

A. WILLIAM RITTER, JR.
District Attorney

SECOND JUDICIAL DISTRICT



201 West Colfax Avenue
Dept. 801
Denver, CO 80202
720-913-9000
Fax 720-913-9035

State of Colorado

OFFICE OF THE DISTRICT ATTORNEY
DENVER

February 18, 2004

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the murder of Justyn Rosen, DOB 8/15/1923, and the attempt murder and assault of Officer Randy Yoder, 91034, by Teresa Perez, DOB 9/10/63, and the shooting death of Teresa Perez, in which Captain Joe Padilla, 84005, Officers Daniel Perez, 95032, and Officer Randy Yoder, 91034, fired their weapons on October 3, 2003, at 2205 Colorado Boulevard, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Teresa Perez have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Captain Joseph Padilla, Officer Randy Yoder, or Officer Daniel Perez. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed and redressed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this shooting by a peace officer and the applicable Colorado law is attached to this letter. The complete file of the investigation will be open to the public at our office and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

The Denver Police Department's Gang Bureau is housed at 2205 Colorado Boulevard. The building, a firehouse in a previous incarnation, sits on the west edge of City Park and just east and north of the Denver Museum of Natural History. Many of the officers park their personal vehicles in the parking lots and parking areas near the building. On Tuesday, October 3, 2003, one of those officers was Officer Randy Yoder, 91034. Just before 6:00 p.m., on that date, Officer Yoder left the gang unit and walked to his vehicle, a Ford F-250 pick-up truck. Officer Yoder had just finished his shift and he had started taking off his police equipment. He was standing at the passenger side of his truck, placing his police radio, his duty belt, personal body armor (sometimes referred to as a "bulletproof vest"), and uniform shirt in a gym bag when he saw a white Ford Expedition (the

“Expedition”), occupied by a male driver and a female passenger, drive into the driveway just south and west of the gang unit building. The Expedition pulled up near Officer Yoder – the only officer in the lot at that time – and Officer Yoder walked up to the driver’s side of the vehicle. Through a window that was partially opened, the driver, later identified as Justyn Rosen, asked Officer Yoder if he was a police officer. As Officer Yoder answered in the affirmative, Mr. Rosen pushed the car door open and started running. As he got out of the Expedition, Mr. Rosen said, something to the effect of “she’s got a gun!” Officer Yoder looked back into the Expedition and saw the woman in the passenger seat, later identified as Teresa Perez,¹ pointing a handgun at him. Officer Yoder quickly backed to his vehicle and started frantically trying to find his own handgun and his police radio. As he did so, he saw Teresa Perez get out of the Expedition, holding a silver handgun. She started walking toward him and the location where Mr. Rosen had sought refuge.

Teresa Perez had reached a point between the Expedition and Officer Yoder’s pick-up, when Officer Yoder located his handgun. (He had first found his radio but was having problems turning it on). He identified himself as a police officer and ordered her to drop her weapon. She, instead, placed her pistol to her head and said “shoot me.” Teresa Perez continued moving and Officer Yoder moved so as to keep his truck between the two of them. Officer Yoder managed to turn his police radio on and made an emergency broadcast that he had a party with a gun. He then began backing to the north, away from Teresa Perez.

Captain Joseph Padilla, 84005, was working inside the gang-bureau building when he heard the radio call. He immediately started out of the building. As he did so, he saw another officer’s equipment and realized that Officer Daniel Perez, 95032, was in the building. He yelled an alert to Officer Perez and then ran out the front door. Once outside the building, Captain Padilla looked to his right and saw a white SUV in the parking lot. He then saw a woman step from behind the vehicle armed with a handgun. As he was running in an effort to get into a position of advantage, he saw and heard her begin shooting the handgun.

Officer Perez had been in a bathroom, changing out of his duty wear. He had left his gun belt (the equipment that Captain Padilla had seen) on a table in the roll-call room and was in the bathroom taking off his uniform shirt and personal body armor when he heard Captain Padilla’s call. He grabbed his fanny pack, in which he had his handgun, and immediately ran outside. He saw Captain Padilla running west toward the parking lot, then saw the white SUV and Officer Yoder at the back of his truck. He also saw a female armed with a handgun and an elderly man.

Captain Padilla had moved to a position to the southeast of the SUV, Officer Perez was almost directly east of Officer Yoder’s truck, and Officer Yoder was to the north of his truck when Mr. Rosen started to run toward the passenger side of Officer Yoder’s truck. As he did so, Teresa Perez started following him with gun in hand. Officer Yoder attempted to tell Mr. Rosen to get into his truck while simultaneously moving to a position at the back of his truck near the passenger side. Teresa Perez proceeded around the front of Officer Yoder’s truck, following Mr. Rosen. Officer Yoder heard two gunshots. He saw Mr. Rosen fall and he saw that Teresa Perez was pointing her gun at him. He then

¹ Teresa Perez is not related to either Officers Daniel Perez or Joey Perez.

saw Teresa Perez step over Mr. Rosen's fallen body and begin firing in a downward direction. Officer Yoder began firing at Teresa Perez. Officer Perez also saw Mr. Rosen fall. Officer Yoder's pick-up truck separated Officer Daniel Perez from Teresa Perez. However, he could see her lower body by looking under the undercarriage of the truck. Teresa Perez was firing "point blank straight down" into Mr. Rosen and he aimed at Teresa Perez's lower body and fired his pistol.

Captain Padilla heard several gunshots as he approached. He believed that Teresa Perez was firing at Officer Yoder (this belief was later substantiated as Officer Yoder was determined to have been "grazed" by a bullet), and he fired several shots. Captain Padilla and Officers Yoder and Perez were each firing at Teresa Perez. She was hit several times and fell to the ground. As the shooting stopped, Officer Yoder stepped back and realized that he was injured. He slumped down against a tree. Denver police officers and paramedics arrived within moments and transported Teresa Perez, Mr. Rosen and Officer Yoder to Denver Health Medical Center.² Despite the efforts of the medical staff at Denver Health Medical Center, both Teresa Perez and Mr. Rosen were pronounced dead. Officer Yoder suffered a "graze" type wound to his upper body that fortunately did not penetrate and cause more serious damage.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Justyn Rosen by Teresa Perez,³ who was then shot and killed in an exchange of gunfire in which Denver police officers Randy Yoder, 91034, Daniel Perez, 95032, and Joseph Padilla, 84005, fired their weapons.

Captain Padilla was wearing a full blue Denver police uniform. Officer Yoder was wearing uniform pants and a dark t-shirt. Officer Daniel Perez was in plainclothes and displayed a Denver police badge on his belt. Following the incident, each officer's weapon was delivered to the Denver police department crime lab firearms examination section according to the protocol established for officer-involved shootings. Captain Padilla was armed with a .45 caliber Glock, Model 21, semi-automatic pistol. This weapon has a magazine capacity of 13 rounds and may be carried with an additional round in the chamber. The weapon was fully loaded with Denver police issued ammunition. Investigators determined that Captain Padilla fired three rounds. Officer Daniel Perez was armed with a 9mm Glock, Model 17, semi-automatic pistol. This weapon has a 17 round magazine capacity and may be carried with an additional round in the chamber. The weapon was fully loaded with Denver police issued ammunition. Investigators determined that Officer Daniel Perez fired five rounds. Officer Randy Yoder was carrying a .45 caliber Sig Sauer, Model P220, semi-automatic pistol. This firearm has an 8-round magazine and may be carried with an additional round in the chamber. Officer Yoder fired 7 rounds.⁴

² Computer aided dispatch ("CAD") records show that the first call regarding the incident was made at 5:54:02 p.m. At 5:55:25 p.m., the CAD entry reflects: "2 PARTIES SHOT AMBULANCE C10 [Code 10]."

³ The evidence shows that bullets fired by Officer Perez also struck Mr. Rosen after he had been shot by Teresa Perez and fallen to the ground.

⁴ This determination is based on the condition of the weapon when examined by firearms examiners and Officer Yoder's statement regarding the manner in which he loaded his pistol. Scene investigators located only five shell casings identified to this pistol.

Investigators recovered Teresa Perez's weapon at the scene. It was determined to be a 9mm Smith & Wesson, Model 669. The weapon has a 12 round magazine capacity and may be carried with an additional round in the chamber. Investigators were unable to inquire of Teresa Perez how she had the weapon loaded.⁵ Nine shell casings recovered at the scene were identified to Teresa Perez's handgun – she fired at least nine rounds.

On October 4, 2003, Dr. Thomas Henry, Chief Medical Examiner for the Denver Coroner, performed an autopsy on Teresa Perez's body. The cause of death was determined to be "multiple gunshot wounds." Dr. Henry found evidence of six gunshot wounds. The first⁶ wound was caused by a bullet that entered Teresa Perez's right chest, passed between the ribs "in the fifth intercostals space," and perforated a lower portion of her right lung. It then passed through the diaphragm and the liver, fractured the "twelfth thoracic vertebra" and was recovered from the soft tissue in her back. This bullet was identified to Officer Yoder's pistol. The next wound was caused by a bullet that entered the body one centimeter to the right of wound number one, passed between the seventh and eighth ribs and then the "right lower lobe" of the lung, and then fractured the "then posterior rib," before exiting the body at the mid back.⁷ The third wound was caused by a bullet which entered the body on the left side of the thorax, passed through the stomach and damaged that organ and other viscera before exiting "over the right posterolateral hip." The fourth bullet struck Perez over the left hip, fracturing bones in the sacral region before exiting through the right buttock. The fifth wound was a "graze defect" to the right upper back. The final wound was caused by a bullet that struck the "anterolateral" aspect of the right arm, fracturing the right humerus and exiting the back of the right upper arm. Toxicological analyses of blood and urine samples obtained from Perez's body were positive for the presence of ethanol, cocaine, and benzoyecgonine (a cocaine metabolite). Perez's blood-ethanol level was determined to be .224%, more than two times the level at which Colorado presumes that one is driving under the influence of alcohol. The blood-cocaine level was "less than 25 ng/ml [nanograms per millileter]" and the blood benzoyecgonine level was "704 ng/ml." These figures suggest that Perez had ingested cocaine sometime before the incident and that her body had metabolized much of the controlled substance ingested.

Dr. Henry also performed the autopsy on Mr. Rosen's body. This examination was also completed on October 4, 2003. The cause of death was determined as "multiple gunshot wounds." Dr. Henry documented fifteen gunshot wounds, but noted that some wounds may have been caused by bullets that entered, exited and then re-entered the body. The first wound noted was caused by a bullet that entered the back of the right shoulder, passed through the soft tissue and musculature of the shoulder and chest and exited through the right chest. The bullet causing the second wound entered

⁵ Teresa Perez was taping the conversations in the car as Mr. Rosen and she drove around town. As discussed below, the tape was recovered and transcribed. In the transcript is found the following comment made by Teresa Perez: "I'm gonna shoot myself too so don't worry I got ten (sic) bullets."

⁶ The numbers ascribed to various wounds by the medical examiner are for reference purposes only. The Coroner makes it clear that in neither Ms. Perez's case nor Mr. Rosen's is the medical examiner able to determine the order in which the wounds were inflicted.

⁷ Although no bullet recovered at the scene may be linked to this wound, circumstantial evidence, specifically, the proximity to wound # 1, suggests that Officer Yoder fired the bullet that caused wound number two.

the right shoulder a ½ centimeter below the first wound. This bullet fractured the right scapula and entered the chest cavity, damaging the right lung, the diaphragm and the liver. It passed through the large and small bowel and exited the body at the left lower abdomen. The third wound was caused by a bullet that struck the back of the right upper arm, passed through the arm and re-entered the right chest, where it fractured a rib then damaged the lower part of the right “lung, liver, stomach, and large bowel” before exiting the body on the front left side of the thorax. The fourth wound was caused by a bullet that entered the back and side of the right arm at the elbow, passed “through the soft tissue of the right forearm” and exited the body. Dr. Henry noted that this bullet “may continue its path as gunshot wound number 9.” The fifth wound was described as a “graze wound over the lateral surface of the left forearm.” The bullet causing the wound passed “only through the soft tissue of the forearm.” The sixth and seventh wounds were both to the left arm and hand, the sixth wound was a deep graze or “guttered” wound that passed through the soft issue of the left forearm; the seventh wound was caused by a bullet that entered the back of the left hand near the base of the index finger and exited near the base of the “left ring finger.”

The eighth gunshot wound was caused by a bullet that entered the body at the “left lateral chest wall, fractured “the left lateral ninth rib,” damaged the left lung and spleen and fractured the first lumbar vertebra.” It was recovered in the right back.⁸ The ninth wound was determined to be a “guttered defect over the front of the abdomen that forms three separate superficial defects.” Dr. Henry reaffirmed that this wound “may be associated with gunshot wound #4.” The tenth wound was caused by a bullet that entered, exited and re-entered the body at the “left lower quadrant of the abdomen.” When it re-entered the body, the bullet passed into the abdominal cavity and perforated the small and large bowels. It then exited the abdominal cavity and came to a point of rest “in the soft tissue of the right anterior pelvis.” This bullet was recovered at autopsy.⁹

The wounds described as gunshot wounds number 11, 12, 13, 14, and 15 were each caused by bullets that struck Mr. Rosen in the legs. The wound described as wound number eleven was found just above and to the side of the right knee. A bullet fragment was recovered from this wound.¹⁰ The bullet that caused wound number twelve struck Mr. Rosen in the front of the left upper thigh and passed through the area of the left femur. The bullet that caused wound number thirteen entered the left thigh just “below gunshot wound #12.” Both bullets had similar paths and Dr. Henry was unable to determine which of the two bullets actually fractured the left femur. These bullets fragmented and the fragments were recovered at autopsy. The wound denoted as number fourteen was caused by a bullet that entered the front inner left thigh, passed through the “soft tissue and musculature of the left

⁸ This bullet and the bullet recovered at “wound # 10” were examined by Denver police firearms examiners and found to “lack sufficient identifiable markings for a positive identification. They are consistent in class characteristics with the Glock 9mm mod. 17 ser. #BUS353 [Officer Daniel Perez’s pistol].”

⁹ See note 8, *supra*.

¹⁰ This bullet fragment and those recovered in the exploration of wounds ## 12 and 13 were examined by Denver police firearms examiners. The fragments were weighed but examiners concluded that each “respectively cannot be identified nor eliminated as having been fired from any of the submitted firearms.”

thigh before exiting” at the “posterolateral left thigh.” The fifteenth wound was caused by a bullet that struck near the front inner left knee. This bullet passed “only through the soft tissue and bone of the left knee before coming to rest.” This bullet was recovered at autopsy.¹¹ Toxicological analyses of blood samples were negative for blood ethanol; analyses of urine samples were negative for the presence of “opiates, cocaine metabolite, benzodiazepines, and barbiturates.” There is, in short, no evidence that Mr. Rosen had ingested any alcohol or controlled substances in the time immediately before his death.

Investigators found numerous spent shell casings, spent bullets and bullet fragments and other firearms evidence (evidence of bullet strikes to pavement, cars, etc.) at the scene.¹² Five 9mm shell cases, recovered near a tree south and west of the Gang Unit building, were identified to Officer Daniel Perez’s handgun. These items were recovered near the location from which he stated he had fired his pistol and almost due east of Officer Yoder’s pick-up truck (identified on the diagram by the numbers “3AF314”). A bullet strike, denoted by the letter “A” on the diagram, was observed to the pavement between Officer Perez’s position and the pick-up truck. A bullet strike, denoted by the letter “D” on the diagram, was found on the driver’s side of the pick-up truck, 28 ½ inches above ground level. Two other bullet strikes, denoted by the letters K and J, were found on the “under-carriage” of Officer Yoder’s pick-up truck and a final bullet strike mark, denoted by the letter L, was found on the black-top under the pickup truck. This evidence is corroborative of Officer Daniel Perez’s statement that he was attempting to shoot at Teresa Perez from under the high clearance of the pick-up truck.

Two shell casings identified to Captain Padilla’s pistol were found near an unmarked police car south of the Gang Unit building, a third was located just west of Mr. Rosen’s vehicle and south of Officer Yoder’s pick-up truck. This evidence is corroborative of Captain Padilla’s description of the route that he took after leaving the Gang Unit building. Five .45 caliber shell casings identified to Officer Yoder’s pistol were recovered near a tree a short distance west of his vehicle (it was this tree near or against which Officer Yoder collapsed after the shooting stopped). A bullet or bullet fragment identified to his pistol was located a short distance north and west of the right rear of his pick-up truck. A trail of shell casings, starting to the south and west of Mr. Rosen’s vehicle and ending with the a cluster of six shell casings found just west of the passenger door of Officer Yoder’s pick-up truck were identified to the pistol fired by Teresa Perez.¹³ Also recovered in this cluster was a spent bullet

¹¹ Denver police firearms examiners identified this bullet to the firearm wielded by Teresa Perez.

¹² A scene diagram is attached hereto as **appendix 1**. The numbers 1 through 5 indicate the presence of 5 shell cases recovered and identified to Officer Daniel Perez’s pistol. The numbers 6, 7 and 12 represent the location of three shell casing recovered and identified to Captain Joseph Padilla’s pistol. The numbers 11, 13, 14, 15, 17, 18, 19, 20 and 33 represent the location of nine shell casings recovered and identified to the handgun wielded by Teresa Perez. The number 16 represents the location of a bullet recovered and identified to Teresa Perez’s handgun. The numbers 26 through 30 represent the location of five shell casings recovered and identified to Officer Randy Yoder’s pistol; the number 34 represents the location of a large bullet fragment identified to Officer Randy Yoder’s pistol.

¹³ After the shooting stopped, Captain Padilla found Teresa Perez’s pistol underneath one of Mr. Rosen’s legs. He placed it in the cab of Officer Yoder’s pick-up truck, through the open passenger’s side door, and thereafter directed investigators to its location. It was later recovered and processed by crime lab investigators.

identified to Teresa Perez's handgun. Found underneath Officer Yoder's pick-up truck were two bullet fragments. One of them, found at "marker #B" was identified to Teresa Perez's handgun.

Among other items recovered at the scene was a Sony tape recorder found on the ground near the open passenger's-side door of Mr. Rosen's vehicle. Investigators determined that the tape recorder had been running for some time before the shooting and that on the tape was a conversation between Mr. Rosen and Teresa Perez and the brief conversation that Mr. Rosen had with Officer Yoder just before the shots were fired. This tape was recovered and transcribed by Denver police transcribers. The tape and transcript were made part of the investigative file and will be referred to hereinafter as the "Perez tape."

Mr. Rosen, Officer Yoder and Teresa Perez were separately transported to Denver Health Medical Center by ambulance. The paramedics who transported Mr. Rosen later found a spent bullet in their ambulance. They immediately alerted Denver police investigators who recovered this item. It was examined by Denver police crime lab firearms examiners and identified to Teresa Perez's handgun. Another spent bullet was found in Mr. Rosen's clothing. It, too, was identified to Teresa Perez's handgun.

Investigators located or were contacted by a number of citizens -- neighborhood residents or people driving by -- who had heard gunshots or seen the aftermath of the shooting. Written statements were obtained from these individuals. Investigators also obtained written statements from the Denver paramedics who transported Mr. Rosen to the hospital and later found a bullet in their ambulance.

Two citizens, Mr. Rolf Reitzig, 1/2/67, and Mr. Thomas Ward, 3/15/40, identified themselves to investigators as individuals who, alerted by the sounds of gunshots, looked and saw at least part of the actual shooting incident. Each one of these witnesses provided a written statement and then agreed to provide a video-taped statement at Denver police headquarters.

Investigators located witnesses who had some knowledge regarding the manner in which Teresa Perez and Mr. Rosen had come into contact earlier in the afternoon. Written statements were obtained from these individuals. Investigators also spoke with a Mr. Robert Costello, 2/27/49, Teresa Perez's former husband. He agreed to provide a video-taped statement in which he discussed information he had regarding the relationship between Teresa Perez and Mr. Rosen. Other than to acknowledge the fact that there was such a relationship, it is not germane to the issues regarding potential criminal liability of the involved officers and we will not here discuss it (with the exception of that part of the transcript of the Perez tape which is relevant to Teresa Perez's state of mind).

At the time of the shooting, four Denver police officers were in the area: Captain Joseph Padilla, Officer Randy Yoder, Officer Daniel Perez and his brother, Officer Joey Perez, 98003. Officer Joey Perez was circling to the north to "cover" Officer Yoder and, while he saw much of the incident, he did not fire his weapon as Officer Yoder's truck was between him and Teresa Perez. When the shooting ceased, Officer Joey Perez went to the aid of Officer Yoder. It was he who took custody of Officer Yoder's pistol and delivered it to crime-lab investigators. He provided a video-taped statement to investigators. All the involved officers were separated from one another according

to the officer-involved shooting protocol. Captain Padilla and Officer Daniel Perez were brought to Denver police headquarters by uninvolved supervisors. Each officer gave a video-taped statement to investigators. As noted previously, Officer Yoder was taken to Denver Health Medical Center and was treated for his injuries.¹⁴ On October 5, 2003, Officer Yoder responded to Denver police headquarters and gave a video-taped statement to investigators.

The evidence establishes that Teresa Perez and Mr. Rosen had been in a relationship of some intimacy for some time before the day of the shootings.¹⁵ It appears that the relationship deteriorated and that on or about October 2, 2003, Mr. Rosen obtained a Temporary Civil Protection Order from the Denver County Court. At some point on the afternoon of October 3, 2003, Teresa Perez either joined or forced Mr. Rosen into the Expedition and started ordering him to drive around at gunpoint. Several of the conversations in the car were recorded on the Perez tape and a review of that tape suggests that Teresa Perez was distraught, homicidal, and suicidal. During a discourse that is, at times, rambling, profane and emotional, she threatens Mr. Rosen and herself repeatedly:

TERESA PEREZ ...Craig Silverman. I already got all the letters out in the mail to, to newspaper, everything. It's all out. All the money's goin' to one o' my relatives that I have. You have pushed me hov-...(possibly crying). You're a dead man tonight, an' I'm a dead woman 'cause o' you. You went too far. You, you, you do one thing wrong I'm gonna shoot ya.

Later, the following exchange is recorded:

TERESA PEREZ: don't wa-...sh-...yeah. I saw (sic) your lawyer callin' me, an' here's your lawyer with a (unintelligible). You're setting me up.

MR. ROSEN: Bullshit (sic).

TERESA PEREZ: You're settin me...you better turn it (sic). If you hit that car you're...as soon as you fuck up on the road I'm shooting you an' then me. So be ready. An' I don't wanna kill you, but I'm gonna embarrass the fuck outta you 'cause you...I'm gonna die 'cause I wa-...I wanna go to heaven. If I kill me I can go to heaven, but if I kill you I won't. But I'm gonna shoot you. You're, you're gonna be shot tonight. Gimme (sic) your cell phone now. Gimme (sic) your cell phone.

MR. ROSEN: I'm not gonna do it (sic).

TERESA PEREZ: Okay, when you pick it up then you're shot (unintelligible). Why have you lied to me for six years? You been fuckin' me, huh? You like blow jobs? You can have sex can't you?

Several more exchanges of this nature are recorded on the Perez tape. During this time, it appears that Teresa Perez is giving directions to Mr. Rosen -- ordering him to make turns and, at times, to stop the car. The Perez tape ends at the point where Mr. Rosen pulls into the parking lot by

¹⁴ It appears that Officer Yoder was struck twice on his left lateral chest/abdomen. These were not penetrating wounds and he suffered bruising and abrasions.

¹⁵ See the "Sworn Statement of Justyn Rosen in Support of Verified Complaint for Protective Order" dated October 2003.

the gang unit. What is heard corroborates Officer Yoder's statement. The taped exchange is as follows:

TERESA PEREZ: If you get outta the car you're shot. Drive the mother fuckin' car up there now. If you...drive the mother fuckin' car. Geez, what are you trying...go straight. What are you tryin' to do to me?

MR. ROSEN: Nothing. I just wanna...

TERESA PEREZ: Keep drivin' or (unintelligible). Go up there. Oh, you wanna be with the police when you die? Okay. If you tell this guy anything you're shot now. (Unintelligible) I mean it. Okay. You're done an' I'm done.

(THE RECORD SHOULD REFLECT AN UNIDENTIFIABLE SOUND.)

MR. ROSEN: Are you the police?

UNKNOWN: Yeah, I'm a police officer?

(THE RECORD SHOULD REFLECT UNIDENTIFIABLE SOUNDS FOLLOWED BY STATIC AND BACKGROUND VOICES.)

UNKNOWN: Let me see your hands. Let me see your hands. Let me see your hands. Drop that gun. Drop the gun.

UNKNOWN: (Unintelligible).

UNKNOWN: (Unintelligible) the gun.

(THE RECORD SHOULD REFLECT FOUR POPPING SOUNDS WHICH IS THE END OF SIDE TWO OF THIS TAPE.)

There is no dispute regarding the events that occurred after Mr. Rosen drove into the Gang Unit parking lot. Officer Yoder had just left the gang unit and was standing on the passenger side of his personal vehicle, a black Ford F-10 pick-up truck. He had removed his uniform shirt, his ballistic vest, his gun belt and his radio and was placing them into a gym bag when he saw the Expedition pull into the parking lot. He noted, first, that the Expedition did not park in a normal fashion in that it did not pull into any set parking space. He then noted that the Expedition was occupied by a male driver and a female passenger. The Expedition drifted slowly into the area set aside for police cars and officers' personal vehicles. Officer Yoder described his initial contact with the Expedition in the following manner

YODER: We all park our Gang Unit personal cars. And he pulls up kind've, kinda close to my truck. An' he sees me. I'm the only one out there. An' I get out of my truck 'cause I was in the driver's seat at that point and I walk up to the, to the car an' it kinda struck me as a little odd. The window was cracked a little bit, like a half inch.

INVESTIGATOR: M-huh.

YODER: I was, I guess I was kinda expecting 'im to roll down the window an' say hey where can I go, where can I...

INVESTIGATOR: Right.

YODER: But he says, uh, are you the police? An' I'm like well yeah I'm the police. An' he kinda pauses. He starts to open the door an' he asked me again are you the police? Are you a police officer? An' I was like yeah, what can I help you with? An' before I can finish what

can I help you with he flings open the door, kinda bumps into me an' takes off runnin'. He runs outta this door here. *[Indicating on a diagram.]*

INVESTIGATOR: M-huh.

YODER: An' he runs around. An' as he's runnin' he says she's got a gun, she's got a gun. And he's, eventually, at this point I don't know where he goes but he goes in this direction. *[Indicating on a diagram.]*

INVESTIGATOR: 'Kay.

YODER: I'm standin' in front o' the door lookin' at this woman pointin' a gun at me.

Officer Yoder had moved to the driver's side of the Expedition. When he saw Teresa Perez wielding a handgun, he backed up to his truck, opened the door, and started frantically looking through his gym bag for his service pistol. As he was "diggin' through the bag," he kept his eyes on Teresa Perez. He saw her get out of the Expedition and he saw that she was armed with a silver semi-automatic handgun. Officer Yoder located his gun and his radio. As he did so, Teresa Perez came walking in his direction, saying something like "where is he, where is he?" From his position, Officer Yoder could see Mr. Rosen, trying to hide behind Officer Joey Perez's vehicle which was parked just to the south of Officer Yoder's vehicle.

Officer Yoder was unable to get his police radio turned on at that time. Instead, he identified himself as a police officer and ordered Teresa Perez to drop the gun. He told investigators that he did so three times and "immediately she puts [her gun] to her head . . . an' she says shoot me, shoot me, at least two times . . . an' then she says well jus' go ahead an' kill me."

Teresa Perez began moving about in the area between the Expedition and Officer Yoder's pick-up truck and Officer Yoder kept moving in an effort to keep his truck between the two of them. At one point, she started walking in the direction that Mr. Rosen had hidden, and Officer Yoder, in an effort to distract her, again ordered her to drop her weapon. He told investigators that Teresa Perez turned toward him and, at about that time, he was able to turn his radio on. He described the next moments in the following manner:

YODER: So I, uh, I wait [until the radio traffic ceases] an' I...then I'd call out. When the air is clear I'd call out an emergency TAC Thirty Six. I've got a party holdin' a gun to her head. I got a party with a gun an' she's holdin' it to her head. And wh-...while I'm talkin' she's still movin' about.

INVESTIGATOR: M-huh.

YODER: An', an' she goes an' she gets back into her car, in the passenger side o' her car, an' she's sittin' in there an' she's yellin' an' rantin' an' ravin', but I don't know what she's sayin'.

INVESTIGATOR: M-huh.

YODER: Because now I focused on this guy. I'd, I'm tryin' to get him...I'm hollerin' at him. I'm watchin' her, but I'm hollerin' at him to come to me.

INVESTIGATOR: M-huh.

YODER: 'Cause I was gonna throw 'im in my truck. So, you know, he doesn't respond and I, I tell him several times. Well finally he does. He, he comes runnin' as fast as s-...an old man can run. There, my door is open.

Officer Yoder told investigators that, as Mr. Rosen ran to his truck, Teresa Perez saw him and made a “b-line [beeline]” toward Mr. Rosen. Officer Yoder recalled telling Mr. Rosen to get into his truck. He saw Teresa Perez coming around the truck so he began to back away from her. He had reached a position near his tailgate when Teresa Perez began firing her pistol.

YODER: An’ I hear these two pops. I see him go down, an’ I see her pointin’ a gun at me.

INVESTIGATOR: ‘Kay.

YODER: An’ I, I feeled (sic), you know, I didn’t know that I had been hit or what had happened. At that point adrenalin’s kinda runnin’. An’, uh, she doesn’t, she doesn’t even skip a beat though, you know. She’s not like lollygaggin’ through here. She’s, at (sic)...

INVESTIGATOR: M-huh.

YODER: ...she’s on the move. She goes through here right to him...hear the pops an’ she’s standin’ over ‘im, an’ she’s jus’ continually...one, two, three, you know...

INVESTIGATOR: M-huh (sic).

YODER ...numerous times. I come out here an’ in between she an’ I, she’s, she’s been pointin’ the gun at me. An’ then she goes back to shootin’ this guy. But I, I see her...well somewhere...I don’t know if it’s in front o’ the car or behind the car, but I see another cop. An’ th only one I saw was Captain Padilla.

Captain Padilla had been in his office catching up on paperwork when he heard an officer broadcast that he had “a woman with a gun holding it to her head in front of the gang bureau, Twenty Second an’ Colorado.” He immediately ran out of his office and started for the door. In his progress he noted a gun belt on a table and realized that Officer Daniel Perez was still in the building. He told investigators that he shouted something to the effect of “Danny, let’s go; let’s go; they got a gun; lady with a gun or somebody with a gun outside.”

When he got outside, he looked first to the east, saw nothing, and then looked to the west – his right – and saw the Expedition. He told investigators:

And I see movement an’ I start runnin’ that way an’ I see a woman come out behind the SUV an’ she raises the gun up. She had the gun in her hand, she raised it an’ I could tell it was a silver semi-automatic revolver [sic]. And, uh, I’m running past the Gang Bureau

Captain Padilla continued moving to the southwest of the Gang Bureau and arrived at a location which he described as being “parallel” to Teresa Perez. He then saw her raise her weapon and start shooting. He saw Officer Yoder “duckin’ an’ bobbing over here somewhere [indicating on the diagram].” Although he wasn’t sure, he believed that Officer Yoder had been shot and he began firing at Teresa Perez:

An’ . . . ‘cause her hands went like that an’ her hands...so [I] fired at her. (Sighing) I thought Randy was hit. And, uh, ‘cause I never saw ‘im again. And, uh, she ran around this way by this black truck, which is Randy’s truck. An’ I ran up to the front o’ the car. I think it was a little further back in here somehow, but from this position I had the view of his door was open

on the black truck, it was open. An' I s...an' I'm hearing gunshots an' I stood crouched down like that. And, uh, I don't know where Randy's at. I'm here, I'm thinkin' she's shooting at Randy over here, so I fired again at her underneath the door as she's down. An' I believe I hit her because after I fired, her body just slumped. And...

When Teresa Perez fell to the ground, Captain Padilla moved around Officer Yoder's truck and approached her. As he did so he saw, for the first time, another person – Mr. Rosen – lying on the ground. He saw no weapon in Teresa Perez's hand and, believing that the threat was over, began yelling "cease fire." Another officer approached and advised Captain Padilla that he was providing cover, and Captain Padilla approached Teresa Perez and Mr. Rosen. He saw a handgun underneath Mr. Rosen's leg and he "knocked it away from [Teresa Perez's] hand," and then secured it by picking it up and placing it on the passenger side "floorboard of the truck." He told investigators that he had already called for an ambulance and that, after he secured Teresa Perez's weapon, he heard Officer Yoder say that he had been hit. He made sure that Officers Daniel and Joey Perez remained with Officer Yoder and he began to direct arriving officers to secure the scene.

The gun belt that Captain Padilla had seen on a table in the roll-call room did, in fact, belong to Officer Daniel Perez. Officer Daniel Perez told investigators that he had placed some items on the table and was in the bathroom removing his uniform shirt and ballistic vest when he heard "Captain Padilla yell—Danny she's got a gun." He ran out of the bathroom to find that Captain Padilla had already left the building. He grabbed the fanny pack in which he had his pistol and ran out the front door. He told investigators that he believed his brother, Officer Joey Perez, came out of the building at about the same time.

As he came out the door, Officer Daniel Perez saw Captain Padilla running in a west-bound direction. He then saw the Expedition in the parking area and saw Officer Yoder near the back and

to the northwest of his truck. And I observed an elderly male an' a female wearin' a white shirt moving from the white SUV...

INVESTIGATOR: M-huh.

OFFICER DANIEL PEREZ:...to in front of Officer Yoder's truck. I observed that the female wearin' the white shirt, um, had a handgun in her hand and that it was placed towards 'er...at her temple.

INVESTIGATOR: M-huh.

OFFICER DANIEL PEREZ: Um, I could see that officer, I mean Captain Padilla, had moved off in my peripheral to the left, an' I thought had taken a position by the white SUV that I'd seen.

Officer Daniel Perez told investigators that he started moving toward Officer Yoder's truck. As he did so, he saw Mr. Rosen, in an apparent attempt to flee from Teresa Perez, run along the west side of Officer Yoder's truck and stop "about mid of his truck, about where the cab an' the bed come together." Officer Daniel Perez was on the east side of Officer Yoder's pick-up truck and Mr. Rosen and Teresa Perez were on the west side. Officer Daniel Perez stated that:

... he an' I went down to one knee so I could see the parties from underneath the...Officer Yoder's truck's a big, uh, Power (unintelligible) Diesel so the clearance is real high so I was able to see both parties up to about the mid-thigh.

Officer Daniel Perez then heard the sound of gunfire and saw Mr. Rosen fall to the ground on his left side, with his "back facing north an' his head an' body facing south." He saw Teresa Perez's "legs turn towards" Mr. Rosen and he heard more gunfire. From his vantage point, it appeared that Teresa Perez's rounds were striking Mr. Rosen: "it was my perception that she was shooting him point blank straight down, but I couldn't see her hands. But I could see rounds hitting him from that direction." At that point Officer Daniel Perez, still in the kneeling position, "fired three or four shots at her body that I could see, which is about mid-thigh down . . ." He saw Teresa Perez drop to the ground and he ceased firing. Officer Daniel Perez heard no other gunshots after Teresa Perez fell. He approached Mr. Rosen and Teresa Perez with his gun drawn. When he neared the two, he was able to see Teresa Perez's weapon under Mr. Rosen's "right side." Officer Daniel Perez maintained his position until Captain Padilla secured Teresa Perez's weapon. Additional officers began to arrive and Officer Daniel Perez turned his attention to Officer Yoder.

Officer Joey Perez was working in a plainclothes assignment on October 3, 2003. He told investigators that he was sitting in an office at the gang bureau when he heard Captain Padilla yell "Man with a gun, Danny! Man with a gun!" He left his office and saw that Captain Padilla had left the building. He then saw his brother, Officer Daniel Perez, come out of the bathroom. His brother got his weapon out of his fanny pack, which he saw lying on a table in the roll-call room, and the two went outside. Once outside, Officer Joey Perez saw Captain Padilla. To the west he saw a white SUV and heard some shouting. When he looked in that direction, he saw Officer Randy Yoder. Officer Joey Perez told investigators that he was familiar with Officer Yoder's pick-up truck and it was to the west of that truck that he saw Officer Yoder. He stated that Officer Yoder's pick-up truck had an extended cab that was "quite high" and he was able to tell that there was more than one party on the other side of the pick-up truck

Officer Joey Perez told investigators that he heard more than one voice shouting, and that he then realized that Officer Randy Yoder had his gun drawn. Realizing that Officer Yoder was in some type of confrontation, Officer Joey Perez started moving along the side of the building and then west toward the parking lot in order to provide Officer Yoder with some back-up. He stated that he drew his weapon but that he had no "line of sight at what threat Officer Yoder was addressing." He, therefore, did not fire his weapon. As Officer Joey Perez was running along some bushes toward Officer Yoder's position, he heard a gunshot. He was near his brother, Officer Daniel Perez, and when he heard the shot, he moved to the north so that he and his brother were not in the same field of fire. He continued to move toward Officer Yoder in order to determine the nature of the threat that Officer Yoder was addressing. As he did so, he heard "eight to twelve" gunshots. He told investigators that it sounded to him as if several guns were firing at the same time. He ran to the back of Officer Yoder's pick-up truck. As he got to the corner, he saw Officer Yoder lowering his gun. Officer Joey Perez believed that the threat that Officer Yoder was confronting had deescalated, so he crouched and looked around the rear of Officer Yoder's pick-up truck. He saw Mr. Rosen lying on his back and Teresa Perez lying near Mr. Rosen. Officer Joey Perez determined that the gunfight was

over. He checked for Teresa Perez's weapon and then went to Officer Yoder's aid. Officer Joey Perez did not fire his weapon during the incident.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being and causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force by a peace officer is justified. As the evidence establishes that Teresa Perez was shot by the officers, the determination of whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly physical force in Colorado. In pertinent part, the statute reads as follows:

- (2) A peace officer is justified in using deadly physical force upon another person ... 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:
 - 1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - 2. Is attempting to escape by the use of a deadly weapon.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term "Deadly weapon" as follows:

(2)(e) "Deadly Weapon" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. **A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance.** The degree of force required may be different in different situations. (*Boykin v. People*, 22 Colo. 496, 45 P. 419). This, of course, does not mean that an officer cannot retreat, if he or she chooses to do so.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

- (1) A person commits the crime of assault in the first degree if:
 - (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the “Assault in the first degree” statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

“The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable.”

Therefore, the question presented in this case is whether, at the instant the officers fired the shots, they reasonably believed that Teresa Perez was directing or was about to direct deadly physical force against one of them or another person or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing the death of another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

On October 3, 2004, as described in this letter and documented in the investigative-case file, it was Teresa Perez’s specific intent to shoot Justyn Rosen. When Justyn Rosen turned his vehicle into the Denver Police Gang Bureau driveway in search of help, Teresa Perez’s actions set in motion a chain of events that led to their deaths and to her shooting and wounding Officer Randy Yoder in the process.

The three Denver officers who fired their service pistols in this deadly confrontation were clearly justified in doing so in an effort to stop Teresa Perez from continuing to fire. This conclusion is not altered by the fact that two of the bullets that hit Justyn Rosen were apparently fired by Officer Daniel Perez. Teresa Perez had fired at and wounded Officer Randy Yoder and was standing over Justyn Rosen firing repeatedly into his body at the time the officers fired. Seeing Teresa Perez standing over Justyn Rosen and repeatedly shooting him from point-blank range, the three officers, from varying positions, were attempting to shoot Teresa Perez to end her murderous attack. The actions of these three officers were reasonable, appropriate, and necessary under the specific facts of this case. Officer Joey Perez’s decision not to fire, under the circumstances that confronted him from his vantage point, demonstrated sound judgment and weapon control on his part. Without an instant of hesitation, these four officers responded to this life-threatening confrontation in an effort to save

Mr. Rosen from the homicidal attack by Teresa Perez. Their willingness to put their lives at great risk to help another is deeply appreciated and is in the highest tradition of protecting and serving our community.

As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,

Bill Ritter, Jr.
Denver District Attorney

cc: Captain Joe Padilla
Officer Randy Yoder
Officer Daniel Perez
David Bruno, Attorney at Law
John W. Hickenlooper, Mayor
All City Council Members
Alvin J. LaCabe, Jr., Manager of Safety
Marco Vasquez, Deputy Chief
Michael Battista, Deputy Chief
Dan O'Hayre, Division Chief
Dave Fisher, Division Chief
Steve Cooper, Division Chief
Mary Beth Klee, Division Chief
Dave Abrams, Captain, Crimes Against Persons Bureau
Jim Haney, Lieutenant
Jon Priest, Lieutenant, Homicide
Dave Neil, Detective, Homicide
Dale Wallis, Detective, Homicide
John Lamb, Commander, Civil Liability
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Doug Jackson, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission

Appendix 1

CRIME SCENE MAP

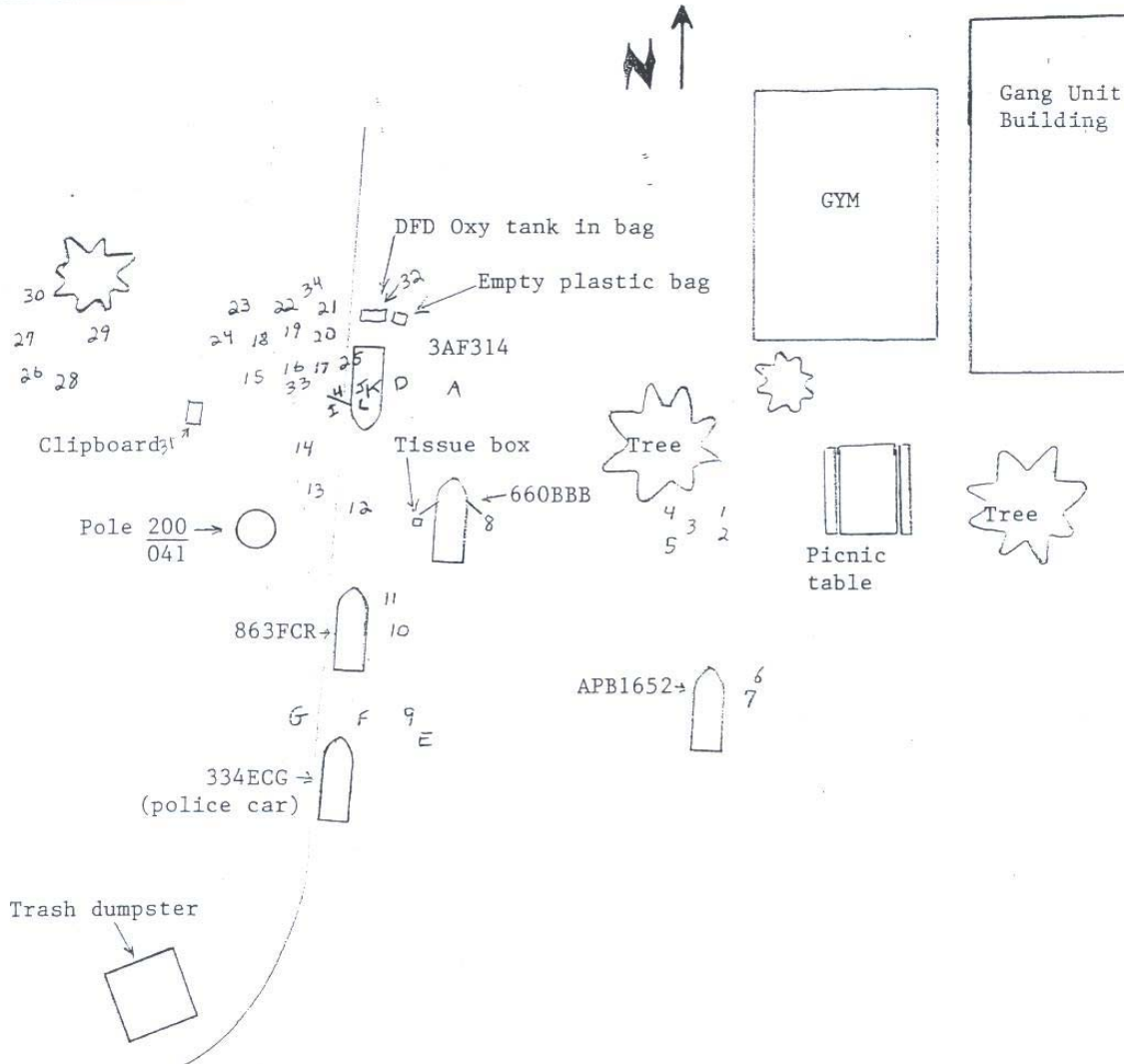
Location: 2205 Colorado Blvd.

Case # 200345297

Drawn by: Det. D. G. Wallis 79046

Date: Oct. 3rd, 2003

NOT DRAWN TO SCALE



CRIME SCENE MAP LEGEND

Three points of reference where used to triangulate the position of evidence: Utility pole # 200/041, the south curb of East 22nd Avenue and the black top curb which separates the Gang Unit driveway and the grassy area to the west. All measurements are approximations.

Item # 1: a 9mm spent shell casing, located 95'2" North of the South curb of E. 22nd Ave. and 52'8" East of Pole 200/041.

Item # 2: a 9mm spent shell casing, located 94'5" North of the South curb of E. 22nd Ave. and 52'6" East of Pole 200/041.

Item # 3: a 9mm spent shell casing, located 93'11" North of the South curb of E. 22nd Ave. and 49'8" East of Pole 200/041.

Item # 4: a 9mm spent shell casing, located 93'11" North of the South curb of E. 22nd Ave. and 48'8" East of Pole 200/041.

Item # 5: a 9mm spent shell casing, located 92'8" North of the South curb of E. 22nd Ave. and 49'1" East of Pole 200/041.

Item # 6: a .45 caliber spent shell casing, located 59'10" North of the South curb of E. 22nd Ave. and 44'6" East of Pole 200/041.

Item # 7: a .45 caliber spent shell casing, located 57'6" North of the South curb of E. 22nd Ave. and 43'8" East of Pole 200/041.

Item # 8: a Sony tape recorder, located on the ground near the open passenger side door of 660-BBB, 77'6" North of the South curb of E. 22nd Ave. and 24'10" East of Pole 200/041.

Item # 9: a small white button, located 46'5" North of the South curb of E. 22nd Ave. and 11'0" East of Pole 200/041.

Item # 10: a small white button, located 56'2" North of the South curb of E. 22nd Ave. and 7'2" East of Pole 200/041.

Item # 11: a 9mm spent shell casing, located 64'8" North of the South curb of E. 22nd Ave. and 8'7" East of Pole 200/041.

Item # 12: a .45 caliber spent shell casing, located 73'1" North of the South curb of E. 22nd Ave. and 5'4" East of Pole 200/041.

G-2

Item # 13: a 9mm spent shell casing, located 6" West of the black top curb separating the gang unit drive from the grassy area of the park. And 4" North of Pole 200/041.

Item # 14: a 9mm spent shell casing, located 2' 7 1/2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 8'7" North of Pole 200/041.

Item # 15: a 9mm spent shell casing, located 5'8 1/2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 11'4" North of Pole 200/041.

Item # 16: is a spent bullet, located 4' 0" West of the black top curb separating the gang unit drive from the grassy area of the park. And 12' 0" North of Pole 200/041.

Item # 17: a 9mm spent shell casing, located 3' 5 1/2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 11'2" North of Pole 200/041.

Item # 18: a 9mm spent shell casing (bloody), located 4'2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 14'0" North of Pole 200/041.

Item # 19: a 9mm spent shell casing, located 2'4" West of the black top curb separating the gang unit drive from the grassy area of the park. And 13'0" North of Pole 200/041.

Item # 20: a 9mm spent shell casing, located 1' 8 1/2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 12' 7" North of Pole 200/041.

Item # 21: a bullet fragment, located 8 1/2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 14' 7" North of Pole 200/041.

Item # 22: a bullet fragment, located 2' 5" West of the black top curb separating the gang unit drive from the grassy area of the park. And 18'1" North of Pole 200/041.

Item # 23: a pair of eye glasses, located 2' 7" West of the black top curb separating the gang unit drive from the grassy area of the park. And 18'7" North of Pole 200/041.

Item # 24: a cell phone, located 3'6" West of the black top curb separating the gang unit drive from the grassy area of the park. And 19'0" North of Pole 200/041.

Item # 25: a grey cap, located 92'10" North of the South Curb line of East 22nd Ave and 10'3" east of Pole 200/041.

Item # 26: a 9mm spent shell casing, located 22' 9" West of the black top curb separating the gang unit drive from the grassy area of the park. And 28' 0" North of Pole 200/041.

G-3

Item # 27: a 9mm spent shell casing, located 20' 11" West of the black top curb separating the gang unit drive from the grassy area of the park. And 29' 0" North of Pole 200/041.

Item # 28: a 9mm spent shell casing, located 21' 2" West of the black top curb separating the gang unit drive from the grassy area of the park. And 24'9" North of Pole 200/041.

Item # 29: a 9mm spent shell casing, located 17'4" West of the black top curb separating the gang unit drive from the grassy area of the park. And 25'3" North of Pole 200/041.

Item # 30: a 9mm spent shell casing, located 17'8" West of the black top curb separating the gang unit drive from the grassy area of the park. And 30'11" North of Pole 200/041.

Item # 31: is a small clipboard left at the scene by emergency responders (Fire Department or Paramedics), located 14' 10" West of the black top curb separating the gang unit drive from the grassy area of the park. And 9' 7" North of Pole 200/041. This item is not marked with an evidence placard.

Item # 32: is a metal oxygen bottle in a nylon bag and an empty plastic bag left at the scene by emergency responders (Fire Department or Paramedics), located 117' 2" north of the South curb line and 7'3" East of Pole 200/041. The tank is 6'8" North of the bumper of the black pick-up truck (3AF314). This item is not marked with a placard.

Item # 33: a 9mm spent shell casing, found on 10/04/03 during scene re-visit, located 1'7 ½ " West of the black top curb separating the gang unit drive from the grassy area of the park. And 11'7" North of Pole 200/041.

Item # 34: is a copper bullet fragment, possibly a >45 caliber, found on 10/04/03 during the scene re-visit, located 2'10 ½ " West of the black top curb separating the gang unit drive from the grassy area of the park. And 17' 0" North of Pole 200/041.

Item A: is a bullet strike on the black top, appears to run east to West. Located 90' 1" North of the South curb line of East 22nd Ave. and 23'4" East of Pole # 200/041

Item B: is a bullet fragment discovered under the black pick-up truck (3AF314), located 88'3" North of the South curb line of East 22nd Ave. and 16' 10" East of Pole # 200/041

Item C: is a bullet fragment, discovered under the black pick-up truck (3AF314), located 88'11" North of the South curb line of East 22nd Ave. and 15'0" East of Pole # 200/041

Item D: is a bullet strike on the drivers side of the black pick-up truck (3AF314), located 91'1" North of the South curb line of East 22nd Ave. and 16'10" East of Pole # 200/041 and 28 ½ " above the ground.

Item E: is the end of a blood trail which leads to this position from the grassy area onto the black top of the Gang Unit driveway. Witnesses agree that the blood trail was created

G-4

when victims were moved to the transporting ambulances. It is located 44'6" North of the South curb line of East 22nd Ave. and 10'3" East of utility pole 200/041.

Item F: is the approximate center of the blood trail which leads to this position from the grassy area onto the black top of the Gang Unit driveway. Witnesses agree that the blood trail was created when victims were moved to the transporting ambulances. It is located 47'9" North of the South curb line of East 22nd Ave. and 0' of utility pole 200/041.

Item G: is the position of the approximate beginning of a blood trail which leads to a place on the black top of the Gang Unit driveway. Witnesses agree that the blood trail was created when victims were moved to the transporting ambulances. It is located 53'6" North of the South curb line of East 22nd Ave. and 7'9" West of Utility Pole 200/041

Item H: is a bullet hole on the outside passenger door of the black pick-up truck (3AF314), it is located 86'9" North of the South curb line of East 22nd Ave. and 7'10" East of Utility Pole 200/041. The bullet hole is 41 ½" above the ground.

Item I: is a bullet hole on the inside passenger door of the black pick-up truck (3AF314), it is located 87'1" North of the South curb line of East 22nd Ave. and 7'10" East of Utility Pole 200/041. The bullet hole is 40 ½" above the ground.

Item J: is a bullet strike mark on the under-carriage of the black pick-up truck (3AF314), located 90'8" North of the South curb line of East 22nd Ave. and 13'9" East of Utility Pole 200/041. The strike is 18 ½" above the ground.

Item K: is a bullet strike mark on the under-carriage of the black pick-up truck (3AF314), located 91'1" North of the South curb line of East 22nd Ave. and 15'0" East of Utility Pole 200/041. The strike is 28 ¼" above the ground.

Item L: is a bullet strike mark on the black top of the Gang Unit driveway, under the black pick-up truck (3AF314), located 90'9" North of the South curb line of East 22nd Ave. and 14'10" East of Utility Pole 200/041.

A Kleenex box is found near the open driver's door of the victim's vehicle (660-BBB). The position of this item was not measured.

VEHICLES

ABP-1652, an unmarked police vehicle, is 39'10" North of the South curb line of East 22nd Ave. to the left rear bumper. And 43'2" East of Utility Pole 200/041. The vehicle is oriented in a northbound position.

334ECG, a marked police vehicle, is 42'5" North of the South curb line of East 22nd Ave. to the left rear bumper. And 26'0" East of Utility Pole 200/041. The vehicle is oriented in a northbound position.

G-5

3AF-314, is the private vehicle of Officer Yoder. It is a black Ford pick-up truck, located 5'3" North of Utility Pole 200/041 and 10'6" East of Utility Pole 200/041. Both measurements are to the front right bumper. The vehicle is oriented in a southbound position.

660-BBB, is the privately owned vehicle of the victim Justin Rosen. It is located 9'11" South of the Utility Pole 200/041 and 18'3" East of Utility Pole 200/041. Both measurements are taken from the left rear bumper of the vehicle. The vehicle is oriented in a northbound position

863-FCR, a privately owned vehicle. The driver's side tires are on the curb separating the grassy area of the park from the black top of the Gang Unit's driveway. The left rear bumper is 21'2" South of Utility Pole # 200/041 and 4'0" West of Utility Pole 200/041. The vehicle is oriented in a northbound position.

G7-6