

The officer who fatally shot an armed Vietnam veteran won't be criminally charged, prosecutor says

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FULL TEXT

Criminal charges will not be filed against a Colorado police officer who fatally shot an armed Vietnam War veteran in July in an apparent case of mistaken identity, the Adams County District Attorney's office said Monday.

There's no evidence to support that Officer Drew Limbaugh "engaged in reckless or criminally negligent conduct" when he shot and killed Richard "Gary" Black, 73, while Black stood in the living room of his own home, District Attorney Dave Young wrote in a letter to the Aurora Police Department.

The case is the second fatal shooting of an armed civilian this summer in which Limbaugh has been cleared, Young's letter states.

The officer had returned to duty two weeks before he shot Black after an administrative leave following the death in June of a man who "pointed a handgun at Officer Limbaugh and attempted to fire it, but was unable due to a weapon malfunction," the letter states.

Limbaugh underwent a psychological assessment, counseling and "firearms qualification" before returning to duty, Young wrote.

In the incident involving Black, Limbaugh made a "split-second decision based upon his assessment of the circumstances surrounding the scene," the prosecutor wrote in his 26-page letter, which details 911 dispatch audio, police body-camera video and witness interviews to account for its conclusion.

Footage from Limbaugh's body camera was the "most critical" piece of evidence in the decision, Young wrote in a letter that identified Limbaugh as the officer who fired the fatal shots during the encounter. Limbaugh joined the department in 2015, he wrote.

The police department on Monday released two body-camera videos of the shooting, both showing the moments before Limbaugh shot Black. Officers thought Black was an intruder, police have said, and opened fire after he didn't follow a command to drop the gun he was holding. Officials later learned Black had been protecting his family from an invader.

"The officer who shot Mr. Black currently remains in a non-enforcement role," Aurora Police Department Chief Nick Metz said in a statement accompanying the videos. "With the release of the DA's declination letter, an internal investigation will begin."

"This was a heartbreaking and tragic incident. Our thoughts and prayers remain with Mr. Black's family and those involved," Metz said.

Black's family was "extremely disappointed" in the decision, according to a statement by his relatives' attorneys.

"Mr. Black was a Vietnam veteran who served two tours of duty, earning four separate Bronze Stars for his service, as well as a Purple Heart," the statement by the Rathod Mohamedbhai law firm says. "He was a dedicated family man, and his last moments were spent heroically defending his family against intruders in his home. As the District Attorney's report demonstrates, Mr. Black's death was an unnecessary tragedy."

'A very, very violent and complex situation'

Officers responding to reports of an intruder attacking a child on July 30 heard gunshots from inside Black's home

as they approached, Aurora police said in a written statement included with Monday's video release.

Officers then saw a man with a gun in one hand and a flashlight in the other and told him to drop his weapon, according to the statement.

"For reasons unknown to those officers, the man did not respond to commands to drop the weapon and an officer shot him," the statement reads. "At the time, the officers did not know the man was Mr. Black and he had just shot the intruder who was viciously attacking his grandson."

The intruder was identified by police and the coroner's office as Dajon Harper, 26.

The incident began when Harper, naked, knocked repeatedly on the Blacks' door while everyone inside the house -- Black, his wife Jeanette and his 11-year-old grandson -- was asleep.

Harper eventually knocked the door off its hinges and entered, then dragged the boy into the bathroom, police said. Jeanette Black called 911. She reported the attacker was in the bathroom hurting her grandson, and that there was blood everywhere.

"(Officers) were confronted by a very, very violent and complex situation, and within two minutes, if that, had to make some very, very critical decisions," Metz said in August.

"Officer Limbaugh stated he felt like he had to shoot the man, because it was not an option to 'wait and see what happens,'" Young wrote in the letter to the police department. "He could not recall whether the man pointed the gun at him."

Lawyers representing the Black family said in their statement that the body camera footage shows Black wasn't a threat to officers and officers never identified themselves as law enforcement before shooting Black.

"The District Attorney's report selectively emphasizes certain facts in order to justify its conclusion," the statement reads.

The immediate moments before and after the attack

Harper was attending a party across the street, and "began damaging cars right near the house, was acting irrationally ... and at one point, he injured himself," Metz said days after the incident.

After leaving the party, he made his way to the Blacks' residence.

There were "probably upwards of 10 people at that house at one time before police got there," as other attendees of the party tried to get Harper out of the residence. But he locked the door behind him, Metz said.

Officers proceeded from the living room, where Black had been killed, to the bathroom, where they still heard screams. The boy and his father were found sitting in the bathtub, with Harper's dead body lying nearby. The boy yelled to officers that it was Harper who attacked him and gave them a detailed account of the incident, Metz said. It is unclear if the boy's father had been there the whole time.

The ordeal unfolded quickly. By the time officers made it to the bathroom, they had only been there for 2 minutes, 27 seconds, Aurora police have said

Black died from his injuries at University of Colorado Hospital. The Purple Heart recipient list shows Black received the award for his service in the Vietnam War.

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