



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

October 13, 2016

Chief Rick Brandt
Evans Police Department
1100 37th Street
Evans, CO 80620

RE: Investigation of the September 10, 2016 Officer-Involved Shooting of David Blanco

Chief Brandt:

The investigation into the shooting of David Blanco has been completed by the Critical Incident Response Team (CIRT) and has been presented to my office. Following my review, and applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officer who discharged his weapon. Included with this report is a summary of the investigation and the pertinent Colorado law.

INVESTIGATIVE SUMMARY

On September 10, 2016 Sergeant Moore of the Evans Police Department was assigned to the patrol shift as a uniformed officer. As part of his duties he reviewed the Rodeway Inn Motel's hotel registry and checked the names of the registered guests for warrants. Sgt. Moore learned the registered guest in room 142 was a David Blanco (Blanco), date of birth March 7, 1988. He learned there was a felony fugitive warrant out of Kansas for Burglary, Possession of Methamphetamine, and Use of Phone to Facilitate a Drug Transaction for Blanco.

Sgt. Moore obtained the copy of the photo identification provided to the Rodeway Inn by Blanco and photographed it. When Officer Stone arrived to assist he was shown the photograph and briefed on the information regarding the outstanding fugitive warrant.

Shortly before 11:44 p.m., the Officers went to room 142 and knocked on the door. A male voice from the other side of the motel room door asked who was there. Sgt. Moore responded it was the police. A female, later identified as Krissy Blanco, opened the door and came outside and spoke with Sgt. Moore. He told Ms. Blanco he needed to speak with Blanco to which Ms. Blanco asked him why the officers needed to speak with him. Sgt. Moore told her he would not discuss that with her. She asked him for a business card which was provided to her by the officers. Sgt. Moore then asked her to get Blanco to come to the door. She agreed and then stepped back into the motel room, closing the door and latching it. Shortly after the lights in the room were turned off.

During this exchange Officer Stone had been peering through a small opening in the room's window and observed a male subject. Based on having viewed the ID photo provided to him by Sgt. Moore, Officer Stone was able to identify the male as Blanco.

At 11: 54 p.m., dispatch confirmed the fugitive warrant for Blanco as a felony no bond extraditable warrant for Burglary to a Non-Residence, Possession of Methamphetamine, and Using a Phone to Facilitate a Drug Transaction.

The officers continued to command Blanco to come out of the room or they would force entry. Their commands were met with replies from Krissy Blanco demanding to see a paper warrant. At 12:02 a.m. the officers used a room key and Officer Gabriel used bolt cutters to open the door. The door swung open and the officers provided the following statements regarding their observations when the door opened:

Sgt. Moore stated as he looked in, he saw a male trying to crawl into the ceiling through a cold air return/ventilation system. The male dropped down from the ceiling, pulled a gun and pointed it at him and the other officers at the door. He remembers hearing "gun" and was not sure if he or one of the other officers yelled it. The male began moving toward the bathroom while pointing the gun towards officers. Sgt. Moore said he began shooting at the subject until the subject entered the bathroom. Seeing Krissy Blanco on the bed with children he immediately ordered her and the children to drop on the ground and crawl out of the room which they initially refused to do. Eventually the female and children did as directed.

Officer Gabriel stated that when the door flew open he immediately heard Sgt. Moore state "gun." He pulled his gun and looked into the room and observed a male who appeared to be retreating to the back of the room. The subject turned and extended his hand towards officers while holding a black gun. He could see the barrel pointed directly at them. At that moment Sgt. Moore fired 3 to 4 times. Officer Gabriel said at the point he saw the gun pointed directly at them he felt any of the officers could have been shot.

Officer Stone stated he was positioned behind Sgt. Moore and Officer Gabriel and exposed to the interior of the motel room when the door was opened. He recalled the suspect pointing the gun at him and clearly saw the barrel of the gun. He described that moment as the "...[worst] moment of his life, hands down the [worst] moment of his life." He does not believe he will ever get that image burned out of his head. He was waiting for the flash from the barrel as he was completely exposed in the doorway, expecting to get shot. He was waiting for rounds to start coming through the wall. He thought the subject was going to start shooting at them from inside the bathroom as well.

During Sergeant's firing of his weapon, Krissy Blanco and her four children were on one of the two beds positioned to the left of the path of gun fire. Immediately after the sergeant ceased firing his weapon, he and other officers, while remaining outside of the room, urgently tried to convince Krissy Blanco to bring her children out of the room. She resisted initially, but finally relented and brought the kids out of the motel room. Officers continued to negotiate with Blanco in an attempt to get him to surrender. Blanco expressed his anger at officers for shooting at him and refused to surrender, remaining in the bathroom. Attempts to get Blanco to surrender continued until 1:28 a.m. when chemical agents were introduced into the motel room effectively causing Blanco to surrender leading to his arrest.

Blanco was interviewed by CIRT investigators and stated he was aware there was a Kansas warrant for his arrest. He was aware the officers identified themselves to be police officers, but he was not certain as they were not producing an actual paper warrant when requested. He said at first his wife didn't believe they were police but she went outside and talked to them and one of the officers gave her his business card. She came back in and told him he needed to go out there. He didn't know what to do and panicked. He just told her not to answer the door.

Blanco stated he used his BB gun as a means to protect himself, believing if they weren't police, it would scare them away and protect his family. He is unable to have a gun so he carries the BB gun as protection. Blanco demonstrated his actions when the door to the room opened to interviewing officers, showing them that he raised the gun to a 45 degree angle from the floor. Blanco stated, "Didn't know what the f____, I just went as far as it did."

During the arrest and subsequent interview of Mr. Blanco, officers observed that Blanco was not struck by any of the rounds fired by Sgt. Moore.

Blanco's actions at the point officers forced open the door were captured by Sgt. Moore's body camera. A review of that recording shows Blanco pointing the "gun" directly towards the camera, and therefore the officers as well.

The crime scene investigation conducted by the CIRT revealed five (5) spent shell casings located on the ground outside the motel room doors 141 and 142. This count was consistent with the finding of five (5) defects consistent with bullet holes in the bathroom door and wall.

Sgt. Moore's weapon is a Glock Model 21 with a RLR/1 Stream Light attached to it. A count of the rounds remaining in this handgun as well as Sgt. Moore's extra magazine was completed by crime scene investigators. The inventory was consistent with the Sgt. Moore having fired five (5) rounds during the incident. Additionally, the manufacturer of the rounds was found to be Winchester. The manufacturer of the spent shell casings found at the scene was similarly Winchester.

A black BB gun was found on the floor just outside the bathroom door of Room 142. The BB gun is similar in design and size effectively replicating a real handgun:



David Blanco was charged with three counts of Felony Menacing- real or simulated weapon, a class 5 felony and three counts of Child Abuse, a class 2 misdemeanor due to his actions on September 10, 2016.

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 at another human being is generally prohibited 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 Blanco was shot at by Sgt. Moore, the determination of whether the sergeant's conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707(2) establishes when a peace officer can use potentially 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...OR to effect an arrest...of a person he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.**

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 Blanco intended to use deadly force against the officers. The issue is whether or not it was reasonable for the officers to believe that Blanco was about to use deadly physical force against them or another person with what appeared to be a deadly weapon.

In this case, the officers were attempting to arrest Blanco on an outstanding felony warrant from Kansas. They had positively identified him in the hotel room and were attempting to arrest him. After identifying themselves on several occasions as law enforcement officers, they entered the hotel room. Upon entering the hotel room Blanco pointed what appeared to be a handgun at them. Fearing for his and other officers' safety, Sgt. Moore fired five rounds at

Blanco, none of which struck him. The sergeant reasonably believed, based on all of the surrounding facts and circumstances known to him that he and the other officers were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the sergeant was justified in discharging his firearm at Blanco because he reasonably believed that it was necessary to defend himself and the other officers.

CONCLUSION

Under C.R.S. § 18-1-707(2)(a) and (b), Sergeant Moore's actions in this situation were justified and authorized by law in order to defend and protect himself and other officers from the lawless and dangerous actions of Mr. Blanco. As a result, the Weld County District Attorney's Office will not file charges against Sergeant Moore for discharging his firearm during this incident. 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 large, stylized initial "M".

Michael J. Rourke
District Attorney