

Gordon P. McLaughlin
District Attorney



201 LaPorte Avenue, Suite 200
Fort Collins, Colorado 80521-2763

Phone: (970) 498-7200
Fax: (970) 498-7250

August 18, 2022

To Sheriff Justin Smith:

Re: Opinion Letter Regarding 7.12.22 CIRT, Case Numbers LCSO #22-5925, FCPS #22-9442, LPD #22-5275, & TPD #22-330

On July 12, 2022, Larimer County Sheriff's Office Deputies were involved in an exchange of gunfire with Bryan Erdbuegger on Prospect Road in Fort Collins, Colorado. This constituted an officer use of force incident, invoking the Eighth Judicial District Critical Incident Response Team (CIRT) protocol. The purpose of a CIRT investigation is to provide an independent and comprehensive examination of law enforcement's use of force to ensure there is accountability for any criminal conduct.

The 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.

CIRT Procedures

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

Rules of Professional Conduct Regarding Public Comment on Open Criminal Cases

The opinion in this matter will necessarily be brief as criminal charges have been filed against a civilian, Bryan Erdbuegger, stemming from this incident. That criminal case is open and ongoing. Mr. Erdbuegger 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 (CRPC) 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. In cases such as this, we seek to simultaneously fulfil our duties to the CRPC and CRS 20-1-114(1). Transparency is a priority for the CIRT and, at the appropriate times, we look forward to providing further information in this case through formal court proceedings and filings in respect of our CRPC obligations. All contentions against Mr. Erdbruegger in this letter are merely allegations and he remains innocent of all charges unless and until proven guilty beyond a reasonable doubt.

CIRT Investigation

On July 12, 2022, at approximately 2232 hours, Deputy Jeffrey Kaley (driving a marked patrol K9 vehicle) observed a silver Ford Escape speeding northbound on Timberline Road at Drake Road at what he estimated to be 90 MPH (in a 40 MPH zone). Bryan Erdbruegger was later identified as the driver and only occupant of the Ford Escape. Deputy Kaley attempted to contact the vehicle as it continued north on Timberline Road and then turned east onto Prospect Road. Deputy Kaley activated his emergency lights and Mr. Erdbruegger accelerated. Deputy Kaley aired that he was in pursuit of the vehicle traveling eastbound on Prospect Road at 70 MPH. Shortly after, Mr. Erdbruegger pulled over on Prospect Road, east of Specht Point Road. Deputy Kaley initiated a high-risk traffic stop, positioning himself behind his driver's side door, drew his service weapon, and began issuing verbal commands for Mr. Erdbruegger to stay in his car and show his hands. Deputy Aaron Horwitz (in a marked patrol vehicle) responded to the location to provide cover.

These events were captured on video by Deputy Kaley's body worn camera, Deputy Horwitz's body worn camera, and two separate dash mounted cameras from civilian vehicles that happened to be traveling past the scene. These videos corroborate information provided during interviews with Deputy Kaley, Deputy Horwitz, and the passing civilians.

Video footage shows that Mr. Erdbruegger opened his driver's side door, produced a handgun, and began to rapidly fire at Deputy Kaley. In response, Deputy Kaley returned fire. Deputy Horwitz, who arrived on scene just as Mr. Erdbruegger started shooting, also returned fire in response to Mr. Erdbruegger's shots. Evidence collected at the scene indicates that Erdbruegger was struck by the initial volley from the deputies, but the injuries sustained at this point did not stop his offensive. Mr. Erdbruegger reloaded his weapon, fired additional shots, and then advanced towards Deputy Kaley while still holding the gun. Deputy Kaley's firearm was out of ammunition, and he was unable to reload as Mr. Erdbruegger advanced. A physical struggle for Erdbruegger's firearm, later determined to be a Glock 43x, ensued between Deputy Kaley and Mr. Erdbruegger. Deputy Kaley was able to push Mr. Erdbruegger back as Mr. Erdbruegger fired a single shot while still near Deputy Kaley.

Mr. Erdbruegger initially retreated towards his vehicle and then turned back toward the deputies and began to raise his gun towards the deputies. Deputy Horwitz, having just reloaded his weapon, fired repeatedly, striking Mr. Erdbruegger and causing him to fall to the ground. Additional cover

units arrived, and deputies rendered medical aid. Mr. Erdbruegger repeatedly apologized and demanded that deputies and paramedics let him die. Mr. Erdbruegger was transported to the hospital by ambulance. During transport, Mr. Erdbruegger spit at LCSO Deputy Cody Armstrong and continued to protest medical treatment.

CIRT investigators recovered the Glock 43x handgun from the scene. It was still loaded with one round in the chamber and one round in the magazine. An empty magazine for the gun was recovered from his vehicle. Investigators recovered 17 casings (brass) fired by Mr. Erdbruegger and recovered 40 total casings (silver) fired by the deputies. Investigators determined that nine shots fired by Mr. Erdbruegger struck Deputy Kaley's patrol vehicle (four to the driver's side door, four to the front of vehicle, and one in the spotlight). At the hospital it was determined that Mr. Erdbruegger was struck four times (stomach, left thigh, neck, top of head) by shots fired by the deputies.

When interviewed, Mr. Erdbruegger advised that this was a suicide attempt and that he intentionally drove at a high rate of speed past the Fort Collins Police Department on Timberline Road in the hopes of being contacted by police. Mr. Erdbruegger denied attempting to harm the Deputies.

The driver of the first vehicle passing the traffic stop described seeing Mr. Erdbruegger half in and half out of his vehicle looking back at Deputy Kaley and then hearing multiple gun shots.

The front passenger of a second vehicle passing the traffic stop described seeing Deputy Kaley standing outside his vehicle as Mr. Erdbruegger pointed a gun at the Deputy and then fired several shots. Once downrange, the rear of the second passing vehicle was struck by a bullet, likely originating from one of the deputies' weapons.

Deputy Kaley described first firing his weapon in response to seeing rapid fire muzzle flashes. He indicated that he was in fear for his life and needed to return fire. Deputy Kaley felt a "chunk of something" strike his right knee and believed that he had been shot. He also described feeling something hit his face. While Deputy Kaley was uninjured after the incident, evidence of the rounds hitting the door and spotlight is consistent with fragments or debris striking him in those areas. As Mr. Erdbruegger advanced on him, Deputy Kaley could see a gun in Mr. Erdbruegger's right hand. Deputy Kaley stated that he attempted to fire his gun but was out of ammunition and unable to reload in time before wrestling for the gun.

Deputy Horwitz described pulling up and immediately hearing multiple gun shots. He described seeing Deputy Kaley lift his right leg and duck into his vehicle. Deputy Horwitz believed that Deputy Kaley had been shot. Deputy Horwitz described hearing and feeling bullets go past him and knew that Mr. Erdbruegger was firing at them, and he returned fire in response. He observed Mr. Erdbruegger approach Deputy Kaley with a gun in his hand and believed Mr. Erdbruegger was "pressing the threat on us, he was attacking us." Deputy Horwitz described that after Deputy Kaley was able to either push or punch Mr. Erdbruegger back, Mr. Erdbruegger began to raise the gun towards them. Deputy Horwitz believed that Mr. Erdbruegger was going to kill him or Deputy Kaley and he again fired at Mr. Erdbruegger in response to that threat.

Deputy Horwitz's second round of return fire caused Mr. Erdbruegger to collapse to the ground and the handgun fell from his grasp. Deputy Horwitz stopped firing and deputies approached Mr. Erdbruegger, kicked the gun away from his reach, and held him at gunpoint for their own safety until cover units arrived within two minutes.

Charges Filed Against Mr. Erdbruegger

Bryan Erdbruegger has been criminally charged due to his actions on July 12, 2022. Mr. Erdbruegger is presumed innocent, all charges are merely allegations unless and until they are proven beyond a reasonable doubt. Mr. Erdbruegger's charges are as follows:

Criminal Attempt to Commit Murder in the First Degree of Deputy Kaley (F2)
Criminal Attempt to Commit Murder in the First Degree of Deputy Horwitz (F2)
Illegal Discharge of a Firearm (F5)
Assault in the Second Degree of Deputy Armstrong (F4)
Speeding (T)

Applicable Law

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.

(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.

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.

Legal Conclusions

Evidence shows that Deputies complied with Colorado law in their response to Mr. Erdbruegger.

Deputies returned fire only as a response to being fired upon by Mr. Erdbruegger. The fact that nine shots fired by Mr. Erdbruegger impacted Deputy Kaley's patrol vehicle, in immediate proximity to where Deputy Kaley was standing, demonstrate his intent to kill or seriously injure a deputy and the significant risk of death or serious bodily injury the deputies faced. Mr. Erdbruegger continued to present a threat as he advanced on Deputy Kaley with the gun in his hand and by firing another round in the course of the physical struggle for his gun. Although Mr. Erdbruegger retreated briefly, he then turned back towards the deputies and lifted the gun once more. Deputy Horwitz was reasonably in fear for his own life and the life of Deputy Kaley when he fired again at Mr. Erdbruegger bringing him to the ground.

Once Mr. Erdbruegger fired at Deputies, the deputies faced a clear and imminent threat to their own lives and that of their fellow deputy, 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. When faced with a barrage of bullets fired directly at them, no other response from the deputies would have been reasonable in this situation.

Additional deputies from LCSO arrived and rendered aid to Mr. Erdbruegger as soon as safely practicable, while Deputies Kaley and Horwitz were securing the scene. Mr. Erdbruegger was

transported to the hospital promptly. Those lifesaving efforts were successful. Mr. Erdbruegger's family was notified later the same evening by CIRT investigators who met with them in person.

While Mr. Erdbruegger did not die as a result of being shot, the deputies would have been justified in using deadly physical force under both C.R.S. 18-1-704 and 18-1-707(4.5) as a lawful defense of self or defense of another, 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. Erdbruegger had already shot at them.

As such, my review of the thorough CIRT investigation clears Deputies Jeffrey Kaley and Aaron Horwitz of criminal culpability. I thank all members of the Eighth Judicial District CIRT for their efforts in compiling a complete and professional investigation. While transparency is of great importance to me and the CIRT, further information cannot be publicly disclosed at this time due to the pending criminal case filed against Mr. Erdbruegger and our legal obligations pursuant to the CRPC.

Gordon P. McLaughlin


District Attorney
8th Judicial District