



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

May 6, 2021

Re: Investigation into the Non-fatal Shooting of Ahmad Al Aliwi Alissa on March 22, 2021

Dear Chief Herold:

The Boulder County Critical Incident Team and the Office of the District Attorney for the 20th Judicial District have completed their investigation into Boulder Police Department Officer Richard Steidell's non-fatal shooting of Ahmad Al Aliwi Alissa. Based on a thorough analysis, I have determined that the shooting was justified.

Introduction

The Boulder County Critical Incident Team ("BCIT") is a multi-agency team charged with investigating incidents in which a peace officer, acting within the 20th Judicial District and under the color of official authority, used deadly or potentially deadly force against a person. BCIT's mandate and protocol are broader than state law, which requires review of a peace officer's discharge of a firearm only if it caused injury or death.

Here, the BCIT investigation examined whether criminal charges are appropriate in the non-fatal shooting of Ahmad Al Aliwi Alissa on March 22, 2021, within the City of Boulder. BCIT did not evaluate or review the appropriateness of police tactics or officers' adherence to policies and procedures. On the date of the incident, the BCIT was activated to investigate the officer-involved shooting for possible criminal charges. Consistent with Boulder County protocol, the Boulder Police Department ("BPD") did not actively participate in the investigation.¹

My decision, based on criminal law standards, does not limit administrative action by BPD or any civil actions where less-stringent laws, rules, and levels of proof would apply. The authority and role of the District Attorney's Office is to determine whether Officer Steidell

¹ Consistent with statute and protocol, BPD Detectives remain involved in the criminal investigation against Alissa for his alleged murder of nine civilians and one peace officer, as well as other criminal offenses. BPD is legally responsible for enforcing any criminal violations committed in Boulder.

committed a criminal offense that can be proven beyond a reasonable doubt. Since that is the purpose of this inquiry, this letter will focus primarily on the police response to the incident and, specifically, that of Officer Steidell.

The Federal Bureau of Investigation (FBI) led the crime scene processing and documentation. The BCIT participated in the crime scene processing as part of this investigation. The BCIT completed a thorough investigation and generated a voluminous file that includes reports, video footage, and photographs. All involved officers submitted to voluntary interviews that were recorded and reviewed as part of the BCIT investigation. Members of my staff and I reviewed all these files in detail and have been fully briefed regarding this incident by the BCIT Commander.

I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against Officer Steidell. My findings, analysis, and conclusions of law are as follows:

Statement of Facts

The information set out below represents my findings of fact concerning Officer Steidell's use of force. I am required by Colorado law to make and publicly disclose my findings and conclusions, including the bases for not charging Officer Steidell. Specifically:

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.

Section 20-1-114(1), C.R.S.

As District Attorney, I am required to comply with this statutory obligation. There is no exception for cases in which there is, also, an active prosecution. In addition, this report is necessary to inform the public of the nature and reasons for my decision. Finally, I recognize that Officer Steidell is on administrative leave until this investigation is concluded and my decision is reached. For all these reasons, this decision and report cannot be delayed.

This report is not to be construed as commentary on the criminal charges, which are merely allegations, pending against Mr. Alissa. He remains innocent of the charges against him unless and until a jury finds him guilty beyond a reasonable doubt.

A. BPD's initial response and entry.

Just before 2:30 pm on March 22, 2021, a person pulled into the parking lot of the King Soopers supermarket on Table Mesa Drive. He exited his car and began shooting at individuals in the parking lot. The shooter ran toward the east entrance and entered the store. He continued shooting inside the store.

Boulder Police Dispatch received its first 911 call at 2:30 p.m. Within a minute of that call, BPD officers were dispatched to respond. During this time, radio traffic aired that there was an active shooter, a description of the shooter, and that the shooter may have been wearing an armored vest. Multiple callers described barricading themselves inside the store. Dispatch also indicated there may be multiple shooters.

BPD responded very quickly. Officers arrived at the store within minutes of the first 911 call and pushed into the King Soopers almost immediately after arriving on scene. At approximately 2:36 pm, BPD Officers Eric Talley, Brian Capobianco, and Pam Gignac entered the same east doors the shooter had used to access the store. Footage from body-worn cameras (BWC), video surveillance, interviews, and radio traffic confirm that Officers Capobianco and Gignac had observed multiple victims by the time they entered the store.

After entering the store, Officers Gignac, Capobianco, and Talley advanced slowly past a deceased victim inside the doors and toward the aisles that were in the center of the store. Officer Capobianco, armed with a long-gun and backed by Officer Gignac, moved along the customer service counter. Officer Talley, armed with a handgun, took the lead position during the officers' entrance.

As Officer Talley passed the registers, he was shot and killed.

B. BPD's second entry and use of force.

Officers Capobianco and Gignac withdrew and took cover after shots were fired at Officer Talley because it was unclear where the shots were coming from within the store. After moving to cover, they realized that Officer Talley had not moved with them. Less than two minutes later, BPD had formed a second entry team and pushed back through both sets of doors at the east entrance and into the store. This entry group included Officer Steidell, Officer Plyter, Officer Kicera, Officer Capobianco, Officer Smith, and Trainee Officer Schmeits. BPD Officer West, University of Colorado Police Officer Braun, Open Space Ranger Kilburn, and Boulder County Sheriff Deputy Brunkow took positions in the east vestibule behind the entry team. BPD Sergeant Drelles established position immediately outside the vestibule. Other officers took positions outside the store and throughout the area.

At this point, officers were aware that the shooter had shot Officer Talley inside the King Soopers and that the shooter remained armed inside King Soopers.

This second entry group pushed into the King Soopers shortly before 2:38 pm and advanced behind a ballistic shield manned by Officer Plyter. All members of the second entry

team wore clearly marked police uniforms. The ballistic shield had the word "Police" written on it. At the time of their entry, police vehicles with flashing lights were parked immediately outside the store. Sirens could be heard throughout the area.

Approximately 20 seconds after the second entry group stepped into the store, multiple shots were fired at them. These rounds passed directly over the heads of Officers Steidell, Plyter, and Kicera and struck the entrance doors, shattering glass throughout the vestibule. One round passed directly between the heads of Officers Braun and West. Officer Braun sustained injuries from the shattered glass.

When the shots were fired, Officer Steidell dove to the ground in a prone position. Officer Steidell had a clear line of sight down the aisle and saw the shooter holding a long gun. Officer Steidell returned fire with his handgun. Based on surveillance video, BWC footage, interviews, and scene analysis, there were no civilians in Officer Steidell's line of fire.

The shooter withdrew from Officer Steidell's line of sight. Officer Steidell remained on the ground, motionless, with his weapon trained down the aisle in which he had seen the shooter. Approximately 90 seconds later, the shooting suspect reentered Officer Steidell's line of sight. The shooter stood at the end of the aisle, raised his weapon, and aimed down the aisle toward officers. Officer Steidell immediately fired a second group of shots toward the suspect. When the shooter moved out of his sight again, Officer Steidell returned to a standing position and took cover outside the door.

The investigation subsequently determined that one of Officer Steidell's shots struck the suspect in the right thigh. Without firing another shot, the shooter surrendered to SWAT and was taken to the Boulder County Hospital for treatment. He was later discharged to a local jail, where he remains pending criminal charges.

No civilian was shot or killed after Boulder Police Officers entered the store. No person other than Officer Steidell fired a weapon at the shooter. Officer Steidell's shots were the last ones fired by anyone inside the King Soopers on March 22. The shooting ended with the shots by Officer Steidell. After additional teams of officers entered the store, employees and customers were found alive and hiding throughout the store. Based on all the evidence and information, the reports of multiple armed gunmen were determined to be unfounded.

C. Statements from Boulder Police Department Officer Richard Steidell.

Officer Steidell voluntarily interviewed with BCIT after law enforcement arrested Alissa. He explained that he had been working a standard shift on March 22, 2021 and was preparing to take a lunch break when he heard dispatch call for units to respond to a shooting at the King Soopers located on Table Mesa Drive in Boulder. Officer Steidell determined that this call was serious enough that he should prepare to respond even though he was not specifically dispatched to the scene.

Officer Steidell stated that he activated his lights and sirens and responded to the King Soopers. As he drove, he heard Dispatch relay information from 911 callers, including that it was

an active shooter situation, that the suspect had a rifle and ballistic armor, and that the suspect was still inside the store. Dispatch also indicated that information from 911 callers suggested the possibility there were multiple shooters. Officer Steidell recalled hearing, on his way to King Soopers, Officer Gignac radio that people were down on scene.²

Officer Steidell recounted that he arrived at King Soopers and parked immediately behind other patrol cars in the center drive connecting the store's parking lot to Table Mesa. Officer Steidell grabbed his duty weapon—an H&K VP 9mm handgun—and exited his patrol vehicle. Officer Steidell chose his firearm over less-lethal options (like a Taser or bean-bag shotgun) because of the reports of an active shooter armed with a rifle and wearing body armor.

Officer Steidell joined BPD Officers Kicera and Smith and Trainee Officer Schmeits. This group added Officer Plyter, who was carrying a ballistics shield. As Officer Steidell and the other officers gathered and prepared to enter the store, Officer Steidell personally observed a deceased victim in the parking lot and another deceased victim on the entrance ramp leading to the east doors. Concerned about the safety of other civilians inside the store, Officer Steidell urged this second entry group to push into the store quickly.

The second entry group immediately moved up the access ramp and into the east vestibule. Officer Steidell described being on the left side of this group with Officer Plyter in the front with his ballistics shield. On entering the store, Officer Steidell had a clear view of the aisles inside the east entrance. Officer Steidell explained that he immediately noticed Officer Talley was down and seemed to have sustained devastating injuries.

Officer Steidell described that the group inched into the store, using the tobacco counter as cover. They moved slowly because they did not know where the shooter was at the time. Their first goal was to extract Officer Talley and get him medical treatment. Officer Steidell did not announce his presence or give any commands as he did not want to reveal his location to the shooter. He was specifically concerned, having seen Officer Talley on the ground, that announcing his presence would expose them to an ambush.

As Officer Steidell and his group approached Officer Talley, Officer Steidell noticed movement at the end of the aisle opposite the east door, along the store's southern wall. He saw a person walk into view with "some type of long gun pointed right at" the officers. Officer Steidell recalled this person firing at least two rounds at the entry group and remembered hearing something break behind him. Knowing that the entry group was clustered together in close quarters and that the shooter had a long-range weapon that he suspected would be highly accurate, Officer Steidell was worried that he or another officer would be killed. Thus, he dropped to a prone position to minimize his target profile.

Officer Steidell recalled returning fire with one or two shots. He then waited for the shooter to reemerge and remained on the ground, with his gun trained down the same aisle. Eventually, the shooter moved left-to-right into Officer Steidell's view and Officer Steidell fired, in his estimation, between five to ten rounds. Officer Steidell elected to use potentially lethal

² The investigation confirmed that Officer Gignac did relay this information over the radio before Officer Steidell arrived on scene.

force at this time because the shooter had a gun, had fired at officers and civilians, and Officer Steidell had no other means of safely subduing or stopping the shooter.

After firing the second time, Officer Steidell waited briefly to see if the shooter reemerged into the aisle. When he did not, Officer Steidell determined he was no longer in a safe position on the floor and withdrew from the floor to cover.

After exiting the store, Officer Steidell and the other officers regrouped outside the store and waited for SWAT to enter. No additional shots were fired during this time. Officer Steidell later returned to Boulder Police Department Headquarters to be interviewed by BCIT.

Pertinent Scene Documentation and Evidence Collection

The FBI's Evidence Recovery Team (ERT) processed the crime scene. Its investigation was extensive. As relevant here, the ERT collected eight spent 9mm cartridge casings near the east entrance where Officer Steidell discharged his weapon.

Additionally, on March 22nd, BCIT investigators Dawn Cavins (Longmont Police Department) and Donna Teague (Boulder County District Attorney's Office) collected Officer Steidell's handgun and three magazines. They then performed a round count.

Officer Steidell reported that he began his shift with 46 rounds—one in the chamber and 45 rounds split evenly across three magazines. Officer Steidell further explained that after he exited the King Soopers he performed a tactical reload. That is, he removed the partially spent magazine, placed that magazine into the waistband of his pants, and loaded a full magazine into the gun. He later transferred the partially spent magazine into his magazine pouch.

Investigators determined that, after the shooting, Officer Steidell had two unused magazines—one located in his magazine pouch and the one he had inserted into the gun during the tactical reload. The third magazine BCIT collected was the magazine that had been inside the gun when Officer Steidell fired. This magazine had a capacity of 15 rounds and had only seven remaining in it. When investigators cleared Officer Steidell's handgun, they located an additional unspent round in the chamber. Thus, BCIT concluded that Officer Steidell fired eight shots. This conclusion is consistent with evidence found at the scene and review of surveillance and BWC video evidence. As noted above, the ERT collected eight spent 9mm casings near where Officer Steidell was lying prone.

Analysis

A. Legal standard

A person may be held criminally liable under Colorado law only when the evidence proves beyond a reasonable doubt that he committed every element of an offense defined by Colorado statute. Knowingly or intentionally shooting another person is generally prohibited by

statute as an assault or attempted homicide in Colorado.³

A person is not criminally responsible, however, if a statutorily recognized justification relieves him of liability. As pertinent here, Section 18-1-707, C.R.S., defines the circumstances under which a peace officer may justifiably use physical force in Colorado:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (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 injuries to others;
 - c. Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - d. Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - a. The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - b. The suspect poses an immediate threat to the peace officer or another person;
 - c. The force employed does not create a substantial risk of injury to other persons
- (4) A peace officer shall identify himself or herself as a peace

³ See generally Sections 18-3-101 to 18-3-105, C.R.S. (defining homicide); Section 18-3-202, C.R.S. (defining assault in the first degree); and Section 18-2-101, C.R.S. (defining criminal attempt).

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, 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 injury⁴

Section 18-1-707, C.R.S.

Applying the foregoing principles here, there is absolutely no question that Officer Steidell was justified in firing his weapon at Ahmad Al-Aliwi Alissa.

B. Application

Initially, at the time he fired his weapon, Officer Steidell believed that an individual had shot and killed at least two civilians and critically wounded or killed Officer Talley. He also believed that other individuals may have been killed and there was a mass casualty event. To his knowledge at the time, at least one individual remained armed inside King Soopers. Officer Steidell had, along with other members of the second entry group, just been fired upon. Further, Officer Steidell believed that the use of force was required to prevent an imminent threat of serious bodily injury or death to himself or another peace officer. His beliefs were both objectively reasonable and, upon further review, correct. Thus, Officer Steidell was justified in using force.

Next, at the time Officer Steidell fired his weapon, he believed the shooter had committed felonies involving the use of deadly physical force—namely, the murder of the deceased victims and attempted murder of the fired-upon officers. Officer Steidell knew the individual(s) posed an immediate threat to himself, his fellow officers, and civilians still inside the store. And, because Steidell fired down an empty shopping aisle and toward the back wall of the store, his use of force did not create a substantial risk of injury to persons other than the man shooting at him and his fellow officers. Officer Steidell was therefore entirely justified in using deadly physical force.⁵

⁴ The language of this provision mirrors that of Section 18-1-704, C.R.S., which provides that an actor may use deadly force if 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.”

⁵ Deadly physical force is defined by Section 18-1-901(3)(d), C.R.S., as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” Because Alissa survived, Officer

Though neither Officer Steidell nor any other officer gave a clear verbal warning of their intent to discharge firearms, officers could not have done so without unnecessarily placing themselves at risk of serious bodily injury or death. The shooter already had ambushed officers twice—once when he shot Officer Talley and again when he fired at the second entry team. As Officer Steidell had determined, giving verbal warnings and waiting for the shooter to answer the warnings would have enhanced the shooter's ability to locate and fire on the officers. Further, at the time Officer Steidell fired his weapon, all officers were uniformed, the entry team carried a shield marked "POLICE," marked patrol cars with emergency lights were parked outside, and police sirens were audible from inside the store.

Finally, Officer Steidell believed that lesser force was inadequate to stop the shooter from continuing his deadly attack. Specifically, Officer Steidell believed the shooter had a long-range and accurate weapon, that the shooter possibly wore tactical armor, and that the shooter had killed both officers and civilians. He also knew the shooter was firing on officers. For the reasons described above and under the totality of the circumstances, these beliefs were objectively reasonable.

Conclusion

Based on the applicable law and the facts and circumstances of this case, law enforcement's actions during this incident were legally justified. Officer Steidell was legally justified in his use of reasonable and appropriate physical force in response to the imminent risk of death or great bodily injury to himself, his fellow officers, and the civilians in the area. Thus, Officer Steidell did not violate any criminal statutes. My office will not file criminal charges against Officer Steidell.

These cases are important to the officers and civilians involved, as well as to our community as a whole. I appreciate the cooperation provided by the Boulder Police Department and the thorough investigation conducted by the BCIT.

I will be releasing this letter to the public, as required by law. Pursuant to our policy, the Boulder Police Department will become the custodian of records related to this case. Any future records inquiries will be directed to the Boulder Police Department. At this point in time, no further evidence should be released due to the pending prosecution of Alissa.

Steidell did not use deadly physical force. As noted earlier, however, the BCIT's mandate reaches broader than state law in some respects. To be clear, I believe it necessary to indicate that Officer Steidell's shooting would have been justified even if it had produced the individual's death.

Please contact me if you have any questions or require further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. T. Dougherty", written in a cursive style.

Michael T. Dougherty
District Attorney
20th Judicial District