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March 22, 2019

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

RE: Investigation of the February 6, 2019 Officer-Involved Shooting of Seth Keo Mallard

Chief Harvey:

The investigation into the shooting of Seth Keo Mallard 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 officer who discharged his weapon. Attached hereto are the findings of the Investigations Unit of the District Attorney's office based on the entirety of the CIRT investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

I have determined that, under the circumstances presented in this investigation, I will not release the name of the officer 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 (CJRA) requires disclosure of records of official actions by criminal justice agencies.

These cases are not directly on point as the release of the officer's name alone does not fall squarely within the CJRA, but they are informative in analyzing whether such disclosure is appropriate. The cases require a "balancing test" by the custodian of criminal justice records prior to the disclosure of criminal justice records. 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.

Here, the balancing test shows that the privacy interests of the individual who may be impacted by a decision to allow inspection (i.e. the officer involved in this incident) outweigh the other four factors to be considered. The continued safety of the officer and his/her family is of paramount concern in this case since the individual involved in the incident with law enforcement has associations to known criminal gangs. This investigation has uncovered information that Mallard's best friend is a known tracked gang member. Further, the investigation determined that there have been threats made to injure or kill individuals associated with this incident. Therefore, the involved officer's identity will not be released.

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 the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being or shooting at 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 Mallard was shot and killed by the responding officer, the determination of whether his conduct was criminal is 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, OR otherwise indicates...that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.**

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 Mallard intended to use deadly force. The issue is whether it was reasonable for the officer to believe that he was about to use deadly physical force against the officer or another person with a deadly weapon. In this case, the officer was in contact with Carlos Liendo when Mallard intervened and armed himself. When the officer confronted Mallard, Mallard leveled a shotgun at him, thus, the officer fired in self-defense.

Mallard clearly knew that the officer was in fact a law enforcement officer. As Mallard was approaching, he stopped pulled behind the officer's patrol car, and then drove around it. The officer was in uniform and his police vehicle had flashing red and blue lights illuminated.

The officer reasonably believed when he fired his weapon that he was in danger of death or serious bodily injury. Mallard leveled his shotgun at him. Further, the evidence shows, and witnesses stated, that Mallard wielded the shotgun and made a threatening statement to the officer.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that the officer was justified in discharging his firearm at Mallard. He reasonably believed that it was necessary to protect himself from Mallard's use of potentially deadly physical force. Further, Mallard had committed a felony when he pointed a shotgun at the officer.

CONCLUSION

Under C.R.S. § 18-1-707(2), the officer's actions in this situation were justified and authorized by law to defend and protect himself and others from actions of Seth Mallard. As a result, the Weld County District Attorney's Office will not file charges against the officer 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.

Michael J. Rourke
District Attorney



Officer Involved Shooting

Seth Keo Mallard DOB/091498

Lasalle, Colorado

Chief Investigator Thomas M Walde

February 6, 2019

Lasalle PD 19LP00285

Summary:

On 02/06/2019 Seth Mallard was shot by a LaSalle Police officer and later pronounced dead. The shooting was investigated by the 19th Judicial Critical Incident Response Team (CIRT).

At 0239 hours, Reporting Party (RP), Wilma Fling called 911 to report a suspicious vehicle. She reported that as she left her home, 18822 WCR 394, she noticed a dark colored vehicle parked near her home occupied by a male. Fling also reported that as she was driving through LaSalle, she heard a car alarm going off at E-Z Motors.

According to dispatch radio traffic:

0244: Weld 200 asked dispatch to see if a LaSalle Unit can check on this vehicle, the call was in Weld County jurisdiction, bordering LaSalle.

0246: Officer 1 is dispatched to 18822 WCR 394 on the report of a suspicious vehicle.

0248: Officer 1 called on scene and said that he will be out with a black Volkswagen bearing Colorado registration ASI073 and the vehicle is occupied by one person.

0252: Officer 1 asked dispatch if a county unit is attached and requested to "have one float this way" to check on an alarm at E-Z Motors which is very close to this location (529 2nd St. Unit A, LaSalle) since there was a recent burglary at E-Z Motors a few days ago.

0254: Dispatch asked Evans if they could respond to back Officer 1. Evans 143 advised that he will be in route, at 0257 hours Evans 153 also acknowledged that she is attached and responding. At 0300 hours, Evans 143 reports that he is on scene at E-Z Motors and that there is a light on inside. Evans 143 and 153 check the business and find damage to a garage door. At 0306 hours, Officer 1 says that the damage may be from the previous burglary.

Officer 1 contacted the occupant of the Volkswagen, identified as Carlos Liendo. Liendo told Officer 1 that his friend Ducky/Seth drove him to this location and told Liendo that "he was going to handle something." Ducky/ Seth was later identified as Seth Mallard, 09/14/1998. Officer 1 cleared Liendo through dispatch and found that Liendo had a revoked driver's license. Officer 1 re-contacted Liendo and told him of his driving status, he also told Liendo that there have been recent burglaries in the area and that it is suspicious that he is out here at this time.

Officer 1 went back to his marked patrol vehicle and was sitting in it when a vehicle approached him from behind. Officer 1 stated that this vehicle parked behind him for a few seconds and then rapidly pulled around his vehicle on the passenger side. Officer 1 said that this vehicle was a dark colored vehicle and had pulled up near the passenger side of the Volkswagen. Officer 1 observed a person step out of the driver's door of this new vehicle and run to the rear

passenger door of the Volkswagen. Officer 1 described this person as wearing a dark colored hoodie and having a dark bandanna across his face.

Officer 1 exited his patrol vehicle and un-holstered his duty weapon as he approached the Volkswagen. He observed the male lean into the rear passenger door of the Volkswagen and the male "comes up with a shotgun in his hand." Officer 1 stated that the male pointed the shotgun directly at him and thought "this guy is going to kill me." Officer 1 said he pulled the trigger of his duty weapon 3-4 times. Officer 1 said the male then leaned forward into the Volkswagen saying "OK, OK, OK," next he heard a thud of the shotgun hitting the floorboard inside the vehicle. The male fell backwards onto the ground outside the vehicle.

At 0309:37 hours, Evans 153 aired over the radio that she just heard shots fired from Officer 1's location, right after that Officer 1 aired "Shots fired, shots fired one male down on the ground." Officer 1 requested that dispatch send paramedics for a male with multiple gunshot wounds.

Evans and Weld officers responded to assist. Upon their arrival, Liendo is commanded to exit the vehicle and taken into custody. Officers cleared both vehicles (the second vehicle was a Chevrolet Avalanche bearing Colorado registration, 289WZY. This vehicle was later discovered to have been stolen from Sunset Auto in LaSalle). Officers then approached the downed male (Mallard) and began CPR at 0317 hours. At this point, there is a shotgun visible in the rear passenger floorboard area of the Volkswagen.

EMS transported Mallard to Northern Colorado Medical Center at 0322 hours, Mallard is pronounced deceased at 0348 hours.

During an interview with Carlos Liendo, Liendo stated that he observed Mallard with a long gun in his hands and heard Mallard threaten the officer. Liendo stated that Mallard pointed the gun at Officer 1 before he heard the shots being fired.

The autopsy on Mallard revealed that he sustained three gunshot wounds. The first documented gunshot wound (1) was an entrance wound to the left lateral wrist with an exit to the left medial forearm and then another entrance to the left chest area, noted as a re-entry. There was another documented gunshot wound (#2) to the left back with no exit. A third gunshot wound (#3) was documented to the left buttocks, there was no exit. The autopsy report documents that gunshot wound 1 had associated injuries including: visceral lacerations to the heart and liver. Three (3) copper jacketed bullets were recovered during the autopsy.

Summary of Officer 1 statement:

Officer 1 was sent to the area of 18822 WCR 394 on what was reported as a suspicious activity involving a dark colored vehicle parked near her home. Officer 1 stated he was driving a marked

Lasalle Police SUV. Officer 1 found the suspicious vehicle with one male inside. Officer 1 contacted the driver who identified himself as Carlos Liendo. Officer 1 returned to his vehicle and ran clearance on Liendo and learned Liendo's driver's license was revoked. Officer 1 contacted Liendo again and asked him what he was doing in the area. Liendo told Officer 1 he had dropped a friend off in the area and Liendo was told to wait for his friend to return. Liendo identified the friend as "Ducky" stating he only knew his first name was Seth.

Officer 1 noted lights from a vehicle pulling in behind him. Officer 1 said the headlights on this vehicle were strobing, but he did not recognize the vehicle as a police vehicle. This second vehicle remained behind officer 1 for several seconds, officer 1 said the vehicle then drove around the patrol vehicle and stopped in front of the suspicious vehicle containing Liendo. Officer 1 saw the driver of the second vehicle get out and start walking towards the first vehicle. Officer 1 could see this person was wearing dark clothing and something was covering the lower portion of his face.

Officer 1 got out of the patrol vehicle and started to walk towards the front of the patrol car. He saw the driver of the second car open the rear door of the first car and ordered this individual to stop. Officer 1 then saw this person remove a shotgun from the rear seat area of the car. Officer 1 could see the green tube sight on the gun and could tell this was a shotgun. Officer 1 saw the suspect holding the gun in his right hand with the barrel lying across his left arm. Officer 1 believed the suspect was "Going to kill me." Officer 1 fired his duty weapon three to four times. Officer 1 heard his first shot but does not remember hearing any other shots. Officer 1 then heard the suspect say, "OK, OK," and then heard the suspect drop the shotgun inside car and saw the suspect fall to the ground outside the car.

Officers later found three weapons inside the vehicle occupied by Liendo. All were determined to be stolen during a previous burglary. The shotgun wielded by Mallard was not loaded.

Liendo was interviewed and corroborated Officer 1's account of this incident.

Summary of Autopsy and Toxicology:

The autopsy of Mallard was performed on February 7, 2019 at 1300 hours by Dr. Michael Burson. Dr. Burson reported three gunshot wounds to Mallard.

The first gunshot entered the left wrist and exited the left forearm, then reentry into the left chest. The injuries associated with this gunshot are, hemorrhage and laceration along the wound path. There were visceral lacerations to the heart and liver. This bullet was recovered in the right upper quadrant of the abdominal cavity. The gunshot identified as # 2 entered the left back with no exit. The associated injuries are hemorrhage and laceration along the wound path.

It is also reported that a fracture of the posterior aspect of the lumbar spine noted as (L3/L4)
This bullet was recovered from the right psoas muscle.

The gunshot identified as # 3 entered the buttocks and did not exit. Injuries are reported as hemorrhage and laceration along the wound path. There is also a reported fracture to the left pelvis. This bullet was recovered from the are of the left femoral head.

Toxicology reports a positive result for caffeine.

Crime Scene:

The crime scene was processed by Weld County and Greeley Police members of CIRT. Three spent casings were recovered that matched Officer 1's duty weapon. Both vehicles photographed and searched.



Shotgun inside suspect vehicle.



Shotgun in evidence room.