

No charges for officer who shot, killed homeowner - Denver Post, The (CO) - December 4, 2018 - page 1A

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An Aurora police officer who shot and killed a 73-year-old homeowner defending his home against a violent intruder will not face criminal charges in what the Adams County District Attorney's Office described as a "harrowing tragedy."

In its review, the district attorney's office said body camera footage from Drew Limbaugh, the officer who fired the fatal shots, was the critical piece of evidence that showed Limbaugh made the best possible decision amid the chaos happening inside the home of **Richard Gary Black**, according to a letter written by District Attorney Dave Young to Aurora Police Chief Nick Metz.

"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," Young's letter said.

However, lawyers representing Black's family took a different view, saying the body camera footage shows Black never raised his handgun and never pointed it at police.

"The District Attorney's report selectively emphasizes certain facts in order to justify its conclusion," the statement by the Rathod Mohamedbhai firm said. "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."

The body camera footage was released Monday by Aurora police.

"In consult with the (Black) family, we are sharing a mutually-agreeable portion of the involved officer's body-worn-camera in this chaotic incident," Metz said in a statement.

Black's death was surrounded in controversy for multiple reasons.

First, Black was a decorated Vietnam veteran with a concealed weapons permit who had legally defended his home against an intruder. The case calls for law enforcement to debate how police respond to encounters with armed citizens, and Young urged police to discuss the issue in community forums and during training sessions for officers.

Second, Limbaugh, the officer who shot Black, had returned to duty two weeks earlier after killing a man on June 27 in an officer-involved shooting. Some questioned whether Limbaugh returned to duty too soon, but Metz defended his department's decision to send the officer back on patrol.

Limbaugh was cleared in the June 27 shooting by the Arapahoe County district attorney. He is working at the police department but is on a non-enforcement assignment, said Sgt. Bill Hummel,

an Aurora police spokesman. An internal investigation into Black's shooting death will begin Tuesday.

Black was killed in the early morning hours of July 30 after an intruder, who had been at a house party across the street, busted through Black's front door and attacked Black's 11-year-old grandson. The intruder, later identified as 26-year-old Dajon Harper, took the boy into a bathroom where Black and his son, Chad Hayashi, fought with him to free and save the boy.

Black shot and killed Harper in the bathroom just as police arrived. Black, still armed and carrying a flashlight, emerged from a hallway and was shot by Limbaugh.

The night of the incident, officers arrived to a chaotic scene, finding the front door of the home broken and several people inside and outside the residence. Shots rang out as officers approached the front door.

Limbaugh told investigators he was looking through the front door opening, just after hearing shots, when he saw a man wearing a robe emerging from a back hallway, Young's letter said.

"Officer Limbaugh recalled yelling, 'Drop the gun!' and 'Show me your hands!' multiple times," according to the review. The man inside the home did not respond, Limbaugh told investigators.

Black kept coming toward the front door, but Limbaugh didn't know who Black was or what had just happened inside the home.

Limbaugh's body camera reveals a period of 10 seconds between the time he shouted "Gun!" to the time he fires his weapon, the review said. Officers gave multiple commands for Black to drop the gun during that 10 seconds, the letter said.

"Believing that 'the threat was imminent,' Officer Limbaugh fired his weapon at the man," Young's letter said. "Although we now know the tragic reality that Mr. Black lawfully possessed a weapon and justifiably used it against an intruder, the investigation proved that the police officers who responded to this incident did not know those critical details. Consequently, the evaluation of Officer Limbaugh's reasonable belief must be based not upon what we now know, but the circumstances as he perceived them at the time: hearing gunshots and then seeing an armed man emerge from a back room who refused commands to drop the weapon."

Black had significant hearing loss from his Army service, attorneys said. And the scene was noisy from people screaming, including Black's grandson, who had been assaulted, and Harper's mother.

Black was shot three times -- in the right shoulder, right lower chest and upper back, the letter said.

Black's family, through their attorney, said Monday that they are "extremely disappointed" that criminal charges will not be pursued.

"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 said. "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 toxicology report on Harper revealed levels of marijuana and methamphetamine in his system.

The night of the incident, Harper had been at a nearby home celebrating his release from an 18-month jail sentence on a robbery charge, the letter said.

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