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June 4, 2019

Chief Nicholas Metz
Aurora Police Department
15001 E. Alameda Parkway
Aurora, Colorado 80012

RE: Officer-involved shooting – Officer David Krieger

Dear Chief Metz:

I reviewed the shooting by Officer David Krieger on March 28th, 2019.

EXECUTIVE SUMMARY

On March 28, 2019, Aurora Police Department (APD) Officer David Krieger was one of several Aurora officers who responded to assist the Denver Police Department in apprehending a fugitive who had kidnapped J.R. at gunpoint and for whom a warrant had been issued for two counts of Felony Menacing and one count of Illegal Discharge of a Weapon. After his car was pinned by officers to prevent him from escaping, the suspect, Alfredo Gutierrez, fled on foot from his vehicle. He was pursued by several Aurora officers, including Officer Krieger, who fired four shots at Gutierrez. None of the shots struck Gutierrez, who was then apprehended by several of the Aurora officers. Applying the law to the facts of this incident, as summarized below, I conclude that Officer Krieger's use of force was a reasonable, justified, and appropriate use of force in order to defend himself and the public from the danger posed by Gutierrez.

THE STATUTORY FRAMEWORK FOR INVESTIGATIONS INTO OFFICER-INVOLVED SHOOTINGS

Section 16-2.5-301 C.R.S. governs investigations into peace 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.

Section 16-2.5-301(1) C.R.S.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Aurora and Denver Police Departments.

Section 20-1-114 C.R.S. 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.

Section 20-1-114(1) C.R.S.

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 was provided materials produced by Aurora Police Major Crimes Unit Detective Matt Ingui, who was the lead investigator for the investigation conducted by the Aurora and Denver Police Departments. Those materials included body camera footage, investigator reports, video of interviews, including that of Officer Krieger, and dispatch notes.

SUMMARY OF THE FACTS AND WITNESS INTERVIEWS

On March 28th, 2019, Aurora Police Department's Special Weapons and Tactics (SWAT) team was contacted regarding a request from Denver Police Fugitive Unit for assistance in apprehending Alfredo Gutierrez. Gutierrez was wanted for kidnapping his girlfriend, J.R., at gunpoint (subsequent to being charged with other acts of domestic violence on her and being the subject of a protection order with J.R. as the protected party). J.R.'s grandmother had reported to the Denver police that J.R. had been kidnapped by Gutierrez at gunpoint earlier in the day. According to the grandmother, when Gutierrez kidnapped J.R., Gutierrez threatened to kill J.R. and her family. Denver police had also obtained a warrant to arrest Gutierrez for two counts of Felony Menacing, one count of Illegal Discharge of a Firearm (shooting into an occupied vehicle – a felony), and one count of Criminal Mischief.

Denver Police Fugitive Detective David Gross located Guttieres driving in the City of Denver and began following him. J.R. was in the car with Guttieres. Gross was unable to obtain Denver police back-up before Guttieres drove into the City of Aurora. At that point Gross requested assistance from the Aurora Police Department. Gross was aware that Guttieres was known to flee from police and had multiple posts on Facebook showing him shooting firearms. This information was provided to Aurora police, including Officer Krieger, when their assistance was requested.

As Detective Gross followed Guttieres he was in contact with Aurora police, providing the above details of his offenses and a real-time account of Guttieres's current location. Guttieres was driving a gray Chevrolet Malibu, and J.R. was still his passenger. Police believed Guttieres still was armed with the handgun with which he had kidnapped J.R. earlier that day. Because of concern that J.R. was in imminent danger of serious bodily injury or death, police formulated a plan to pin Guttieres's vehicle between two APD vehicles so that Guttieres could not elude police with J.R. in the car.

As APD officers followed Guttieres, he entered a drive-through lane of a McDonald's at 16891 East Iliff Avenue. APD SWAT Officer Krieger, who was following Guttieres in an unmarked APD pickup truck, decided that was the best opportunity to pin Guttieres's vehicle. Krieger pulled into the McDonald's drive-through lane behind Guttieres.

At the McDonald's there were two lanes for ordering and the lanes merged into one lane for picking up orders. To avoid a civilian getting between himself and Guttieres from the other ordering lane, Krieger directed that another one of the unmarked SWAT vehicles pull into the other ordering lane and then into the pick-up lane, thus having police vehicles immediately in front of and behind Guttieres's vehicle. At that point Guttieres did not appear to realize police vehicles were present at the McDonald's. The vehicle that pulled in front of Guttieres was an unmarked Ford Expedition occupied by APD Officers Jonathan Dennis (driver) and Timothy Eha (passenger).

When Officer Krieger gave the signal for the pin, Krieger moved his vehicle forward and Officer Dennis backed up his vehicle, both police vehicles simultaneously making contact with the Malibu driven by Guttieres. Very quickly Guttieres got out of his vehicle and began running in a southwesterly direction towards Iliff Avenue. Krieger then began a foot pursuit. Although Krieger cannot recall specifically what he said, he was giving verbal commands to Guttieres for him to stop. Because he feared for his own safety and that of the public, Krieger had his handgun drawn as he pursued Guttieres.

As Guttieres approached the sidewalk along E. Iliff Ave., he turned to his right looking back at Officer Krieger, and as he did so Guttieres's right hand moved around as though he was about to point his right hand behind him towards Krieger. Krieger saw a silhouette of Guttieres's hand and it appeared that Guttieres was holding a handgun, specifically a semi-automatic handgun.¹ Until that point Krieger had not seen Guttieres holding a handgun but, based on Krieger's knowledge

¹ Officer Krieger had placed his body worn camera on the dashboard of his vehicle so it would pick up a more broad view of the intended apprehension, a common practice of FAST officers preparing to apprehend a fugitive. When Officer Krieger had to exit his vehicle to chase Guttieres, Officer Krieger did not have time to retrieve his camera. As a result no cameras recorded the foot chase or shots fired.

that Guttieres had kidnapped J.R. with a handgun, Krieger feared that Guttieres was about to shoot him. Krieger fired a single shot at Guttieres, missing him.²

Guttieres continued running, crossing Iliff towards a Burger King and a car wash. Officer Krieger could not see into car wash bays so he did not know whether customers were present but he could see customers in the Burger King. He was very concerned that Guttieres might take customers of either business hostage or worse. Krieger fired two more shots at Guttieres to prevent that from happening. It did not appear to Krieger that either round had hit Guttieres, as he continued to run. Guttieres ran up the driveway between the car wash and the Burger King, in the direction of a strip mall parking lot that was 75-100 yards away. Krieger was focused on Guttieres and could not see any other officers participating in the foot chase, although he assumed others were also in the pursuit.

Officer Krieger was clearly the closest officer to Guttieres but he was not gaining on Guttieres. Thinking this was his last chance to stop Guttieres before Guttieres reached another area where civilians as potential victims would be, Krieger fired the fourth and last shot, intentionally hitting a paved area between himself and Guttieres. Krieger hoped to skip the bullet off the pavement and strike Guttieres's legs.³ Krieger felt shooting directly at Guttieres would endanger citizens in the strip mall parking lot because the bullet would travel further and at a higher level than a skipped shot.

None of Officer Krieger's four shots struck Guttieres. No other officers fired their weapons. As Guttieres turned left around the car wash he was apprehended by multiple officers who had approached from the opposite direction. No handgun was found on Guttieres or in the path he had taken from the McDonald's to the location where he was apprehended. A .45 caliber semi-automatic handgun was recovered from the Malibu Guttieres had been driving just prior to running away.

APPLICABLE LAW

The District Attorney's review of this event is guided by the following statutes pertaining to the use of deadly force by peace officers:

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 18-1-901(3)(d) C.R.S.

Section 18-1-707 C.R.S. states in relevant part:

- (2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

² As he and Guttieres were running towards Iliff Ave. Officer Krieger observed that Iliff was remarkably devoid of traffic, which was unusual for Iliff at that location.

³ Police officers are taught "skip shooting" as a way to cause a bullet to travel low – under vehicles, etc., when a more direct shot is not feasible or safe.

(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:

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

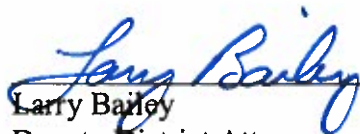
(II) Is attempting to escape by the use of a deadly weapon.

ANALYSIS AND CONCLUSION

The question presented by law is whether Officer Krieger reasonably believed that the use of deadly physical force was necessary to defend himself or others from what he reasonably believed to be the imminent use of deadly physical force, or reasonable grounds to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving great bodily injury. If so, his use or attempted use of deadly physical force was legally justified.

Here, Officer Krieger knew Guttieres had kidnapped J.R. at gunpoint after threatening to kill her and her family. Krieger knew that a warrant had been issued for Guttieres for a separate incident in which he had menaced two people with a firearm and had shot the vehicle those victims were in. Krieger knew that Guttieres on other occasions had eluded police. Based on that knowledge, Officer Krieger's primary fear was for the safety of citizens Guttieres would encounter as he fled from officers. Krieger knew that Guttieres had been armed with a handgun earlier that day and believed he was still armed. When Guttieres turned to his right looking back at Krieger and turning his right hand in the same direction, Krieger thought he saw a semi-automatic handgun in Guttieres's hand. It was at that point that Krieger believed he needed to fire at Guttieres for his own safety and that of the citizens Guttieres would reach if not stopped.

When firing each of the four shots at Guttieres, Officer Krieger had reasonable grounds to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving great bodily injury. Therefore I find, based on the law and the facts, that Officer Krieger was justified in using or attempting to use deadly force to terminate the pursuit and arrest Guttieres. As such, no charges against Krieger are warranted.


Larry Bailey
Deputy District Attorney
18th Judicial District of Colorado