



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

July 27, 2018

Re: Investigation of the non-lethal shooting of Nicholas Moses (DOB: 9/12/93) on June 7, 2018, involving Louisville Police Department Corporal Joseph Lamb, in the area of 585 E. South Boulder Road, Louisville, Colorado.

Dear Chief Hayes:

The investigation and legal analysis of the non-lethal shooting of Nicholas Moses by Louisville Police Department Corporal Joseph Lamb has been completed.

The Critical Incident Team for the 20th Judicial District investigated this case. The team was formed to investigate incidents in which any law enforcement officer within the 20th Judicial District uses physical or deadly force against a person while acting under the color of official law enforcement duties. The investigation in this instance was conducted for the purpose of determining whether criminal charges are warranted as a result of the non-fatal shooting of Nicholas Moses. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether policies and procedures were followed.

The Critical Incident Team completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and multiple compact discs. These discs contain recorded interviews, 911 call(s), police communications, photographs, and video recordings related to the incident.

A review of the reports and documentation filed with my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by Commanders in charge of the investigation. I conclude that, under the applicable Colorado law, no criminal charges can be filed against Corporal Lamb. My decision, based on criminal law standards, does not limit administrative action by the Louisville Police Department or any civil actions where less-stringent laws, rules, and level of proof would apply.

My findings, analysis, and conclusions of law with respect to Corporal Lamb's use of force in this incident are as follows:

SUMMARY OF DECISION

Applying the applicable statutes and case law to the facts presented through this investigation, I find that Corporal Lamb is not subject to criminal prosecution for his actions. In all cases, the District Attorney's Office criminal filing standard requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. The evidence establishes that at the time Corporal Lamb discharged his firearm at Nicholas Moses it was reasonable to believe that Nicholas Moses had used or threatened the imminent use of unlawful physical force against Corporal Lamb and Officer Himes. Additionally, the evidence shows that the conduct of Nicholas Moses would have reasonably been perceived by Corporal Lamb as posing an imminent use of physical force, providing legal justification for Corporal Lamb to fire upon Nicholas Moses. Nicholas Moses and John Moses are being charged in Boulder County for related offenses.

Therefore, the District Attorney's Office would not be able to prove beyond a reasonable doubt that the use of force by Corporal Lamb was unjustified.

STATEMENT OF FACTS

On June 7, 2018 at approximately 5:26 pm, Corporal Joseph Lamb was dispatched to a possible narcotics violation behind Mudrocks Tap and Tavern, located at 585 E. South Boulder Road in Louisville, Colorado. Louisville Police Officer Ben Himes responded to the call to provide cover. Both police officers were in uniform and driving marked patrol vehicles. Employees at Mudrocks had advised that a tan colored pick-up was parked in the alleyway behind their business, and it appeared the occupants may have been "shooting up" intravenous drugs. As Corporal Lamb and Officer Himes travelled eastbound on E. South Boulder Road they were able to observe the suspect vehicle in the location described prior to turning into the entrance to the parking lot. Officer Himes was immediately behind Corporal Lamb as they arrived in the area. Corporal Lamb was in the lead patrol car and able to turn into the entrance without delay. Officer Himes was briefly delayed by oncoming traffic before effecting his turn into the parking lot. Corporal Lamb was the first to arrive and contact the suspect vehicle.

Corporal Lamb pulled in front of the truck at a safety angle, and activated his overhead lights. When Corporal Lamb initiated contact, the driver started the truck engine. In his interview, Corporal Lamb stated he believed the suspects were going to attempt to flee and drew his weapon. Officer Himes arrived seconds after Corporal Lamb and stopped his car perpendicular to the truck, facing west. Corporal Lamb ordered the driver out at gunpoint. The driver exited the truck, raised his hands and walked backwards, initially complying with Corporal Lamb's commands. During the time Corporal Lamb was giving commands to the driver, Officer Himes was covering the passenger and repeatedly giving him commands. The passenger refused to comply with the commands, and Officer Himes observed the passenger moving around and reaching down inside the truck, refusing to show his hands. When Corporal

Lamb indicated verbally he was going to take the driver into custody, the driver ran away from Corporal Lamb, entered the truck, and attempted to flee the scene.

Corporal Lamb and Officer Himes pursued the suspect to the truck and a struggle ensued through the open driver's side window, as the officers attempted to prevent the suspects from fleeing the location. After entering the truck, the driver was moving and reaching around, and the officers could not see his hands. In his interview, Officer Himes expressed that he was concerned throughout the incident that the driver was reaching for a weapon as he continued to reach down in the truck during the incident. Officer Himes deployed his taser through the open driver's side window, striking the driver. A download of the taser data revealed the taser was activated for three five-second cycles during the incident. The taser deployments were unsuccessful in gaining compliance from the driver. Upon examination of the driver, after he was taken into custody, one taser probe was located in the left side of the driver's neck. The second probe was located on the floor of the truck between the driver's seat and door panel.

Despite the taser deployments, the suspect continued his attempt to flee in the truck. At this point, the suspect vehicle accelerated forward rapidly, leaving two parallel acceleration marks approximately 8 feet in length on the asphalt. The truck crashed into the front of Corporal Lamb's patrol vehicle, driving the push bar back and causing damage. Tire abrasions indicated that, during the collision, Corporal Lamb's patrol vehicle was pushed backwards despite the wheels being in a fixed position. When the truck struck the patrol car, the truck rotated counter-clockwise thereby creating additional markings on the asphalt. The truck came to rest momentarily as the driver was unable to get the transmission into gear. The driver continued to depress the throttle with the engine "revving" at high RPM's as he attempted to get the truck back into gear. Both officers were giving loud, repeated verbal commands to the driver to stop the truck and exit. Corporal Lamb, also, gave repeated warnings to the driver that he would shoot if the driver continued his efforts. The driver continued to attempt to flee. The driver eventually engaged the reverse gear and accelerated rapidly backwards striking a tree and coming to a stop. In this position, the truck was facing east, with Corporal Lamb's patrol car and a large concrete sign post limiting mobility to the south.

After hitting the tree, the driver again was unable to get the transmission into gear and continued to "rev" the engine at significant RPM's. Corporal Lamb and Officer Himes continued to give numerous loud, verbal commands. The driver was again able to get the truck into a forward gear and began to accelerate. As the truck started to move forward, Officer Lamb fired seven (7) rounds from his pistol. As the truck moved forward, it turned to the right passing Corporal Lamb's previously rammed patrol vehicle, striking and knocking over a large concrete sign post. After the truck ran over the concrete sign post, it came to rest against a bush just west and south of Corporal Lamb's patrol car. Corporal Lamb indicated in his interview that he was in fear that he or Officer Himes would be struck by the truck and seriously injured or killed when the truck started to move forward.



The photograph above shows the truck's acceleration and rotational abrasions on the asphalt, position of the patrol vehicles during the incident, concrete sign post struck by the truck, and the final resting location of the truck. The Boulder County Sheriff's vehicle captured in the upper left-hand corner of the photograph was not present at the time of the incident.

After the truck stopped in the bush, Corporal Lamb approached the truck and continued to give loud, repeated commands to exit the truck. After realizing the driver of the truck had been injured, Corporal Lamb immediately called for medical assistance. Eventually, officers were able to get both the driver and passenger out of the truck. Corporal Lamb immediately applied a tourniquet to the driver's left arm after he exited the truck.

The driver was identified as Nicholas Moses. The passenger was identified as John Moses, the driver's father. Both the driver and the passenger were taken into custody on active warrants. It was determined Nicholas Moses was struck in the upper left arm by two (2) bullets. During the entire incident, the suspects' Pitbull was located in the cab of the truck. After the suspects were taken into custody, it was discovered that the suspects' Pitbull was struck by one of the rounds and was deceased.

Corporal Lamb's handgun was a Sig Sauer brand, P226 Elite model, 9mm caliber semi-automatic pistol. Seven 9mm shell casings were recovered on scene, and an examination of Corporal Lamb's handgun and magazine indicated seven missing 9mm rounds. All seven bullets were ultimately accounted for during the processing of the evidence.

Corporal Lamb and Officer Himes submitted to voluntary interviews, and provided detailed statements regarding the facts and circumstances as perceived by each of them during the incident. Additionally, both officers were equipped with body worn cameras and both patrol vehicles were equipped with in-car cameras. The body worn cameras and dash cameras were

activated during the incident. Corporal Lamb's body worn camera shows his close proximity to the truck during the prolonged revving of the engine, smoking of the tires, and the repeated unpredictable accelerations of the truck as it struck the patrol car, the tree, and finally, the concrete barrier and bush.

Members of the Critical Incident Team conducted the investigation. Team members involved in the investigation included personnel from the Boulder County Sheriff's Office, Lafayette Police Department, Erie Police Department, Longmont Police Department, Boulder Police Department, and the Boulder District Attorney's Office. During the investigation, members of the Critical Incident Team conducted a canvas of the individuals living and working in the area of the incident. Team members located a number of witnesses to the incident. The descriptions below are from the witnesses with the best view of the incident when the shots were fired.

Investigation team members interviewed Mudrocks employees R.T., J.W., M.A., and R.N. R.T. was outside Mudrocks on a break and initially observed the brown pick-up truck a few feet away from him in the alleyway. He observed two occupants in the truck, and the passenger had a blue band tied around his arm. He said when the driver saw him; he drove south further down the alleyway. R.T. reported the activity to his boss J.W. and asked her to call the police. Both R.T. and J.W. were in and out of the bar keeping track of the truck as they waited for police to arrive. Two other employees R.N. and M.A. also came out and observed the truck.

R.T. said he saw police arrive and point guns at the males in the truck. He went back into the bar and told J.W. what was occurring outside. R.T. and J.W., as well as M.A. and R.N., came out of the bar and watched the incident take place. J.W. saw the driver of the truck exit and interact with the officers, and then observed the driver run back to his truck and jump into the driver's seat. She saw the officers use a taser at that time. J.W. and R.T. said the officers were trying to control the driver by reaching in the truck's driver's side window when the truck drove forward and crashed into the police car. J.W. indicated the truck reversed direction and backed into a tree. She indicated both officers were then positioned in front of the truck. She said the driver was revving the engine and the tires were smoking. J.W. and R.T. said they heard the officers giving multiple commands to the driver to stop the truck or they would shoot him. R.T. heard the driver put the truck into drive and saw the truck drive towards the officers. He said the officer moved out of the way, and shot four or five times at the truck. M.A. and R.N. gave similar accounts of the event. R.N. indicated, however, that two officers were on the driver's side of the truck and one on the passenger side at the time of the shooting. R.N. further indicated that when the truck was driving forward it was not in the direction of the officers.

B.P. was interviewed during the neighborhood canvas. B.P. lives in a second floor apartment directly west of the alleyway, and his apartment windows face east, giving a view of the parking lot and the alleyway behind Mudrocks. B.P. said that he "saw everything." He was in his apartment using his computer when he noticed what he described as a traffic stop outside of his window in the parking lot. He said there were two police cars that had stopped a pickup truck. He said the driver was initially cooperative, but then he ran back to his truck and tried to get away. He said the officers pulled their guns on the driver and were yelling commands like, "Don't do it. Get out, or I'll shoot." He said it appeared the driver could not drive very well. He said the truck's tires were spinning and there was a lot of smoke and noise. He said one of the officers was about 10-15 feet away from the truck's front bumper. B.P. observed the truck

reverse and run into a tree. The police were still yelling commands and the truck was still spinning its tires. He said after 20 or 30 seconds the truck drove forward and collided with the patrol car as the officers fired on it. B.P. opined that the officer was justified in firing his weapon under the circumstances he witnessed.

The neighborhood canvas included both apartment complexes bordering the Mudrocks shopping center, 1744 Garfield on the west and 745 E. South Boulder Road on the north, as well as the shops and businesses within the shopping center. Numerous individuals were interviewed and many heard shots or "fireworks," but, apart from the above listed witnesses, no other witnesses actually observed the shooting. The Critical Incident Team collected all available surveillance video from the shops in the complex, but nothing captured the shooting scene.

Nicholas Moses was interviewed during the investigation. He admitted to injecting heroin earlier in the day, but claimed he was no longer feeling the effects of the drug at the time of the incident. Eventually, after further questioning, Nicholas Moses admitted he was actually waiting in the parking lot and behind Mudrocks in order to purchase more drugs.

During a subsequent search of the truck, members of the Critical Incident Team located numerous used syringes, a bent spoon with residue, and several rubber arm tourniquets. Additionally, two syringes containing apparent narcotics were located in the truck. One of the loaded syringes tested presumptive positive for heroin. The second loaded syringe tested presumptive positive for heroin and fentanyl.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proved 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 by statute as an assault or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. One of these specific circumstances is the use of physical force by a peace officer. The evidence establishes that two rounds from Corporal Lamb's handgun struck Nicholas Moses in the left arm. Corporal Lamb indicated that he intentionally fired his weapon at Nicholas Moses in fear that he or Officer Himes was going to be struck by the truck, causing serious injury or death. The determination of whether Corporal Lamb's conduct was criminal is, therefore, primarily a question of legal justification.

The legal framework for the analysis in this case is found in the following case law and sections of the Colorado Revised Statutes:

C.R.S. § 18-1-704 Use of physical force in defense of a person

(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.

C.R.S. § 18-1-707 Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

C.R.S. § 18-1-901 Definitions

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.¹

C.R.S. § 18-1-407 Affirmative defense

(1) “Affirmative defense” means that unless the state’s evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

C.R.S. § 18-1-710 Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

In cases of self-defense or defense of another, individuals are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964), People v. Silva, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken. People v. Silva, 987 P.2d 909 (Colo. App. 1999). It has long been held by the Colorado Supreme Court that:

¹ Because no death occurred in this incident, the deadly physical force statutory provisions do not apply in this case. Accordingly, the analysis in this case is conducted pursuant to C.R.S. 18-1-704(1) and 18-1-707(1), rather than C.R.S. 18-1-704(2) and 18-1-707(2).

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one's right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well-grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. Young v. People, 107 P. 274 (Colo. 1910).

The issues are, therefore, whether at the time Corporal Lamb used physical force, he reasonably believed that he and Officer Himes were being subjected to, or were about to be subjected to, the imminent use of unlawful physical force while attempting to effect an arrest or prevent an escape; and furthermore, that his actions in defending against that force were objectively reasonable. Alternatively phrased, would a reasonable officer, confronted with the same facts and circumstances, have concluded that it was necessary to use physical force to defend himself or another, and stop the threat that the suspect vehicle presented.

LEGAL ANALYSIS

In this case, the actions of Corporal Lamb were legally justified under Colorado law. At the time Corporal Lamb discharged his handgun, he was justified in using physical force pursuant to C.R.S. section 18-1-707(1)(a). This subsection provides that an officer may use physical force where he or she reasonably believes that it is necessary to effect the arrest of a person. At the time Corporal Lamb discharged his handgun, he had probable cause for the felony arrest of Nicholas Moses. Furthermore, there were a series of dangerous acts and efforts to escape that arrest by Nicholas Moses before Corporal Lamb used physical force by discharging his handgun.

Corporal Lamb and Officer Himes had knowledge of facts establishing that Nicholas Moses had committed obstruction of a peace officer, reckless driving, felony menacing, and felony criminal mischief. Therefore, Corporal Lamb was legally justified in using physical force so long as use of physical force was reasonably necessary to effect the arrest of Nicholas Moses. In examining the reasonableness of the use of physical force, the law requires that I consider the totality of the circumstances. Corporal Lamb and Officer Himes were in uniform and driving marked patrol vehicles. When Corporal Lamb initiated contact with the suspects with his overhead lights activated, Nicholas Moses immediately started the engine of his truck, thereby causing Corporal Lamb to believe the suspects were going to attempt to flee. After initially complying with commands to exit the truck, Nicholas Moses ran back to the truck and attempted to flee. Throughout the incident, Corporal Lamb and Officer Himes were repeatedly giving loud, clear verbal commands, and Nicholas and John Moses repeatedly refused to comply. After Nicholas ran back to the truck, he again started the engine and attempted to get the vehicle in gear. Corporal Lamb and Officer Himes struggled with Nicholas Moses through the driver's side window and Officer Himes deployed his taser. Despite the taser deployment, Nicholas Moses continued his attempt to flee and did not comply with the officers' commands. When Nicholas Moses was able to get the truck into gear, he rapidly accelerated forward and rammed

Corporal Lamb's patrol car. The officers continued to give commands and Nicholas Moses, again, attempted to get the truck into gear and flee the scene. Nicholas Moses accelerated rapidly backward crashing into a tree and again came to a stop. Despite continued and repeated commands from the officers, Nicholas Moses again shifted the truck into gear and accelerated forward. During the entire incident, Nicholas had the gas pedal depressed and the engine was at or near maximum RPM's. Prior to Corporal Lamb discharging his firearm, both officers attempted to affect the arrest with safer methods and a lesser degree of physical force. Officers attempted to physically prevent the escape when struggling with Nicholas Moses through the window and utilizing a less lethal taser.² The suspect indicated a willingness to escape when, after and despite being tased, he rammed a patrol car, crashed into a tree, and then started driving forward again, all in violation of the officers' loud, repeated verbal commands.

Moreover, when Corporal Lamb discharged his firearm, he was legally justified to use physical force pursuant to C.R.S. 18-1-704(1) and 18-1-707(1)(b), in defense of himself or a third person. The officers provided voluntary and detailed statements that substantiated their individual perceptions requiring the use of physical force. Those statements were corroborated by the body worn cameras, particularly Corporal Lamb's body worn camera, and by the independent witnesses. At the time the truck rapidly accelerated forward for the final time, Corporal Lamb articulated he was focused on the driver, and in fear that he or Officer Himes would be struck, and thereby seriously injured or killed. Independent eyewitnesses believed the officers acted reasonably and appropriately based on their own observations.


CONCLUSION

We find in our review of this shooting that no conduct by Corporal Lamb rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident meet the legal requirements of the affirmative defense of self-defense as contained in C.R.S. 18-1-704(1). The officers' actions also meet the legal requirements of C.R.S. 18-1-707(1)(a) and (b) involving the use of physical force in making an arrest or preventing an escape. Therefore, based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense(s) were satisfied by law enforcement actions, that law enforcement was legally justified in the use of physical force in this case and, therefore, that their conduct does not violate any criminal statutes. Accordingly, pursuant to C.R.S. 18-1-704(1), 18-1-707(1)(a) and (b), and applicable case law, I find that Corporal Lamb was legally justified in using physical force against Nicholas Moses under the circumstances. As a result, my office will not be filing criminal charges against Corporal Lamb.

The Louisville Police Department is the custodian of records related to this case. Any records inquiries will be directed to the Louisville Police Department.

² Officer Himes' deployment of his taser in an attempt to apprehend Nicholas Moses and further prevent his escape was a reasonable and justified use of physical force under the circumstances pursuant to C.R.S. 18-1-707(1)(a). Accordingly, there are no criminal charges resulting from Officer Himes' actions.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Dougherty", written in a cursive style.

Michael Dougherty
District Attorney
20th Judicial District