



## OFFICE OF THE DISTRICT ATTORNEY

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

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April 22, 2020

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

RE: Officer Involved Shooting at 9121 E. 14<sup>th</sup> Street, Aurora, Colorado on October 20, 2019.  
APD case 2019-40933.

Chief Wilson:

This incident concerns the non-fatal shooting of Mr. Oscar Lucio-Vazquez by Aurora Police Officer Joseph Carns, which occurred on October 20, 2019. I have been asked to review this incident to determine whether Officer Carns acted in conformity with Colorado law. My role is limited to an assessment of whether criminal charges are warranted. It is not my role to opine on questions of training or law enforcement procedure.

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

### **EXECUTIVE SUMMARY**

On October 20, 2019, Aurora Police Officers responded to a report of a fight with a knife at 9121 E. 14<sup>th</sup> Avenue, Aurora, Colorado, although the reporting party had not actually seen the knife. While responding to the scene, dispatch aired that Denver ShotSpotter had recorded shots fired in the area of 13<sup>th</sup> and Akron, which is about 400 feet from 9121 E. 14<sup>th</sup> Avenue. Upon arrival, Officer Carns could hear a disturbance occurring behind the building. Officer Carns proceeded through the alley between 9121 E. 14<sup>th</sup> and the neighboring 9089 E. 14<sup>th</sup>. When he got to the rear of 9121 E. 14<sup>th</sup>, two females were standing in the parking lot. As he rounded the corner, the 2 females began running at him screaming. One of the females made a statement to the effect of, "He's got a gun." The females ran past Officer Carns and were somewhere behind him. Officer Carns also knew his backup officers were behind him. Officer Carns then saw an individual, later identified as Mr. Oscar Lucio-Vazquez, crawling out of a broken, garden-level window. Officer Carns could see Mr. Lucio-Vazquez holding an assault-style rifle with a chrome barrel. Officer Carns yelled, "Drop the gun! Drop the gun!" Mr. Lucio-Vazquez turned to face Officer Carns. Officer Carns stated that as Mr. Lucio-Vazquez "squared up" with him, the barrel of the rifle began to lower towards himself, the 2 females and his backup officers. Officer Carns fired his weapon five times, striking Mr. Lucio-Vazquez.

Based on everything known to Officer Carns 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 Joseph Carns 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) (2020).

The investigation into this shooting incident was conducted by officers and detectives a multi-agency team consisting of personnel from the Aurora Police Department and the Denver Police Department.

C.R.S. §20-1-114 defines the District Attorney's role in peace officer involved shootings.

This statute 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) (2020).

This document constitutes a report of the findings of the District Attorney for the 18<sup>th</sup> Judicial District, and includes the basis of the decision not to charge the involved officer with any violations of Colorado criminal law.

**MATERIALS REVIEWED AND INFORMATION CONSIDERED**

I was provided materials produced by the joint Aurora Police Department/Denver Police Department investigation into the shooting, and reviewed the same. The materials I reviewed include: 911 and dispatch recordings, body-worn camera footage of the involved officers and other officers who were on scene, recorded interviews of the involved officers, reports prepared by various law enforcement personnel who were on scene, reports of the Aurora Fire Department personnel. Additionally, I reviewed and compared the original and a digitally-enhanced version of Officer Carns' body-worn camera.

## **SUMMARY OF THE FACTS AND WITNESS INTERVIEWS**

*Officer Background: Joseph Carns was a police officer for the Littleton Police Department from January 2014 through March 2018. He has been a police officer for the Aurora Police Department since leaving Littleton. Officer Carns was a SWAT officer for Littleton PD. He had been through SWAT training with Aurora PD, but was not assigned to the SWAT unit on October 20, 2019. Officer Carns' assigned shift on the day of the shooting was 10pm on October 19 through 8am on October 20, 2019.*

At 1:40am on October 20, 2019, Aurora Police Officers were dispatched on a report of a disturbance outside 9121 E. 14<sup>th</sup> Street, Aurora, Colorado. The reporting party stated there was a group of people fighting and stated they heard someone yell that there was a knife, although the reporting party had not seen any weapons. Multiple officers, to include Officer Joseph Carns, responded. As officers were responding, another call for service came in at 1:41am. That call was from a different reporting party also calling to report a disturbance at 9121.

Also, while officers were responding, Denver ShotSpotter<sup>1</sup> generated two separate ShotSpotter Alerts for 1391 Akron Street, Aurora, Colorado. 1391 Akron is approximately 400 feet from 9121 E. 14<sup>th</sup>. Several officers radioed that the shots are in the vicinity of the 9121 address. Officer Carns knew that 1391 Akron is very close to 9121 E. 14<sup>th</sup>, as both locations are in his assigned area.

When he arrived, Officer Carns had his patrol car window down, which enabled him to hear the disturbance as he arrived. As he got out of his patrol car, he can see other Aurora police vehicles arriving. He aired to the other responding officers that the disturbance is in the back of 9121 and to follow him. He flashed his flashlight to other officers to signal his location.

Officer Carns walked down the alley between 9121 E. 14<sup>th</sup> and the neighboring building at 9089 E. 14<sup>th</sup>. He walked slowly and paused to allow his backup to catch up to him. Lt. Cassidee Carlson was approximately 20 feet behind Officer Carns and moving towards Officer Carns. Officer Oulliber and Officer Manley were further down the alley moving towards Officer Carns and Lt. Carlson. Officer Carns & Lt. Carlson could hear yelling in the rear of the 9121 building.

The area behind 9121 is a parking lot that was moderately full of vehicles. There was some lighting, but many areas of shadow and darkness. When Officer Carns reached the end of the 9121 building, there were two females standing in the middle of the parking lot. As Officer Carns stepped around an SUV parked in the lot, the two females began screaming and running towards him. Lt. Carlson was still behind the building, but she could see and hear the females. One of the females yelled, "He's got a gun." The two females ran past Officer Carns and were behind him. Both Officer Carns & Lt. Carlson had drawn duty weapons by this point.

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<sup>1</sup> ShotSpotter is a system through which gunshots can be recorded and geo-located across the Denver Metro area. First, a series of microphones installed throughout Denver and Aurora record a gunshot. A filter then confirms the sound recorded was a gunshot. Finally, given the differences in the time the gunshot is "heard" by the various microphones, the system triangulates the location of the gunshot. The system then generates an alert that contains the time and location of the gunshot.

Officer Carns then saw an individual, later identified as Mr. Oscar Lucio-Vazquez, emerge from a broken, garden-level window, later determined to be a window in apartment [REDACTED]. The window (and therefore, Mr. Lucio-Vazquez) was approximately 40-50 feet from Officer Carns and was not well illuminated. Mr. Lucio-Vazquez was holding a black, assault-style rifle with a chrome barrel, with the barrel pointed upwards.<sup>2</sup> Officer Carns yelled, “Drop the gun! Drop the gun!”

As Officer Carns gave commands, Mr. Lucio-Vazquez turned towards Officer Carns. Officer Carns stated that as Mr. Lucio-Vazquez “squared up” (which raised tactical concerns for Officer Carns), Mr. Lucio-Vazquez lowered the barrel of the rifle towards Officer Carns. Officer Carns was aware that the two females were in the area, as well as the officers who responded to assist.

When interviewed, Officer Carns stated he was afraid for the safety of himself, the two females and other officers. He made the decision to shoot and fired his duty weapon, a Glock 34 9mm. Officer Carns fired five times. The five shots went off one right after another (approximately two seconds for all five shots). Officer Carns’ shots struck Mr. Lucio-Vazquez.<sup>3</sup> After being shot, Mr. Lucio-Vazquez went back through the broken, garden-level window. Officer Carns lost sight of Mr. Lucio-Vazquez inside the apartment. Lt. Carlson was the officer closest to Officer Carns when he fired, but she was not in a position to see Mr. Lucio-Vazquez.

Mr. Lucio-Vazquez was eventually located and transported to the hospital. After extensive treatment, Mr. Lucio-Vazquez was released from the hospital. Although the injuries were serious, Mr. Lucio-Vazquez survived.

In an interview later that morning, Mr. Luis Ramirez stated, in relevant part:

- He (Mr. Ramirez) lived in apartment [REDACTED] with his family;
- He owned the AR15 rifle;
- His window was broken just before the incident;
- He believed the window was broken by someone striking it with a pistol;
- He retrieved his AR15 rifle to defend himself and his family from others involved in the original fight;
- The AR15 rifle was not loaded, although he had a loaded magazine for it;
- Mr. Lucio-Vazquez grabbed the rifle from him and went through the broken window;
- After Mr. Lucio-Vazquez got outside and took a step, he was shot;
- Mr. Lucio-Vazquez came back in through the broken window and was bleeding.

A weapon check confirmed that Officer Carns fired his weapon five times, which is consistent with his body-worn camera (BWC). Officer Carns was interviewed on October 23, 2019.

It is important to note that Officer Carns had activated his BWC for a majority of the incident. He activated it as he approached the end of the alley between 9121 and 9089. A feature of the

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<sup>2</sup> When the Aurora Police Department later cleared apartment 103, Officer Carns found an AR15-style assault rifle with a chrome barrel.

<sup>3</sup> The Aurora Fire reports indicate a gunshot wound to the right lateral chest, right lateral and medial upper arm, midline/lateral lumbar spine, right upper glute and right medial glute. However, the reports do not relate how many separate shots hit Mr. Lucio-Vazquez.

Aurora BWCs is that once an officer activates the BWC, it saves thirty seconds of video that occurred prior to the activation.

Unfortunately, due to the low-light conditions present in the parking lot behind 9121, Officer Carns' BWC is not particularly helpful for recording what is happening in the darkness or shadows. The two females can be clearly seen and heard. Mr. Lucio-Vazquez appears to have something in his hands that could be a rifle. However, other than some minor movement, the actions and identification of Mr. Lucio-Vazquez are unclear, at best. The two images below show the video quality. The image on the left is the raw video version. The right image is the digitally enhanced version.



In reviewing the video (both the digitally-enhanced and the original), Mr. Lucio-Vazquez appears to be holding an item that could be a rifle. However, the video quality is too poor to conclusively say it is a rifle. This shot shows Mr. Lucio-Vazquez holding what appears to be a rifle.



This item is consistent with the appearance of a rifle found during the subsequent execution of a search warrant:



In reviewing the other officers' BWCs, no other officers were in a position to see Mr. Lucio-Vazquez as he emerged from the window. Some officers, such as Officer Destiny Bailey, were in the front of 9121 E. 14<sup>th</sup> when the shots were fired. Other officers, such as Lt. Carlson, Officer Oulliber and Officer Manley, were walking down the alley approaching Officer Carns from behind. This map shows the approximate positions of officers when Officer Carns fired his weapon:



Lt. Carlson was the officer closest to Officer Carns when he fired. This is what Lt. Carlson's BWC showed when Officer Carns fired:



## APPLICABLE LAW

The District Attorney's review of this event is guided by the statutes pertaining to the use of physical force in defense of a person.

Officer Carns' use of his service weapon to fire five shots clearly constitutes the use of physical force against Mr. Lucio-Vazquez. 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) (2020) (*emphasis added*). Since the shots fired by Officer Carns did not "produce death" in this incident, the degree of force exercised by Officer Carns does not constitute "deadly physical force," but merely "physical force."

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

## ANALYSIS AND CONCLUSION

The questions presented by law are whether Officer Carns: (1) reasonably believed that the use of physical force was necessary to defend himself or others from what he reasonably believed to be the imminent use of unlawful physical force; and (2) used a degree of force which he reasonably believed was necessary. If both answers are affirmative, his use of physical force was legally justified.

I begin by stating that I found Officer Carns to be credible in his interview. I found him to be forthcoming and honest. There were details that he did not remember and details that he remembered incorrectly. For example, he believed he had fired his weapon six times, when a bullet count and a review of the BWC confirmed he fired five times. However, he was able to accurately relate many details. For example, he accurately remembers the previous case he was investigating when he was dispatched to this incident. He also accurately related the information aired by dispatch. He was able to describe in detail the appearance of the two females. Officer Carns' statements are substantiated by other evidence, such as BWC, dispatch recordings and other officers' reports.<sup>4</sup>

As shown above, Officer Carns' BWC is not particularly helpful when trying to evaluate the threat posed by Mr. Lucio-Vazquez. However, what is visible is consistent with Officer Carns' statements. The statements of Mr. Luis Ramirez further corroborate Officer Carns' statements. When this corroboration is coupled with my perception of his credibility in the interview, I believe a jury would accept his version of events.

If we look at the situation objectively, we have an officer who has been dispatched to a disturbance. He has two separate, independent reports of gunfire in the area. He was confronted with an individual holding an assault rifle. The individual turned to face him and lowered the

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<sup>4</sup> At the time of his interview, Officer Carns had not viewed his BWC footage.

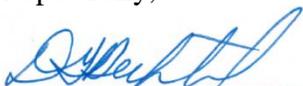
barrel of the rifle towards the officer. The officer was aware there are people behind him. Due to the ShotSpotter reports, a reasonable person could believe that this person was the person that previously fired a weapon. It is not a stretch to infer that a person who has already fired a weapon could fire again. Therefore, I believe a jury would find that a reasonable person would believe there was a danger of the imminent use of unlawful physical force.

As to the degree of force used, the officer used the only degree of force that was available to him. Given the distance between the officer and Mr. Lucio-Vazquez, there was no other way to insure that the unlawful physical force was not exercised against Officer Carns, the two females or fellow officers. I believe that a jury would find the degree of force used was reasonable.

I do not find the fact that the AR15 was unloaded to be relevant. I do not believe this would have been evident to a person given the distance, movement, darkness and brief interaction. Therefore, I do not believe this is a factor in whether Officer Carns' belief was reasonable.

Given that a jury would find both that Officer Carns reasonably believed Mr. Lucio-Vazquez posed a threat to himself or others and the degree of force used was reasonable, I believe Officer Carns' use of physical force is legally justified. Therefore, it is my opinion that no criminal charges should be filed against Joseph Carns.

Respectfully,



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Douglas Bechtel  
Senior Deputy District Attorney  
(720) 733-4557



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Amy Ferrin  
Chief Deputy District Attorney  
(720) 875-8202