

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: Boulder County Justice Center 1777 Sixth Street Boulder, Colorado 80302 Court Phone: (303) 441-3750	COURT USE ONLY
IN RE: 2019 BOULDER COUNTY GRAND JURY	Grand Jury Case Number: 19CR34
ORDER RELEASING BOULDER COUNTY GRAND JURY REPORT	

INTRODUCTION

The Boulder County Grand Jury conducted an investigation into the shooting death of Jesus Ramos on December 31, 2018 by Longmont Police Officer Michael Kimbley. On August 29, 2019, the Boulder County Grand Jury returned a No True Bill and issued a Report of its findings. Pursuant to statute, the District Attorney submitted the Grand Jury Report, certification of public interest, attached exhibits, and attached Response from the Longmont Police Department to this Court for review and consideration to determine whether this Report and the attachments met the statutory requirements for public release. For the reasons articulated in this Order, this Court concludes that it is in the public interest to release the Grand Jury Report along with the certification of public interest, attached exhibits, and the Response from the Longmont Police Department.

On December 31, 2018, Longmont Police Officer Michael Kimbley shot and killed Jesus Ramos while on duty in his official capacity as a peace officer. In Colorado, district attorneys are vested with broad prosecutorial discretion to bring charges via complaint or to present a grand jury indictment in open court. However, in cases involving an officer involved shooting, the district

attorney has the following three options: the district attorney may file charges, decline to file charges and issue a letter, or refer the matter to the grand jury for investigation. COLO. REV. STAT. § 20-1-114. Pursuant to section 20-1-114, the District Attorney requested the Grand Jury review all pertinent facts and conduct additional investigation into the circumstances, including whether a charge of Murder in the Second Degree should be filed against Officer Kimbley.

LEGAL AUTHORITY

A grand jury is an investigative body comprised of citizens whose purpose is to determine whether an individual or organization should be criminally charged through an indictment. COLO. R. CRIM. P. 6.2. Grand jury proceedings are governed by statute. The Chief Judge of the district court in each county, or a judge designated by him or her, may order a grand jury summoned where authorized by law or required by the public interest. Typically, a county grand jury consists of twelve citizens who reside in the county. COLO. REV. STAT. § 13-72-102.; see also COLO. CONST. ART. II § 23. As an investigative body, a grand jury may subpoena witnesses to provide sworn testimony or to provide tangible evidence. COLO. R. CRIM. P. 6.1. The prosecution may also present the sworn testimony of witnesses as well as other tangible pieces of evidence to the grand jury. *Id.*; COLO. REV. STAT. §16-5-204; COLO. R. CRIM. P. 16(a)(1)(II). Given the grand jury's role to investigate, pursuant to statute, grand jury proceedings are secret and the oath of secrecy shall continue until either an indictment is returned or if no indictment is returned, a grand jury report is issued and made public. COLO. R. CRIM. P. 6.2.

When a prosecuting attorney presents an investigation of alleged criminal conduct to a grand jury, he or she is charged by the legislature with a duty to appear and advise the grand jury, as well as to examine witnesses who may be subpoenaed before the grand jury. COLO. REV. STAT. § 20-1-106. Except as otherwise provided by statute, the district attorney is the sole authority

charged with performing these duties. The court does not participate in grand jury investigations and is not present in grand jury sessions or while the grand jury deliberates.

After the conclusion of the grand jury's investigation, the grand jury may issue a True Bill and Indictment, may issue No True Bill, or may issue No True Bill and determine that the release of a report of its findings is in the public interest. COLO. REV. STAT. §§ 16-5-205 & 16-5-205.5. However, a grand jury report may only be issued and subsequently made public under the specific circumstances set forth in section 16-5-205.5. Section 16-5-205.5 requires that the grand jury report be accompanied by a certification that the grand jury has determined that the release of the report is in the public interest. Section 16-5-205.5(5) states that a grand jury report may be deemed to be in the public interest if it addresses one or more of the following:

- (a) Allegations of the misuse or misapplication of public funds;
- (b) Allegations of abuse of authority by a public servant, as defined in section 18-1-901(3)(o), C.R.S., or a peace officer, as described in section 16-2.5-101;
- (c) Allegations of misfeasance or malfeasance with regard to a governmental function, as defined in section 18-1-901(3)(j), C.R.S.;
- (d) Allegations of commission of a class 1, class 2, or class 3 felony.

Within fourteen days after the prosecution receives the grand jury's report. the prosecution must notify any persons and businesses specifically named in the report and must give them an opportunity to review the report and prepare a response. Any response must be provided within fourteen days of the notice. The prosecution must then submit the grand jury report, the certification of public interest, and any responses submitted. COLO. REV. STAT. §16-5-205.5(4).

The court must then review the report and release the report to the public if it finds that:

- (a) The grand jury and the prosecuting attorney were acting within the statutory jurisdiction of such persons in convening the grand jury; and

(b) The grand jury foreman and the prosecuting attorney have verified on the record that:

(I) The certification of public interest by the grand jury complies with the provisions of subsection (5) of this section; and

(II) The report is based on facts revealed in the course of the grand jury investigation and is supported by a preponderance of the evidence; and

(III) The report does not contain material the sole effect of which is to ridicule or abuse a person or business or to subject such person or business to public disgrace or embarrassment; and

(IV) The report does not contain material that is personal in nature that does not relate to any lawful inquiry; and

(V) No confidentiality agreement will be violated and the identity of no confidential informant will be disclosed in making such grand jury report public; and

(VI) The filing of such report as a public record does not prejudice the fair consideration of a criminal matter.

COLO. REV. STAT. §16-5-205.5(4).

The court does not review the record of the proceedings held in front of the grand jury only the report and the certifications of the grand jury foreperson and prosecuting attorney, and parties' responses and determines whether the report and attached certifications satisfy the statutory requirements. *In re 2000-2001 Dist. Grand Jury*, 22 P.3d 922, 926 (Colo. 2001).

ORDER

In this case, a grand jury was properly convened pursuant to statute to investigate the shooting death of Jesus Ramos on December 31, 2018 by Longmont Police Officer Michael Kimbley. The Grand Jury considered the sole charge of Murder in the Second Degree, C.R.S. § 18-3-103. The Grand Jury was also presented with and considered the required affirmative defenses of Use of Physical Force in Defense of a Person, C.R.S. § 18-1-704 and Use of Physical Force in Making an Arrest or Preventing an Escape, C.R.S. § 18-1-707. Following its investigation,

the Grand Jury issued a No True Bill and determined that it was in the public interest to issue a report of its findings.

The Court has reviewed the Grand Jury's Report as well as the certification of public interest, attached exhibits, and the Response submitted by the Longmont Police Department. After reviewing the Report and attached materials, this Court finds that the Boulder County Grand Jury acted within their statutory jurisdiction, that the Boulder County Grand Jury and prosecuting attorney have verified that the certification of public interest accompanying the Report complies with the requirements within section 16-6-205.5(5), that this investigation involved allegations related to a public servant's or peace officer's abuse of authority and involved allegations of the commission of a class two felony, that the report is based on facts revealed in the record that are supported by a preponderance of the evidence, that the report does not contain material the sole purpose of which is to ridicule or abuse a person or to subject that person to public disgrace or embarrassment, that the report does not contain personal information not relating to a lawful inquiry, that making the report public will not violate any confidentiality agreement or identify any confidential informant, and that the filing of the report as a public record will not prejudice the fair consideration of a criminal matter.

For all the foregoing reasons, the Court orders that the Grand Jury Report, including the certification of public interest, attached exhibits, and Response submitted by the Longmont Police Department be made public.

DATED THIS 7th DAY OF September 2019.

BY THE COURT:



Ingrid Seftar Bakke
Chief District Court Judge