



For Immediate Release:
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October 14, 2021

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the shooting death of Robert Lee Alire on June 28, 2021. The incident involved Commerce City Police Officers Michael Pasko and Joshua Moody.

***Video captured by the body-worn camera of Officer Pasko is linked below.
Please be aware the video is graphic.***

Officer Pasko Body-Worn Camera Video:
<https://youtu.be/2jtPUjI68nc>

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District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

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October 14, 2021

Chief Clint Nichols
Commerce City Police Department
7887 E. 60th Ave.
Commerce City, CO 80022

Re: The officer-involved shooting of Robert Lee Alire, occurring on June 28, 2021

Dear Chief Nichols:

The 17th Judicial District Critical Incident Response Team (CIRT) recently completed its investigation into the June 28, 2021 shooting death of Robert Lee Alire. Adams County Sheriff Office Detectives Marilyn Rush-Lara and Lonn Trail led the investigation and presented the factual findings to the 17th Judicial District Attorney's Office on July 28, 2021. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Commerce City Police Department. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a summary of the facts and materials that the CIRT presented for review.

The District Attorney's review is limited to determining whether any criminal charges should be filed against any of the involved officers for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all of the elements of a crime beyond a reasonable doubt. The prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, my review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and applicable law, there is no reasonable likelihood of proving the elements of any crime beyond a reasonable doubt against the involved officers. Therefore, no criminal charges will be filed against the officers involved in this incident.

STATEMENT OF FACTS

On June 28, 2021, Y.R.¹ lived with her 46-year-old son, Robert Alire, at 7375 Brighton Boulevard, just beyond the geographic boundary of the City of Commerce City. That morning, Y.R. took her son to North Suburban Hospital because she believed that he was having a mental health crisis. However, after arriving at the hospital, Mr. Alire refused to go in for treatment.

¹ Initials are used to protect the confidentiality of citizen witnesses.

Y.R. and Mr. Alire returned home. Given her son's condition, Y.R. decided to leave the residence. She left Mr. Alire home. Y.R. returned home after approximately two hours to find her home in "shambles." Robert Alire told Y.R. that "undercover police" and "federal agents" were following him and were coming to kill him. With Robert Alire standing nearby, Y.R. called 911 and reported that her son was "all high on drugs and just destroyed my house." Y.R. advised dispatch that Robert Alire had ingested an unknown type and quantity of drugs that day. She asked for police assistance as well as an ambulance. At 12:08 p.m., Commerce City Police Officers Michael Pasko and Joshua Moody responded to Y.R.'s home on what was reported to them as a "family disturbance."



Aerial photo, 7573 Brighton Blvd.

Officers Moody and Pasko arrived separately in marked patrol vehicles. Both officers wore full police uniforms that clearly identified them as police. Both officers had their body worn cameras (BWC) activated. Upon arrival, Officer Pasko realized that the home was not in Commerce City, but rather was in unincorporated Adams County and within the jurisdiction of the Adams County Sheriff's Office. Officers Pasko and Moody remained on scene in a standby capacity while dispatch notified the Sheriff's Office of the situation. Both officers later described not wanting to get too involved outside their jurisdiction and waiting around simply to ensure that "no one got hurt."

Officer Moody contacted Y.R. and explained the situation. He advised that they were "just waiting for [Adams County Deputy Sheriffs] but we're just going to hang out until they get there just so everyone's safe in the moment." While the officers were in contact with Y.R., she

informed them that her son was “all high on drugs” and that he “needs help” and that he “thinks they are after him.” Officer Moody stood and talked to Y.R. across a parking lot area, a considerable distance away from the home. Robert Alire remained inside the home. As Officer Moody spoke with Y.R., Officer Pasko stood nearby watching the area and waiting for Adams County Deputy Sheriffs to arrive.



This photo shows the approximate vantage point of Officer Pasko as he stood by while Officer Moody talked to Y.R. The home of Y.R. and Robert Alire is circled.

Seconds after contacting Y.R., Robert Alire appeared to open the front door and stand in the doorway of the home. Officer Pasko reported that he noticed Robert Alire motion and call for Officer Pasko to come closer. Officer Pasko proceeded toward the home, intending to tell Mr. Alire that they were just standing by until Adams County Deputy Sheriffs arrived.



Still image from Officer Pasko's BWC as he approached Robert Alire standing in the doorway of the home.

As Officer Pasko approached Robert Alire, Officer Pasko's voice can be heard on his BWC saying, "Listen man, we cannot get too involved we just want to make sure everybody is safe." Robert Alire suddenly drew a knife from his waistband, came off the porch, and charged at Officer Pasko. Officer Pasko yelled, "No! No! No!" The BWC recording shows Robert Alire running towards Officer Pasko with a large knife in his right hand. In his later interview, Officer Pasko described what he experienced:

He was off the stairs and running at me ...within two to three seconds. As soon as I started approaching, he, he came out from underneath the shadows, lifted up his shirt, drew the knife and came running at me within two to three seconds.

[Alire] took a couple of steps towards me uh, lifted up his shirt and drew a large butcher knife in his right hand and started running at me ... I believe he had a smile on his face um, when he was running at me ... I, I noticed that it, obviously, it was a very large knife and he was coming at me very quickly ... and he was closing the distance very quickly....



Still image from Officer Pasko's BWC as Robert Alire leaves the porch, knife in right hand, running toward Officer Pasko.

As Robert Alire charged Officer Pasko, Officer Pasko back peddled and drew his weapon while yelling, "Drop it!" Officer Pasko pointed his firearm at Robert Alire and fired it a number of times at Robert Alire. Officer Pasko described the encounter:

I was in fear for my life... not only because of his size um, compared to mine, um, but as the look in his eye ... the look in his eyes and ... I believe he was smiling as he's running at me with this knife. I was, I was scared. I was ... I felt that ... my life was in danger, so I, that, that, I, I immediately went to my, my firearm and ... and I shot him.



Still image from Officer Pasko's BWC, Robert Alire charging at Officer Pasko while armed with a knife.

Officer Moody saw Robert Alire and perceived danger based upon Mr. Alire's actions and quick movement toward Officer Pasko. Officer Moody drew his weapon and focused his attention on Mr. Alire. Seeing Mr. Alire running toward Officer Pasko armed with a knife, Officer Moody aimed and fired at Mr. Alire because he feared for Officer Pasko's life. Officer Moody described the encounter and his decision:

I saw the male quickly lift up his shirt and reach to his waistband. At that point, I drew my weapon thinking he was pulling a gun. Saw that he pulled a long knife out and instantly started sprinting towards Officer [Pasko]. At that point, I don't know who fired first. It was pretty simultaneously but I made the decision to fire. If not, he was gonna kill [Pasko].

[Mr. Alire] wasn't listening, wasn't stopping. Two guns were drawn on him. Still doesn't stop so once he got to like a certain point and I saw that he was not stopping. His intent was to kill Officer [Pasko] is when I decided to shoot.



Still image from Officer Moody's BWC, both Officers with weapons drawn as Alire advances on Officer Pasko.



Still image from Officer Moody's BWC, Robert Alire running towards Officer Pasko as Officer Pasko backs away.

Examination of the BWC recordings reveals that Officers Moody and Pasko arrived at approximately the same time. The two officers consulted briefly about jurisdiction and first

made contact with Y.R. at 12:10:03 p.m. The front door to 7375 Brighton Blvd opens at 12:10:10 p.m., just as Officer Moody begins his discussion with Y.R. about waiting for the Adams County Sheriff's Office. At 12:10:44 p.m., Officer Pasko began to walk toward the front door to the residence. Robert Alire steps out of the doorway at 12:10:53 p.m. At 12:10:57, Mr. Alire stepped off the porch wielding the knife and ran toward Officer Pasko. The first of several gunshots is fired at 12:11:00 p.m.

Criminalists assigned to the CIRT gathered evidence and processed the scene, including the two officers' firearms. Based on an examination of the firearms and evidence at the scene, the criminalists concluded that Officers Pasko and Moody each discharged four rounds at Robert Alire. Mr. Alire's final resting place was approximately forty-four feet from the front porch. The knife held by Robert Alire was collected and examined. The knife could be described as a classic "butcher" style kitchen knife with an overall length of more than thirteen inches, and a blade of approximately eight inches.



Photo of "butcher" style kitchen knife held by Robert Alire.

On June 30, 2021, Dr. Stephen Cina conducted an autopsy of the male identified as Robert Alire, date of birth, June 14, 1975. The examination revealed five gunshot wounds. Dr. Cina concluded that the cause of death was multiple gunshot wounds to the head and torso. A toxicological examination also led to the conclusion that Mr. Alire ingested methamphetamine prior to death.

LEGAL ANALYSIS

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. Consequently, in order to file a criminal charge, the District Attorney's Office must be able to prove beyond a reasonable doubt that the involved law enforcement officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

Under Colorado law, a law enforcement officer may use an amount of force, including deadly physical force, that is necessary and reasonable. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers' use of force at the time of this incident is found at §18-1-707(4.5), C.R.S. (2020), and that subsection provides:

(4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officers 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.

The United States Supreme Court has set forth a standard of "objective reasonableness" in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer's use of force must (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (2) be judged from the perspective of an objectively reasonable officer on the scene "in light of the facts and circumstances confronting them, without regard to [his] underlying intent or motivation." Further, the United States Supreme Court notes, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Applying the legal standard in this case, the question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Robert Alire posed an immediate threat to the safety of the officers such that the use of deadly physical force was necessary.

Here, Officers Pasko and Moody responded to a call of a “family disturbance.” These officers were clearly identifiable as police officers. Once the officers discovered that the incident was outside of their jurisdiction, they contacted Y.R. to advise that Adams County Sheriff’s Deputies would arrive to assist. The officers made no attempt to arrest Robert Alire, or even inquire as to his conduct. Within one minute of time, while awaiting the arrival of other law enforcement officers, the two officers simply stood by to ensure the situation remained safe. In a matter of seconds, Robert Alire invited Officer Pasko closer to him. Officer Pasko walked closer and advised that they were not going to get involved in the situation.

As Officer Pasko came closer to the residence, Robert Alire displayed a large knife and came running toward Officer Pasko. Officer Pasko perceived the danger presented by Mr. Alire. Officer Pasko yelled “No! No! No!” and “Drop it!” as Mr. Alire ran toward him with the weapon held high. Mr. Alire did not comply with the command and demonstrated an intent to cause harm to the officer. Three seconds elapsed between the time Mr. Alire displayed the knife and the time shots were fired. The evidence reveals that within that time frame, Mr. Alire ran a distance of approximately forty feet toward Officer Pasko. Officer Pasko backed away from Mr. Alire, but had little time to formulate a less lethal response. Based on Mr. Alire’s actions with the knife, both officers expressed their belief that Officer Pasko would have been killed or seriously injured if they did not use deadly force to stop Mr. Alire.

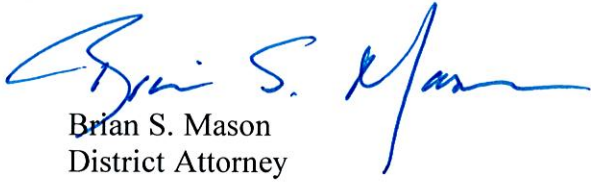
There is no evidence to suggest that an objectively reasonable officer would have acted differently than the officers who were involved in this incident. While this situation escalated within a matter of seconds, it was not the result of the officers’ behavior or conduct toward Mr. Alire. Rather, these officers advised the civilians on scene, including Mr. Alire, of their intent and purpose—to keep the peace. Mr. Alire, by his actions, demonstrated an intent to use force with a deadly weapon and refused to comply with reasonable commands to drop the weapon. Although Mr. Alire may have ingested an intoxicant or had other mental illness that may have altered his state of mind, that fact does not change the law applicable to these officers’ right to exercise self-defense when they were faced with an imminent threat of death or injury. Mr. Alire’s actions with a deadly weapon caused these officers to make a split-second and, indeed, reasonable judgment in a tense and quickly evolving situation, as clearly shown on the Body Worn Camera video. The evidence presented in this investigation supports a conclusion that Officers Pasko and Moody were justified in the use of deadly physical force against Mr. Alire.

CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2020). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Michael Pasko or Officer Joshua Moody for firing their weapons at Robert Alire and causing his death.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian S. Mason". The signature is fluid and cursive, with the first name "Brian" and last name "Mason" clearly distinguishable.

Brian S. Mason
District Attorney