



OFFICE OF THE DISTRICT ATTORNEY

JOHN KELLNER, DISTRICT ATTORNEY

18TH JUDICIAL DISTRICT

SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

August 9, 2021

Chief of Police Sam Watson
Englewood Police Department
3615 S. Elati Street
Englewood, CO 80110

Re: Officer-Involved Shooting on May 18th, 2021, in Englewood, Colorado

Dear Chief Watson,

On May 18th, 2021, the 18th Judicial District Critical Incident Response Team (CIRT) responded to investigate an officer-involved shooting by officers of the Englewood Police Department (EPD). Englewood officers had been called about a suspicious vehicle parked in an open garage. When officers arrived, they found the car backed into a parking space against a wall with the engine running. Inside the car there was a male in the driver's seat and a female in the front passenger seat. Both were unresponsive, apparently asleep. A license plate check indicated that the vehicle was stolen.

When officers attempted to wake the driver and take him into custody for possessing a stolen car, the driver resisted apprehension and drove forward. One officer, Stephen Creaghe, was dragged by the stolen car and two other officers were pinned against the garage wall. Officer Creaghe was then crushed against a parked patrol car as the driver of the stolen car side-swiped it. The injured officer was able to fire one round from his duty handgun, striking the driver. Sergeant David LeClair, seeing Officer Creaghe being dragged and crushed, also fired his duty handgun at the driver through the rear passenger window of the car.

The driver of the stolen car, Caleb Grisenti, crashed the car and died as a result of the gunshot wounds. The female passenger was uninjured. Officer Creaghe suffered significant injuries. The two other pinned officers suffered only minor injuries.

I reviewed all of the evidence provided by the 18th Judicial District's Critical Incident Response Team to determine whether there was any illegal use of force by the officers.

SUMMARY

Applying the law to the facts of this incident, as described below, I conclude that Officer Creaghe and Sergeant LeClair were legally justified in using lethal force. Their use of force was reasonable, necessary, and appropriate in order for the officers to defend themselves and others from the threat posed by Mr. Grisenti on May 18, 2021.

STATUTORY FRAMEWORK FOR INVESTIGATING OFFICER-INVOLVED SHOOTINGS

C.R.S. § 16-2.5-301 governs investigations into police officer-involved shootings. This statute provides, in relevant part: “Each police department, sheriff’s office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff’s office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.” C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Arapahoe County Sheriff’s Office, the Douglas County Sheriff’s Office, the Parker Police Department, the Greenwood Village Police Department, the Aurora Police Department and the 18th Judicial District Attorney’s Office.

C.R.S. § 20-1-114 provides, in relevant part: “The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney’s findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.” C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18th Judicial District, and includes the basis of the decision not to charge the involved officers with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

Investigator Kristin McCauley of the Arapahoe County Sheriff’s Office is the lead Critical Incident Response Team investigator for this incident. I reviewed all materials provided by Investigator McCauley including body-worn camera video, dashboard-mounted camera video, dispatch notes, radio traffic, interviews of the involved officers, all reports regarding interviews with witnesses, and photographs of the scene. Additionally, on the day of this officer-involved shooting, I responded with the Critical Incident Response Team to both the Englewood Police Department and the scene of the incident to observe the investigation.

SUMMARY OF THE FACTS

On May 18, 2021, a maintenance worker at a large apartment complex located at 1401 E. Girard Place, Englewood, Colorado, took note of a suspicious vehicle parked beneath Building 15. The worker knew the resident who usually parked in this space but didn’t recognize the car parked there. He noted that the car’s engine was running and that there was a male in the driver’s seat and a female next to him in the passenger seat. Both occupants of the car appeared to be sleeping. They didn’t respond when the worker tapped on the window in an attempt to get their attention. The worker contacted his supervisor and was advised to call the police.

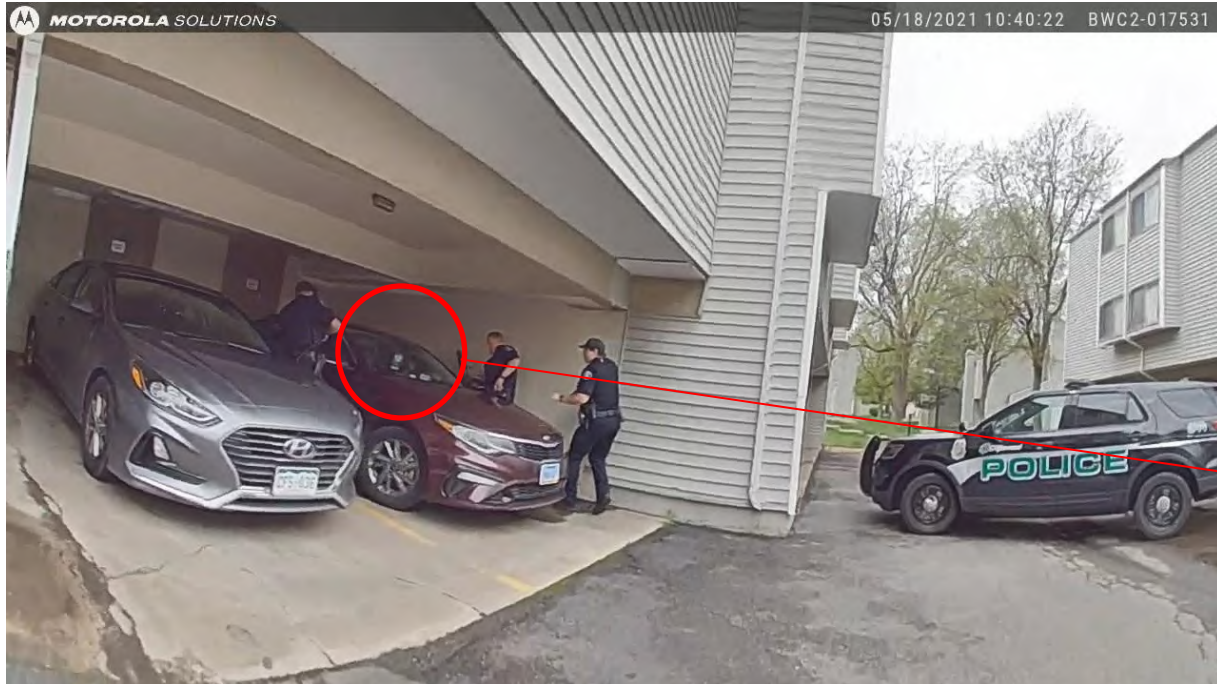
At roughly 10:20 a.m., the maintenance worker called the Englewood Police Department's (EPD) Dispatch center. He stated what he had noticed about the suspicious vehicle and described the car as a maroon Kia Optima with a Nevada license plate number [REDACTED]. Dispatch put out the information over police radio. EPD Sergeant David LeClair asked Dispatch to determine if the license plate was valid. Dispatch discovered that the plate belonged to a car that had been reported as stolen in Denver, Colorado.

Sergeant LeClair arrived at Building 15 at 10:33 a.m. He waited for other EPD officers to respond as "cover" before approaching the stolen car. Due to the fact that the car's engine was running, Sergeant LeClair called the watch commander and asked – per departmental policy – if the responding officers could block or "pin" the stolen car. The watch commander did not approve blocking the stolen car in this situation. Therefore, the other responding officers parked their marked patrol cars in such a way that would allow the stolen car to leave without injuring property or people.

Within the next few minutes Sergeant Reed McGrath and Officers Stephen Creaghe, Trey Sammon, Tim Weeks and Orion Watts arrived and joined Sergeant LeClair. All of their cars were clearly marked as Englewood Police Department vehicles. All officers were in full police uniform. They observed that the stolen maroon Kia Optima had been backed into an open parking space beneath Building 15. The driver's side of the stolen car was next to a cement wall.

Officer Creaghe approached the car on the driver's side. Officer Watts approached on the passenger's side. Officers Weeks and Sammon tried to approach the driver's side from the back but were unable to due to the car being backed against the wall. They then came around the front of the car and joined Officer Creaghe on the driver's side.

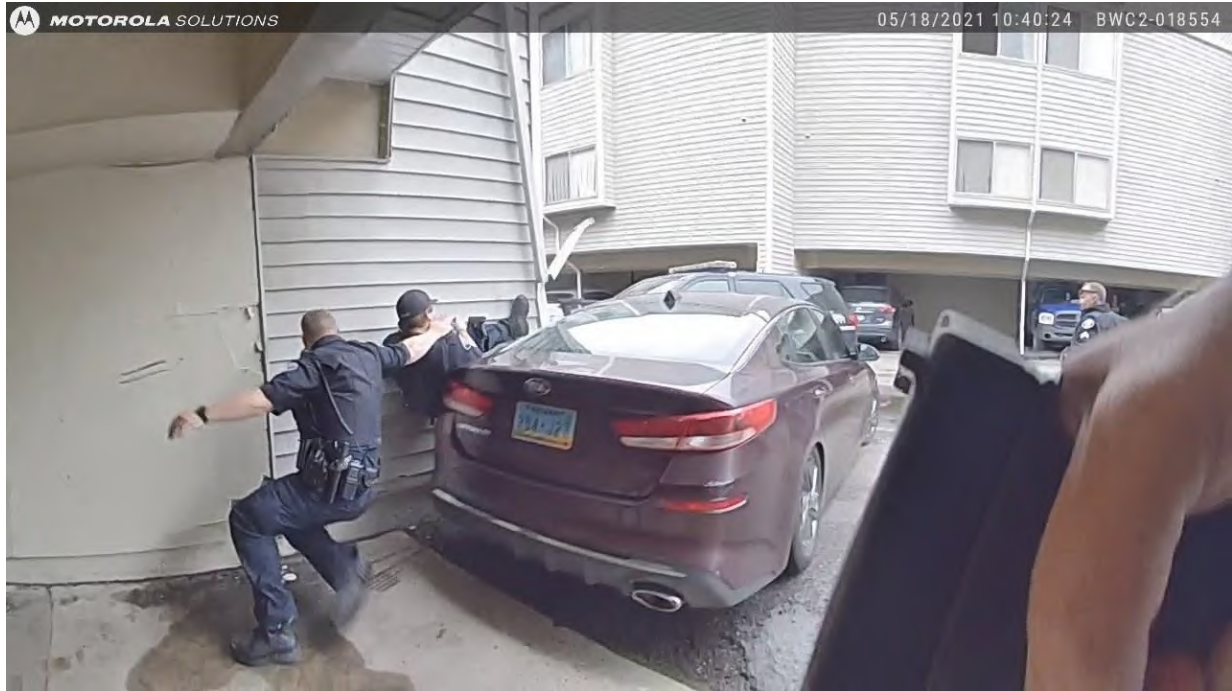
Officer Creaghe opened the door and gave commands for the apparently sleeping driver to step out. Creaghe then bent and reached into the car with his right hand in an attempt to pull the driver from the vehicle. The driver of the vehicle started to struggle with Officer Creaghe. Officers Weeks and Sammon were unable to assist Officer Creaghe due to the driver's door being open, and they were still at the front of the car by the fender on the driver's side.



In this still photo from a body-worn camera, Officer Creaghe is leaning into the car within the red circle. The arrow to the right indicates the direction and distance he is about to be dragged beyond the police car.

The driver of the stolen car managed to put the car in gear and accelerate.

The car lurched forward, veering towards the left, pinning both Officers Weeks and Sammon against the concrete wall. As the car continued forward, Officer Sammon was thrown to the ground, causing his unholstered gun to fly out of his hand. Officer Creaghe was pinned by the car's open driver's door between the car and the wall. He was dragged from the parking spot, against the wall, underneath his fellow officers, and then against his EPD patrol sport utility vehicle.



While being dragged, Officer Creaghe, who is left-handed, was able to put his gun to the driver's chest. He fired a single round while being crushed against the wall and then against his own patrol car. Officer Creaghe's fired bullet hit the suspect in the upper left chest at a downward angle. He was only released from being dragged after the stolen car passed his patrol car.

Sergeant LeClair approached the car as it started moving. He was able to get his handgun sighted on the driver through the rear-passenger window. Sergeant LeClair fired four shots at the driver through the window of the vehicle. His bullets struck the suspect three times in the upper right shoulder/torso. The driver crashed into the opposite garage wall a few feet from where a civilian witness was standing with the assistance of a walker.



The passenger was removed from the car. The officers immediately began to render aid to the driver who was clearly wounded from the gunshots. The driver was transported to the hospital via ambulance where he was pronounced deceased. The passenger was also taken to the hospital but she was found to be uninjured.

The driver was identified as Caleb Grisenti, born [REDACTED], 1998. He had two active warrants for his arrest. One was for a violation of parole stemming from charges of attempted escape and vehicular eluding. The second was for failing to appear to face drug charges in Douglas County, Colorado. He was also on bond for aggravated motor vehicle theft, driving under the influence, and reckless driving from Wheat Ridge, Colorado. Mr. Grisenti had been charged numerous times in recent years with aggravated motor vehicle theft, vehicular eluding, hit-and-run, and other charges.

Officers Creaghe, Sammon and Weeks were transported to the hospital for injuries received from the stolen vehicle. The injuries to Sammon and Weeks were minor. Officer Creaghe suffered significant injuries to his knees, pelvis and internal organs.

APPLICABLE LAW

The ethical obligation of prosecutors and the policy of the District Attorney's Office is to only prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime, and 2) there is a reasonable likelihood of conviction at trial. This is a higher standard than the probable cause standard used by police officers making initial charging and arrest decisions. The decision whether to pursue a criminal charge, therefore, is based on the reasonable likelihood of conviction standard. Criminal liability is established when there is a good faith basis to believe an individual committed the crime, and there is sufficient evidence to

prove all of the elements of the crime beyond a reasonable doubt, to include the criminal conduct and the criminal mental state. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt. The District Attorney's review of this event is guided by statutes (referenced below) pertaining to the use of deadly force by peace officers.

The use of service handguns by Sergeant LeClair and Officer Creaghe constitutes the use of deadly physical force, as that term is defined by Colorado law. Deadly physical force "means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death." C.R.S. § 18-1-901(3)(d).

The District Attorney's review of an officer involved shooting event is guided by the statutes pertaining to the affirmative defenses applicable to use of force by peace officers, specifically C.R.S. § 18-1-707, which states (in relevant part):

- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical 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...
- (4) A peace officer shall identify himself or herself as a peace officer and give a 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.

Additionally, with respect to offenses relating to firearms, officers have an additional affirmative defense stated in C.R.S. § 18-12-101(2): "It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful performance of his duties."

ANALYSIS AND CONCLUSION

The question presented to the District Attorney's Office for the 18th Judicial District is whether Sergeant LeClair and Officer Creaghe reasonably believed their use of deadly physical force was necessary to defend themselves and/or others from what they reasonably believed to be the imminent use of deadly physical force by Mr. Grisenti, the driver of the stolen car who the officers were attempting to apprehend.

Officers are trained to use caution when approaching occupants in stolen vehicles. Often the occupants are armed and will attempt to fight or flee. This caution was evident when the EPD officers approached Mr. Grisenti, who was seated in the driver's seat of a running vehicle, which the officers knew had been reported stolen.

Based on interviews after the incident, and as documented on their body-worn cameras, the responding officers were told not to "pin" the stolen car to avoid injury to people or property. Instead the officers positioned their patrol vehicles in such a way so that Mr. Grisenti could drive to the right and evade arrest if he could not be removed from the car and arrested.

Officer Creaghe approached the driver's side of the car, followed by Officers Sammon, Weeks, and Watts, initially on the passenger side. All officers had unholstered their duty weapons. Officer Creaghe opened the driver's door and repeatedly ordered the driver "Out of the car! Out of the car!" as Mr. Grisenti began to struggle and shout, "No! No!". Mr. Grisenti fought to stay in the car as Officer Creaghe attempted to pull him out with his right hand, his left hand holding his handgun. Officer Creaghe was hindered in his efforts to apprehend Mr. Grisenti by the concrete wall of the garage at his back. Mr. Grisenti managed to place the car in drive with his right hand and get his right foot on the accelerator. The car lurched forward just as Officers Weeks and Sammon came around the front of the car to assist Officer Creaghe.

The car veered left, pinning Officers Weeks and Sammon against the concrete wall. Officer Creaghe – trapped on the other side of the driver's door – was dragged underneath them. He was also crushed against the wall and then his own patrol vehicle as the stolen car side-swiped it. He was only freed once he had been dragged beyond the patrol vehicle. Officers Weeks and Sammon were lifted into the air and then fell to the ground as the car passed and released them from the wall. While still being dragged and crushed, Officer Creaghe was able to place the muzzle of his handgun to Mr. Grisenti's chest and fire one round. Sergeant LeClair, approaching from the passenger side, fired four rounds through the rear passenger-side window, striking Mr. Grisenti three times in the shoulder and torso.

Officer Creaghe stated later that he felt the life being crushed out of him as he was dragged. He believed he was going to die. He felt the driver was going to kill him. He described feeling "horrific, gut-crushing pain," with his torso stuck in the car and his legs being dragged underneath. He feared Officers Weeks and Sammon would be killed or paralyzed as they, too, were being crushed against the wall. Officer Creaghe recalled reaching with his left hand and trying to get his gun as close to the driver's chest as he could before firing because he didn't want to miss or risk injuring anyone else. He pulled the trigger and then "just fell out of the car." He stood, felt searing pain from his back all the way down his body, and then collapsed to the ground.

When interviewed, Sergeant LeClair described being aware of construction workers or landscapers working at the entrance to the alleyway where the stolen car was parked. He also described an older man with a walker directly across the alleyway from the stolen car. Sergeant LeClair approached from the passenger-side of the stolen car as the car lurched forward, initially veering left into the wall, while Officer Creaghe was attempting to pull Mr. Grisenti from the car. Sergeant LeClair saw Officer Creaghe disappear from view and Officers Weeks and

Sammon try to “get small,” meaning they stood up as high as they could to brace themselves for being crushed by the car against the wall. Sergeant LeClair thought that Officers Weeks and Sammon may have been killed right there.

As the car accelerated forward, side-swiping the patrol vehicle, Sergeant LeClair thought that Officer Creaghe, too, had been killed. Sergeant LeClair described drawing his duty weapon and moving toward the car. He believed he needed to stop the car from running over the other officers present and the older man with the walker. LeClair noted the female in the passenger seat so he waited until the car was slightly past him before he fired at the driver through the rear passenger-side window. He was able to get a direct line of sight on the driver’s torso. He recalled the window exploding as he fired four shots. The driver immediately slumped over and the car crashed into the opposite side of the alleyway near where the older man with the walker was standing.

The police officers’ actions were reasonable and justified based on Mr. Grisenti’s actions. He ignored commands, resisted arrest, placed the already-running stolen car in drive towards police officers, pinned Officers Sammon and Weeks against the wall and dragged Officer Creaghe. Mr. Grisenti, by his actions, was willing to injure or kill officers and bystanders in order to escape arrest, and was attempting to do so. Mr. Grisenti’s actions were the proximate cause for the immediate use necessary force. He used the stolen car as a deadly weapon and injured officers. Officer Creaghe fired at Mr. Grisenti to save his own life and the lives of other officers. Sergeant LeClair fired at Mr. Grisenti attempting to stop the threat Grisenti posed to other officers and bystanders. They both made the decision to fire based on the imminent, deadly threat posed by Mr. Grisenti.

The evidence shows that Sergeant LeClair and Officer Creaghe reasonably believed Mr. Grisenti posed an imminent threat of deadly physical force to the police officers present as well as civilian parties in the area. For these reasons, Sergeant LeClair and Officer Creaghe were justified in using deadly physical force against Mr. Grisenti to defend themselves and others from the unlawful, imminent, and actual use of deadly physical force against them. Sergeant LeClair and Officer Creaghe acted in accordance with the law. No criminal charges will be filed against them.

Clinton McKinzie
Chief Deputy District Attorney
18th Judicial District