



## *8<sup>th</sup> Judicial District Critical Incident Response Team*

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*Larimer County Sheriff's Office, Fort Collins Police Services, Loveland Police Department, Timnath Police Department, Windsor Police Department, Johnstown Police Department, Estes Park Police Department, Colorado State University Police Department, Colorado State Patrol Troop C3, 8<sup>th</sup> Judicial District Attorney*

August 26, 2021

Sheriff Justin Smith  
Larimer County Sheriff's Office  
2501 Midpoint Drive  
Fort Collins, CO 80525

Opinion Letter Regarding 7.28.21 CIRT, Case Numbers LCSO21-6728, LPD21-5635, CSU21-0644, & WPD21-12708

On July 28, 2021, Larimer County Sheriff's Office Deputies were involved in an exchange of gunfire with Erik Locker in the town of Berthoud, Colorado. This constituted an officer use of force incident, invoking the Eighth Judicial District Critical Incident Response Team (CIRT) protocols. The purpose of a CIRT investigation is to provide an independent and comprehensive examination of law enforcement uses of force to ensure there is accountability for any criminal conduct.

The criminal investigation surrounding this incident has been completed and submitted to my office for an opinion. Pursuant to the Eighth Judicial District's Critical Incident Protocol, I am required to determine whether any person committed criminal law violations during this incident. The scope of this review is criminal in nature and necessarily limited by Colorado statutes to determine whether any criminal charge is legally provable beyond a reasonable doubt.

A non-involved agency is required to lead all CIRT investigations to ensure the independence of their work. In this case, the Loveland Police Department led the CIRT with assistance from other member agencies including, Fort Collins Police Services, Windsor Police Department, Colorado State University Police Department, the Larimer County Sheriff's Department (non-critical functions only), and the District Attorney's Office for the Eighth Judicial District. I have reviewed reports, photos, videos, communication records, witness interviews, and other relevant evidence, along with a full presentation of the case by CIRT investigators.

Pursuant to Colorado Revised Statutes 20-1-114(1), written findings of such investigation shall be made public. The Eighth Judicial District CIRT takes our obligations of integrity and transparency to the Larimer and Jackson County communities incredibly seriously and endeavors to convey as much information as possible to the public to ensure trust in our criminal justice system and the CIRT process.

The opinion in this matter will necessarily be brief as criminal charges have been filed against a civilian, Erik Locker, stemming from this incident. That criminal case is open and ongoing. Mr. Locker has a constitutional right to due process, a fair trial, and an unbiased jury. As District Attorney, I have a legal and ethical obligation to protect those rights. Pursuant to the Colorado Rules of Professional Conduct 3.6 and 3.8, a District Attorney is significantly limited in releasing information and making public comment

regarding ongoing criminal cases. As such, I will provide an explanation of the findings of the CIRT investigation and the application of Colorado law to those facts, while necessarily limiting any information which may negatively impact our ability to prosecute an open case or infringe upon a defendant's constitutional rights. All contentions against Mr. Locker in this letter are merely allegations and he remains innocent of all charges unless and until proven guilty beyond a reasonable doubt.

The facts gathered by CIRT investigators indicate that on the night of July 28, Erik Locker had patronized the Side Tracked Bar, located at 237 Welch Avenue, Berthoud, Colorado. A 911 call was placed reporting that an individual, later determined to be Mr. Locker, left the bar intoxicated, was driving a vehicle while under the influence, and had struck a stationary trailer. Larimer County Sheriff's Deputies Steven Fay and Zach Wartenbe responded and attempted to initiate a traffic stop by activating their overhead emergency lights and sirens. Mr. Locker failed to promptly yield, eventually coming to a stop on 2<sup>nd</sup> St. between Mountain Avenue and Welch Avenue. Soon thereafter, Deputies Patrick Crossland and Matthew Bordewick arrived as back up. All deputies were in clearly marked Sheriff's vehicles and wearing clearly marked Sheriff's uniforms.

Body Worn Camera video was collected and reviewed from all involved Deputies. The video evidence showed Deputies gave commands to Mr. Locker to put both of his hands outside of his vehicle. Mr. Locker's front, driver's side window was lowered, and Deputies' commands were clear and audible. Deputies repeatedly identified themselves as Larimer County Sheriff's Deputies. Video evidence shows Mr. Locker did not comply with numerous commands. Deputies remained at a distance and continued to give verbal commands for approximately seven and a half minutes until Mr. Locker fired a single round in the direction of the four deputies on scene.

Deputy Bordewick described hearing a shot, witnessing muzzle smoke emanating from Mr. Locker's position, and believed the trajectory to be in the direction of other Deputies on scene. Deputy Crossland witnessed Mr. Locker point his handgun out the window at Deputies and fire towards them. Evidence showed that multiple civilian vehicles and at least one pedestrian passed through the vicinity at or near the time Mr. Locker fired at Deputies.

Deputies Crossland and Bordewick returned fire. Deputy Bordewick fired a single round from his rifle and Deputy Crossland fired seven rounds from his handgun. The remaining two Deputies on scene did not fire their weapons. Deputies ceased fire when they observed Mr. Locker had desisted.

After firing their weapons, Deputies resumed attempts to resolve the incident without further use of force. Mr. Locker eventually dropped his weapon out of the window and exited the vehicle. Deputies approached Mr. Locker, who was refusing to obey commands and Deputy Bordewick, who had switched to a less-lethal device, deployed his Taser, which struck Mr. Locker. Deputies were able to place Mr. Locker into custody and promptly began rendering medical aid until the arrival of EMTs who transported Mr. Locker to the hospital. Evidence showed Mr. Locker was struck in the shoulder by a single round fired by Deputies and sustained non-life-threatening injuries. The weapon which Mr. Locker had used to fire at deputies, a .45 caliber Ruger handgun, was recovered on scene with a malfunction which prevented further firing.

Erik Locker has been criminally charged due to his actions on July 28<sup>th</sup>. Mr. Locker is presumed innocent, all charges are merely allegations unless and until they are proven beyond a reasonable doubt. Mr. Locker's charges are as follows:

- One count of Criminal Attempt to Commit Murder in the First Degree, a Class 2 Felony;
- Four counts of Felony Menacing, a Class 5 Felony;
- One count of Driving Under the Influence, an Unclassified Misdemeanor;



One count of Failure to Report a Traffic Accident, a Class 2 Traffic Infraction;  
One count of Prohibited Use of Weapon, a Class 2 Misdemeanor;  
One count of Failure to Yield to an Emergency Vehicle, a Traffic Infraction; and  
One count of Violation of Bail Bond Conditions, a Class 6 Felony.

In evaluating whether an officer's use of force is lawful, the District Attorney's office must analyze the officer's actions pursuant to Colorado Revised Statutes 18-1-707 "Use of Force by Peace Officers." The current version of this statute, effective July 6, 2021, as revised by the Colorado Legislature, states in relevant part:

- (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 injury 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.*

Additionally relevant in this review is C.R.S. 18-1-704 "Use of Physical Force in Defense of a Person" also known as "the right to self-defense."

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.*
- (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.*

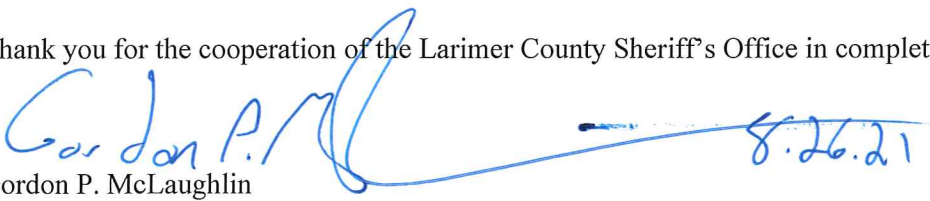
Evidence shows that Deputies abided by Colorado law in their response to Mr. Locker. Deputies spent considerable time using verbal techniques in attempt to resolve the situation without use of force. Deputies did not approach Mr. Locker or his vehicle, nor did they use any physical force prior to Mr. Locker firing his weapon at them. Deputies returned fire only as a response to being fired upon.

Once Mr. Locker fired at Deputies, the Deputies faced a clear and imminent threat to their own lives, the lives of their fellow deputies, and the safety of civilians in the vicinity, therefore legally justifying their response under C.R.S. 18-1-707(1) as a lawful use of force. Further, evidence shows Deputies complied with the requirements as outlined in C.R.S. 18-1-707(2), using only the degree of force which was consistent to minimize harm and rendering prompt medical assistance. The Deputies' actions would also be justified under C.R.S. 18-1-704 as lawful self-defense, as they had ample reason to believe they were

at risk of being killed and that a lesser response would have been inadequate after Mr. Locker had already shot at them.

As such, my review of the thorough CIRT investigation clears Deputies Crossland, Bordewick, Fay, and Wartenbe of criminal culpability. I thank all members of the Eighth Judicial District CIRT for their efforts in compiling a complete and professional investigation. Further information cannot be publicly disclosed at this time due to the pending criminal case filed against Mr. Locker.

Thank you for the cooperation of the Larimer County Sheriff's Office in completion of the investigation.



Gordon P. McLaughlin  
District Attorney  
8<sup>th</sup> Judicial District