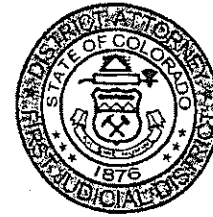


Office of the District Attorney
First Judicial District
Jefferson and Gilpin Counties

Scott W. Storey
DISTRICT ATTORNEY



November 6, 2008

Chief Gerald R. Whitman
Denver Police Department
1331 Cherokee St.

Denver, CO 80204

Re: The Investigation of the September 24, 2008 Officer-Involved Shooting by Denver Police Officers Joseph Hamel and Steven LeTendre at 1375 Washington Street, Denver Police Department Case # 2008-636956, Police Shooting #P08-005

Dear Chief Whitman,

On September 26, 2008, Denver District Court Judge Martin Egelhoff appointed the 1st Judicial District Attorney's Office to be Special Prosecutor in the investigation of the September 24, 2008 officer-involved shooting at 1375 Washington Street in the city and county of Denver, Colorado. This letter contains the evaluation for criminal charges of the conduct of Detective Joe Hamel and Patrol Officer Steven LeTendre. My office has received and reviewed the entire file presented to us by Denver Police Department detectives on October 1, 2008 and all supplementary reports and transcripts received since that date.

APPLICABLE LAW

The legal framework for our analysis in this case is found in the following sections of the Colorado Revised Statutes.

§ 18-1-407, C.R.S. Affirmative defense

- (1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.
- (2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

§ 18-1-710, C.R.S. Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

§ 18-1-704, C.R.S. Use of physical force in defense of a person

(1) ...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.

(2) Deadly force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

- (a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

§18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) ...A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:

- (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon;
or
- (II) Is attempting to escape by the use of a deadly weapon;
or
- (III) Otherwise indicates that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

SUMMARY OF OPINION

Applying these legal standards to the facts presented through this investigation, I find that Detective Joseph Hamel and Officer Steven LeTendre are not subject to criminal liability for their actions on September 24, 2008. Based upon the evidence in this case, the District Attorney's Office could not prove beyond a reasonable doubt that it was unreasonable for these two officers to perceive that the actions and statements of Joseph Loera posed an imminent threat to them. Additionally, it was not unreasonable for these two officers to utilize physical force in making the arrest of Joseph Loera based upon the information available to them at the time. No criminal charges are fileable or provable against these two officers in the wounding of Joseph Loera.

BRIEF SUMMARY OF RELEVANT FACTS

The following information is a summary of the relevant portions of the DPD reports presented to the DA's Office. Where references are made to transcript pages, those refer to the transcript of the witness's or involved officer's interview by DPD detectives.

On September 24, 2008, members of the Denver Police Department's Special Investigations Unit were assisting with the investigation of a number of armed robberies that had occurred during the previous week. The individual that was suspected of committing the robberies at local businesses was described as a light-skinned black male with a small goatee who wore a hat, a sweatshirt, and big sunglasses. He was reported to be always armed with a gray and black handgun. Detective Joseph Hamel was involved with a number of other plain clothes officers in attempts to survey the areas of the robberies during the morning of September 24, 2008. Detective Hamel was dressed in civilian clothing and was driving an unmarked vehicle. He had with him a copy of the robbery bulletin which contained photographs of the robbery suspect taken by cameras inside one of the businesses.

At approximately 11:48 a.m., Detective Hamel observed a black male, later identified as Joseph Nicolas Loera, DOB 1-1-89, in the area of East Colfax Avenue and Pearl Street. This individual appeared to match the description of the suspect wanted for questioning in the series of robberies. Detective Hamel observed that the subject was dressed in dark gray

pants, a black and gray shirt and that he was wearing a black backpack. Detective Hamel called for assistance in contacting the male and DPD Officer Gary Estrada responded in his marked patrol car. Officer Estrada contacted Mr. Loera in the 1400 block of Washington Street and asked him for identification. Mr. Loera indicated that he did not have any and then ran south on Washington Street. Detective Hamel observed Mr. Loera running from Officer Estrada so he got out of his vehicle and pursued Mr. Loera on foot. Officer Estrada returned to his patrol car and hearing on his radio that the suspect may be heading west, he drove to the alley between Pearl Street and Washington. A civilian witness, Ray Garcia, saw Mr. Loera run into the entry way of the apartment building located at 1375 Washington Street and he alerted the officers to Mr. Loera's location.

Officer Steven LeTendre, having heard the call for assistance to contact the robbery suspect, was on his way to the area in his marked patrol car. Officer LeTendre described in his interview that he heard a foot chase had been called southbound on Washington. He engaged his lights and siren, proceeded to the scene and parked on the street in front of 1375 Washington. He observed Detective Hamel in front of the apartment building with his gun drawn on the door and went to assist him. Detective Hamel told Officer LeTendre that the person inside the front door of the building was possibly a robbery suspect and was likely armed. Both Detective Hamel and Officer LeTendre had their weapons drawn. Detective Hamel was standing to the south side of the front door of the apartment complex and Officer LeTendre was standing to the north side of the front door.

Both Detective Hamel and Officer LeTendre reported in their interviews that Officer LeTendre attempted to open the front door of the building. Detective Hamel stated that Officer LeTendre was able to get the door partially open which allowed Detective Hamel to look in and see the suspect standing in the lobby. Detective Hamel described the suspect grabbing the door to close it as he said "Get back or I'll shoot you." Detective Hamel stated that the other officer then reached back and pulled the door open and he again sees the suspect to the right of the lobby and the suspect yells, "Get back, I got a gun. I'll shoot, I'll kill you. Get back. I'll shoot you." (Transcript, p. 14) Detective Hamel described the lobby as being dark and that his eyes were trying to adjust from the bright exterior sunlight as he was looking into the lobby towards the suspect. He described that as his eyes adjusted to the darkened interior, he saw the suspect approximately five feet away, with his right hand up and what he believed to be a gun in his hand. (Transcript, p. 14, 15, 22 and 31.) He indicated that the suspect started to lower the gun and that he and the other officer were in the direct line of potential fire. He stated that he and the other officer both began to fire on the suspect and that the suspect stumbled back to the right corner of the lobby. After the suspect fell to the ground, he ordered the suspect to show his hands. The suspect showed his hands and they did not see a gun in them. Detective Hamel asked the suspect where the gun was located and he heard the other officer also asking where was the gun. They both looked for the gun but could not locate it. Detective Hamel heard Officer LeTendre ask the suspect why he said he'd shoot them and the suspect responded that he had not said that. Another uniformed officer that had arrived handcuffed the suspect and officers took control of the scene. Detective Hamel left the lobby and went out to the sidewalk where he checked his weapon to determine how many rounds he had fired and found that there were eleven rounds remaining in his weapon. Detective Hamel, as confirmed by other officers, was kept separate

from other witnesses and was taken to headquarters where his weapon was removed for analysis and where he was later interviewed that afternoon.

Officer LeTendre described in his interview that as he attempted to see into the lobby area, it was very dark inside but that as he grew closer, he could see the suspect. He attempted to pull open the front door and Mr. Loera pulled back on the door so he could not open it. He heard the suspect yell, "I'm gonna shoot you. If you come through this door, I'll shoot you." (Transcript, p. 5) Officer LeTendre recalled hearing at least twice the suspect say he was going to shoot him. Officer LeTendre described being afraid that the suspect was going to shoot him through the door or the door glass and that he was "committed to pulling that door open and getting it out of my way." (Transcript, p. 5, p.11, and pp. 15-16). Officer LeTendre indicated in his interview that his concern at the time was that the man inside the front door was a potential robbery suspect who could very well be armed and that he'd run from the police. He believed that he had to get the suspect in custody before he escaped or was able to enter the apartment complex and possibly take someone hostage. (Transcript, p. 17) Officer LeTendre stated that he saw the suspect off to his right turning towards him. As he was able to see inside, he saw the suspect reach behind toward the area of his right rear waistband and start to pull out a black object in a very fast motion (Transcript, p. 11). Officer LeTendre then described being in fear that the suspect was pulling a weapon and that he was going to be shot by the suspect. (Transcript, p. 5, p. 18 and pp. 20-21) "It was black and he started to pull it out and I didn't wait to find out if it was a gun. I was in fear for my life and I shot. I was not gonna let him shoot me. He told me he was gonna shoot me, he reached into his waistband, and he started to pull out a black object, and I shot." (Transcript, p.11). He next saw the suspect pull a black object roughly the color of the handle of a gun and Officer LeTendre fired at the suspect. Officer LeTendre described that the suspect then dropped down in the corner and that he was yelling at the suspect to show his hands. He described staying "right on top of him" because he was worried that the suspect was going to be able to reach underneath him and pull out a weapon so he continued to yell at him to keep his hands up as other officers came in and handcuffed him (Transcript, p. 6). Officer LeTendre left the lobby, informed his Sergeant that he was involved in the shooting and he was separated from other officers. He was then taken to the police station where his weapon was collected and he was interviewed that afternoon. Officer LeTendre stated that he believed he discharged four rounds from his weapon.

Also that morning, Lieutenant Vincent Porter was dressed in full uniform driving an unmarked police car when he heard Detective Hamel radio that he needed cars to assist him in contacting a possible robbery suspect. Lieutenant Porter heard the description Detective Hamel aired of the suspect and he responded to the area to assist via the 1400 block alley of Washington and Pearl. As he went through a parking lot to get to Washington Street, Detective Hamel pulled over on the west side of Washington which blocked Lieutenant Porter's vehicle from entering the street. He then saw the suspect running south bound on Washington and viewed Officer Estrada running back to his car. He got out of his vehicle and joined Detective Hamel in the foot chase. Lieutenant Porter identified himself to the suspect and told him to stop. He saw the suspect turn and run into 1375 Washington Street. Detective Hamel followed him and he proceeded to the rear of the building in case the suspect ran through the building to the back. Police cars and cover officers were arriving so

he decided to go to the front of the building to cover Detective Hamel. Lieutenant Porter jumped a fence on the south side of the building but could not get over a second six foot high fence. He saw Detective Hamel standing to the south side of the door and Officer LeTendre standing on the north side of the door by the front entrance of the building. He heard them repeatedly shouting "Put your hands up, let me see your hands, come out of the door". Lieutenant Porter stated that he saw Officer LeTendre attempt to pull the door open but the door was yanked back shut. Lieutenant Porter could not see inside the building from his vantage point. He then saw Officer LeTendre try to pull open the door again and he heard the suspect say "If you come in, I'm going to shoot you." He then saw Officer LeTendre successfully pull the door open and he observed both officers to immediately fire their weapons into the opened door area. After the shots were fired, he aired the officer-involved shooting and requested an ambulance. He ran around the back of the building to the front door where he saw officers trying to handcuff the suspect, however, the suspect was actively fighting and resisting.

Officer Kyllion Chafin was searching the south side of 1375 Washington when he heard five to six gunshots coming from Washington Street. He ran to the alley and around the building to the front door where he observed Officer LeTendre holding the suspect at gunpoint. Officer Chafin assisted with handcuffing the suspect and searched him for weapons but found none. Officer Chafin observed half of a broken flip phone next to the suspect's left leg and another object protruding from under the radiator. Officer Chafin pulled the item out from under the radiator because it looked as if it might be a portion of a handgun and found that it was the other half of the broken flip phone. The photographs of this phone show it to be of a dark grey color.

Officer Gene Sharla responded to the scene immediately after the shooting and saw the suspect lying in the foyer, after being shot. Other officers were on scene and were placing the suspect in handcuffs. Officer Sharla observed a small black bag in the doorway of the apartment building and opened it to look for possible weapons. He observed suspected marijuana, pills, a scale and other personal items. No weapons were located in the bag. Officer Sharla returned all items to the bag and left it for the crime scene investigators to document and secure as evidence.

A canvass of the areas was conducted in order to locate witnesses to this event. Additionally, some citizens contacted police to offer statements regarding the incident. All citizen eye witnesses and some citizen ear witnesses to the shooting have relevant information and are summarized for this report:

- Sean Barnett lives at 1375 Washington Street but was sitting on the grass yard of the church east of the apartment building with his dog at the time of the shooting. Mr. Barnett estimated that he was approximately twenty-five to thirty-five yards east of the apartment building when the incident occurred and there was nothing obscuring his view of the front of the building. He described seeing a "kid" running south on Washington and a few seconds later, saw two males chasing him, one wearing plainclothes and the other a uniformed police officer. He saw the first male run through the front door at 1375 Washington. He then saw the uniformed officer go

west on 14th Avenue towards the rear of the building. He saw the man in plainclothes go to the south side of the building. He then saw another man who was standing on the sidewalk to the south of 1375 Washington, gesture toward the apartment complex and told the police that the kid ran into the building. He described seeing another uniformed officer come up to join the plainclothes officer and they both were looking into the side glass panels by the front door. He indicated that the uniformed officer was on the north side of the door and the plainclothes officer was on the south side of the door. He saw the uniformed officer open the door which gave him (Barnett) a view inside the doorway and he saw a torso of a person, which he assumed was the kid the officers were chasing. He described the kid being in the middle of the doorway or a little to the north of the doorway with his hands appearing to be holding a gun. He did not actually see what was in the kid's hands but he appeared to be holding something. He then heard the kid yell, "I'll blow you motherfuckers away." He thought it looked as if the kid had a gun in his hands. When he heard the kid yell that statement, he dove behind a tree on the church lawn. He then heard five to six gunshots and he thought he would next see dead cops when he looked around the tree. He said he then heard screaming and that "every cop in Denver" converged on the scene.

- Bart Barger was walking west-bound on the north side of 14th Avenue. He observed two males, one being a uniformed police officer, running south-bound but did not see who they were chasing. At the northwest corner of 14th Avenue, he stood behind a metal telephone box at the corner and watched the activities to the south. He saw a uniformed officer grab and open the front door of the apartment complex but then observed the officer to lose his hold on the door. He saw the officer reach for the door again and to then hold it open as both officers yelled twice to "get down". He said it looked to him as if the officers felt threatened and tensed up and that they then fired approximately ten rounds. He indicated that the officers gave "ample opportunity" for whoever was inside the door to get down as they requested prior to shooting.
- Ray Garcia saw the initial interaction between a black male, a plainclothes police officer and the uniformed officer. Garcia was in his vehicle and saw them having what he thought was a conversation. He said the black male appeared to grab something from the plainclothes officer and he then ran south on Washington Street. The officers started chasing the man as he ran. Mr. Garcia drove south on Washington and saw the black male run into 1375 Washington Street. He parked his vehicle and waited for the officers. As an officer came to the scene, he pointed out the building and the door where the black male had entered. He was back in his vehicle and driving away when he heard the gunshots however, he did not hear or see what had occurred prior to the gunshots being fired.
- Tyler Kuskie resided at 1375 Washington Street and was expecting a visit from Joseph Loera on the date of the shooting. Mr. Kuskie stated that Joseph Loera had spent Monday night with him at his residence and had left at 11:00 am on Tuesday. Mr. Loera had a small black backpack with him at the residence which he had taken

with him when he left. On the date of the shooting at about 10 am, Mr. Loera called him from his cell phone and asked if he could come over and take a shower. Mr. Kuskie gave Loera permission to do this and Kuskie went back to sleep. Mr. Kuskie was later awakened by a phone call and when he answered the phone, no one was there. Kuskie heard five to six gunshots and then heard someone shouting, "Get on the ground, don't move." He looked outside and saw police cars. He then went to the foyer of his apartment building where he saw uniformed police officers and a man he thought was a plainclothes police officer. These officers were pointing guns at Loera who was lying in the corner of the foyer with his hands up and blood around him. Mr. Kuskie's cell phone was examined and it showed that he had received an incoming call on September 24, 2008 at 11:52 am from Joseph Loera with a duration of 9 seconds.

- David Medina resided at 1375 Washington Street and was in his apartment in the southwest corner of the top floor of the building when he saw two men approach the front of the building and one of them had a gun in his hand. One man was a uniformed police officer and he believed the other to be a police officer in plain clothes. He saw the uniformed officer open the front door and then heard someone yell something that he could not understand. A few seconds later, he heard five to seven gunshots being fired and did not know who fired the gun(s).
- The following individuals did not see the actual incident but heard gunshots and then heard someone or more than one person yelling "get down".
 - John Hicks
 - Gennie Jackson
 - James Kleber
 - Mary Reddy
 - Kristen Thompson

Mr. Loera was transported to Denver Health Medical Center by ambulance. Homicide Detective Aaron Lopez was present as Mr. Loera was brought out of the ambulance into the emergency room. Detective Lopez observed that as Mr. Loera was being treated, he was combative with hospital personnel and was screaming and yelling for his parole officer. Detective Lopez heard Mr. Loera inform hospital personnel that he was taking Prozac. He also heard him say "I was just standing in the doorway and when I opened the door for them, they shot me, why did they shoot me?" Detective Lopez observed two apparent gunshot wounds to Mr. Loera's left leg and an apparent gunshot wound to the back of his left side. Detective Lopez was advised by hospital staff members that Mr. Loera had a bullet in his left leg and another bullet near his spine.

Detective Michael Martinez received a telephone call from Denver Juvenile Parole Officer Sharon Stephens on September 24, 2008 at approximately 3:00 pm . Ms. Stephens indicated that Joseph Loera was her client and that he was wanted on a Parole Violation/Escape charge issued in February, 2008. She indicated that she had spoken with Mr. Loera on September 18, on his cellular phone and had requested that he turn himself in on the charges. She had also called Joseph on the morning of September 24 but he had not answered his cell phone.

Due to statutory confidentiality of medical information, we do not have access to information concerning Loera's injuries and treatment. While it would be helpful to have this information, it is not required in order to make our decision in this case

While the suspect is presumed innocent, felony criminal charges of Menacing (two counts), Possession of a Schedule II Controlled Substance over 1 gram, and misdemeanor charges of obstructing a peace officer and possession of marihuana have been filed against Joseph Loera in the 2nd Judicial District and the 1st Judicial District Attorney's Office has been appointed special prosecutor in that action as well.

Crime Scene Investigation and Relevant Physical Evidence:

There are several reports, numerous photographs, a crime scene video and individual crime scene diagrams which document the crime scenes involved in this case. The evidence was analyzed by the Denver Police Department Crime Laboratory Bureau. Specific details regarding distance, location and relationship to other items of evidentiary value are contained in the written and photographic materials and are part of the file. The significant portions of the crime scene investigation for this analysis are as follows:

1. Detective Hamel was armed with a Glock model 17 loaded with 9 mm Speer JHP plus P rounds. Detective Hamel's weapon had a capacity of seventeen rounds in the magazine and one round in the chamber for a total of eighteen rounds. After the shooting, his weapon contained eleven rounds, one in the chamber and ten in the magazine. He was not carrying any extra magazines or weapons on his person.
2. Officer LeTendre was armed with a Sig Sauer P220 loaded with .45 caliber Speer JHP plus P rounds. Officer LeTendre's weapon had a capacity of seven rounds in the magazine and one round in the chamber for a total of eight rounds. After the shooting, his weapon contained four rounds. He was not carrying any extra magazines or weapons on his person.
3. Both weapons were found to be functioning properly as designed.
4. The scene was processed and there were five 9mm shell casings and four .45 caliber shell casings recovered with several suspected bullets and bullet fragments. The five 9mm shell casings were identified as having been fired by Detective Hamel's weapon and the four .45 caliber shell casings were identified as having been fired by Officer LeTendre's weapon. Damage to the bullets prevented a positive identification or elimination to either weapon.
5. The suspect's pants had two holes in the left leg to the rear of the side seam with a third hole in the rear of the left leg, inside the crease. The suspect's shirt had one hole in the lower left front of the shirt and a second hole in the center back of the shirt. No singeing or soot was noted at any of the holes. Two gunpowder particles were located between the two holes in the left pant leg and seven gunpowder particles were located in the area of the hole in the

lower left shirt front. Despite chemical processing, no gunpowder residue patterns were developed so further proximity tests were not conducted.

6. The suspected marijuana and pills in the suspect's backpack were tested and found to be marijuana and methadone, a Schedule II Controlled Substance, respectively.

LEGAL ANALYSIS

We find in our review of this shooting that no conduct of any of the police officers involved in this action was criminal. We would also note at the onset that this review is limited to the utilization of physical force by the Denver police officers because the suspect did not die from his wounds.

It is the conclusion of the 1st Judicial District Attorney's Office, based upon the applicable law and the facts and circumstances of this case, that the shooting by the two law enforcement officers during this incident meet the legal requirements of the affirmative defense of self-defense as contained in §18-1-704 (1)(2)(a). The officers' actions also meet the legal requirements of §18-1-707 Use of physical force in making an arrest or preventing an escape, specifically §18-1-707 (1)(2)(a), and §18-1-707 (1)(2)(b)(I).

Based upon an ongoing investigation into recent aggravated robberies occurring within that specific geographical area, Detective Hamel was appropriately attempting to identify an individual who appeared to match the description of an aggravated robbery suspect. Pursuant to C.R.S 16-3-103, law enforcement may stop any person that they reasonably suspect has committed a crime and require that person to give their name, address, identification and an explanation of their actions. Detective Hamel had with him a robbery bulletin containing surveillance photos of the suspect. Detective Hamel was unable to eliminate the black male he had seen at the corner of East Colfax and Pearl as possibly being the aggravated robbery suspect who was known to carry a gun. Accordingly, Detective Hamel's direction to another uniformed officer to make this contact was reasonable under the circumstances. When the suspect decided to run from the contact, he, in essence, invited law enforcement officers to pursue him to complete their inquiry. Based upon the brevity of Officer Estrada's contact with the individual, it was still unclear who the individual was and whether he was involved in the recent robberies. Since the suspect was known to carry a weapon, continuing the efforts to contact the suspect was reasonable and appropriate and in the interests of public safety.

When it was ascertained that the suspect had fled into an apartment building, the officers correctly continued with their efforts to contact with this person. Due to the individual's efforts to evade them, Detective Hamel's suspicions were now heightened. When Officer LeTendre arrived and was informed that the person inside the foyer could possibly be the armed robbery suspect, he also was appropriate in attempting a forcible stop, if necessary and to arrest him for running from their previous lawful contact. The officers acted in concert from that point on in their efforts.

The suspect forcibly attempted to keep law enforcement from entering the foyer and then told them he had a gun and threatened to shoot and kill them if they entered. These verbal threats were heard by another police officer and a citizen across the street. At that time, due to the threat the suspect posed to them and to residents of the apartment complex if the suspect was successful in gaining entry to the building, the officers were correct in trying to gain access to the suspect. When the officers discerned that he had an object in his hand and was moving his hand immediately after threatening to shoot and kill them with a gun, they were justified in firing their weapons at him under C.R.S. 18-1-704 in the utilization of defensive physical force. Additionally, pursuant to C.R.S. 18-1-707, both officers were justified in using reasonable and appropriate physical force to defend themselves from what they reasonably believed to be the use or imminent use of physical force while effecting or attempting to effect an arrest.

The fact that Mr. Loera was not the aggravated robber that the police were looking for does not change the appropriateness of the use of force by these officers. These police officers were legally justified in stopping Mr. Loera since he matched the description and was in the geographical area of previous robberies. If Mr. Loera had not run from them, a pursuit would have been unnecessary. It was Mr. Loera's conduct that caused Mr. Loera to be shot by the police.

Pursuant to C.R.S. 18-1-704 and C.R.S. 18-1-707, Detective Hamel and Officer LeTendre were justified in using reasonable and appropriate physical force to defend themselves from the potential use of physical force by the suspect, Mr. Loera, and also, under the criminal statutes, were justified in using reasonable and appropriate physical force when they reasonably believed it was necessary to defend themselves from the imminent use of physical force while attempting to effect an arrest.

Reviewing the totality of the circumstances, law enforcement had grounds to defend themselves from what they reasonably believed to be the imminent use of deadly physical force. Law enforcement had grounds to make a lawful arrest with the appropriate level of force, and they utilized only physical force. Based upon all of the evidence, the People would be unable to disprove the affirmative defenses beyond a reasonable doubt.

Based upon the investigation of this incident and the information provided to this office by the Denver Police Department, it is the final conclusion of the First Judicial District Attorney's Office that the legal requirements of the affirmative defense(s) listed were satisfied by law enforcement actions on September 24, 2008, that law enforcement was justified in the use of physical force and that the conduct of Detective Hamel and Officer LeTendre did not violate any criminal statutes.

Sincerely,



Scott Storey
1st Judicial District Attorney