



MICHAEL J. ROURKE
District Attorney

ROBERT W. MILLER
Assistant District Attorney

Office of the District Attorney
Nineteenth Judicial District

915 10TH Street
P.O. Box 1167
Greeley, CO 80632
Phone: (970) 356-4010
Fax: (970) 352-8023
www.weldda.com

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Chief Jerry Garner
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

Chief Carl Harvey
LaSalle Police Department
128 North 2nd Street
LaSalle, CO 80645

RE: Investigation of the February 25, 2016 Officer-Involved Shooting of Luke Nathan Miller

Chiefs Harvey & Garner:

The investigation into the shooting of Luke Nathan Miller has been completed by the Critical Response Incident Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officers who discharged their weapons. Included with this report is a summary of the investigation and the pertinent Colorado law.

I have determined that, under the circumstances presented in this investigation, I will not release the names of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act requires disclosure of records of official actions by criminal justice agencies. These cases are not directly on point as the release of the officers' names alone does not fall squarely within the Criminal Justice Records Act. They are, however, informative in analyzing whether such disclosure is appropriate. Each of those cases require a custodian of criminal justice records to undertake a balancing test prior to the disclosure of criminal justice records and the information contained therein. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

When I engaged in this balancing test, I was persuaded that the privacy interests of the individuals who may be impacted by a decision to allow inspection (i.e. the officers involved in this incident) outweigh the other four factors to be considered. The continued safety of the officers and their families is of paramount concern in this case when, as here, the individual involved in the incident with law enforcement (Luke Miller) has very strong and documented ties to known criminal gangs. This investigation has determined that Miller was an active member of white supremacist groups such as the Aryan Brotherhood and the "211" prison gang. This membership has been documented in prior police reports, and is corroborated by the tattoos on Miller's body. Therefore, I will not release the names of these officers, and they will be referred to in this report as Officers 1, 2 and 3.

INVESTIGATIVE SUMMARY

At approximately 1:20 a.m. on February 25th, 2016, Officer Desmond with the Evans Police Department observed a female in a suspicious vehicle parked at the 1100 Block of 40th Street. Moments before Officer Desmond contacted the female, he observed two male subjects, later identified as Johnny King and Luke Nathan Miller (DOB:10/8/1978) walking eastbound out of the abandoned Gateway Fun Center. During the contact, Miller ran from Officer Desmond and a foot chase ensued. Officer Desmond lost sight of Miller after he jumped over a barbed wire fence into the secured parking lot of Wireless Advance Communications (WAC) located at 3901 West Service Road in Evans. While a ninety minute multi-agency search followed, Miller trespassed a tan Chevrolet Avalanche located in the WAC parking lot and armed himself with a .40 caliber Glock handgun.

Sergeant McDaniel with the Evans Police Department confronted Miller on the northeast corner of WAC, and gave Miller verbal commands to stop. Miller turned toward Sergeant McDaniel, and with his hands concealed inside his sweatshirt pocket, fired one shot at Sergeant McDaniel from approximately twenty-five yards away.

Officers lost visual of Miller when he ran eastbound across Highway 85. After twenty minutes, a search team observed Miller on the property of 3819 Idaho Street. Miller fled westbound back across Highway 85 and walked northbound on the sidewalk of the west service road. Officer's 1 and 2 were positioned to the north of Miller with their illuminated patrol vehicles blocking the west service road. Miller continued walking in their direction, while holding the weapon in his right hand. Officers gave numerous loud verbal commands for him to drop the weapon, but Miller continued walking northbound. Miller turned in the direction of Officer 3, who was standing to the east, and yelled "Kill me," then turned back towards Officers 1 and 2 and began to raise the weapon in their direction. Officer's 1, 2, and 3 fired their weapons, fatally shooting Miller.

The Weld County District Attorney's Office has utilized recorded statements from all officers and witnesses, reports from the Weld County Critical Incident Response Team, the Dispatch and radio traffic recordings, as well as relevant evidence reports in the review of this incident.

On 02/26/2016, Officer 1, a LaSalle Police Officer, was interviewed at the Greeley Police Department by Investigator Donald Potter with the Weld County District Attorney's Office and Deputy Dan Boyle with the Weld County Sheriff's Office, both members of the Critical Incident Response Team (CIRT). Officer 1 stated he was returning to LaSalle from the Weld County Jail

after booking an arrestee. He was aware of the situation in Evans and responded to assist. While responding, he was stopped at 31st Street and heard Sergeant McDaniel air that he was in a foot pursuit. Officer 1 then put his sirens on and ran the light. As he sped up, he heard a shot fired and immediately after, heard the officers yelling shots fired.

Officer 1 described his efforts to assist in locating the suspect, during which he armed himself with his AR-15. Officer 1 stated that because the situation involved an active shooter he put on his extra rifle armor and his Kevlar helmet. His body camera would not attach to his armor so he put it in his pocket. As part of the training for using body cameras, officers are taught that the cameras are not to interfere with their personal safety.

Officer 1 stated he ultimately heard the suspect had broken out of the perimeter and was running west across Highway 85. Officer 1 got back into his patrol vehicle, while keeping his overhead lights on and his AR-15 slung across his shoulder resting in his lap. He proceeded to make a U-turn and hit the green light on Highway 85 and started down the frontage road. He observed a marked Greeley Police Department SUV and parked on the frontage road just south of the intersection, blocking that area.

When he parked on the frontage road, Officer 1 estimated the suspect was thirty-five to forty yards from him. Officer 1 continued to give verbal commands as the suspect was walking towards him. He recalled the suspect wearing a black sweatshirt and blue jeans, and no hat. Officer 1's spotlight was still on and overheads were still activated from when he was posted on the perimeter. Officer 1 estimated the suspect was within twenty yards when the suspect raised the gun and he fired at the suspect. Officer 1 stated he shot from the door well of his patrol vehicle. He then left that position at the door well to assist providing medical aid to the suspect.

Officer 1 confirmed when he first encountered the suspect, he could see the gun. When he was giving the suspect verbal commands to stop and drop the gun, the only response he heard from the suspect was "You're going to have to shoot me, you're going to have to kill me." Officer 1 then stated that the suspect grabbed the gun with both hands and started walking towards him. The suspect started to raise his hands up. Officer 1 then discharged his firearm because he was in fear of his life and that of other officers.

Officer 2, a Greeley Police Officer, was interviewed on 02/25/2016 at the Greeley Police Department by Officer Greg Tharp with the Greeley Police Department and Sergeant Kevin Jamison with the Erie Police Department, both members of CIRT. Officer 2 stated that at approximately 3:15 a.m. he was contacted by Dispatch stating that the Evans Police Department was requesting his agency's assistance to help establish a perimeter. He had heard over the radio that Evans Police Department was in a foot pursuit and mentioned there was some type of shooting event. He pulled up the call on his computer, and it actually stated in the call that someone shot at an officer.

Officer 2 drove where Officer 1 and an Evans Police Officer were posted at 37th Street and Central to get direct information about the situation. Officer 2 heard the suspect description aired over the radio as being a white male, wearing a black hoodie, and either blue jeans or a blue shirt. A short time later, officers aired they had flushed the suspect out and were in a foot pursuit

westbound across Highway 85. Officer 2 made a quick U-turn and drove back down 37th street. Officer 1 was in front of him in his small SUV as they crossed Highway 85.

Officer 2 saw someone running westbound across Highway 85, but he was unsure sure if it was the suspect, or other officers. Officer 2 stated he was driving southbound down the frontage road with Officer 1 ahead of him. Officer 1 made a quick stop and turned his vehicle in a southwesterly direction. Officer 2 pulled up as quickly and as closely, as he could to Officer 1. He got out of the vehicle with his Glock sidearm drawn. He believed Officer 1 was out of his vehicle with his rifle drawn.

Officer 2 put his sights on the suspect and lit him up with a spotlight. All of Officer 2's vehicle overhead lights were on, as well as Officer 1's. Multiple people were yelling verbal commands. This included approximately four or five officers in the "grassy berm" area, himself and Officer 1. He heard the suspect yell something to the effect of "Just kill me." Officer 2 then saw the suspect turn toward the officers in the berm, the suspect brought his left hand up into what Officer 2 considered a typical two-handed shooting position. At that point, Officer 2 thought the suspect was going to shoot at the officers in the berm and potentially kill them. This was the reason Officer 2 stated he fired his weapon. Officer 2 advised that during the incident there was an obvious heightened concern for officer safety because the suspect had shot at an officer.

Officer 3, a Greeley Police Officer, was interviewed at the Greeley Police Department on 02/25/2016 by Investigator Traci Dowd with the Weld County District Attorney's Office and Deputy Pete Jones with the Weld County Sheriff's Office, both members of CIRT. Officer 3 was at the Greeley Police Evidence Department when he heard Dispatch state that Evans was requesting officers to assist. The call involved a male who had run from Evans and then fired a shot at officers. Officer 3 responded to the scene and assisted other officers in attempting to locate the suspect on east side of Highway 85. When they reached the fence near Highway 85, there was an area where the barbed wire fence was depressed down, and he heard one of the Deputies in his group yell "Suspect" and then "Show me your hands." The suspect then ran west across Highway 85 with a black object in his hand. Officer 3 started following the suspect and noted the suspect started running fast. Officer 3 did not run after him because the suspect was armed and he had no idea what was going to happen. So he took it slow, gave the suspect verbal commands, and told him "Police, Stop."

Officer 3 observed the suspect on the frontage road west of Highway 85, near an old business where he saw the suspect get on the sidewalk. Officer 3 was jogging after the suspect trying to call out the radio traffic when he observed the 7-Eleven with all its lights on. Officer 3 began to run faster to try to intervene in the event the suspect tried to enter the 7-Eleven. Officer 3 stated he was trying to yell, "Police, Stop," but he was also trying to keep up with the radio traffic. Officer 3 stated he could hear vehicles, sirens, and see lights up at the intersection. He could hear vehicles screeching and stopping, which he assumed were other officers trying to get into position.

Officer 3 then observed the suspect pacing in front of a business on the frontage road and saw that other officers had positioned to the north. Because of a potential crossfire situation he and other officers repositioned to approach more from the east. Officer 3 stopped as he was

approaching the suspect. He then heard the suspect say, “either just shoot me, or just kill me.” He stated the suspect then turned toward him and he saw the barrel of the suspect’s gun and believed the suspect was about to start shooting at him, so he fired multiple times at the suspect.

Officer Desmond had his body camera on during the initial contact with the suspect and Johnny King that showed the suspect fleeing. Desmond’s camera was also on when officers were set up, approximately 90 minutes later after they had located the suspect. The camera shows the suspect walking northbound on the west service road and then across the grassy median between Highway 85 and the west service road. Officers can be heard giving loud verbal commands to the suspect to put his hands in the air and drop the gun.

On the video, the suspect is wearing a black hoodie pulled up over his head, and blue jeans. The video shows the suspect walking northbound in the direction of officers who were blocking the west service road. The officers’ vehicles were clearly lit with their overhead lights. At one point, the suspect turned in Officer Desmond’s direction (or towards the east) and then turned north again. The second time the suspect turned to the east, it appeared that he was holding an object in both hands and yelled “Kill me” and turned back to face northbound. The suspect raised his arm when officers fired a quick sequence of shots. The suspect fell forward (northbound) and no further movement was seen from him. Officers begin to make a formation and approach him. Once officers approached, a handgun is clearly visible on the ground next to the suspect, who is identified at that point as Luke Miller.

Based on the evidence collected at the scene of the shooting, investigators determined that Officer 1 fired three (3) rounds from his rifle, Officer 2 fired two (2) rounds from his handgun, and Officer 3 discharged his rifle nine (9) times.

An autopsy was conducted on Miller at the McKee Medical Center in Loveland on February 25, 2016 by Dr. Michael Burson. The report was delivered to the District Attorney’s Office on April 28, 2016. That autopsy determined that Miller died as the result of multiple gunshot wounds. Specifically, Dr. Burson determined that Miller sustained seven gunshot wounds. Additionally, a toxicology screen determined that at the time of his death, Miller had 1600 ng/mL of methamphetamines in his system. The autopsy report concluded “the cause of death is multiple gunshot wounds, which were sustained during an altercation with law enforcement. Acute methamphetamine intoxication may have contributed to the events leading up to the incident.”

APPLICATION OF THE FACTS TO THE LAW

The District Attorney’s office may ethically charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known

as an affirmative defense. Because the evidence establishes that Miller was shot and killed by officers, the determination of whether their conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707(2)(a) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary...**to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.**

C.R.S. § 18-1-901(3)(d) of the Colorado Revised Statutes defines the term “Deadly Physical Force” as follows:

(2)(d) “**Deadly Physical Force**” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Miller intended to shoot the officers. The issue is whether or not it was reasonable for the officers to believe that Miller was going to fire his gun at the officers.

In this case, the officers were attempting to contact Miller after he fled from Officer Desmond. During the search for Miller, Sergeant McDaniel was shot at by Miller. Further, when he was ultimately confronted by Officers 1, 2, 3 and other officers he had a firearm in his hand. Thus, it is clear that law enforcement knew that Miller was in possession of a firearm.

Throughout the course of the incident, Miller refused to comply with the commands of the officers. He refused to show them his hands and put down his weapon. Miller ignored these commands and instead pointed his handgun at the officers immediately after shouting at officers to shoot him.

The officers reasonably believed, at that time, based on all of the surrounding facts and circumstances known to them, they were in imminent danger of death or serious bodily injury.

Miller would have clearly known that the individuals giving him commands were police officers because they were in uniform and they arrived in law enforcement vehicles, which were parked in sight of him with lights on. Further, he had ran from Officer Desmond earlier.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the officers were justified in using lethal force against Miller because they reasonably believed that it was necessary to defend themselves from Miller’s threatened use of deadly physical force.

CONCLUSION

Under C.R.S. § 18-1-707(2)(a), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the potentially volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file charges against the Officer 1, 2 or 3 for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Rourke". The signature is written in a cursive style with a prominent initial "M".

Michael J. Rourke
District Attorney