



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

Date: April 22, 2020

To: Vanessa Wilson, Acting Chief of Police, Aurora Police Department

RE: Officer-Involved Shooting at [REDACTED] S Bahama Street, Aurora, Colorado on October 10, 2019
APD case #19-39638

Chief Wilson:

This incident concerns the non-fatal shooting of Andrew Huff by Aurora Police Officer Alexander Ord on October 10, 2019. I have been asked to review this incident to determine whether officer Ord acted in conformity with Colorado law. My role is limited to a determination of whether criminal charges against officer Ord are warranted. It is not my role to opine on issues of training or law enforcement procedure.

For the reasons set forth below, I conclude that no criminal charges are warranted against officer Ord.

EXECUTIVE SUMMARY

On October 10, 2019, Aurora Police Officers responded to a call about a cold assault – the assault occurred several hours earlier. Officers spoke to [REDACTED], who claimed he was assaulted by Andrew Huff and [REDACTED] outside their home at [REDACTED] S. Bahama Street. [REDACTED] claimed that Andrew Huff had multiple firearms in his possession. [REDACTED] was suffering from multiple visible injuries. Four officers responded to the home on S. Bahama Street. As they approached the home, they saw a male standing out front. The male walked quickly into the home without acknowledging the officers. The officers then approached the front door. They saw the same male standing in a large picture window “darting” in and out of view. The male then reappeared with a rifle in his hands. Officer Ord was afraid the male was going to shoot him and the other officers with him, so he yelled “put your hands up, put your hands up!” When the male did not respond to his commands, officer Ord fired five times, hitting the male (Andrew Huff).

Based on everything known to Officer Ord at the time he fired his service weapon, it is my conclusion that his conduct and decisions were permissible under the laws related to self-defense and defense of others. Therefore, it is my conclusion that officer Alexander Ord should not be charged.

**THE STATUTORY FRAMEWORK FOR INVESTIGATIONS INTO
OFFICER-INVOLVED SHOOTINGS**

C.R.S. § 16-2.5-301 governs investigations into peace 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 Office of the District Attorney, Denver Police Department, and Aurora Police Department.

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 officer with violations of Colorado criminal law.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I reviewed materials provided by the joint Denver Police Department (DPD)/Aurora Police Department (APD) investigation into the shooting. The materials I reviewed include:

All narratives and reports generated by both police departments, 911 call(s), dispatch audio, body-worn camera, photos, video from a digital video recorder collected from [REDACTED] S. Bahama Street, recorded interviews with officers Ord, Marrero, Mann, Oviatt and [REDACTED].

SUMMARY OF THE FACTS AND WITNESS INTERVIEWS

On October 10, 2019, [REDACTED] called 911 to report an assault. Officer Erica Marrero responded to his location at [REDACTED] around 10:47 pm. Officers Alexander Ord and Jason Oviatt (riding together) responded to the [REDACTED] address after officer Marrero to assist with the investigation.

[REDACTED] told officers the following: until that day, [REDACTED] lived with and was paying rent to Andrew Huff and [REDACTED] at [REDACTED] South Bahama Street, Aurora, Colorado. Andrew's¹ brother, [REDACTED], also lived at that address. [REDACTED] said he drove [REDACTED] car in the past and drove the car that morning. He believed he had permission to drive the car but, in hindsight, thinks [REDACTED] did not agree because when he arrived back to the house the [REDACTED] brothers were angry and waiting for him. They pulled him out of the car, took turns holding him down, and were hitting and kicking him. Andrew took [REDACTED] house key and other keys from [REDACTED] key ring, grabbed a small, black handgun from inside the home, loaded the gun with a magazine from his truck, and pointed the gun at [REDACTED].

Officers, including officer Ord, observed visible injuries to [REDACTED], including bruising and abrasions around his right eye, right ear, on his forehead, and on the left side of his head. [REDACTED] showed police his medical records, which described two broken ribs.

The assault occurred earlier in the day, around 12:09 pm.

After the assault, [REDACTED] went to The Medical Center of Aurora – South Campus to get treatment for his injuries. By coincidence, Andrew's fiancé ([REDACTED]) was working at the medical center as a radiology technologist and assisted in treating [REDACTED] injuries. He told her that Andrew and [REDACTED] "jumped" him and that he was probably going to call the police. While [REDACTED] was getting medical treatment, Andrew and [REDACTED] dropped off [REDACTED] personal belongings at the [REDACTED] address, but kept some of [REDACTED] personal belongings: a safe, a PlayStation game console, his iPhone, and other items of value. [REDACTED] also said he loaned both Andrew and [REDACTED] \$100 the day before. [REDACTED] told officers we wanted a civil assist to pick-up the rest of his personal belongings (hidden in a crawl space in the home).

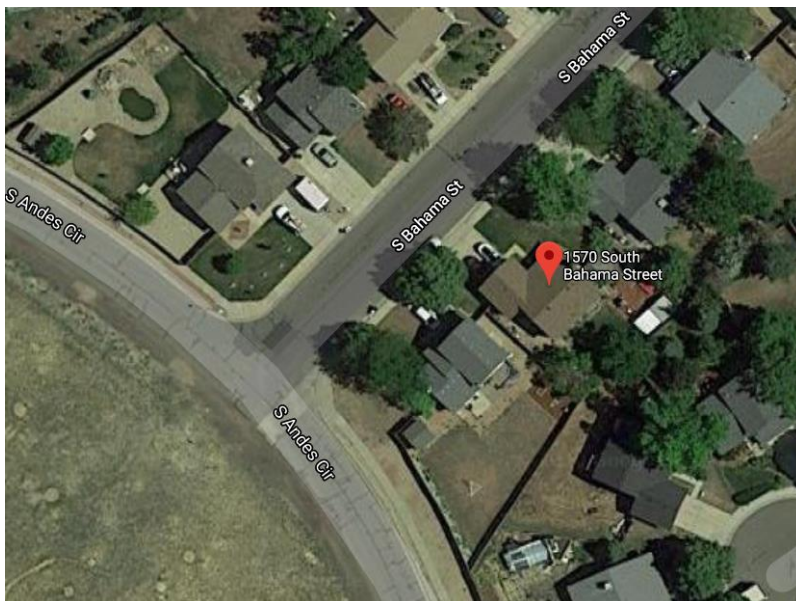
[REDACTED] told police Andrew is known to have the black handgun that was involved and a sawed-off shotgun in his truck.

Officers Marrero, Ord and Oviatt then responded to the home on South Bahama Street, arriving around 11:29 pm. At that time, they were concerned that Andrew Huff was armed and therefore called for a third car (officer Mann) and parked one house away at the intersection of South Bahama Street and South Andes Circle. Two patrol cars were parked on South Andes Circle to

¹ To avoid confusion, I will refer to Andrew Huff and George Huff by their first names.

the east of South Bahama Street, and the third patrol car was parked on South Andes Circles to the west of South Bahama Street. The officers intentionally parked this distance from the home for officer safety purposes.

This map shows the location of the home relative to the intersection where officers parked their patrol cars.



The four officers began walking toward the suspect home, which was the second house from the corner. Officers Ord, Mann, and Marrero saw a male standing at the street-end of the driveway of the suspect home. All officers saw the male quickly walk toward the home and then disappear. Officers smelled burnt marijuana and concluded the male was outside smoking. While there are no streetlights in the area pictured above, officers could see the male for two reasons: there was a very bright spotlight attached to the front of the home immediately to the southwest of [REDACTED] S. Bahama St and a front porch light just above the front door to [REDACTED] S. Bahama Street.

This image, taken after the shooting and therefore with different lighting conditions (the garage door was closed), shows the location of the trailer and cars and the location of the front door relative to the garage.



As officer Marrero began walking toward the front door (to the left of the garage), she and Officers Mann and Ord saw through a large picture window who they believed to be the same male inside the home. Officer Marrero described lights on inside the home and a porch light. Officer Ord described the area as well-lit.

Officers approached the front door in the following order: Marrero, Ord, Mann, Oviatt.

Officer Marrero waved to the male (now inside the home), who was facing the window while taking off a jacket, moving quickly, and doing something with his hands below the area she could see. The male then “darted” to her right and behind the front door, and she could not see him anymore. Based on a review of her body-worn camera, at this moment officer Marrero stopped walking and said, “well, that doesn’t make me comfortable.” Officers Ord and Oviatt saw and heard officer Marrero’s reaction. Officer Marrero then resumed walking, knocked on the front door, and before she finished knocking she heard officer Ord yell and heard shots fired.

While officer Marrero was approaching the front door, officer Ord walked to the left onto the lawn in an effort to get a view into the home where the male disappeared. Officer Mann was intending to follow officer Ord when he heard officer Ord yelling and shots fired.

Officer Ord, who had moved onto the lawn, had a different vantage point than officers Marrero, Mann and Oviatt. Officer Ord initially saw the male in the picture window run to Ord’s right out of sight. As Officer Ord moved onto the lawn, he saw the male return to view with a rifle. The male was holding the rifle with two hands, with the barrel pointed up and to the male’s left. Officer Ord described feeling scared and concerned for his life, and drew his firearm.

Ord yelled loud and clear “put your hands up, put your hands up!” before firing. The male made eye contact with officer Ord, but did not cooperate and did not drop the rifle. Instead, the male again moved to Ord’s right in a manner that appeared he was attempting to “take cover” behind a partial wall inside the home. He described that he expected the male to shoot him, especially because officer Ord was standing in the yard exposed with nowhere to retreat for cover.

Officer Ord fired five shots. He fired one shot and then fired an additional four shots in rapid succession.

The officers did not announce “police” before knocking on the front door. All four officers believed the male knew the police were present.

This image, taken from officer Marrero’s body-worn camera, shows the lighting and angle when Andrew Huff first comes into view.



This image, also from officer Marrero's body-worn camera, shows the lighting and where she was standing just after she lost sight of Andrew Huff (he moved to her right).



Due to his angle of approach to the home, officer Ord's body-worn camera does not capture Andrew Huff's initial appearance in the picture window. The BWC is worn on the chest and is stationary. It shows only what is directly ahead of the officer's chest. It does not show what the officer can see by simply turning his head. Although the BWC does not show Andrew's initial appearance in the picture window, it would have been visible to officer Ord.

This image, taken from officer Ord's body-worn camera after Ord turned to directly face the window, shows the male in the picture window holding a rifle. At the moment of this image, officer Ord already drew his firearm and was yelling commands.



This image, taken from officer Ord's body-worn camera, shows the male's movement to officer Ord's right.



This image, taken from officer Ord's body-worn camera, shows officer Ord's view as the male moved to the right and out of view. The figure standing in front of the door is Officer Marrero.



Andrew Huff and [REDACTED] have a home security system with cameras facing various angles outside the home. They use a digital video recorder (DVR) to save the video files. The APD seized and searched the DVR. There are four camera angles or “channels” capturing various location outside the home. The first camera is above the front door. The second camera is on the west side of the home, facing the street and captured nothing of evidentiary value (due to the camera angle and obstruction caused by trees). The third camera faced the backyard and captured nothing of evidentiary value. The fourth camera faced the backyard from a different angle and captured nothing of evidentiary value.

The camera above the front door faced the yard where officer Ord was standing when he fired. However, due to moisture on the camera lens and the location of the porch light relative to the camera, very little can be seen.

This camera angle did capture an event that corroborates officer Ord's, Marrero's, and Mann's perceptions. Specifically, this camera angle confirms that Andrew Huff was the person outside the home and then walked into the home through the front door less than 45 seconds before officer Marrero appeared in view.

Here is an image taken from this camera angle when officer Marrero was standing near the front door and officer Ord was standing on the lawn (note: it is very difficult to see officer Ord in this image).



Police interviewed ██████████ in the early morning hours of October 11. She was home in bed watching television at the time of the shooting. ██████████ described that Andrew was outside with a friend and all of a sudden came running up the stairs (inside the home). He described “something weird” going on and said, “there’s cops in our yard.” He then ran into the bedroom and grabbed a shotgun and ran back downstairs. ██████████ then heard two “pops” that she believed to be gunfire. By the time ██████████ came downstairs, Andrew had been shot.

This image shows the stairs in the home relative to the front door and the picture window. The front door was not open when officer Marrero knocked.



Officer Ord shot Andrew Huff once in the right buttock. He was transported to The Medical Center of Aurora where he was treated. He survived the injury.

Unknown to officers Marrero, Ord, Oviatt and Mann, another person called 911 earlier in the day claiming to have witnessed part of the assault of [REDACTED]. Three Aurora Police Officers responded to that call, spoke with Andrew Huff and [REDACTED] but closed the investigation because [REDACTED] declined to file charges for the reported theft of his car.

Detectives from both police departments interviewed officer Ord on October 15, 2019. He did not view his body-worn camera footage before the interview.

Officer Alexander Ord joined the Aurora Police Department in June 2017. Before that, officer Order worked for approximately two years as a corrections officer with the Colorado Department of Corrections. In October 2019, officer Ord was in the field training program. Officer Oviatt was his field training officer.

APPLICABLE LAW

The District Attorney's review of this event is guided by the following statutes pertaining to the use of force by peace officers:

C.R.S. § 18-1-704 states in relevant part:

- (1) A peace officer 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.

Officer Ord's use of a firearm to fire five shots clearly constitutes the use of physical force against Andrew Huff. However, it does not constitute deadly physical force because 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) (emphasis added). Because Andrew Huff survived his injury, the degree of force exercised by Officer Order does not constitute "deadly physical force."

ANALYSIS AND CONCLUSION

The question presented by law is whether Officer Ord reasonably believed the degree of physical force he used was necessary to defend himself or others from what he reasonably believed to be the use or imminent use of force against himself or others. If the answer is yes, his use of physical force was legally justified.

I found the four officers (Marrero, Ord, Mann, and Oviatt) to be credible. Their collective memories corroborated each other, especially as it related to officer safety concerns. They specifically articulated why they did not park immediately in front of the S. Bahama Street home. Three of the four officers saw Andrew Huff in the picture window and found his behavior to be concerning. All four officers believed that Andrew Huff either saw them approaching the home or through the picture window once he was inside. The body-worn camera also corroborates the officers' perceptions. Officer Ord, who had the best view into the home and thus of Andrew Huff's actions, believed they were going to be shot: he saw concerning movements, he saw the male disappear and reappear with a rifle in hand, and he saw the male appear to take cover behind a wall. Officer Ord also felt the male disregarded his orders and rather than dropping the gun, ran for cover. Officer Ord was afraid for his safety as well as the safety of the three fellow officers on scene. Presented with all of this information, I believe a jury would find credible officer Ord's perception and description of fear.

Focusing on whether officer Ord's belief was reasonable, I focus on the circumstances known to officer Ord when he approached the home. First, he knew that Andrew Huff possessed multiple guns and used a gun in the earlier assault on [REDACTED]. Additionally, he had information that Andrew Huff may have been told they were coming. Further, he believed Andrew saw the officers approaching. This belief is corroborated by Andrew's statement to [REDACTED], "There's cops in our yard." An officer's perception that the suspect *knows* police are there, coupled with his darting movements in front of the window, his reappearance holding a rifle, and his movement back to a place of "cover" would cause a reasonable officer to conclude that the male intended them harm. Additionally, a reasonable officer would conclude that a person holding a rifle could imminently become a lethal threat: the person need only point the gun and shoot. As such, I believe the jury would find officer Ord's thoughts and actions to be objectively reasonable.

As to the degree of force used, the officer used the only degree of force that was available to him. Given Andrew Huff was armed with a deadly weapon and quickly moved to a location in the home where officers could no longer see him, officer Ord could not stop the use of the rifle by any other means.

For all of the above-stated reasons, it is my opinion that no criminal charges are warranted against officer Ord.

Respectfully,



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