



OFFICE OF THE DISTRICT ATTORNEY

JOHN KELLNER, DISTRICT ATTORNEY

18TH JUDICIAL DISTRICT

SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

Dec. 27, 2021

Sheriff Tyler S. Brown
13101 E. Broncos Parkway
Centennial CO 80112

RE: Sept. 3, 2021 shooting at [REDACTED] E. Harvard Ave., Arapahoe County, CO

Dear Sheriff Brown,

EXECUTIVE SUMMARY

Members of the Arapahoe County Special Response Team (SRT) were asked to assist the Denver Police in locating and apprehending a fugitive, Lisa Garcia, on Sept. 3, 2021. The responding officers located Ms. Garcia running north on the sidewalk outside 7500 E. Harvard Ave. Deputies commanded her to stop. She extracted a black handgun from her purse and pointed it, with both hands on the handgun, in a shooting stance, at Deputy Joseph Hallett.

Deputy Hallett fired his rifle at her. Deputy Zimmerman arrived on scene to see Ms. Garcia remove the handgun from her purse and observed her pointing it at Deputy Hallett. He also fired two rounds from his rifle.

Applying the law to the facts of this incident, as described in detail below, I conclude that Deputies Hallett and Zimmerman reasonably believed that Lisa Garcia posed an imminent threat of death or serious bodily injury to themselves and members of the public in the immediate area. I find both Arapahoe County Deputies had the legal right to defend themselves and others from the threat posed by Ms. Garcia.

Subsequent to Deputy Hallett and Deputy Zimmerman firing at Ms. Garcia, she fell to the ground facedown with her hand and the handgun underneath her. When Ms. Garcia did not respond to commands to show her hands, Deputy Yantiss fired two 40mm less lethal impact rounds striking her in the right buttock area.

Deputy Yantiss' use of force – by firing the less-lethal shotgun twice at Ms. Garcia's torso – was a reasonable use of force, consistent with the minimization of injury to others.

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.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

Detective Eric White of the Aurora Police Department is the lead CIRT investigator. I reviewed all materials provided including police reports, interviews with involved officers, body camera footage, ballistic reports and autopsy findings.

SUMMARY OF THE FACTS

Lisa Garcia was accused of fatally shooting a relative in Denver and was wanted for first-degree murder as documented in Denver Police Department case 21-422099. On Friday, Sept. 3, 2021, Denver Police Fugitive Detective James Waidler received a Crime Stoppers tip that she was in the area of ■■■■■ E. Harvard Ave. located in Arapahoe County, Colorado. Arapahoe County Deputy/Safe Streets Task Force Officer Pete Mills was contacted and asked to be the local contact for Arapahoe County. The Arapahoe County SRT (Special Response Team)

was contacted and responded to the scene to assist. A Denver Police Department Fugitive Unit “be on the lookout for” (BOLO) was disseminated to the special response team members for Lisa Garcia, which included: a photograph of her, the warrants she was wanted for, and the fact she was listed as, “Armed-firearm used in shooting.”

Det. Waidler said as Ms. Garcia walked east, a surveillance van drove towards Ms. Garcia, which alarmed her. Ms. Garcia ran west and then south through the complex.

Arapahoe County SRT Deputy Joseph Hallett was inside a Ford truck that pulled into the complex on the east side, near the pool. Deputy Hallett and Deputy Tyler Zimmerman both had body-worn camera footage that showed the entire incident. Deputy Hallett went west to 7500 E. Harvard Ave., and in the north doors of the apartment building. At 3:33:11 p.m., as Deputy Hallett stepped just inside the door, he saw Lisa Garcia running north on the sidewalk and aired, “I got her!” Deputy Hallett left the building pursuing Ms. Garcia and at 3:33:13 yelled, “Stop! Police stop!”

At 3:33:19 p.m., a female voice is heard to say, “I’ve got a gun”. Ms. Garcia’s right hand appeared from her purse holding a handgun, which was later determined to be an airsoft pistol. The airsoft pistol was metallic looking and solid black in color with no orange tip.



Ms. Garcia next turned towards Deputy Hallett with the black handgun pointing at him.



Ms. Garcia took a shooting stance towards Deputy Hallett.





At 3:33:21, as Ms. Garcia took a shooting stance with both hands on the handgun, Deputy Hallett dropped to a kneeling position and fired his rifle at her. Deputy Hallett says he kept firing until she went to the ground. Ballistics investigation indicates that seven .223 shell casings were recovered in the area where Deputy Hallett fired his rifle.

Deputy Zimmerman said as he got to the south of the complex, he heard some yelling. Deputy Zimmerman said he ran through the buildings and saw the suspect running. Deputy Zimmerman chased the suspect and said he saw the suspect was reaching into a bag and running strangely. Deputy Zimmerman said he could hear people giving her commands to stop, but he didn't give any verbal commands. He raises his gun at 3:33:20. Deputy Zimmerman said as she started to turn, he could see a black handgun in her hand and she was raising it up and pointing it towards, "Joe" (Deputy Hallett). Deputy Zimmerman said he was scared that she was going to shoot and kill Joe, so he fired 2 rounds from his rifle from approximately 25 yards away.

At 3:33:21 p.m., Ms. Garcia was hit by a round and began to turn her body. Ms. Garcia's hand is still on the trigger of her gun.



At 3:33:23 P.M., Ms. Garcia fell to the ground with her hands under her body.



Deputy Zimmerman said he fired two rounds as she was pointing her gun at Deputy Hallett. Deputy Zimmerman said as soon as he fired his second round, he saw her start to go down. Ballistics indicated two .223 shell casings were recovered in the area where Deputy Zimmerman fired his rifle.

At 3:33:36 p.m., Deputy Hallett said, "Police, Stop!" At 3:33:46 p.m., Deputy Hallett said, "Moving around to the head, moving around to the head." At 3:33:51 p.m., Sgt. Rodriguez said, "Show us your hands, less lethal now, puts your hands out!" At 3:33:52 p.m., Deputy Justin Yantiss fired a 40mm less-lethal direct impact round at Ms. Garcia, striking her on her right buttock area.

Ms. Garcia did not respond to verbal commands to show her hands although her legs appeared to be moving. At 3:34:04 p.m., Sgt. Rodriguez yells, "Hands out now, 40 again." At 3:34:36 p.m., Deputy Yantiss fired another 40mm direct impact round at Ms. Garcia, striking her in the same right buttock area, with no reaction.

At 15:34:47 p.m., officers moved in to arrest Ms. Garcia and also started to provide first aid. At 15:35:07 p.m., an ACSO medic began to provide first aid to Ms. Garcia.

Three Deputies were identified as firing weapons during the incident: Deputy Joseph Hallett (rifle), Deputy Tyler Zimmerman (rifle) and Deputy Justin Yantiss (less-lethal 40mm direct impact).

The autopsy findings reported the condition directly leading to death was a penetrating gunshot wound to the chest. The report also documented that there was a penetrating gunshot wound to the shoulder neck area, and perforating gunshot wounds to the chest and back shoulder area. There were also graze gunshot wounds to the fingers.

ANALYSIS AND CONCLUSION

The determination to be made is whether Deputies Hallett and Zimmerman reasonably believed their use of deadly physical force was necessary to defend themselves or others from what they reasonably believed to be the imminent use of deadly physical force by Ms. Garcia. Deputies Hallett and Zimmerman's actions were reasonable and justified based upon Ms. Garcia drawing a handgun, taking a shooting stance and pointing the gun directly at Officer Hallett. Both officers were clearly in uniform, they had identified themselves as police officers. Neither had an opportunity to communicate their intent to shoot as both, independently and simultaneously, made the decision to shoot based upon the imminent, deadly threat posed by Ms. Garcia. Although the handgun was later determined to be an airsoft pistol, there was no way, in the limited moment they had to decide, for the deputies to distinguish it from a lethal firearm. It was reasonable for the officers to conclude it was a real firearm capable of deadly force.

Deputy Yantiss's actions were also reasonable under the circumstances. Ms. Garcia was still in possession of the weapon, it appeared to still be in her hand under her body and she was not responding to commands to show her hands. She did react to the first non-lethal shot and moved

her legs but still did not comply so it was reasonable to use a second non-lethal round to try to gain her compliance.

I find that Deputies Hallett, Zimmerman and Yantiss reasonably believed the Ms. Garcia posed an imminent threat of deadly physical force to Officer Hallett and others in the vicinity. As such I find that Deputy Hallett and Deputy Zimmerman were justified in using deadly physical force to defend themselves the unlawful and imminent use of deadly physical force against them.

Deputy Yantiss was justified in the use of less lethal force against the threat of physical harm to himself and the other officers present. Officers Hallett, Zimmerman, and Yantiss did not commit any crime and criminal charges will not be filed against them.

Rebecca S. Gleason

Chief Deputy District Attorney

18th Judicial District