnson's hand as a gun, specifically a black handgun. Due to his ability to see that object, and the fact it was pointed at him and other officers, he made the decision to fire his weapon. Scherrer indicated he was in fear for his life and the lives of his fellow officers at the time he decided to shoot. It should be noted that Scherrer only remembered three volleys of fire, when in fact the dash-camera and CAD notes reflect five. It is clear from his interview that he discharged his weapon during the fifth and final volley of shots.

In his recorded interview, CSP Sgt. Carr articulated that from his position near the right rear of Trooper Scherrer's vehicle he did not have a view of the driver's side of the vehicle and thus was not able to see when Johnson opened the door or window. He was aware that he could not fire into the vehicle without a clear target. Once a portion of the rear window was shot out, he was able to see inside the vehicle from the rear and was able to observe movement in the driver's seat. He articulated that his decision to shoot was based on the information communicated by others at the time of the 12:13 weapon discharge. He explained that he heard someone announce that Johnson had a gun, and could tell from the changed tone of voice that Johnson was again pointing a weapon. He fired a single shot from his shotgun at that time. His decision to shoot was based on his belief that he and his fellow officers were in imminent danger of being shot by Johnson.

In his recorded interview, ACSO Deputy Norris indicated that prior to his arrival he learned from radio communications that Johnson had pointed a gun at the officers on scene on at least three occasions, and there had already been at least three groups of shots fired. He was also aware of the nature of the communications between Johnson and dispatch, about her wanting to kill police and being armed with an AK-47. Norris took up a position to the rear of Trooper Boyle's vehicle, armed with his AR-15 rifle. Norris described that he shot (the final round of shots at 12:13 am) when Johnson rolled down her window again and pointed a gun at the officers. He described the object as a black semi-automatic handgun. He fired 8-9 shots from

his rifle towards what he believed to be the head and body of Johnson. From his angle his view was partially obscured by the rear drivers-side metal pillar of the vehicle, but he was still able to make out portions of Johnson's head and shoulders. Norris indicated he fired because he believed he and his fellow officers were in imminent danger of being shot and killed.

At approximately 12:45 a.m., Deputy Zimmerman deployed his less-lethal 40mm grenade launcher to shoot out the remainder of the rear window of the Focus utilizing foam baton rounds in order to give the officers a better view of the interior. Zimmerman then attempted to utilize the same weapon to break out the driver's side door window, but was unsuccessful due to the baton rounds deflecting off of the glass. Zimmerman then changed positions and utilized a shotgun loaded with less-lethal "beanbag" rounds to break out the windows and was successful. The only weapons Zimmerman discharged that night were the less-lethal 40mm grenade launcher and the less-lethal shotgun. In his interview, Zimmerman indicated he did not intend to hurt or kill Johnson when utilizing these weapons, and his goal was to break out the windows without injury to Johnson.

Zimmerman's use of the less-lethal grenade launcher and shotgun was the last weapon discharge during the incident. In total, there were five firearms discharges, at 11:43 a.m. (Lofland), 11:47 p.m., (Lofland and Boyle), 11:51 p.m. (Lofland and Boyle), 11:54 p.m. (Lofland and Boyle) and 12:13 a.m. (Lofland, Boyle, Scherrer, Carr, Norris), plus the less-lethal deployments by Zimmerman at approximately 12:45 a.m.

For approximately the next hour, officers continued to shout commands for Johnson to show her hands and get out of the car. Johnson did not comply. There were times she was non-responsive, and on other occasions she would curse at the officers. At approximately 1:50 a.m., an armored Humvee operated by the Elbert County Sheriff's Office SWAT Team approached the vehicle and officers were able to get a clear view of the front seats. They observed Johnson in the driver's seat, apparently sleeping, with her hands under her knees. There was an initial report that she had an AK-47 on her lap, but it was later clarified that this was a radio report repeating the information that had been earlier conveyed by Johnson, rather than an actual observation of a weapon. No weapon was observed in the vehicle by the SWAT Team in the Humvee.

Shortly thereafter, an Elbert County Sheriff's Deputy, being covered by individuals from ACSO and CSP, pulled Johnson from the vehicle. Johnson was combative and cursing, and had to be tased. She continued to be verbally abusive while awaiting ambulance transport, saying things such as "I'm gonna fucking kill all of you", "just fucking kill me", and "you don't give a fuck about black people". Johnson was uninjured. Several officers suffered minor injuries during her arrest.

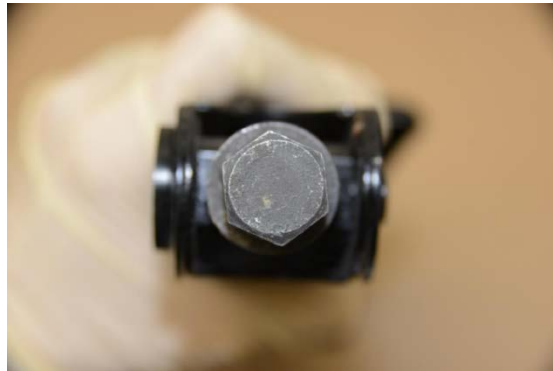
Johnson was transported to the hospital, and made statements that she had attempted to commit suicide by overdosing on Tramadol (a pain reliever with narcotic effects) Soma (a muscle relaxant) and alcohol. Johnson continued to be combative and physically resistive at the hospital, and made statements at the hospital that the police deserved to die and "all crackers should get gunned down."

Subsequent investigation revealed that Johnson had made statements to an ex-girlfriend and to her sister during the week prior that she had a gun, was suicidal and intended to get killed by the cops, and that she was “hitting every cop I see”. It was reported that Johnson suffered from chronic mental illness, specifically bipolar disorder, and had recently been under the care of a psychiatrist. Friends and family reported that in the days leading up to this incident Johnson abused drugs and alcohol and her behavior had become more erratic.

Police conducted a thorough search of the Ford Focus and the surrounding area. No firearms or other weapons were recovered from Johnson’s person, the area surrounding the Focus, or in the Focus itself. An examination of the law enforcement vehicles involved revealed no evidence that there was any gunfire issuing from the Focus. All indications are that Johnson did not in fact have a firearm in the car with her that evening.

The Focus had significant damage from multiple bullet strikes. The bullets traveled from the back to the front of the vehicle, and the entrance holes were clustered on the left(driver’s) side of the vehicle. The location of the bullet strikes and their direction of travel were consistent with expectations based on the location of the officers in relation to the suspect vehicle.

Several items of interest were recovered from the Focus, including an angular, black scissor jack, in a folded or “down” position, with a small black hex screw at one end. This was recovered from the front driver’s side foot well. The jack belonged to this vehicle, and normally would be stored in a compartment in the trunk under the trunk flooring. A black dustbuster-type vacuum cleaner was also located in the back seat. Pictures of each of these items are below:



The jack was processed for fingerprints and none were found. The absence of fingerprints is not dispositive of whether Johnson handled the jack. Any number of factors may have contributed to prints not being left on the jack at the outset, or prints becoming smudged or removed through routine handling prior to being examined. The jack was found to weigh approximately 4.5 pounds.

In addition to the jack and dustbuster, there was vomit in the vehicle, an empty liquor bottle, and an iPhone connected to a charger. The iPhone was password-protected and could not be accessed.

Based on an examination of the officers' weapons, the number of casings recovered from the scene, and the officers' accounts, it was determined that Lofland had fired approximately 13 rounds, all from his AR-15 rifle, Boyle had fired an estimated 20 rounds from his .40 caliber Smith and Wesson pistol, Scherrer had fired an estimated 11 rounds from his .40 caliber Smith and Wesson pistol, Norris had fired an estimated 10 rounds from his AR-15 rifle, and Carr had fired one round from his 12-gauge shotgun.

ANALYSIS

The primary statute at issue in this case is C.R.S § 18-1-704, concerning use of physical force in self-defense or defense of another. As relevant to this case, C.R.S. § 18-1-704(1) allows a person to use physical force against another to defend himself or a third party from what he reasonably believes to be the use or imminent use of unlawful physical force by the other, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

As applied to this case, the evidence is clear that Johnson was not in fact armed with a firearm that night. It is equally clear that the decision made by each of the officers to shoot was based upon their belief that Johnson was in fact armed with a firearm or firearms, and had pointed a firearm at the officers with the intent to injure or kill. Such a belief, if reasonable, would be a legal justification for them to fire their weapons at Johnson. Therefore, the central question in determining whether the officer's actions were legally justified is whether their belief that Johnson was pointing a gun at them, although ultimately determined to be incorrect, was a reasonable belief.

With respect to the physical evidence recovered from Johnson's vehicle, as can be seen from the photo, the jack is similar in appearance to a large, squared off semi-automatic pistol such as a Glock. The jack was found in an unusual place, on the floorboard of the driver's seat. The jack weighed only 4.5 pounds so could have been held by Johnson in a manner similar to a pistol. These facts support a conclusion that the jack was probably the item Johnson pointed out the window and door at the officers on multiple occasions that evening. The "dustbuster" found on the back seat is also black in color and has a generally rectangular shape, so it is possible that it may have been the object Johnson pointed out the window as well.

There is no dash-camera footage that captured the appearance of the object(s) when Johnson pointed it out of the car. Boyle's vehicle would have been in the best position to

capture that footage, but as noted earlier the dash-camera in his car did not activate so no footage was captured. The investigators assigned to this case spoke to a representative of L3 communications, the company who manufactured the cameras and is responsible for troubleshooting, who conducted research and determined that the camera failed to activate due to a technical fault that had occurred earlier that evening, and was not the result of operator error.

As applied to the facts of this case, the officers were aware of the following facts at the time they made each decision to shoot:

1. At the time the first shot was fired by Deputy Lofland at approximately 11:43 p.m., he was aware of the following:
 - a. Johnson had made statements to dispatch and ACSO Deputy Dossett that she was armed and intended to kill cops.
 - b. She attempted to evade police by driving her vehicle across the median of I-70.
 - c. When Dossett tried to convince Johnson to surrender on the phone she reiterated that she would not surrender and would kill the police.
 - d. Lofland, Scherrer, and Boyle all gave Johnson repeated commands to show her hands and get out of the car, and she did not comply in any way.
 - e. At 11:34 p.m., Johnson cracked her door and pointed a black object at the officers, which both Boyle and Lofland believed to be a gun. (Scherrer was not able to clearly see the object based on where he was located). The officers gave additional commands to drop the gun and surrender but Johnson refused.
 - f. Johnson pointed the black object at Lofland and Boyle again at 11:43 p.m., which resulted in the decision to shoot.
2. At the time the second group of shots was fired at 11:47 p.m. by Lofland and Boyle, they would have been aware of all of the factors mentioned above. They had the following additional information:
 - a. Following the first shot, Johnson was contacted by telephone and asked if she was injured, and she said she was not. She told Deputy Dossett that she would not surrender.
 - b. Johnson was given additional commands to surrender, show her hands, etc., and she did not comply.
 - c. Johnson again pointed the black object at the officers, which resulted in the decision to shoot again.
3. At the time the third and fourth groups of shots were fired at 11:51 and 11:54 p.m., by Lofland and Boyle, Johnson again pointed the object out the door at the officers and still refused commands to surrender.
4. At the time of the firing of the fifth and final group of shots by Lofland, Boyle, Scherrer, Carr and Norris at 12:13 a.m., the officers were aware of the following additional information:

- a. Johnson had been re-contacted by Deputy Dossett and indicated she had been shot in the arm, but was still refusing to surrender.
- b. Johnson was alerted to the presence of the dog and had been warned that the dog might be released, and Johnson threatened to kill the dog.
- c. Johnson popped the trunk open, which further restricted the ability of the officers to see inside the car.
- d. Despite now having been shot at four times, Johnson still refused to surrender and made threats toward the officers.
- e. Johnson again pointed the object out the window and the officers, with the exception of Carr, specifically identified that object as a firearm.

All of the officers involved who were in a position to see Johnson's actions in the driver's side of the car, specifically Lofland, Boyle, Scherrer, and Norris, described in their recorded interviews that they saw Johnson pointing "a gun" at them. They did not describe it as an "object shaped like a gun", or even "something that appeared to be a gun." At the time of these interviews, the Focus had yet to be searched, so the officers had no information as to what had, or had not, been found in the Focus. On multiple occasions during the incident itself, officers can be heard verbally announcing that they saw a gun in Johnson's hand.

Each instance of shooting was triggered by Johnson pointing the object out the window or door at the officers. At no point did any officer fire his weapon at Johnson other than when she was pointing the gun-like object at that officer or others.

Each decision to shoot was also preceded by multiple efforts to get Johnson to surrender peacefully. By the time the final shots were fired at 12:13 a.m., the officers had been pleading with Johnson to surrender for approximately 40 minutes. They continued to plead with Johnson for well over an hour after the last round of shots, until she was taken into custody at 1:50 a.m.

CONCLUSION

Based on the totality of the evidence described above, I conclude that each of the officers who saw the object subjectively believed they were observing a gun in Johnson's hand at the time each made the decision to shoot. Although Carr was not in a position to see the object himself at the time he fired, I conclude that Carr's decision to shoot was nonetheless justified, based on the information he had that Johnson had pointed a gun at the other officers on multiple occasions and was doing so at the time he fired his weapon.

I also conclude that the officers' subjective belief that Johnson had a gun was objectively reasonable, for all of the reasons stated above. Among the facts that are particularly significant to me in reaching that conclusion are that Johnson herself had made statements that she was armed with a gun and intended to use it on the police, that the manner in which Johnson repeatedly pointed the object out the door and window indicates that she wanted the officers to believe that she was holding a gun, and that the jack found under the front seat could easily be mistaken for a gun, particularly in the high-stress environment in which the officers found themselves.

Because the officers reasonably believed a gun was being pointed at them by Johnson on each occasion when they fired their weapons, and reasonably believed that Johnson intended to hurt or kill them with that gun, it is my conclusion that the decisions by Deputies Lofland, Norris and Zimmerman, Troopers Boyle and Scherrer, and CSP Sgt. Carr to fire their weapons were all legally permissible decisions under the law of self-defense and defense of others. Thus, it is my opinion that none of the officers should be subject to criminal prosecution for their actions during this incident.

Sincerely,



Brian Sugioka
Chief Deputy District Attorney