



OFFICE OF THE DISTRICT ATTORNEY

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

6450 S. REVERE PARKWAY
Centennial, CO 80111
720-874-8500
FAX 720-874-8501

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Chief Jack Cauley
Castle Rock Police Department
100 Perry Street
Castle Rock, Colorado 80104

RE: December 24, 2017 - Officer Involved Shooting of Charles Walter Rees (DOB: [REDACTED])

Dear Chief Cauley,

On December 24, 2017, the 18th Judicial District Critical Response Team ("CRT") responded to an officer-involved shooting in Castle Rock, Douglas County, Colorado. Castle Rock Police Officers fired both non-lethal and lethal rounds at Charles Walter Rees. Mr. Rees survived his injuries.

EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in detail below, I conclude Officer Paul Smith was legally justified in his use of force to defend himself and other officers from the threat posed by Charles Rees on December 24, 2017.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

Douglas County Sheriff's Office Investigator Adam Moorman is the lead CRT investigator. Castle Rock Police Department Investigator Michael Williams is the lead criminal investigator. I reviewed all materials provided by Investigator Moorman including 911 calls, recorded interviews with involved officers, body camera footage, written reports, Castle Rock Police Department call history, and photographs.

SUMMARY OF THE FACTS

On December 24, 2017 at 2:50 p.m., Douglas County dispatch received a 911 call from Charles Rees. Mr. Rees gave dispatch his address and stated he needed help. Mr. Rees told dispatch "the first officers come here, I'll kill em." Dispatch inquired whether Mr. Rees needed medical assistance or police assistance. Mr. Rees stated whoever showed up would be shot. In the background a women repeatedly said "no." Mr. Rees then hung up the phone. Douglas County dispatch transferred the call to the Castle Rock Police Department. Castle Rock dispatch called

Mr. Rees. Mr. Rees' wife, [REDACTED], answered the phone. [REDACTED] told dispatch Mr. Rees was intoxicated and she wanted help for her husband. She told dispatch he had about fifteen shooters that day. [REDACTED] stated Mr. Rees wanted the police to shoot him. [REDACTED] told dispatch no handguns were in the residence; however, Mr. Rees carried a pellet gun without a clip in his back pocket. [REDACTED] stated Mr. Rees was upset because she refused to give him additional alcohol. At one point during the phone call, Mr. Rees attempted to take the phone from [REDACTED]. [REDACTED] told dispatch only she and Mr. Rees were currently inside the residence. [REDACTED] remained on the phone with dispatch until officers arrived on scene.

At approximately 2:54 p.m., dispatch transmitted a call for service at [REDACTED] South Sierra Drive. The Detail Call for Service Report indicated a male party called 911, stated whoever shows up is going to get shot, and a female in the background said "no, no, no." Castle Rock Police Officers Paul Smith, George Grega, Darsel Polite and Corporal Robert Grafner were dispatched to the residence. Officers Lee Gizzi and Adam Elliott overheard the radio traffic and responded to the residence as well.

At 3:04 p.m. Officers Smith, Grafner, Grega, Polite, Gizzi, and Elliott gathered up the street from the residence. Corporal Grafner, Officer Polite, and Officer Grega were familiar with Mr. Rees and his family. They previously contacted Mr. Rees for a welfare check and a disturbance call. Officers were not sure how many people resided at the residence. Officers previously contacted Mr. Rees' granddaughter at the residence. On both occasions, Mr. Rees was verbally uncooperative with police officers and [REDACTED] had been less than forthcoming.

Prior to contacting Mr. Rees, officers discussed the use of different levels of force depending on Mr. Rees's level of cooperation. Officer Smith was assigned lethal coverage using his department issued rifle. Officer Grega was assigned less lethal force using his beanbag round shotgun. Corporal Grafner was assigned less lethal force using his Taser. Officer Polite was assigned the ballistic shield along with his pistol. All officers then approached the residence.

[REDACTED] walked out of the residence and met with Officer Elliott. [REDACTED] told officers Mr. Rees was in the bedroom. Officer Grega, Officer Polite and Officer Smith moved to the corner of the front door of the residence and opened the door. Officer Polite identified himself and commanded Mr. Rees to come out with his hands up multiple times. Mr. Rees did not respond. Officers heard muffled voice and the voice of female in distress. Concerned for the safety of the female, officers entered the residence. Officer Polite, Officer Grega, Officer Smith and Corporal Grafner fanned out in the living room area of the residence. Officers identified themselves as police officers and continually gave loud verbal commands ordering Mr. Rees to come out with his hands up.

Thirty seven seconds later, Mr. Rees exited the bedroom and stood in the hallway doorway that led into the living area where officers were located. Despite commands to put his hands up, Mr. Rees hands remained at his sides. A couple of seconds later, Mr. Rees raised his right hand and pointed what appeared to officers to be a black 1911 pistol at Officer Grega. Officer Smith feared for his own life and the lives of his fellow officers. Officer Smith fired four rounds at Mr. Rees with his rifle. One round struck Mr. Rees in the right arm below the shoulder but above the elbow. The other three rounds struck the walls surrounding Mr. Rees. No rounds exited the

residence. Officer Grega fired five rounds from his less than lethal shotgun. One round struck Mr. Rees on his right side, halfway up his ribcage. Mr. Rees fell to the ground. The other four rounds struck the walls where Mr. Rees stood and a cabinet in the living room. Corporal Grafner did not fire his Taser. Corporal Grafner stated he was scared and feared for the lives of his fellow officers, and that he feared Mr. Rees would shoot them all. Officer Polite did not fire a round from his pistol. Officer Polite also stated he feared for the lives of his fellow officers. After Rees was down, Officer Smith approached him with his rifle drawn and observed what he believed was a handgun within the reach of Mr. Rees. Officers secured the weapon and provided aid to Mr. Rees. The body cameras of Corporal Grafner, Officer Polite, Officer Smith and Officer Grega captured the entire encounter with Mr. Rees. The body cameras support the accounts given by each officer.

At 3:11 p.m., a call of shots fired and medical aid aired over the police radio. Officer Grega and Officer Smith provided medical aid to Mr. Rees until emergency responders arrived. Emergency responders transported Mr. Rees to St. Anthony's Hospital where he underwent surgery for a non-life threatening injury to his arm. One week later, Mr. Rees was released from the hospital and booked into the Douglas County jail on four counts of felony menacing.

SCENE DOCUMENTATION AND EVIDENCE COLLECTION

Castle Rock Police Officer Thomas O'Donnell collected all handguns, rifle and ammunition from Corporal Grafner, Officer Polite, Officer Grega and Officer Smith. All firearms were unloaded, bagged separately and stored in a secure location. Arapahoe County Sheriff's Office Criminalist Erinn Dominguez photographed all weapons and ammunition. The ammunition count was consistent with the reported number of shots fired by each officer.

Douglas County Sheriff's Office Crime Scene Investigator Derek Delve processed and photographed [REDACTED] South Sierra Drive. CSI Delve recovered four spent 223 Remington casings from just inside the front door entryway. Approximately eight to ten feet south of the entryway, CSI Delve recovered five spent beanbag shotgun shells. CSI Delve reconstructed the trajectory for all rifle rounds. The trajectories were consistent with the statement made by Officer Smith.

CSI Delve recovered a Tanfoglio Witness 1911 plastic 6 mm pellet handgun on the floor of the hallway. The pellet gun did not have an orange barrel tip and appeared identical to a 1911 pistol.

WITNESS INTERVIEWS

Detective Adam Moorman and Castle Rock Police Department Detective Michael Williams interviewed all involved officers. Their accounts of the incident are described above.

District Attorney Investigator Steve Tarr interviewed [REDACTED]. [REDACTED] told Investigator Tarr on the day of the incident, Mr. Rees had not been eating or sleeping. Mr. Rees drank a sleeve of alcohol as well as a number of shooters. Mr. Rees told her he was done with life and wanted to die. Mr. Rees wanted more alcohol. Out of concern for Mr. Rees, [REDACTED] moved the vodka Mr. Rees normally kept in the closet. Mr. Rees went to the closet and retrieved the pellet gun. Mr. Rees kept saying he wanted to die. He told her he was going to contact the

police and make them shoot him. ██████ attempted to take the pellet gun away from him. Mr. Rees refused to give her the pellet gun. Mr. Rees then contacted the police and told them he had a handgun. ██████ told dispatch and responding officers it was only a pellet gun. ██████ told Investigator Tarr she knew Mr. Rees wanted the police to kill him.

APPLICABLE LAW

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

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

- (2) 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 in relevant part:

- (1) . . . a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
 - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
 - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

- (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:
 - (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;

Deadly physical force “means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” §18-1-901(3)(d), C.R.S.

ANALYSIS AND CONCLUSION

Based on my review of all the evidence in this case, I find no evidence establishing Officer Paul Smith committed a crime when he shot Charles Rees on December 24, 2017. The totality of the

evidence leads me to conclude Officer Smith feared for his life and the lives of his fellow officers when he fired his weapon.

In visually comparing the pellet gun recovered from Mr. Rees to a 1911 handgun (which is of course a luxury the responding officers did not have) it is clear that the two are nearly indistinguishable. Further, the pellet gun lacked any distinctive markings to indicate it was in fact a pellet gun. I conclude Officer Smith reasonably believed the pellet gun was a handgun and under the circumstances the actions taken were appropriate. I find Officer Smith's beliefs and actions to be reasonable under the circumstances to ensure his and other officers' safety.

The body cameras worn by the officers corroborates their accounts of events. The physical evidence corroborates the officers' statements. Officer Smith observed Mr. Rees pointing what looked like a handgun at Officer Grega. Officer Smith fired his rifle to prevent what he perceived as great bodily injury to - or the death of - his fellow officers.

Based on the law (as stated in §18-1-704 and 707, C.R.S.) and the facts summarized above, I find Officer Paul Smith reasonably believed that officers' lives were in imminent danger. Moreover, I find, based on the law and the facts, that Officer Paul Smith was justified in his use of force to defend himself and his fellow police officers.



Vicki Klingensmith
Chief Deputy District Attorney
18th Judicial District Attorney's Office

