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September 29, 2020

RE: *Investigation of the shooting of Jason Snow (DOB 5/4/1986) on July 1, 2020 involving Durango Police Department Officer Padraic Ingle in the area of O'Reilly's Auto Parts located at 2475 Main Avenue, Durango, Colorado.*

The investigation, legal analysis, and review for potential criminal charges regarding the shooting of Jason Snow by Durango Police Department Officer Padraic Ingle on July 1, 2020 is complete. This letter contains a summary of the review and findings regarding this incident.¹

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. In this instance, the prosecution would have the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. Applying the applicable statutes and case law to the facts presented through this investigation, I find that the involved Durango Police Department officers are not subject to criminal prosecution for their actions as their actions were legally justified.²

Based on standing protocol, the Officer Involved Incident Team (OIIT) for the Sixth Judicial District was deployed to investigate this case. The OIIT for the Sixth Judicial District, led by Colorado Bureau of Investigations (CBI) Agent Collin Reese, is comprised of detectives and crime scene technicians from multiple police agencies, including the Colorado Bureau of Investigations, the Colorado State Patrol, the La Plata County Sheriff's Office, the Montezuma County Sheriff's Office, and the Sixth Judicial District Attorney's Office, among others.

The factual findings of the investigation were presented to my office on August 13, 2020 by lead investigator Jack Haynes of the CBI. Investigator Haynes presented police reports, officer body-worn camera footage, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation, among other evidence. The Office of the District Attorney reviewed the full investigatory file and I, along with members of my staff, have been fully briefed regarding this incident by the OIIT. The Office of the District Attorney concludes that the investigation is thorough and complete.

My findings, analysis, and conclusions of law with respect to the officer's use of deadly force in this incident are as follows.

¹ The Office of the District Attorney for the Sixth Judicial District is issuing this public report pursuant to C.R.S. §20-1-114, which requires public disclosure of the District Attorney's findings following an officer involved shooting causing death or serious bodily injury. *See C.R.S. §§20-1-114, 16-2.5-301.*

² This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the involved agency.

SUMMARY OF DECISION

In all cases, the criminal filing standard requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. Applying the applicable statutes and case law to the facts presented through this investigation, I find that Durango Police Department Officer Padraic Ingle is not subject to criminal prosecution for his actions.

The evidence establishes that Mr. Snow was armed with a loaded handgun during the commission of the burglary that preceded the shooting. When confronted during the burglary by another uniformed Durango Police Department officer, Mr. Snow retreated in the direction of Officer Ingle, who twice ordered Mr. Snow to drop his gun. Instead, Mr. Snow fired one round in the direction of Officer Ingle, whereupon Officer Ingle returned fire, killing Mr. Snow. Under the circumstances, Officer Ingle was legally justified in using deadly physical force.

Therefore, the District Attorney's Office will not be filing any criminal charges against the Durango Police Department officer Padraic Ingle in this fatal shooting incident.

STATEMENT OF FACTS

Overview

On July 1, 2020, dispatch aired that a burglar alarm had been triggered at the O'Reilly's Auto Parts Store on Main Ave. in Durango. Durango Police Officers Padraic Ingle, Pete Malberg, and Johnathan "Cole" Murch responded. Upon arrival, the back door was found ajar by Officer Murch, and as he entered the building, he flushed a suspect out, who ran toward the front door, which was being guarded by Officer Ingle. As the male ran toward the front door, Officer Ingle drew his weapon and issued commands to the male, who did not respond. The male held a gun in his right hand, and shot toward Officer Ingle, shattering the glass of the front door. As the male tried to run through the broken glass, Officer Ingle saw the gun in the male's right hand, pointed at Officer Ingle. Officer Ingle, believing himself to be in danger of deadly force, discharged his firearm nine times, killing the suspect.

Witness Statements, Police Reports, and Forensic Analysis

As part of the OIIT investigation, Officers Murch and Malberg were interviewed on July 1, 2020, Officer Ingle was interviewed on July 3, 2020, and Officer Murch was re-interviewed on July 14, 2020.³ The investigation also involved a crime scene analysis, forensic examination of the firearms in question, a re-enactment video designed to examine the sight-lines and perspective of the decedent, and the coroner's report, among other investigative steps. The following is a combined summary of the interviews of Officers Ingle, Murch, and Malberg and the relevant investigative work completed on the case.

On July 1, 2020, at 4:34 am, a burglary alarm at O'Reilly's Auto Part Store, 2475 Main Ave., Durango was triggered. Durango Police Department Officers Padraic Ingle, Jonathan "Cole" Murch, and Peter Malberg responded. Upon arrival, the interior lights of the store were illuminated. The officers split up, with Officer Ingle taking position near the front entrance of the store on the east side of the building,

³ Although the investigation involved extensive work on the underlying burglary (among other issues), much of that investigative work-product is not relevant to the issues examined within this review.

and Officer Murch taking position in the alley on the west side of the building. Officer Malberg originally entered the parking area to the south east of the building, and moved toward the alley on the south side of the building.

As Officer Murch entered the alley, he saw a late 90's white Dodge truck in the alley, slowly driving past him; he noted a female driver, but did not associate the vehicle with the alarm they were investigating.⁴

Officer Murch noticed a rear door to the store was ajar. As he investigated further by entering the building, he saw a white male inside the store. The male was wearing a surgical mask and dark clothing, and initially moved toward Murch, but then turned and ran toward the front of the store. Officer Murch radioed out that there was a male inside running toward the front of the store. Officer Murch held his position at the rear of the store.

Officer Malberg, upon hearing the radio report from Officer Murch, headed to the back of the store to support Officer Murch.

Officer Ingle, who remained stationed at the front entrance, heard the radioed information from Officer Murch, and immediately saw a male matching the description enter the front area of the store. He described the male as "bobbing and weaving" as though he was unsure what to do next. Officer Ingle took cover behind the southern stone pillar outside the front door of the store. He saw the male enter one of the aisle in the middle of the store briefly, but then emerge again. Officer Ingle then describes that the man "charged" the front door. Officer Ingle saw unknown objects in the male's hands; a red and black object on his left hand and a dark object in his right hand. As the male approached the door, Officer Ingle reports yelling commands to the male, although he was unsure of the exact words he used. The male did not respond and continued rushing toward the door. As the male rushed the door, Officer Ingle drew his firearm and kept it in the high ready position. The re-enactment video confirms that Officer Ingle was visible to the decedent through the window, and that his verbal commands could be heard.

Officer Ingle reports that as the male charged the door in front of which he was standing, he heard a gunshot and saw the glass of the door shatter. Forensic examination of the decedent's gun shows that it was fired at least one time. The male began to exit through the door, sliding under the arm bar, through the broken glass. At this time, Officer Ingle reports seeing the muzzle of a gun on the male's right hand, and that the barrel of the gun was pointing at Officer Ingle.

After perceiving the suspect firing his gun at him, Officer Ingle returned fire. Officer Ingle felt the male was an imminent threat to his safety, stating:

"It happened so quickly that I thought [] he's running at me and then I thought [] he was shooting at me...Um, and he wasn't complying to my commands..." and "I thought he was going to shoot me. I thought he wasn't gonna stop. I honestly perceived him to be a threat for my life and for the life of everybody else around me..."

Officer Ingle discharged his firearm at the male. He estimated that he fired between six and ten shots. Officer Ingle stated that his duty weapon contained 18 rounds prior to the incident. A round count

⁴ This was later determined to be a co-defendant, who was acting as a lookout and getaway driver.

was conducted, showing that nine rounds remained in Officer Ingle's gun. Nine casings were collected on the scene. Forensic examination shows that those nine casings were fired from Officer Ingle's weapon.

Officer Ingle continued to give commands to the male, who was lying on his back. Officers Murch and Malberg returned to the front of the store. They took possession of the male's gun, which ended up on the ground following the shooting, radioed for medics, checked the male for a pulse, of which there was none. Upon arrival, the medics confirmed that the male was deceased. The coroner's report shows that gunshot wounds were the cause of death.

Officer Ingle was removed from the active investigation, the building was cleared, back-up officers arrived, and the OIIT team was activated.

Body Worn Camera

Officer Ingle was wearing and had activated his department issued body-worn camera throughout the events of July 1, 2020. Officers Malberg and Murch inadvertently failed to activate their body-worn camera was until after the shooting was over.

Officer Ingle's video is 20 minutes 23 seconds long. As per the usual operation of the body-worn cameras utilized by the Durango Police Department, the audio does not begin until the 30 second mark of the video. Radio traffic between Officer Ingle and the other officers on the scene is not recorded by the body-worn camera as the Durango Police Department officers have in-ear communications devices that are not externally audible and not picked up by the body worn camera microphone.

The video begins with Officer Ingle driving his patrol vehicle and entering the parking lot area of the Durango Animal Hospital, slightly north of the O'Reilly store. He has not activated his lights or sirens while in his vehicle. As he exits the vehicle, he approaches the O'Reilly store on foot. The lights of the store are on and the interior of the store is fully illuminated. The parking lot area is unremarkable.

As Officer Ingle approaches the store, he looks into the interior through the north end of the front windows and sees nothing of note. He proceeds south to the front doors of the store and confirms that they are locked. He communicates to his radio "I think that's 72." He proceeds to the south end of the front window area and sees nothing of note. The southern end of the front window area provides the best vantage point to observe the interior of the store; the view of the main aisles, checkout area, and path to the rear storage area of the store are unobstructed. From this position, Officer Ingle communicates briefly with Officer Malberg and agrees to guard the front of the store while the others go around the back. Officer Ingle moves north to the front door area, where there are two stone pillars supporting the overhanging roof just outside the front doors. Officer Ingle is standing just to the north of the southern stone pillar.

At the 2:00 mark of the video, a man can be seen inside the store running toward the front door. In less than 1 second, the man arrives near the front door and Officer Ingle draws his weapon. At the 2:01 mark, the suspect aims his weapon at the door, beyond which Officer Ingle is standing. Officer Ingle yells "Drop the gun!" and moves to the south to take cover behind the stone pillar. As Officer Ingle enunciates the word "gun," the suspect fires one round, shattering the glass on the lower half of the front door. At the 2:02 mark of the video, shards of glass can be seen erupting past Officer Ingle on the video and the suspect comes crashing through the lower half of the front door. Officer Ingle fires one round at the suspect from the southwest side of the stone pillar while yelling "Drop the gun!" again. At the 2:03 mark of the video, the suspect's momentum carries him forward beyond the front door and Officer Ingle shifts to the southeast

side of the pillar and fire eight rounds at the suspect in quick succession. The shooting ends at the 2:05 mark of the video. At this time, the suspect is incapacitated and no further conflict ensues.

Following the conflict, the remainder of the video consists of Officer Ingle interacting with the other officers on scene, securing the business, interacting with the medical first responders, assisting with further investigation, and interacting with his supervisors. During these interactions, Officer Ingle makes several relevant comments, as follows:

2:45 - I fired like 9 shots....He fired first...

3:42 - I didn't get hit. He fired through the windshield, I announced myself, told him to drop the gun, I saw the gun, I fired. I had no other choice.

8:10 - Sorry dude...sorry. He had a [] gun... I saw him, like I saw movement, and I'm like "that's not normal"...I'm glad he didn't shoot at you... Well, he shot, so he shot at me...he shot at me.

9:57 - He came...He came out, he shot through the window and I was behind the pillar and so when he shot, I just returned fire and he fell through the window and I kept firing.

10:53 - I'm glad it wasn't at you, like I'm glad he came running out here so I had...like, I had a view of him, I saw him running up with the gun and he like came up sideways and fired...

The video recording of these statements reveals that Officer Ingle is still under the stress of the events and appears to reflect Officer Ingle's authentic perception of the events. His recall and memory of the events in these statements is remarkably accurate and consistent with the video of the events.

In reviewing the body-worn camera footage, one is struck by how quickly these events take place; in less than 5 seconds, the suspect is seen sprinting toward the front door, Officer Ingle draws his weapon, detects that the suspect is wielding a gun, tells him to drop the gun, the suspect fires one round in Officer Ingle's general direction, crashes through the glass door, Officer Ingle fires one round, tells him to drop the gun again, shifts position, and fires eight more rounds. The general tenor of the events, which began as entirely mundane, escalated into a deadly gunfight in the blink of an eye, and subsided almost as quickly. While reviewing this evidence, a frame-by-frame analysis was conducted many, many times, allowing us to parse each individual split-second and place each one in sequence. This was a huge benefit in understanding the events of the night of July 1, 2020, a benefit which Officer Ingle did not have.

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 and killing another human being is, generally, prohibited by statute as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly force is justified. One of these specific circumstances is the use of deadly force to defend oneself or a third person. A second specific circumstance is the use of deadly force by a peace officer in making an arrest. The evidence establishes that Durango Police Department Officer Padraic Ingle intentionally fired his weapon resulting in fatal wounds to Jason Snow. Officer Ingle indicated that he fired

his weapon believing he was in imminent danger of being killed. The determination of whether Officer Ingle'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 sections of the Colorado Revised Statutes:

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 C.R.S. sections 18-1-701 to 18-1-709 are affirmative defenses.

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.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

- (a) The actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury.

C.R.S. § 18-1-707 Use of physical force in making an arrest or in preventing an escape⁵

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.

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.

⁵ This section of C.R.S. § 18-1-707 was modified by 20SB-217, effective as of June 19, 2020, while other modifications under 20SB-217 did not go into effect until September 1, 2020. See 20SB-217, § 18(3).

LEGAL ANALYSIS

In this case, the actions of Durango Police Department Officer Padraic Ingle were legally justified under Colorado law. At the time Officer Ingle discharged his handgun, he was justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707(3). Both statutory provisions provide an affirmative defense to the taking of human life if done in order to protect oneself from the imminent use of deadly physical force.

C.R.S. §18-1-704 is an affirmative defense applicable to all persons defending themselves. C.R.S. §18-1-707 is an affirmative defense limited in application to law enforcement officers making an arrest or preventing an escape. C.R.S. §18-1-707 is applicable in this case because the decedent was caught committing a felony crime (burglary) and was attempting to escape the officers who were seeking to place him under lawful arrest.

On July 1, 2020, the decedent, while committing a commercial burglary, and while in possession of a handgun, was caught and surrounded by police. Recognizing that the rear exit, his planned route of escape, was blockaded by police officers, he began to sprint to the front door. Officer Padraic Ingle was guarding the front door and was clearly visible and audible to the decedent as he charged the front door. As he ran toward the door, the decedent fired his gun one time toward the door and the general direction of Officer Ingle, who was just beyond the door. Officer Ingle commanded the decedent twice to drop his weapon, but the decedent did not comply. The decedent jumped through the lower of half of the door after his gunshot had shattered the glass. As he did so, Officer Ingle saw the muzzle of the decedent's gun pointing at him. Believing that the decedent was an immediate threat to his life, Officer Ingle fired nine shots at the decedent, killing him.

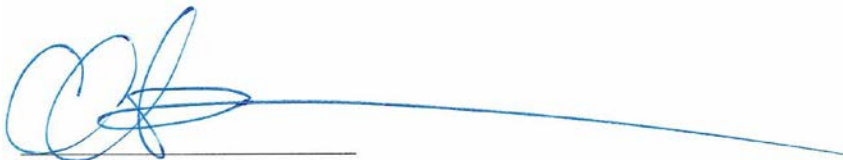
Under C.R.S. § 18-1-704, Officer Ingle was justified in using physical force against the decedent in order to defend himself from what he reasonably believed to be the use or imminent use of unlawful physical force against him, and he used a degree of force which he reasonably believed to be necessary for that purpose. In this case, deadly physical force was necessary because Officer Ingle reasonably believed that a lesser degree of force was inadequate and he had a reasonable ground to believe, and did believe, that he was in imminent danger of being killed or receiving great bodily injury.

Under C.R.S. § 18-1-707, Officer Ingle was justified in using deadly physical force to make an arrest of the decedent for several reasons. First, all other means of apprehension were unreasonable given the circumstances; the decedent was armed and clearly willing to use deadly physical force with a firearm in order to ensure his escape and thus was unlikely to submit to normal arrest tactics. The arrest was for a felony involving conduct including the use or threatened use of deadly physical force. The decedent posed an immediate threat to Officer Ingle, a fact shown by shooting at the door while Officer Ingle stood just on the other side. And, as there were no other people in the range of fire, the force employed did not create a substantial risk of injury to other persons.

CONCLUSION

We find in our review of this shooting that the conduct by Durango Police Department Officer Padraic Ingle does not rise to the level of a criminal offense and that he was fully justified in using deadly

force under the circumstances he encountered on July 1, 2020. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that Officer Ingle's actions during this incident meet the legal requirements of the affirmative defense of using deadly physical force in self-defense as contained in C.R.S. § 18-1-704(2)(a). The officer's actions also meet the legal requirements of C.R.S. § 18-1-707(3) involving the use of deadly 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 Officer Ingle's actions, that he was legally justified in the use of deadly physical force in this case and, therefore, that his conduct does not violate any criminal statutes. Accordingly, pursuant to C.R.S. § 18-1- 704(2)(a), and §18-1-707(3), and applicable case law, I find that Durango Police Department Officer Padraic Ingle was legally justified in using deadly physical force against Jason Snow under the circumstances. As a result, my office will not be filing criminal charges.



Christian Champagne
District Attorney
6th Judicial District