



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

June 7, 2013

Chief Michael Butler
Longmont Police Department

Dear Chief Butler,

My office has completed its review of the circumstances surrounding the officer-involved shooting of Jonathan Shank during a traffic stop at 210 Ken Pratt Boulevard, Longmont, Colorado, on May 22, 2013. Police Officer, Brent Cairns shot and wounded Mr. Shank three times while Mr. Shank was armed with an AR-15 assault rifle. Mr. Shank is recovering from his wounds. Therefore, his actions were reviewed on the question of whether the use of potentially deadly force was justified.

As part of this analysis, I reviewed the complete file provided by the Boulder County Investigation Team. Additionally, representatives of my office have worked closely with the BCIT since the morning of the shooting, advising investigators, approving warrants, and participating in briefings. The case file made available for review includes reports of the investigators assigned to the investigation; transcripts and/or video recordings of interviews with witnesses to the officer-involved shooting and with Officer Cairns, diagrams and photographs of the scene and the involved vehicles, The Longmont Police Department's Use of Force Policy, and Officer Cairns' training records.

The facts, as determined by the Boulder County Investigation Team (shoot team), are as follows:

1. May 22, 2013, at about 2:10 a.m., Officer Cairns was parked in a parking lot on the southwest corner of Ken Pratt Boulevard South Pratt Parkway. He was working traffic enforcement on Ken Pratt Boulevard with a LIDAR unit. Officer Cairns observed a car pull out of the parking lot of a 7-11 store on the southeast corner of the intersection. The car did not have its headlights or taillights illuminated. After waiting briefly to see whether the driver turned the lights on, Officer Cairns pulled out with the intention of making a traffic stop.

2. Officer Cairns saw the vehicle turn east on Ken Pratt Boulevard and began to follow. He lost sight of the vehicle briefly due to other traffic in the area, but sighted it again after crossing Main Street. The vehicle was still travelling without required lights.
3. Officer Cairns saw the vehicle move into the left turn lane to enter the parking lot of the Best Buy store at 210 Ken Pratt Boulevard. This is located on the north side of the street. Officer Cairns is unsure of whether he activated his emergency lights at this point or after entering the parking lot. He had not signaled the motorist to stop previously, but his emergency lights were activated by the time he stopped.
4. The motorist – Jonathan Shank – turned east through the parking lot. In his interview, Officer Cairns described him slowing and then accelerating repeatedly until he climbed a curb and came to a stop on a sidewalk area. Officer Cairns explained that he stopped his patrol car further away from Mr. Shank's car than he would during a normal traffic stop because he suspected Mr. Shank was intoxicated and believed he might back off of the sidewalk. Later measurements showed just over 37 feet between the rear of Mr. Shank's car and the front of the patrol car.
5. According to Longmont Police dispatch records, Officer Cairns radioed that he was making the traffic stop at 2:12:07. At 2:12:22, he radioed the location as between South Emery and South Martin on Ken Pratt Boulevard in front of Best Buy.
6. Officer Cairns reported that he waited in the car for a few seconds to observe Mr. Shank's actions. Although he had trained a spotlight on Mr. Shank's car, Officer Cairns could not see inside the car. At about the time he was opening his car door to exit and approach Mr. Shank's car, Officer Cairns saw the door of Mr. Shank's car open and a leg come out. He stated that he intended to order the driver back into the car.
7. Officer Cairns recalled that before he could say anything, he saw Mr. Shanks standing facing him, holding what Officer Cairns recognized to be an AR-15 assault rifle. Officer Cairns is familiar with the AR-15 from earlier training, and he recently purchased an AR-15. Officer Cairns was armed with a 9mm Glock 17 pistol. He also had a .45 caliber Glock 30 pistol worn in an ankle holster. Officer Cairns said he was "keenly aware" that he was outgunned, and that rounds from an AR-15 would penetrate the body armor he was wearing as well as the body of his patrol car.

8. Officer Cairns described Mr. Shank looking down and manipulating his weapon with one hand. When Mr. Shank looked back up at him, Officer Cairns was acutely aware that he was in danger. He described Mr. Shank being able to "reach out and touch him," a phrase denoting the range and accuracy of the AR-15 rifle. Officer Cairns, who had already removed his sidearm from its holster, fired at Mr. Shank. He believes he fired once or twice.
9. Officer Cairns quickly retreated to the rear of his vehicle, attempting to place the engine block between himself and Mr. Shank. At that point, he aired "Code 10," a signal that an officer needs help. That radio traffic occurred about nine seconds after the traffic stop was aired.
10. As Officer Cairns aired the "Code 10," Mr. Shank was advancing toward him, closing the distance between them by about half. Officer Cairns believes he fired about two shots over the roof of his patrol car at that point. It was while he was in that position that Officer Cairns noticed movement to his side which may be associated with broken glass from his patrol car flying. He also heard about five rapid shots from Mr. Shank and he recalled feeling concussions that were not from his handgun.
11. Officer Cairns ducked down so that Mr. Shank would not be able to target his head and continued to move around the back and up the passenger side of his patrol car. He does not recall firing during that time. Black powder that appears to be gunshot residue on the rear passenger door just below window suggested that he fired from that area. Officer Cairns related a clear memory of fearing that Mr. Shank would come around the back of the car and shoot him from behind.
12. When Officer Cairns reached the windshield area, he rose again and saw Mr. Shanks directly across the hood on the driver's side of the car. He fired two more times and saw Mr. Shank fall to the ground. Afraid that Mr. Shank would fire under the car at his legs, Officer Cairns moved around the front of the patrol car. He saw Mr. Shank laying on the ground.
13. Officer Cairns said he was about to fire again, but stopped when he decided the threat had abated. Mr. Shank's AR-15 rifle was on the ground near him, so Officer Cairns kicked it away. He radioed that shots had been fired and the suspect was down. This was recorded at 2:13:10.

14. Joel Slover, a motorist who was driving east on Ken Pratt Boulevard, saw the exchange of gunfire and called 911 to tell them an officer was involved in a "gunfight." He later described seeing the officer "dodging and weaving" and said he heard at least five shots fired.
15. Longmont Officer Michael Kimbley was the first backup officer to arrive. He found Officer Cairns standing at the back of the patrol car. He made sure Officer Cairns was not hurt and noted Mr. Shank laying on his back next to the patrol car. He placed handcuffs on Mr. Shank. Officer Kimbley noted the AR-15 on the ground north of Mr. Shank. When several other officers arrived, officer Kimbley helped make sure there were no additional occupants in Mr. Shank's car. He then drove officer Cairns to the police station.
16. Based on evidence at the scene, Mr. Shank fired his weapon 23 times and Officer Cairns fired 12 times. Mr. Shank was hit by three rounds. One bullet entered Mr. Shank's the left cheek and lodged near his C1 vertebra. Another passed through his left upper arm and entered his chest cavity. The third passed through his left thigh. Officer Cairns car had extensive damage, including numerous gunshot holes in the windshield, roof, driver's door and rear driver's side door. Both driver's side windows, the rear window and the rear passenger side window were blown out. And numerous defects were found in the driver's seat and throughout the inside of the vehicle.
17. Mr. Shank was taken by ambulance to Longmont United Hospital and he was later airlifted to Denver General Hospital. His blood alcohol level was determined to be .311. As of the writing of this letter, he is still hospitalized but appears to be recovering from his wounds.
18. A search of Mr. Shank's car produced an open 1.75 liter bottle of McCormick's vodka that was nearly empty and a small backpack with a live .223 round that matched the ammunition in the AR-15 resting on top. On the floor officers found a cover that fit the scope on the AR-15.

A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent he reasonably believes it necessary to effect an arrest or to defend himself or a third person from what he reasonably believes to be the use of imminent use of physical force while effecting or attempting to effect such an arrest. C.R.S. § 18-1-707(1)(a),(b). A peace officer is also justified in using deadly physical force 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. § 18-1-707(2)(a). "Deadly physical force is defined as "force, the intended, natural, and probable consequence of which is to cause death, and which does in fact cause death." C.R.S. § 18-1-901(d).

Information known to Officer Brent Cairns at the moment he made the decision to fire his weapon the first time included the following:

1. A suspect being contacted for driving without required lights had pulled into a deserted parking lot. He had driven erratically and finally stopped his car on a raised sidewalk area. Officer Cairns suspected that he was intoxicated.
2. The suspect stepped out of his car and faced Officer Cairns holding an AR-15 assault rifle. He looked down at the weapon and seemed to be manipulating it.
3. Officer Cairns was aware of the capabilities of the AR-15, which were far more lethal than those of his sidearm. He knew that the ammunition in an AR-15 would penetrate his protective vest and would pass through the body of his patrol car. He also knew the AR-15 to be more accurate than his Glock pistol.
4. The suspect, after manipulating the AR-15, raised his head and focused his vision on Officer Cairns.

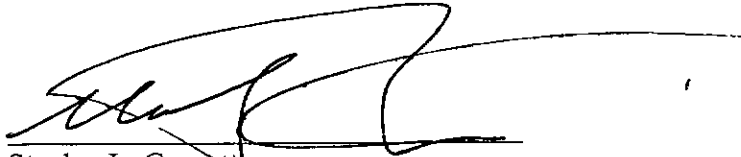
Officer Cairns fired his weapon one or two times and took cover behind his patrol car. It is unclear whether this shot or shots struck Mr. Shank. During the exchange that followed, he observed the suspect advance on him, cutting the distance between them by about half. Movement consistent with flying glass or shrapnel was visible out of the corner of his eye. The sound of rapid-fire gunshots was audible. He felt the concussion of rounds passing through the air. Officer Cairns fired his weapon several times from different locations and continued to move around the car, firing from different locations. He stopped firing when Mr. Shank dropped to the ground and lost control of his weapon. It is likely that the final shots fired by Officer Cairns hit Mr. Shank in the head and chest.

When Mr. Shank looked down at his rifle, manipulated it and focused on Officer Cairns, it was reasonable to conclude that he was about to fire at Officer Cairns. In his interview, Officer Cairns reasonably believed that he was in danger in that moment he had to defend himself against the imminent use of deadly physical force. Later, when he fired additional rounds, including the rounds that struck Mr. Shank, Officer Cairns believed he was defending himself against the actual application of potentially deadly force. When the threat dissipated, Officer Cairns stopped firing.

Chief Michael Butler
Longmont Police Department
June 7, 2013
Page 6

I find that Officer Brent Cairns' use of potentially deadly force was justified pursuant to C.R.S. § 18-1-707(2) because he reasonably believed that it was necessary to defend himself from what was, in fact, both the imminent and actual application of potentially deadly force by Jonathan Shank. Therefore, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Bruce Langer
Chief Trial Deputy District Attorney
Twentieth Judicial District