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August 23, 2023

Terrence Gordon
Chief of Police
Thornton Police Department
9500 Civic Center Drive
Thornton, CO 80229

Re: Investigation of the shooting and wounding of Jedidiah Richard Wilson (10-21-80) on May 31, 2023, in the 4800 Block of Eliot Street, Denver, CO.
DPD GO # 23-286367; 23-5001704.

Dear Chief Gordon,

My office has reviewed the investigation of the officer involved shooting by Thornton Police Officer Scott Schilb (Badge #18-12) that occurred on May 31, 2023, in the 4800 Block of Eliot Street, in Denver, Colorado. The shooting occurred after a blue Scion crashed while being pursued in Denver by Thornton officers. After the crash, both occupants of the Scion ran from the officers. Jedidiah Wilson fired a handgun as officers were pursuing on foot. Officer Schilb returned two shots, one of which struck Wilson, injuring him. Wilson fell and was arrested.

I am writing to inform you of my conclusion that the force used by Officer Schilb was legally justified under Colorado law. He acted lawfully to defend himself and other officers from the danger of additional gunshots from Wilson. Therefore, no criminal charges will be filed pertaining to the use of force. This letter reviews some facts of the case to provide context for my decision but does not contain nearly all of them.

Wilson has been charged by my office with Attempted Murder in the First Degree, a class 2 felony, in Case 23CR3106 in Denver District Court.

Summary of Facts

Officer Schilb is fired upon in Thornton

On May 31, 2023, at 3:32 a.m., the Thornton Police Department was alerted to a burglary in progress at 10217 Quivas Street in Thornton. The caller described a vehicle used by the suspects as "a black or brown ... like a Scion or Honda Element ... one of those box looking cars". Thornton Police Officer Scott Schilb responded to the area and saw a Scion that was blue. He followed this vehicle. Officer Schilb was in an unmarked police vehicle, a white Chevrolet pickup truck. His

truck was not equipped with lights or a siren. However, it was equipped with a “Star Chase” device on the front grill capable of deploying a GPS tracking “dart.” As Officer Schilb drove toward the rear of the Scion, multiple gunshots were suddenly fired at him. He saw muzzle flashes inside the Scion and he heard multiple gunshots.¹ At 3:39 a.m., Officer Schilb radioed that he had been fired upon through the Scion’s back window.²

Officer Schilb backed off but kept the Scion in sight, following it onto I-25 southbound. Thornton Police Officer Tayber Dudley (Badge 20-02), driving in a marked police vehicle, caught up on I-25 to assist and activated his lights and siren behind the Scion. The driver refused to stop. Instead, attempting to elude the police, he continued south to Denver. Officer Schilb followed the pursuit but drove behind Officer Dudley. The Scion exited I-25 and went westbound on 48th Avenue.

Westbound 48th Avenue ends at Eliot Street and becomes a sharp right-turn north onto Eliot Street. The Scion driver turned right but crashed into some concrete barriers on the west side of the street. This disabled the left front wheel of the Scion, and it stopped on Eliot Street facing northeast. Officer Dudley and Officer Schilb stopped their vehicles behind the Scion. The two occupants ran from the Scion, but along separate paths, both heading in a northeasterly direction toward the sidewalk on the east side of Eliot Street. Officers Schilb and Dudley got out of their vehicles and pursued on foot. The shooting occurred just seconds later.

Officer Schilb’s Description of the Shooting on Eliot street

After the shooting, Officer Schilb voluntarily gave a statement to investigators on June 2, 2023. He recounted that he saw a person running from the driver side of the Scion. He assumed this person was the driver and referred to him as the “driver” in his interview. This person was later identified as Jedidiah Wilson. Wilson was north of Officer Schilb and north of the Scion, and was running northeast in the street, heading for the sidewalk and houses on the east side of Eliot Street.

Officer Schilb also saw a male get out of the front passenger seat of the Scion. He ran northeast toward the sidewalk, but he was not as far north as the driver. The passenger was closer to the officer, and Officer Schilb chased after him. The passenger was identified as Anthony Tafoya.³

Officer Schilb explained that as he was following the passenger, he saw a muzzle flash. The flash came from an area that was to the north of the passenger. He also saw the silhouette of the person shooting and it was the “driver”, Wilson. Officer Schilb also heard the gunshot corresponding to the muzzle flash. He believed he was being fired upon and was in imminent danger from additional fire. In his interview, he explained why he fired his weapon:

While I was in pursuit, all of a sudden, I saw a muzzle flash and a “pop” sound, which I determined it was gunfire. ...I believe I was in imminent danger. I believe that I was getting

¹ Later investigation revealed that at least two bullets struck the front of Officer Schilb’s truck. One struck the Star Chase device, breaking off part of its housing. Broken pieces of the housing were recovered by investigators at the parking lot in Thornton where Officer Schilb was fired upon. Another bullet lodged in a CV boot under the truck.

² The Scion did not have a glass rear windshield. Instead, a sheet of plastic film was being used as a rear windshield.

³ Anthony Tafoya was arrested after he ran north on Eliot Street to 49th Avenue and turned left. Body worn camera recordings prove that Tafoya is the person who was on the passenger side of the Scion whom Officer Schilb chased.

shot at and I had a threat that if I didn't address the threat, that I was going to be seriously hurt or killed.

... based on our first situation, or first exchange of gunfire, where he fired multiple rounds⁴, when I heard the first round, I'm assuming that there's going to be another volley, an exchange of gunfire. That's why I'm only thinking about putting the threat down as quickly as possible.

Officer Schilb stated that he returned fire, aiming his shots at the silhouette of the driver, but only after checking his backdrop and ensuring that the passenger was not in his line of fire. He thought he fired twice.

Recordings from Body Worn Cameras

A review of the recording from Officer Schilb's body worn camera reveals that Officer Schilb was accurate in his description of events. On the video, two people can be seen in the street running from police, running northeast along separate paths.

The person running furthest to the north was Wilson. Wilson is distinguishable on the video because of the white athletic shoes he wore. Light reflected from his shoes appear as bright white spots in the dark at several points, revealing his movements even when we cannot see his body. At 3:45:21-22 a.m., Wilson is recorded in mid-street running northeast, and crossing to the east side of the street. [See photos below].

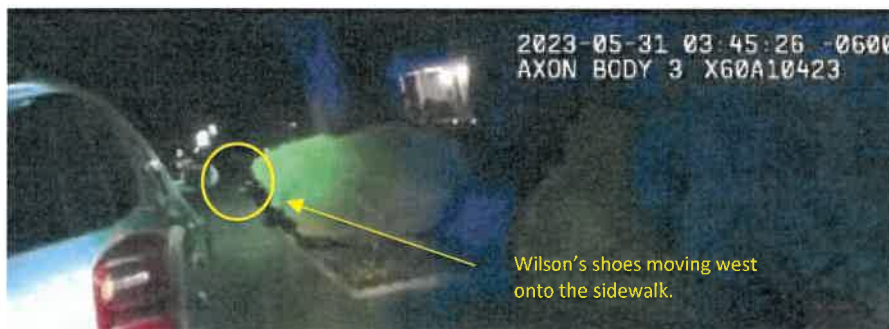


⁴ Officer Schilb is referring to being fired upon from the Scion in Thornton.

A silver SUV is parked along the sidewalk at the east side of the street, facing north. Wilson passes in front of the SUV. At that point, the SUV blocks the camera's view of Wilson and he is not seen for the next four seconds.

The other person seen running on the video is Tafoya. He is the person Officer Schilb followed from the passenger side of the Scion. Tafoya ran to the east sidewalk at a point south of the SUV, and south of Wilson. As he runs, the video shows that Tafoya has nothing in his hands. He runs north on the sidewalk and passes alongside the SUV, which is on his left. Officer Schilb follows behind Tafoya and runs north on the sidewalk.

At 3:45:24 a.m., the first gunshot on scene has been fired.⁵ Then, at 3:45:26-27 a.m., Wilson's white shoes are seen again on Officer Schilb's video. [See photos below]. Wilson is north of Officer Schilb, and north of the SUV, and is east of the sidewalk. When viewed in video mode, it is readily apparent that Wilson is moving toward the west, coming onto the sidewalk from the east. Specifically, we see his white shoes moving west and then stepping onto the sidewalk and gutter along Eliot Street. Wilson plants his left foot to cut right to go north. At that spot his left shoe comes off.⁶



⁵ The sound of the gunshot is recorded on Officer Dudley's camera at 3:45:24 a.m. Officer Schilb's camera was not recording audio until later.

⁶ Note that a spent cartridge casing was found in the grass lawn east of where Wilson stepped onto the sidewalk and lost his shoe turning to the north.



During these moments, Officer Schilb was on the sidewalk to the right of the SUV. He fired his first shot at Wilson at 3:45:27 a.m. He fired another shot one second later.



Wilson fell to the ground. At 3:45:28 the camera records that Tafoya is at the center line of Eliot Street running north toward 49th Avenue. Officer Dudley is pursuing him. Tafoya reaches the corner of 49th Avenue, turns left, and is arrested a short distance to the west on 49th Avenue.



Officer Schilb advanced close to Wilson as he was on the ground in the street. Wilson was holding his hands up so the officer could see they were empty. He then complied with Officer Schilb's commands. The video shows Wilson wearing a white athletic shoe on his right foot and a light gray sock on his left foot. There is not a shoe on his left foot. The left shoe is in the gutter of the street just to the south of Wilson. A few feet north of Wilson in the gutter is a black semi-automatic pistol.⁷ It had been fired until empty so that its slide was locked back.

Injury to Jedidiah Wilson

Wilson was struck by one bullet. Officers called for an ambulance and gave aid to Wilson. He then received medical attention at the scene and was transported by ambulance to Denver Health Hospital. Dr. Benjamin Li indicated that Wilson received a gunshot wound to the "left flank", which he indicated was a "serious bodily injury" since it presented a substantial risk of death. Wilson had surgery for internal injuries.

Investigation by Multi-Agency Task Force

The Thornton Police Department and the Denver Police Department were notified that an officer had fired his weapon. The protocol used by the Denver Police Department for officer involved shootings was followed.⁸ Detective John McGrail (06043) of the DPD Homicide Bureau was assigned as primary investigator for this investigation, and Detective Daniel Andrews (96015) of the DPD Homicide Bureau was assigned as the secondary investigator. The investigation into this shooting was then conducted by the Denver Police Department in conjunction with the Colorado Bureau of Investigation and the Colorado State Patrol.

⁷ This gun next to Wilson was identified as having fired the spent casing found in the grass east of the sidewalk.

⁸ Officer Schilb and officers, who were witnesses, were taken separately to DPD Headquarters and told not to speak about the incident, other than to their attorneys. They did not view or listen to recordings from their body worn cameras. Many written statements and reports were provided by officers, crime scene investigators, crime lab personnel, paramedics, and others. Video recorded statements were given by some witnesses, including residents from the neighborhood. Body worn camera recordings from the officers were downloaded and reviewed.

Crime Scene Evidence & Weapons Unload

DPD Crime Scene Unit personnel responded to the scene on Eliot Street. Photographs and video recordings were taken to document the scene. Evidence was marked and collected. The handgun found next to Wilson was checked, confirmed to be empty of bullets, and collected. Officer Schilb's weapon was unloaded at DPD Headquarters by personnel from the Crime Scene Unit. This procedure showed that Officer Schilb fired two bullets.

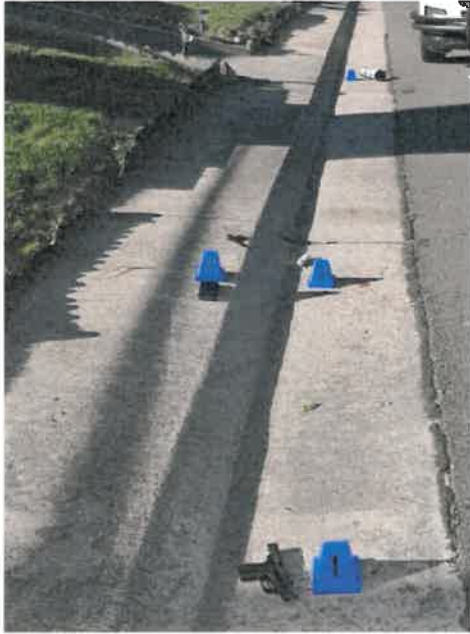
Two spent 9mm cartridge cases were recovered east of Eliot Street, and east of the sidewalk:

- One was found in the grass yard at 4872 Eliot Street in the area where Officer Schilb indicated he saw the muzzle flash. It is at Marker 6 in the lawn in the photos below.
- One was found in front of 4870 Eliot Street in a bush next to the sidewalk where Officer Schilb fired his weapon. It is at Marker 7 in the bush.
- Since three gunshots were fired, a thorough search was conducted for the third cartridge case, but it was not found.

Evidence related to the earlier shooting at Officer Schilb in Thornton was also recovered.⁹ Inside the Scion, seven spent cartridge cases were found, as well as other ammunition.



⁹ See footnote 1.



Firearm Testing / Identification of Cartridge Cases

The handgun used by Wilson recovered at Marker 1, and Officer Schilb's handgun, were each examined and test-fired by the Denver Crime Laboratory Firearms Unit. The test-fired cartridge cases were microscopically compared to the cartridge cases recovered by scene investigators. The Firearms Unit Report reveals the following:

- One spent cartridge case was identified as having been fired in the Taurus 9 mm handgun found next to Wilson. This cartridge case was recovered from the grass at 4872 Eliot Street (Marker 6).
- All seven of the spent cartridge cases found inside the blue Scion were identified to the Taurus 9 mm handgun found next to Wilson.
- One spent cartridge case was identified as having been fired in Officer Schilb's Glock 9 mm handgun. This case was recovered from the bush by the sidewalk at 4870 Eliot Street (Marker 7).

Legal Analysis

Criminal liability is established only if it is proved beyond a reasonable doubt that all elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The statutory justifications for using physical force that govern my analysis are set forth in C.R.S. §18-1-704 and in C.R.S. §18-1-707.¹⁰

As pertinent to this case, C.R.S. §18-1-704 states:

- (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

¹⁰ These statutes also govern the use of "deadly physical force". However, note that deadly physical force was not used in this case. C.R.S. 18-1-901(3)(d) states: " 'Deadly physical force' means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death."

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 physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
 - (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury....

The justification of the use of physical force by peace officers while carrying out their duties is described in C.R.S. §18-1-707. As pertinent to this case, C.R.S. §18-1-707 states:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
 - (b) Use only a degree of force consistent with the minimization of injury to others;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person;
 - (c) The force employed does not create a substantial risk of injury to other persons.
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified

in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

Under Colorado law, when the facts of a case on trial raise an issue of self-defense or defense of another, the person charged does not have a burden to prove that he or she acted within the justification for self-defense or defense of another. Instead, the prosecution must show the justification does not apply by proving all the elements of the crime beyond a reasonable doubt.¹¹

Accordingly, the question I must answer in this case is: After considering the statutory justifications for the use of physical force in C.R.S. §18-1-704 and C.R.S. §18-1-707, would a jury deciding the facts of this case find, unanimously and beyond a reasonable doubt, that all the elements of a crime have been proved? My conclusion is that a jury would not find any criminal culpability by Officer Schilb.

The body worn camera evidence corroborates what Officer Schilb described in his interview and supports his credibility. He expressed that he believed he was in imminent danger of serious injury or death after the first gunshot, and he expected Wilson would continue to shoot. Considering that Officer Schilb had been unlawfully fired upon just minutes earlier from inside the Scion, and that multiple shots were fired at him at that time, I find it was objectively reasonable for Officer Schilb to expect and to fear that Wilson would continue firing more than one shot. While it is true that Wilson's weapon was out of ammunition after he fired the shot on Eliot Street, it was not possible for Officer Schilb to know that. It was reasonable for Officer Wilson to believe that firing at Wilson without delay was necessary to defend himself. I find that Officer Schilb's use of physical force was lawfully authorized and justified by C.R.S. § 18-1-704 and § C.R.S. 18-1-707.

¹¹ For crimes alleging a culpable mental state of acting intentionally or knowingly (e.g., murder), the issue of self-defense or defense of another is handled at trial as an "affirmative defense", which is a defense that admits the commission of the elements of the charged crime but argues the defendant's actions were legally justified or excused. This affirmative defense becomes an additional element of the charge at trial, and it is the prosecution's burden to disprove it by proof beyond a reasonable doubt. For crimes alleging a culpable mental state of acting recklessly, or with criminal negligence or extreme indifference, the evidence of self-defense or defense of another is handled as a "traverse" defense that seeks to refute, or to cast doubt upon, the proof of the mental state element alleged. The prosecution must prove the alleged mental state element by proof beyond a reasonable doubt. See C.R.S. § 18-1-704 (4); *People v Pickering*, 276 P.3d 553 (Colo. 2011).

Conclusion

Because I find that Officer Schilb was legally justified in using physical force against Wilson, no criminal charges against him are appropriate.

Sincerely,



Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Division Chief Joe Montoya; Commander Matt Clark; Commander Layla DeStaffany; Lieutenant Joel Bell; Sergeant Scott Murphy; Sergeant Scott Hagan; Sergeant Tony Lopez, Jr.; Detective John McGrail; Detective Daniel Andrews; Thornton Police Officer Scott Schilb; Bradley Hansen, Esq., Attorney for Officer Schilb; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle.

