

Clifford E. Riedel
District Attorney

201 LaPorte Avenue, Suite 200
Fort Collins, Colorado 80521-2763

Phone: (970) 498-7200
Fax: (970) 498-7250



1st ASSISTANT DISTRICT ATTORNEY
Mitchell T. Murray

2nd ASSISTANT DISTRICT ATTORNEY
Emily A. Humphrey

CHIEF DEPUTY DISTRICT ATTORNEYS
Katharine J. Ellison
Andrew J. Lewis
Daniel M. McDonald

July 27, 2015

Chief John Hutto
Fort Collins Police Services
2221 Timberline Road
Fort Collins, CO 80525

Re: Opinion Concerning FCPD #15-11309

Dear Chief Hutto:

The criminal investigation surrounding the July 18, 2015, death of David Earl Wheat has been completed and submitted to my office for an opinion. As District Attorney, I am required to determine whether any person committed criminal law violations during this incident. The scope of this review is criminal in nature and necessarily limited by Colorado statutes to determine whether any criminal charge is legally prosecutable and provable beyond a reasonable doubt. My review also includes determining if the degree of force used by Officers Adam Brunjes and Tyler Patterson was justified under pertinent Colorado statutes.

In addition to having a representative from my office respond to the scene and assist in the interviews with the involved officers, our investigation has included a review of the reports, photos, and videos taken of the scene, dispatch and communication records, witness interviews, ballistics, and findings made by the Larimer County Coroner's Office. Larimer County's Critical Incident Protocol was in place and followed during this investigation.

In determining whether the degree of force used by Officer Brunjes and Officer Patterson was legally justifiable, my review is based on whether the following Colorado statute involving the use of force was violated.

Section 18-1-704 of the Colorado Revised Statutes provides:

- (1) *... 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 reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury...

The definition of "deadly physical force" is set forth in C.R.S. 18-1-901(3)(d). It reads:

"Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which, does in fact, produce death.

The following is a summary of the facts in this case as established by the above sources of information:

On July 18, 2015 at approximately 3:53 am, Fort Collins Police officers were dispatched to 1225 West Prospect, Apartment K-107 on a report of a verbal disturbance involving an intoxicated and suicidal subject named David Wheat and his brother, Davis Wheat. The informant, Breann Anderson told 911 dispatchers that she and another female, Samatha Mosco were roommates of Davis Wheat and all three of them resided at the 1225 West Prospect address. Ms. Anderson informed police that Davis Wheat's brother, David, had been staying with them recently. Ms. Anderson indicated that David Wheat was currently very intoxicated, was suicidal, and was verbally abusive. David Wheat's anger was directed at both of the women and he stated that he was "not afraid to hit a woman." Both Ms. Anderson and Ms. Mosco were fearful of David Wheat and left the apartment for their safety. Ms. Anderson placed the call to 911 from outside of the apartment. As officers were responding to the scene, Davis Wheat was still in the apartment attempting to calm down his brother, David. Davis Wheat later told investigators that David Wheat had been drinking tequila and may have also ingested multiple painkillers. According to Davis Wheat, his brother, David Wheat, was talking about committing "suicide by cop." Davis Wheat told the police that David asked Davis for a knife and Davis told his brother he did not have one. David Wheat then went to the kitchen and retrieved a steak knife and swung the knife towards Davis Wheat. Davis Wheat avoided being struck with the knife, whereupon David Wheat ran out of the apartment towards where Ms. Mosco and Ms. Anderson were standing while talking with the 911 dispatcher. Davis Wheat ran out of the apartment after David and also yelled a warning to Ms. Anderson and Ms. Mosco to "run," adding "he has a knife."

Officer Adam Brunjes and Officer Tyler Patterson arrived in the parking lot area of 1225 West Prospect and observed Ms. Anderson and Ms. Mosco on the sidewalk outside of apartment K107. It appeared that one of the females was still on her cell phone with the 911 dispatcher. Both officers exited their police cars and began walking over to the location of Ms. Anderson and Ms. Mosco. Suddenly, the women began waving frantically for the officers to hurry up. The officers then ran toward the two women. Officer Brunjes saw a male, later determined to be David Wheat, exit apartment K107 and make "a beeline" towards Ms. Mosco. Officer Patterson also saw David Wheat run towards Ms. Mosco and observed him appear to strike Ms. Mosco with an overhand motion. Officer Patterson thought he saw some sort of a shiny object in David Wheat's hand but could not determine what the object was at that time. Running full speed, Officer Patterson tackled David Wheat who was attacking Ms. Mosco. David Wheat and Officer Patterson hit the ground and the momentum of Officer Patterson caused him to roll over the top of David Wheat. Officer Brunjes struck David Wheat with his police baton to prevent him from

harming Officer Patterson who was now on the ground. At this point, Officer Patterson heard someone yelling “He has a knife! He has a knife!” Officer Patterson got to his feet and observed that David Wheat was in fact holding a knife in his right hand. Officer Brunjes also observed that David Wheat was brandishing a silver bladed knife as he sat on the ground. Both officers then drew their service handguns and began giving verbal commands to David Wheat to drop the knife and to stay on the ground. Multiple residents in the apartment complex confirm that repeated commands of “Drop the knife” were given to David Wheat. David Wheat’s brother, Davis, also told investigators that the officers told his brother to drop the knife and stay on the ground. Nevertheless, David Wheat observed his brother, David, stand up with the knife in his hands and begin taunting the police saying “Do it! Do it pussies!” and, “What are you waiting for?” Both officers continued to order David Wheat to drop the knife. Officer Brunjes observed David Wheat moving his feet as if getting ready to charge the officers. Both officers warned David Wheat that they would shoot him if he stepped towards them. David Wheat responded “I don’t care.” David Wheat then lunged towards the officers whereupon they both fired their handguns multiple times. David Wheat fell to the ground. Officers moved the knife away from David Wheat and Officer Patterson then immediately began rendering first aid to David Wheat. Officer Brunjes then heard a female screaming that she had been stabbed and he looked over to see Ms. Mosco sitting on the sidewalk bleeding from a stab wound to her left shoulder area. It was not until this moment that the officers were aware that David Wheat had attacked Ms. Mosco with a knife. Officer Brunjes went to Ms. Mosco and immediately began rendering aid to Ms. Mosco in an attempt to stop the bleeding.

One of the shots fired by the officers struck the knife as David Wheat lunged at them. The broken knife was recovered at the scene.



Based upon the totality of the evidence, I find that Mr. David Wheat committed the only criminal offenses during this incident. Had he survived, sufficient evidence existed to charge him with multiple felony offenses including Attempted First Degree Murder of Ms. Mosco, Attempted First Degree Murder of Officer Patterson, Attempted First Degree Murder of Officer Brunjes, as well as multiple counts of First Degree Assault with a Deadly Weapon.

Officer Patterson’s decision to physically tackle David Wheat, despite the fact that he saw something shiny in his hand that could have injured Officer Patterson, clearly saved Ms. Mosco from receiving additional stab wounds and very likely saved her life. Officer Brunjes’ attempt to use his police baton to subdue David Wheat was appropriate and necessary. Despite having been

tackled to the ground and struck with a police baton, David Wheat remained in possession of a knife, in very close proximity to the officers and refused repeated commands to drop the knife and not to advance towards the officers or he would be shot. When David Wheat lunged at the officers with the knife Officer Patterson and Officer Brunjes had every right to defend themselves with deadly physical force.

Respectfully,



Clifford E. Riedel
District Attorney