



## OFFICE OF THE DISTRICT ATTORNEY

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February 2, 2023

RE: *Investigation of the January 4, 2023 shooting involving Archuleta County Sheriff's Office Deputy Hayleigh Brown at 107 George's Court, Pagosa Springs, Colorado.*

The investigation, legal analysis, and review for potential criminal charges regarding the shooting of Tyler Intermaggio by Archuleta County Sheriff's Office (ACSO) Deputy Hayleigh Brown on January 4, 2023 is complete.

C.R.S. §20-1-114 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. However, Colorado Rules of Professional Conduct 3.6 and 3.8 prevent the public release of our office's full review letter as it may have a tendency to influence the criminal case pending against Mr. Tyler Intermaggio. As a result, this letter contains an abbreviated summary of the review and findings regarding this incident. The Office of the District Attorney will post the full review letter at the conclusion of the criminal case against Mr. Intermaggio.

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 probable cause that a crime was committed and a reasonable likelihood of conviction in order to bring criminal charges against an individual. In order to charge Deputy Brown, 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 Deputy Hayleigh Brown should not be criminally prosecuted as her actions were legally justified.<sup>1</sup>

### FACTUAL FINDINGS

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 Durango Police Department, the Colorado Bureau of Investigations, the Colorado State Patrol, the Archuleta 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 January 19, 2023 by lead Investigator Joseph Farmer of the Colorado Bureau of Investigation. Investigator Farmer presented police reports, video footage from body-worn cameras, and audio recordings of interview(s) of key witnesses, among other evidence. The Office of the District Attorney reviewed the full investigatory file and I have been fully briefed regarding this incident. The Office of the District Attorney concludes that the

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<sup>1</sup> 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.

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:

Here, the events leading up to Deputy Brown's use of force occurred very quickly, and gave her a reasonable belief that another was in imminent danger of deadly physical force.

### **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. It is undisputed that Deputy Brown fired her weapon and caused a serious bodily injury to Mr. Intermaggio. The determination of whether Deputy Brown's conduct was criminal is, therefore, primarily a question of legal justification.

While knowingly or intentionally using deadly force against another human being is generally prohibited under Colorado law, 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.

The legal framework for the analysis in this case is found in the following sections of the Colorado Revised Statutes:<sup>2</sup>

#### **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.

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<sup>2</sup> Inapplicable portions of these statutes are omitted from this letter for the sake of brevity.

### **C.R.S. § 18-1-707 Use of force by peace officers**

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
  - (a) Not use deadly force to apprehend a person who is suspected of only a minor or nonviolent offense;
  - (b) Use only a degree of force consistent with the minimization of injury to others;
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected person as soon as practicable; and
  - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (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.
- (4) A peace officer shall identify himself or herself as a peace officer and give clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

### **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.

### **ANALYSIS AND DECISION**

In this case, the actions of Deputy Brown were legally justified under Colorado law. At the time Deputy Brown discharged her handgun, she was justified in using deadly physical force pursuant to C.R.S. §18-1-704(2)(a) and C.R.S. §18-1-707.

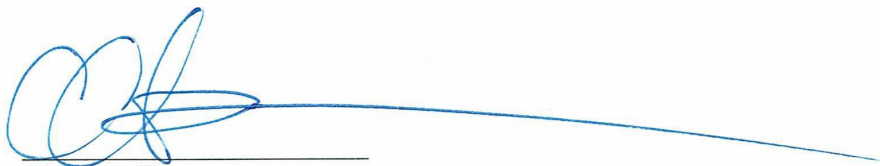
Both statutory provisions provide an affirmative defense to the use of deadly force if done in order to protect oneself or another from the imminent use of deadly physical force. C.R.S. §18-1-704 is an affirmative defense applicable to all persons defending a person. C.R.S. §18-1-707 is an affirmative defense limited in application to law enforcement officers' use of force, including when the suspect poses an immediate threat to the peace officer or another person.

Under C.R.S. § 18-1-704, Deputy Brown was justified in using physical force in order to defend another from what she reasonably believed to be the use or imminent use of unlawful physical force against him, and she used a degree of force which she reasonably believed to be necessary for that purpose. In this case, deadly physical force was necessary because Deputy Brown reasonably believed that a lesser degree of force was inadequate and she had a reasonable ground to believe, and did believe, that another was in imminent danger of deadly physical force.

Under C.R.S. § 18-1-707, Deputy Brown was justified in using deadly physical force for several reasons. As an initial matter, nonviolent means were unreasonable given the circumstances; the speed with which the events unfolded prevented Deputy Brown from employing nonviolent means in any attempt to stop the events from occurring. This also prevented Deputy Brown from issuing any verbal warnings prior to her use of force. Deputy Brown reasonably believed another was in imminent danger and had an objectively reasonable belief that a lesser degree of force was inadequate. Deputy Brown's use of deadly force was justified under the circumstances.

### CONCLUSION

We find in our review of this shooting that the conduct by Archuleta County Sheriff's Office Deputy Hayleigh Brown does not rise to the level of a criminal offense and that she was justified in using deadly force under the circumstances she encountered on January 4, 2023. Based on the applicable law and the facts and circumstances of this case, Deputy Brown'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 involving the use of deadly physical force. Therefore, after review of the entire investigation of this incident, it is the final conclusion of my office that Deputy Brown's conduct did not violate any criminal statutes and this office will not be filing criminal charges against her.



Christian Champagne  
District Attorney  
6<sup>th</sup> Judicial District