

Clifford E. Riedel
District Attorney

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

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



1st ASSISTANT DISTRICT ATTORNEY
Mitchell T. Murray

2nd ASSISTANT DISTRICT ATTORNEY
Emily A. Humphrey

CHIEF DEPUTY DISTRICT ATTORNEYS
Andrew J. Lewis
Daniel M. McDonald
David P. Vandenberg
Gregory K. Biggers
Robert J. Percifield

February 6, 2019

Chief Jeff Swoboda
Fort Collins Police Services
2221 S. Timberline Road
Fort Collins, CO 80525

Re: Opinion concerning—FCPS #19-579, LCSO #19-355, and LPD #19-363

Dear Chief Swoboda:

The criminal investigation surrounding the January 12, 2019 shooting and subsequent death of Joshua Vernon Moore has been completed and submitted to my office for an opinion. As the District Attorney for the Eighth Judicial District, 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. My review also includes determining if the degree of force used by Fort Collins Police Officer Keith Hunter was justified under pertinent Colorado statutes.

Larimer County's Critical Incident Protocol was in place and followed during this investigation. The investigation was conducted by the Critical Incident Response Team ("CIRT") for the Eighth Judicial District. The Larimer County Sheriff's Department led the CIRT team during this incident. Members of the CIRT team included personnel from the Larimer County Sheriff's Department, the Loveland Police Department, the District Attorney's Office for the Eighth Judicial District, and the Fort Collins Police Services. I have reviewed all of the reports, photos, videos, dispatch and communication records, witness interviews, ballistics, and findings made by the Larimer County Coroner's Office.

In determining whether the degree of force used by Officer Hunter was legally justifiable, my review is based on whether the following Colorado statute involving the use of force was violated.

Section 18-1-704 of the Colorado Revised Statutes provides:

- (1) ...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...

The definition of "deadly physical force" is set forth in C.R.S. section 18-1-901(3)(d). It reads:

"Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.
(Emphasis added)

The following is a summary of the facts in this case as established by the above sources of information:

On January 12, 2019, at approximately 10:04 pm, Fort Collins Police 911 operators received a series of 911 calls regarding shots being fired into a residence in the 2600 block of Bradbury Court in Fort Collins, Colorado. Two of those 911 calls came from people inside of the residence located at 2606 Bradbury Court. A male caller, inside the residence, reported that his stepfather had destroyed the interior of the house and was now outside trying to get back into the house. The male caller also stated that his stepfather had a gun and had fired two rounds into the house as he was attempting to gain entry.

A female 911 caller, also from inside the residence, reported that a male was attempting to enter the residence. The female reported that the male, who was attempting to enter the house, was shooting at them and that a child in the residence had been hit and was bleeding. At one point the female caller frantically yelled, "Oh my god he is coming in; I need you here now!" A subsequent investigation revealed that the child received a minor cut from flying glass, due to a bullet striking a mirror.

Numerous police officers were dispatched to the scene of the reported active shooter. Officer Hunter was conducting a traffic stop near the intersection of Overland Trail and Elizabeth Street when he heard an emergency alert tone on his police radio. Realizing that he was very close to the Bradbury Court address, Officer Hunter immediately terminated his traffic stop and rushed to the location of the active shooter. According to computer dispatch records, at 10:08:08 Officer Hunter reported that he was in the area of West Lake Street and Deerfield Drive. Forty-six seconds later, at 10:08:54 pm, Officer Hunter radioed, "Shots fired," and "Suspect is down."

Officer Hunter, who was wearing a body mounted camera, stated that he was on Deerfield Drive approaching the intersection of Bradbury Court when he saw a female running out from Bradbury Court onto Deerfield Drive. The female looked panicked and was running in somewhat of a zig zag manner, looking back as if someone was after her. Officer Hunter then observed a tall thin male grabbing the female and a struggle began. Officer Hunter said the male appeared intent on keeping the female from getting away. Officer Hunter exited his patrol car and began running to assist the female while shouting commands for the male to stop. Officer Hunter observed the male reaching over the top of the female, when he heard a gunshot and the female went to the ground. Officer Hunter believed that the female had been shot by the male attacker. The male was then standing over the female, and Officer Hunter heard a second gunshot, as the male began moving towards the north. Officer Hunter was unsure if this second shot was directed at the female, who was now on the ground, or at him. Officer Hunter then rapidly fired his Glock .40 caliber service pistol four times and the male went to the ground. Officer Hunter immediately contacted the female, who was down on the pavement, to determine if she had, in fact, been shot. The female was distraught and crying; however, thankfully she had not been shot. This female was identified as Roberta Rivera-Moore.

Additional police officers and emergency medical personnel rapidly arrived at the scene. Officer Jake Schneider arrived while Officer Hunter was still attempting to determine if the female had been shot. Officer Schneider approached the male suspect who was laying on the pavement. Officer Schneider observed a handgun laying just under the male suspect's chin. Officer Schneider secured the weapon in his patrol car. A subsequent investigation revealed that the male assailant was Joshua Vernon Moore. The handgun Mr. Moore had been firing was a .45 caliber Glock, which had been stolen during a burglary from the Cabela's Store in Thornton, Colorado, in 2017.



Roberta Rivera-Moore was interviewed and stated that she and Mr. Moore had been married for approximately two years, but had been living apart for the last six months. Ms. Rivera-Moore told investigators that she and Mr. Moore had a heated argument over the phone at approximately 4:00 pm on January 12, 2019. Due to this argument, Ms. Rivera-Moore was concerned that Mr. Moore would come over to her residence at 2606 Bradbury Court. As a

result, Ms. Rivera-Moore and her children left the residence and went to a friend's home. Sometime later, Ms. Rivera-Moore's eighteen-year-old son went back to 2606 Bradbury Court and discovered that someone had entered the home with a sledgehammer and had "destroyed" the home.



Ms. Rivera-Moore returned to her home with family and friends when she learned of the extensive damage to her residence. It was shortly after her arrival back at 2606 Bradbury Court when Mr. Moore drove up in a black BMW sedan and began firing a gun into the residence. There is evidence to suggest that Mr. Moore was, in fact, lying in wait for Ms. Rivera-Moore to return to the residence.

Based upon the physical evidence at the scene, statements made on the 911 calls from inside the residence, and the witness statements, it appears that Mr. Moore drove up into the yard of 2606 Bradbury Court and fired a shot from the stolen .45 caliber Glock through the windshield of his BMW and into the residence.



Mr. Moore then attempted to enter the front door of the residence. He later went to the rear of the residence attempting to force his way into the residence. It was at this point that the occupants of 2606 Bradbury were able to escape out of the front door of the residence. Ms. Rivera-Moore stated that as she was running out of the front door to escape, she observed Mr. Moore coming through the house from the back-door area with a black handgun.

Ms. Rivera-Moore stated that her children and friends got into a Jeep and fled to the west; however, she ran to the east towards Deerfield in an attempt to draw Mr. Moore away from her children and friends who had just escaped in the Jeep. Ms. Rivera-Moore stated that Mr. Moore was chasing her as she ran towards Deerfield. Ms. Rivera-Moore said that she saw a police car on Deerfield and then she was grabbed by Mr. Moore. Ms. Rivera-Moore was pleading with Mr. Moore not to shoot her stating, "Don't shoot me" and "I love you." Ms. Rivera-Moore also remembers grabbing Mr. Moore's wrist while pleading for him not to shoot her. Ms. Rivera-Moore stated that Mr. Moore stated he loved her and then she recalls hearing a series of gun shots and bullets passing by her.

Officer Hunter's body camera video shows a total of six shots being fired. The first two shots were fired by Mr. Moore's stolen .45 caliber Glock. The remaining four shots were fired by Officer Hunter using his .40 caliber Glock. CIRT investigators recovered two .45 caliber shell casings and four .40 caliber shell casings from the scene of the shooting.

The Larimer County Coroner's Office determined that Mr. Moore sustained four non-fatal gunshot wounds to his lower extremities and one fatal self-inflicted wound to the right side of his head. The coroner's office has determined the cause of death of Mr. Moore to be a suicide. All four of the shots fired by Officer Hunter struck Mr. Moore in his legs and hip area. It has been determined that as Mr. Moore was falling to the pavement, he shot himself in the right side of his head.

Based upon the totality of the evidence, I find that Mr. Joshua Moore committed the only criminal offenses during this incident. Had he survived, sufficient evidence exists to have charged Mr. Moore with multiple felony offenses; including Attempted First-Degree Murder, First Degree Burglary, Felony Criminal Mischief, multiple counts of Felony Menacing with a Deadly Weapon, Illegal Discharge of a Weapon, and Possession of a Weapon by a Previous Offender. Additionally, Mr. Moore would have been subject to Habitual Criminal charges based upon his extensive criminal history.

I find the non-lethal force used by Officer Hunter was justified pursuant to section 18-1-704, C.R.S. Officer Hunter placed his life at risk by running towards an armed man who was assaulting and, most likely, attempting to murder a fleeing female. Officer Hunter only fired his weapon in response to Mr. Moore firing two gunshots. But for the selfless action of Officer Hunter, it is reasonable to believe that Mr. Joshua Moore would have killed Ms. Rivera-Moore. Officer Hunter's actions were legally justifiable and, by any measure, commendable.

Respectfully,


Clifford E. Riedel
District Attorney