



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

September 1, 2015

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Samuel Forgy in Boulder County, Colorado on July 27, 2015. During that incident, Officer Dillon Garretson fired his sidearm, killing Mr. Forgy. The Officer's actions were therefore reviewed with regard to whether his use of deadly force was legally justified.

Prosecutors and investigators from this office participated actively in this investigation since the day of the shooting, and have continued to work closely with the Boulder County Investigation Team (BCIT) since that time. In addition to being present for the on-scene investigation, we have reviewed reports associated with that investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the Officer's training records. It is our conclusion that the use of force was justified.

To understand this conclusion, as with most such situations, Colorado law requires that one must understand and appreciate the complex and rapidly developing factual scenario prior to the decision to use deadly force from the point of view of the involved police officers. The following is a brief synopsis of the facts as investigated by the BCIT:

This scenario involved several people: Mr. Forgy, one of his roommates, that roommate's acquaintances, and several neighbors in the apartment next door.

On July 27, 2015, Samuel Forgy was subletting a room in an upstairs four bedroom apartment at 1841 19th Street. That evening, one of Mr. Forgy's roommates was in an upstairs bedroom listening to music. Another roommate was in the common area, where he was

entertaining three out of town guests who were visiting from Connecticut. As the evening went on, the group noticed Mr. Forgy acting odd, at times talking about being the messiah or making nonsensical statements. The group believed Mr. Forgy may have ingested LSD or another hallucinogen. Mr. Forgy later began vomiting, and went to his bedroom.

Mr. Forgy later came back into the common area completely nude. The group tried to ignore Mr. Forgy until he picked up a chair and smashed it to pieces, which he then threw at one of the houseguests. When another tried to intervene, Mr. Forgy became increasingly violent, throwing punches, biting, and pulling hair as the group took Mr. Forgy to the ground and tried to get him to calm down. Large chunks of hair were later found by police in the common area, and obvious bite-marks were observed near the armpit of one of the visitors.



Photograph of the most severely injured houseguest, taken by BCIT investigators at Boulder Community Hospital. This wound was approximately 3 inches long, and opened approximately 3/4 of an inch.



Photograph of the most severely injured houseguest, taken by BCIT investigators at Boulder Community Hospital of the superficial cut across the neck, jaw and chin.

When Mr. Forgy appeared to have calmed down, the group allowed him to get up off the floor. Mr. Forgy appeared to remain calm for a short period of time, but then grabbed a knife and attacked the group. One of the visitors sustained a significant cut over his left eye. He also sustained a superficial cut from beneath his ear across his jawline and chin. These injuries were later photographed and documented at the hospital, where the deeper wound was closed with stitches. Minor injuries and ripped clothing were observed on the others.

After struggling with Mr. Forgy around the apartment and onto a balcony, the group fled. Two people ran out the front door and across a landing to the adjacent apartment, where they called 911. Another of the houseguests ran with the most severely injured individual down the exterior stairs, leaving a significant blood trail.

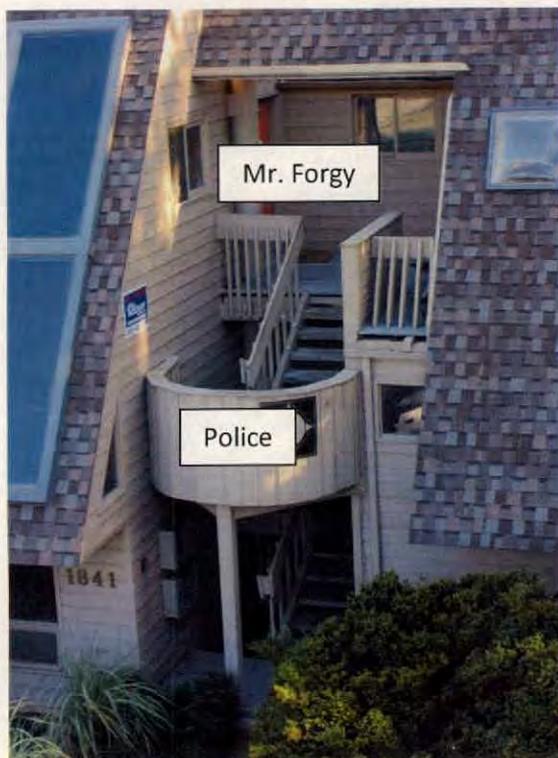
Mr. Forgy ran, still naked, to the adjacent apartment, where he pounded on the door and yelled in a way that did not make sense. Mr. Forgy still had a large knife in his hands and what witnesses described as a crazed look in his eyes. Mr. Forgy then went back to his own apartment.

As officers arrived, they knew from the 911 caller that at least one person had been attacked with a knife and another had been bitten

by a naked person on LSD. They encountered two of the houseguests in the parking lot, spoke with them briefly about what had happened, and immediately radioed for an ambulance.

Additional officers arrived on scene, four of whom proceeded up the outside stairs toward the apartment. The officers announced their presence, and shouted for the person inside to come out with his hands up. The officers had a shield, a tazer, sidearms, and a rifle. As officers reached the landing below Mr. Forgy's apartment, Mr. Forgy came out, now armed with a hammer. Mr. Forgy followed the officers' instructions to put the hammer down, and sat down near the door to the apartment. But after only a few seconds, Mr. Forgy was heard to say either "fuck it" or "fuck you." He then quickly got up, grabbed the hammer, ran past the descending stairs and climbed onto the guardrail closest to the apartment next door.

The officer armed with a tazer fired, but the tazer was ineffective. Later investigation revealed that while one of the probes struck Mr. Forgy in the side, the other missed, striking an exterior wall. Tazers are incapable of delivering an electric charge and incapacitating a person unless both probes make contact, or are within a very close proximity of the target. Mr. Forgy did not respond to the pain of having been hit by a single probe, despite that probe having impacted him and penetrated his skin.



Photograph taken by BCIT investigators of the scene of the shooting. Mr. Forgy was initially in Apartment #8, shown here on the right, then crossed to the left and climbed onto the railing in front of apartment # 7 on the left. Officers were on the landing just below.

Mr. Forgy climbed onto the railing overlooking the landing where officers were positioned, raising the hammer over his head. One of the people who had retreated to the next door apartment heard officers yell "freeze" or "stop." That person also reported that the officers sounded distressed, as if they were in danger.

It was clear to the officers that Mr. Forgy was about to jump down on top of them with the hammer when Officer Garretson fired his sidearm, striking Mr. Forgy four times. Mr. Forgy was killed instantly. His body fell forward and down onto the lower flight of stairs, consistent with officer accounts of Mr. Forgy moving forward at the time the shots were fired.

Analysis of Mr. Forgy's blood at autopsy revealed the presence of LSD, Amphetamines, and THC. It should be noted that while the amphetamines may have been prescription, a typical therapeutic range would be between 10 and 100 nanograms per milliliter of blood. Mr. Forgy had 245 nanograms per milliliter of blood in his

Chief Greg Testa
Boulder Police Department
August 31, 2015
Page 4

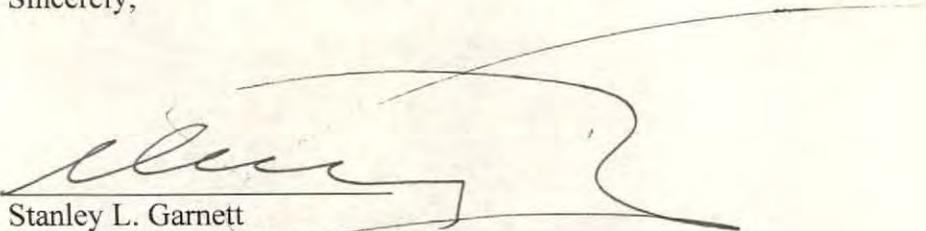
system. While this still might be consistent with a prescription, it is unclear how it might have interacted with LSD and/or THC.

The use of force by Officer Garretson was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, Officer Garretson confronted an individual who had already seriously injured one person with a knife, and was attempting to jump down on him and his fellow officers from a short distance away while wielding a hammer. This was also not a situation in which officers could disengage and hope to simply contain Mr. Forgy. Initially, Mr. Forgy was compliant with officers, but then acted in a way that was sudden and unpredictable, running a short distance to a position from which he presented a an imminent threat. Officers were placed in a situation in which they had to act quickly, and did not have time to retreat to a safe distance. Moreover, given that Mr. Forgy had already seriously injured someone with a knife, it would not have been reasonable for officers to leave him alone in the apartment where another person was still inside and, of course, there were also persons in the adjacent apartments.

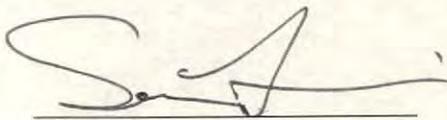
Notably, the most severely injured houseguest wrote a thank you note to the police department stating the following: "Thank you for patching me up, giving me clothes and a safe place to stay. And I hope that the person who shot Sam knows that he saved more peoples' lives in that apartment."

Because the use of force by Officer Garretson was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District