

DANIEL P. RUBINSTEIN
DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE

Mesa County Justice Center ~ P.O.Box 20,000 - Dept. 5031 Grand Junction, CO 81502-5001 (970) 244-1730

July 23, 2019

Lissah Norcross
Lead Investigator
Mesa County Sheriff's Office
215 Rice Street
Grand Junction, CO 81501

Re: CIRT on June 14, 2019 involving Spencer Shanley

Dear Investigator Norcross,

I am in receipt of the case file you sent up for review, per CIRT protocol, of Officer Chris Wood and Officer Tom Nelson. At this time I am declining prosecution of both officers and find their actions completely appropriate and justified under the self-defense defense. Below please find my findings of fact and conclusions of law. If you have any further questions, please do not hesitate to contact me.

Factual Findings

At approximately 1:00am on June 14, 2019, Grand Junction Police Officers Tom Nelson, Chris Wood and Sergeant Stan Ancell responded to 2442 ½ Jack Creek Road, Grand Junction, CO. A female had called 911 stating her boyfriend was threatening suicide by pointing a gun to his head while seated in his white Toyota truck parked in the driveway. It was later determined that the 911 caller is Serenity Santistevan and the reported suicidal subject is Spencer Tye Shanley.

Officer Wood explained he responded to a priority suicidal male with a gun call. Officer Nelson said he self-dispatched to the call. Officer Wood explained while in route, he learned the caller's current or ex-boyfriend was in his white Toyota truck in the driveway with a gun to his head, suicidal and possibly intoxicated. Officer Nelson said the additional information he found in the call notes was at 2442 ½ Jack Creek Rd. a female was scared locked in her home and her boyfriend was in the driveway in an older white Toyota pickup with a handgun to his head. Officers Nelson and Wood were the first to arrive. Dispatch advised the house backed up to the park. Officers Wood and Nelson arrived at about the same time as each other and both parked on Spanish Trails Dr. at about Spanish Hills Ct. They were both in regular patrol officer marked uniforms with badges on their left upper chest and in a marked patrol cars.

Officer Wood got his patrol rifle out of his vehicle and charged a round into the chamber. Officer Wood explained that he deploys his rifle at any call where it is known weapons are involved. Officer Nelson described that he deployed his patrol rifle because of the nature of the call and a known weapon being involved. Officers Nelson explained he and Officer Wood went to the southeast corner of Spanish Trails Dr. and Jack Creek Rd and stood by the corner of the home to view/access the area of the call which he knew was a home on the north side of the street between Spanish Trails Dr. and 24 ½ Rd. They initially did not see anyone to their east. They could see the area well because there was extra lighting from a street light somewhere around the area. Officer Wood said they did not see anyone or a white truck initially.

According to Officer Wood, all of a sudden he saw an unknown male come from behind them walking east bound by them on the south sidewalk about 6-10 feet from the officers. Officer Wood said it appeared to him the male either didn't see the officers or he was ignoring them. Officer Wood said this was the only person on the street and both officers raised their rifles to the male and illuminated the male with their flashlights as he passed by them. Officer Wood said he clearly recalled Officer Nelson saying "show me your hands" to the male. Officer Wood said he does not recall if Officer Nelson said "police, show me your hands" or just "show me your hands." Officer Wood said he did not verbally address the male since Officer Nelson verbally addressed the male.

Officer Nelson recalled that he used the flashlight on his rifle, kept the rifle at the "low ready" position, illuminated the male, and announced "Police Department, show me your hands." Officer Nelson said as soon as he said that, the male looked at the officers, the male's eyes get big, and then he started running north east, back towards the home of the call.

Officer Wood said the male was a white male, estimated early 30's in age, about 5'10" tall, 150-160 pounds. Officer Wood explained as soon as Officer Nelson issued verbal commands, the male looked back at them and Officer Wood saw the male's hands go to his front waist area. Officer Wood said the male started to sprint away from the officers in a north east direction crossing the street towards the residence of this call and both officers pursued the male. Officer Wood explained this all happened quickly, he saw the male's hands were still near his waistline while running, then the male's hands pull upward, and Officer Wood saw a black object in the male's hand. Officer Wood explained the male then quickly turned to face officers, saw the male raise the hand with the black object up pointing towards officers, and Officer Wood observed the object was emitting a red laser light. Officer Wood explained he's familiar with guns and immediately recognized the black object to be a gun with a laser sight. Officer Wood said he recognized this as a lethal threat to the officers and he made the decision to shoot the subject to defend his and Officer Nelson's life. Officer Wood said he specifically recalls hearing one shot (he does not recall if he, Nelson, or the male shot the first round), then he specifically recalls shooting two times, and when the male fell to the ground Officer Wood saw the male's hands were then empty. Officer Wood estimated the subject was within 20 yards of him at the time the shots were fired. Officer Wood said the male was no longer a threat to he and Officer Nelson. Officer Wood estimated he shot 2-4 times, but later became aware his rifle was void 3 rounds. Shortly thereafter, Officer Wood explained in looking around he observed a black colored handgun, possibly a Smith & Wesson model, with an illuminating laser sight lying on

the ground. Officer Wood said he believes Officer Nelson aired "shots fired" and then Sgt. Ancell was on scene. Officer Wood explained within moments other officers and medical personnel were on scene and rendered aide to the male and dealt with the male. Officer Wood also expressed he was concerned when the male was running back towards the call address, the male might injure and/or shoot the reporting person.

Officer Nelson's version was consistent. He described that the subject clearly was non-compliant, fleeing, and this raised Officer Nelson's suspicion. Officer Nelson explained he saw the male's left arm was moving like a normal running position, however the male's right arm was down and his right hand was at the front waist area. Officer Nelson said from his experience, he recognized this is not the normal way people run, he is aware subjects often tuck weapons in their waistband, and he felt the male might be reaching for a weapon. Officer Nelson explained he was pursuing the male because if this was the armed subject, they needed to ensure this male did not get back to the caller's home and harm people there. Officer Nelson said the male then turned towards officers with a small black handgun in his right hand pointed towards Officer Nelson and Officer Wood. Officer Nelson said with the handgun pointed at them, he believed the male's intention was to shoot the officers, so Officer Nelson fired multiple rounds with his rifle at the male. Officer Nelson explained he believes he started firing the rifle as he was bringing the rifle up to target. Officer Nelson said as he was firing, he believes he saw a red laser sweep across his face and he believed it was from the man's handgun. Officer Nelson said this scared him, he thought he was about to get shot in the face, and he ducked down while continuing to shoot the male. Officer Nelson said the male then fell to the ground, so Officer Nelson stopped firing his rifle. Officer Nelson explained he was giving verbal commands for the male to "show me your hands" and Officer Nelson could see the male did not have anything in his left hand. Officer Nelson said the male said he could not move his right hand and Officer Nelson observed the male was bleeding from the right shoulder. Officer Nelson explained the male did not appear to pose a continuing threat, so Officer Nelson stopped firing his rifle. Officer Nelson estimated he shot 5-10 rounds at the time, but later learned his rifle was void of 11 rounds. Officer Nelson explained in looking around on the ground, the officers saw a black small handgun on the ground and realized the male no longer had the handgun. Officer Nelson said he directed Officer Wood to straddle the handgun so it was not disturbed. Officer Nelson said Sgt. Ancell arrived at about that time and explained other officers and medical personnel arrived on scene within moments and provided medical assistance to the male.

Sgt. Ancell provided a statement. Sgt. Ancell explained he was third on scene, he observed a person walking east bound at the round-a-bout (Spanish Trails and Jack Creek), as he continued to approach he heard someone announce "Police" and say something like an order to show hands, then heard running, and then heard 2 weapons firing at the same time. Sgt. Ancell was not in line of sight of the incident until after the shooting, when he observed a wounded adult male on the ground, Officer Wood standing over a handgun (with the laser sight on) with his rifle deployed, and Officer Nelson with his rifle also deployed. Sgt. Ancell said he did not fire his weapon and his round count showed his weapon was full.

Sergeant Caleb Church arrived on scene seconds before the EMS arrived. He described that when he arrived Mr. Shanley was laying in a pool of blood, was still moving and attempting to speak. Several feet from him, laying in the middle of the street, was a black pistol with a laser

light affixed to it. The laser was red and was intermittently illuminating or flickering as if the laser was on, but the battery was failing. EMT's immediately began rendering aid and quickly loaded Mr. Shanley into the ambulance and transported him to the hospital.

Concerning the injuries, medical records were obtained from St. Mary's hospital. On page 8 of the records, there was a note that Mr. Shanley was "lying in bed, speaking mostly non-sensibly, agitated" and "Verbal response:4 = disoriented conversation" pertaining to his statements. Also on page 8 there was a reference to a "single ballistic wound noted to the right upper chest" and "2 ballistic injuries noted to the medial right thigh" and "2 ballistic injuries noted to the left thigh". On page 14 of the records, documentation of Mr. Shanley's injuries as "Traumatic hemorrhagic shock; Type I or II open displaced comminuted fracture of shaft of right femur; Other open displaced fracture of proximal end of right humerus; axillary artery injury, right; Superficial femoral artery injury, right; and Contusion of right lung." Search warrants for Mr. Shanley's blood were obtained. A report from Chematox Laboratory, Inc., date July 11, 2019, reveals that Mr. Shanley's blood alcohol content, at the time blood was drawn at the hospital (June 14, 2019 at 1:46am) was .226 g/100ml. He also tested positive for benzodiazepines. Those drugs were later confirmed by the lab as being clonazepam (29 ng/mL) and diazepam (<30 ng/mL).

Later interviews with Ms. Santistevan, as well as Mr. Shanley's parents revealed the events of the earlier evening leading up to this encounter. Ms. Santistevan reported she was dating Spencer Shanley (DOB 11/10/89). She said that his parents, Brad and Tayra Shanley, invited her to a barbeque at their house, 456 Rob Ren Dr. earlier in the evening. She said Mr. Shanley arrived late to the barbeque and was intoxicated. She believed in addition to alcohol, she felt because of her training as a counselor in substance abuse, she thought he might be under the influence of a stimulant. She agreed to drive him to her house because of his intoxication. She said Mr. Shanley refused her offer and she left. Ms. Santistevan said Mr. Shanley then began sending her nonsensical text messages and left her nonsensical voice messages. She accused him of embarrassing her at his parents and he responded that he would get his stuff from her house. She asked him not to visit her house until the morning. Ms. Santistevan advised she later woke to Mr. Shanley in her home sometime after midnight. She found him in her garage holding a bottle of Mickey's beer. He asked for his stuff and she went through her home and placed his stuff in a bag. Ms. Santistevan said Mr. Shanley asked her to grab his gun out from under her mattress. She denied knowing he had a gun under her mattress but stated he always carries a gun. She believed he had a concealed weapons permit. She retrieved his handgun and gave him the bag. He asked her if she put his gun in her bag and she confirmed that she had. Ms. Santistevan said Mr. Shanley threw her key at her and it was lost in the grass. At some point, she asked him to leave and Mr. Shanley claimed to have seen a police officer in the area, made a statement something about "judge and jury" and "not going to prison", and feared being arrested for DUI. Mr. Shanley asked Ms. Santistevan if he could sleep in his vehicle in her driveway. Ms. Santistevan said Mr. Shanley got in his vehicle. She turned on the outside lights to look for her key. As she was looking for the key she looked over at Mr. Shanley and saw he had his handgun held to his head. She ran inside and then sent a text message to Mr. Shanley's mother and called 911.

Spencer Shanley's mother, Tayra Shanley provided a statement. Tayra reported she had a barbeque tonight at her home of 456 Rob Ren. Mr. Shanley attended the barbeque and his girlfriend, Serenity, left before Mr. Shanley. Mr. Shanley then could not find his keys and was acting as if he may have been drinking (alcohol). Tayra said she did not see him drink alcohol but described him acting as he sometimes does when he drinks alcohol while taking prescription medications. She told Mr. Shanley he should just stay at her home tonight and not go to Serenity's home. Tayra went to bed and thought Mr. Shanley was going to stay home. Tayra then began getting text messages from Serenity, reporting Mr. Shanley was at her home, she had told him to leave, he threw her keys and said to give him his property. Serenity then sent text messages indicating Mr. Shanley was in her driveway sitting in his truck with his gun to his head and she was calling 911. Brad confirmed Spencer had been to his house for a barbeque tonight. Brad talked about years of problems with Spencer abusing prescription type drugs and drinking. He described Spencer would become violent and irrational when abusing the drugs. Spencer had gone to drug rehab in Denver a few years ago, but he said it did not help. In the last few weeks, Spencer was abusing the substances enough he became mean and violent enough he wanted to "kick the ass" of Brad. After the barbeque, Brad and Tayra were trying to go to bed as Spencer was wandering around the house cussing, upset and complaining about Serenity wanting to change him. Brad believed Spencer had been abusing the prescriptions and possibly drinking tonight, making Mr. Shanley upset and angry. Brad said Spencer had talked of overdosing in the past in a suicidal type ideation. After the barbeque, likely around 2330 to midnight, Spencer talked about having a "notion" to take all his pills (suicide). Spencer got his keys and said he was going to go sit in his car. Brad said this happens often and the family does not try to stop Spencer from sitting in the car out of fear his behavior or anger will escalate. Brad said he knew Spencer owned a .380 caliber Bursa handgun he normally kept at Serenity's home. He did not know of this handgun having any type of laser sight.

Legal Analysis

The law permits deadly physical force¹ to be used against a person as defined by statute. Colorado permits deadly physical force to be used only if a person reasonably believes that a lesser degree of force is inadequate, and the actor has reasonable grounds 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. § 18-1-704(2). There is no special exception or permission for law enforcement officers to utilize deadly force, although the nature of the job puts them in situations more likely to present the decision process of using appropriate and justifiable use of force at varying levels.

Here, Officers Wood and Nelson attempted to use deadly force against Mr. Shanley. Such force is authorized, as described above under the theory of self-defense. In Colorado, deadly physical force used in self-defense has two equally important components. The first is a subjective component requiring that the actors themselves, Officers Wood and Nelson, actually believed that

¹ "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death. See C.R.S. § 18-1-901(3)(d). Here, deadly physical force was not used, but rather, was attempted as the result was not death. However, the analysis justifying the attempted use of deadly physical force is the same with respect to whether such use was justified resulting in a determination that no charges are appropriate.

he was in imminent danger of death or great bodily injury, and that deadly force was required. The second component is an objective component; that the actor's actual belief was also a reasonable belief.

Here, it is clear from both officers own statement that they actually believed that Mr. Shanley was about to shoot them. They described Mr. Shanley running in a manner that evidence he was grabbing something from his waistband consistent with where others keep a gun, based upon their experience. They both described him turning with what they perceived to be a gun in his hand, with a laser light on it and pointing it in their direction after being non-compliant with directives from Officer Nelson. Officer Wood stated that he immediately recognized the black object to be a gun with a laser sight. He said he recognized this as a lethal threat to the officers before he made the decision to shoot. Officer Nelson described that he thought he was going to get shot in the face after seeing the laser light sweep across his face.

Given this recount by both and the balance of his interview statements, they were operating on the belief that using or attempting to used deadly physical force was the only option to defend against the force being used them, or about to be used against him, and that no option of lesser force would be available or adequate to defend against that force.

Turning now to the objective reasonableness of this belief, it is clear that any jury would conclude that it is reasonable to believe that a person is in imminent danger of being killed by another who is reported to have a gun, is refusing to comply with repeated commands by law enforcement to show his hands, and then in an aggressive manner, points it at the officers. Additionally, the officers were told that Mr. Shanley had previously placed the gun to his head, which further supports a reasonable belief that he intended to engage law enforcement in a gun battle in order to have one or more of the officers shoot him.

Beyond those very clear and corroborated facts, I find it significant in assessing the reasonableness of their actions that two trained officers simultaneously reached the same conclusion. It is appropriate to consider if an officer has specialized training that would allow him to make decisions more calmly, or otherwise be able to assess threats properly, without mental distortion due to stress.

Officer Wood has about 7 ½ years of law enforcement experience, including about 3 years on a SWAT team and also several years working in a drug task force. Officer Nelson has about 6 years of law enforcement experience, including collateral duties of being a defensive tactics instructor and a field training officer. Due to their prior experience, both are well trained in high stress situations. Given their training, and the consistency of the various witness statements, it is believed that their recitation of the facts was accurate with respect to the pertinent issues of whether they had reasonable grounds to believe that they were in imminent danger of being killed.

For the reasons stated, I believe that the actions of both Officer Wood and Officer Nelson fall squarely within the self-defense justification for use of deadly physical force. Accordingly this matter is inappropriate for any criminal prosecution of either officer.

Respectfully,

A handwritten signature in blue ink, appearing to read "Daniel P. Rubinstein". The signature is fluid and cursive, with the first name being the most prominent.

Daniel P. Rubinstein
District Attorney