

## Colorado DA clears cop who killed armed Vietnam - Dayton Daily News (OH) - December 5, 2018

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AURORA, COLO. —

A Colorado district attorney has cleared an Aurora police officer of criminal wrongdoing in the July shooting death of an armed Vietnam veteran who killed a naked intruder trying to drown his 11-year-old grandson.

Dave Young, district attorney for Colorado's 17th Judicial District, on Monday announced his office's decision in the July 30 death of **Richard "Gary" Black Jr.** Black, 73, was shot by Aurora police Officer Drew Limbaugh as officers responded to multiple 911 calls reporting an intruder in Black's home.

Black, who had just shot and killed the intruder, 26-year-old Dajon Harper, was shot in his living room after he did not respond to multiple officers' orders to drop his weapon. His killing was caught on Limbaugh's body camera.

Portions of two officers' body camera footage were released Monday by the Aurora Police Department. Police Chief Nick Metz said in a statement that the footage was a "mutually-agreeable portion" released after consultation with Black's family, who wanted the footage of his death released.

The footage made public by Metz's office was a big piece of the evidence that Young cited in making his decision not to prosecute Limbaugh.

"Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving any crimes beyond a reasonable doubt at trial," Young wrote in his letter to Metz. "Therefore, no criminal charges will be filed against the law enforcement officer involved in this incident."

Young wrote in his legal analysis that the body camera footage "corroborates the notion of uncertainty surrounding the dispatch call," which was reported to officers as an "unknown problem" at Black's home. He pointed out that responding officers, including Limbaugh, heard people outside the home talking about there being "blood everywhere" and that someone was hurting a child inside the house.

The officers heard gunfire seconds after they approached the house, then saw the armed Black through the kicked-in front door.

"Perhaps Mr. Black did not know that it was the police standing at his front door," Young wrote. "Perhaps Mr. Black did not hear the police commands to drop the weapon. Either way, there is no

evidence to contradict Officer Limbaugh's reasonable belief that Mr. Black presented a threat to the officers because he did not drop the weapon and could shoot at any moment."

Attorneys for the Black family disputed Young's viewpoint, saying in a statement obtained by the Denver Post that the body camera footage proves Black never pointed his gun at the officers, but kept it at his side as he moved toward them.

Officers also failed to identify themselves as police officers.

"The district attorney's report selectively emphasizes certain facts in order to justify its conclusion," the statement by lawyers at Rathod Mohamedbhai LLC read, according to the Post. "But the report minimizes what is clear from the body camera footage: The officers who responded to the Black residence never identified themselves as law enforcement to Mr. Black prior to shooting him dead."

Black was a licensed gun owner who had legally bought his handgun in 2009 and had a concealed weapon permit, the Post reported. An Army veteran who served two tours of duty in Vietnam -- earning four Bronze Stars and a Purple Heart -- he suffered from significant hearing loss stemming from his time in the military, his family's attorneys said.

"He was a dedicated family man and his last moments were spent heroically defending his family against intruders in his home," the lawyers' statement said. "As the district attorney's report demonstrates, Mr. Black's death was an unnecessary tragedy."

His family is "extremely disappointed" that criminal charges are not being pursued against Limbaugh, the Post said.

Black's stepson, Chad Hayashi, told ABC 7 in Denver two days after the shooting that Black died like he lived.

"It's just heartbreaking. My dad was a hero," Hayashi said. "My son wouldn't be here if it wasn't for him. I don't think any of us would be here."

Fox 31 in Denver reported that Black's death was the second fatal police shooting Limbaugh was part of in a 33-day span. Limbaugh, who shot and killed Joey Bronson, 39, in a June 27 incident at the Biltmore Motel, was on desk duty until July 18, when he was returned to patrol.

He had not yet been cleared of wrongdoing in Bronson's death when he killed Black.

One of the Black family's lawyers said in the days immediately after Black's shooting that his family was concerned that Limbaugh had been returned to the street too soon.

"Of course, had the officer been at his desk, this might have been very different," Qusair Mohamedbhai told Fox 31.

The 18th Judicial District Attorney's Office, which covers the counties of Arapahoe, Douglas, Elbert and Lincoln, cleared Limbaugh of wrongdoing in Bronson's shooting on Aug. 29. District Attorney

George Brauchler wrote in his own letter to Metz that Bronson, who had earlier fired two shots into the air from a .380-caliber handgun, was shot to death after he pointed his weapon at Limbaugh, and after two other officers had ordered him to drop his weapon at least three times.

Metz said in his statement Monday that Limbaugh remains in a "non-enforcement role" since Black's shooting. Now that the decision over criminal charges has been made, an internal investigation will be launched into the officer's actions, the chief said.

[Click here](#) for access to Brauchler's report on Officer Limbaugh's June 27 shooting of Joey Bronson.

Young said that the findings of the criminal investigation into Black's shooting, which was conducted by detectives with the Aurora and Denver police departments, were submitted to his office Oct. 9. He and his staff reviewed police reports, transcripts and videos of interviews with witnesses, photographs and diagrams of the crime scene and a total of 94 body camera recordings from officers at the scene.

"A thorough review of the initial responding officers' recordings provides significant insight into the sequence of events from their perspective," Young wrote.

Young's letter and summary of events, which includes details of 911 calls, witness interviews and body camera footage, paints a harrowing portrait of two families trying to stop a break-in and assault of a child that ultimately ended with both Harper and Black dead.

'That's my Grandpa. He saved me.'

The first 911 calls came in at 1:28 a.m. June 30 from a home in the 1900 block of Lola Street, where Harper's family had held a combination birthday party and celebration of his release from prison earlier in the day June 29, Young's summary of events said. One of the calls came from Harper's 12-year-old brother, who told a dispatcher that his brother was "going crazy" and was "out there trippin'."

Neighbors of the Lola Street home, where Harper's cousin lived, also called police to report a loud fight at the home.

Interviews with several members of Harper's family indicated that he began acting oddly at his cousin's home, chanting and beating the end of a stick against the floor. Though none of them saw him take anything, they told investigators they believed he was on drugs.

Harper's autopsy confirmed that he had methamphetamine and marijuana in his system when he died, the summary said.

Afraid after he punched his younger brother in the face, Harper's family locked him inside a bedroom at the front of the home. He broke a window and escaped, leaving a trail of blood behind.

That trail of blood led to Black's front door about 300 yards away.

Black's wife, Jeannette Black, called police five minutes after that first 911 call to report someone breaking into their home, located across an intersection in the 10600 block of Montview Boulevard, Young's summary of events said.

"The nature of the call is chaotic -- sounds of banging and yelling can be overheard in the background," the summary said. "The caller paused during the chaos and a different female voice can be overheard in the background saying something about being 'in these people's house,' followed by, 'I'm sorry, ma'am. He's on some kind of drugs. This is my son.'"

Jeannette Black told the dispatcher that her son and grandson were trapped in the bathroom with the intruder and her grandson was "bleeding all over the place." She said her husband was fighting with the intruder.

Interviews with witnesses indicated that after fleeing his cousin's house, Harper broke into a family member's car, then ran across the intersection and kicked in the Blacks' front door, which was partially torn from its hinges. The couple's grandson, who was sleeping on the couch, awoke to see the door broken and his grandfather outside, looking for an intruder.

While walking back to the bedroom where his father and sister were sleeping, the boy said he heard someone in the shower.

"The door to the bathroom opened and K.H. saw a 'random black guy' with a 'delusional look,'" the summary of his interview said. "The guy was naked."

The boy told investigators Harper forced him inside the bathroom and locked the door before pulling his clothes off of him and throwing him in the shower.

"The guy tried to strangle K.H. and pushed him under the water in the tub," the summary said. "K.H. fought back. He heard his dad and grandpa trying to break down the bathroom door. There was blood all over the bathroom walls."

Other interviews, including that of Hayashi, indicated that Harper's mother, uncle and male cousin followed Gary Black back into his house to get Harper out of there.

Hayashi told detectives that upon learning that Harper had his son in the bathroom, he ran to where his stepfather was trying to get inside. Once they and Harper's uncle and cousin had the bathroom door broken open, Hayashi could see his son, naked and standing in the bathtub with a naked Harper holding him in a chokehold and biting his ear, the district attorney's summary said.

"Mr. Hayashi had no weapons, but got into the bathtub and tried to defend his son by grabbing at the black male's neck and face," the summary said. "He stuck his right thumb deep into the male's left eye socket."

Hayashi tried to get a "wet and slippery" Harper away from his son, at which point he said he saw Harper's cousin, David Lovelace, "stomping on" Harper. Lovelace told investigators he told his cousin, "Get out of here, they're going to kill you."

See a portion of Aurora police officers' body camera footage from the morning of July 30 below. Warning: The footage, which shows the fatal shooting of homeowner Gary Black, contains graphic images and language.

Harper's mother, Frances Shanelle Mayfield, screamed, "He's got the baby!" or something similar, according to multiple interviews.

Hayashi said Harper released his chokehold on his son after a struggle of about a minute to a minute and a half, at which point he pushed the intruder out of the tub. Lovelace remembered it slightly differently, saying he was eventually able to grab his cousin by his foot and pull him from the tub.

By that point, Black had entered the bathroom with his 9mm Luger handgun.

Lovelace left the bathroom prior to Harper being shot, according to his interview. He told detectives that he saw police arriving and pointing weapons into the house, so he put his hands up and told them, "It's not me."

That portion of what happened was captured on officers' body cameras.

Hayashi told investigators that when Black came into the bathroom, Harper picked up a vase and struck his stepfather in the head, causing him to fall into the shower door. His stepfather fired two shots into Harper's body.

"Mr. Hayashi did not see the gun but saw the muzzle flashes near the male's midsection," the summary said. "The male slumped and fell to the floor with his head toward the bathtub."

Harper was shot at 1:38 a.m., according to body camera footage that captured the gunshots. Ten minutes had elapsed since his family began calling 911 and five minutes since Jeannette Black made her call.

Gary Black left the bathroom, Hayashi said, "presumably to chase the others out of the house." Hayashi, who was still in the bathtub with his son, heard three gunshots.

He then heard police officers identify themselves, he said.

"At that point, Mr. Hayashi knew the police shot his stepfather," the summary said.

A few seconds later, officers came into the bathroom, where they gave Hayashi's son a towel to wrap around his body and led him and his father from the house.

Both saw Black lying unresponsive on the living room floor as they walked by.

"That's my Grandpa. He saved me," the boy was heard saying on body camera footage.

'Gun, Gun! Drop the gun!'

The video footage released Tuesday by the Aurora Police Department backed up Black family attorney claims that officers failed to identify themselves to Black prior to the gunshots that took the Army veteran's life.

The five-minute-long video shows an officer arriving at Black's home, where a woman outside is heard screaming, "There's blood everywhere! Oh my God!" Harper's mother, Shanelle Mayfield, tells the officer, "He's on some kind of drugs," and then appears to say something about her son hurting someone.

"Just stay back," the officer tells her in a gruff voice.

A comparison of the video to the district attorney's transcripts of several cameras' footage shows that the officer wearing that camera is Limbaugh.

Read 17th Judicial District Attorney Dave Young's report on the shooting of Gary Black below.

Aurora Police Shooting Decision Letter by c\_bonvillian on Scribd

As Limbaugh gets to the driveway of the home, a woman in a nightgown, later identified as Jeannette Black, is seen walking past, telling the officer, "He's got guns."

As Limbaugh approaches the porch, Lovelace is seen exiting the house.

"Is this the guy?" an officer on the porch says. "Who are you?" another voice asks Lovelace.

A second later, the two shots that killed Harper are heard from inside the house.

"Oh, (expletive)," someone says as the officers on the porch move back from the open doorway.

Limbaugh pulls his weapon and activates the flashlight on it, aiming the handgun at the door. There is no movement from inside at first.

"What do you got? What do you got?" an officer asks him.

"Nothing," Limbaugh responds.

A second or two later, Gary Black emerges from a hallway, wearing a bathrobe.

"Gun! Gun! Drop the gun!" Limbaugh screams.

"Let me see your hands!" another officer yells as Black hovers in the doorway of the hall, appearing to look toward the doorway where officers stand outside. It is unclear if he can see them.

"Drop the gun! Hey! Get your hands in the air!" Limbaugh shouts from his location at the foot of the porch steps.

Black moves to the other side of the hallway door, appearing to take cover. A couple of seconds

later, he moves into full view, turning toward the door.

"Guy in a robe's got the gun," Limbaugh says.

Black's gun can be seen in his right hand, which is down at his side. He lifts his left hand, shining a flashlight at the doorway.

Limbaugh fires three shots and Black falls to the living room floor.

"You got it? You got it?" an officer asks Limbaugh.

"Yes," Limbaugh says, firing another shot at Black. "Drop the gun!"

A few seconds later, another officer asks, "Is he down? Is he down?"

"He's down. He's down," Limbaugh replies.

As Limbaugh approaches the door, a man's voice can be heard screaming, "No!" repeatedly, though it is unclear if the voice is coming from inside the house or outside. According to reports about that morning, Harper's family initially believed police officers had killed him.

Limbaugh holds his gun on Black, shouting at him not to move toward his dropped weapon. Black, who lies mostly on his back, can be seen moving for several seconds as the officers determine how to enter the house.

As other officers prepare to go inside, Limbaugh keeps his weapon trained on Black.

"Somebody get some rubber gloves on," the officer says in a shaky voice. "I've got you."

An officer who spots blood in the vicinity of the front door tells the others to check themselves for gunshot wounds, but Limbaugh tells him no one was hit.

Another officer, identified in documents as Sgt. Patricio Serrant, says in an urgent tone that there was supposed to possibly be a baby inside the house, drowning, so Limbaugh begins to enter the living room. He yells for anyone else in the house to make themselves known.

Black's grandson can be heard yelling from the bathroom. The mortally wounded Black also speaks up.

"My son and my grandson are in the bathroom with the perpetrator," he says from the floor.

The public release of Limbaugh's camera footage ends there, but Young's summary of events said that the officer went to the bathroom, where the footage showed Hayashi and his son standing in the bathtub and Harper lying dead on the floor. Limbaugh then checks the rest of the house for additional threats.

The second officer's camera footage begins in the Blacks' driveway, where members of Harper's

family can be heard telling the officer he is inside "choking a kid." The officer encounters Jeannette Black, who sounds tearful.

"Please!" she urges the officer, who the district attorney's transcript identifies as Serrant. "He's in the bathroom drowning my grandson, I think!"

"Who is? What's his name?" Serrant asks.

"A drug addict that's their friend," Jeannette Black says, indicating Harper's family. "He broke our house in..."

Her voice trails off as Serrant continues up the steps of the porch, where he encounters Lovelace. As he questions the man, the shots are fired from inside.

As Serrant hurries off the porch toward the home's garage, he calls in, "Cruiser 13, we got shots fired."

The sergeant's body camera shows the shooting from his angle, which shows the broken door of the house and little else. The footage ends as he follows Limbaugh into the house and, with rubber gloves on his hands, approaches Black to offer medical aid.

The event summary said Serrant stayed with Black as other officers cleared the home. When Hayashi and his son came out of the bathroom, he escorted the boy to the front door, where other officers took him outside.

Serrant learned from Black that he was the homeowner.

"I think he was trying to protect, but I don't know," Serrant said to other officers, according to the summary. "He had a gun. He wouldn't drop it."

Black's autopsy showed that he was struck by three of Limbaugh's four shots, according to Young's summary of the shooting. Bullets entered his body in the right shoulder, the right chest and the upper back.

"The gunshot wounds to the chest and back caused catastrophic injuries to the thoracic spinal cord and internal organs," the summary said.

The forensic pathologist also found evidence of blunt force trauma, apparently from Black's encounter with Harper.

Harper was killed by two shots to the chest at close range, his autopsy revealed. He also had abrasions, bruises and superficial cuts on his face, head, neck, chest, back, shoulders arms and hands, presumably from breaking out of his cousin's house and into the Black home.

The investigation of the case showed that Harper had a "significant history of arrests and convictions, both as a juvenile and an adult," Young's summary said. He was most recently arrested for robbery in November 2016, a crime for which he was sentenced the following April to



18 months in jail.

Harper was sent in October 2017 to a state prison on a parole violation but was sent back to county jail in February to complete his misdemeanor sentence in the robbery case.

He was out of jail just over 24 hours when he was shot and killed.

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