



Second Judicial District
303 West Colfax Avenue, Suite 1300, Denver, Colorado 80204
Phone (720) 913-9000 Email: Info@denverda.org

Decision Letter

May 10, 2000

Contact: Lynn Kimbrough, 720-913-9025

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

RE: Investigation of the shooting of Ralph Baca-Salcido (9 aliases listed), DOB 12-13-56 (5 DOB's listed), (3 Social Security Numbers listed), DPD#367996, by Technician Michael Mosco, 88-27, and Officer Hans Levens, 99-60, on April 30, 2000, at 2425 Irving Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting of Ralph Salcido have been completed, and **I conclude that under applicable Colorado law no criminal charges are fileable against Technician Michael Mosco or Officer Hans Levens.** 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. The complete file of the investigation is open to the public for inspection at our office, and I invite any interested party to review the investigation and my decision in greater detail.

STATEMENT OF FACTS

The statements of citizen witnesses, family members, involved officers and the physical evidence support the facts stated below. A very clear picture of this life-threatening series of events emerges from the totality of the evidence collected by the investigators.

On April 30, 2000, at 1:38:32 p.m., Denver Police dispatch received a 911 call in which the female complainant indicated that "her dad was yelling at her mother / her dad has a knife and he's swinging it at everyone." The 911 operator also indicated "NIF (no further information)

complainant had to hang up.”

At 1:40:33 p.m., immediately after the “hang up,” Technician Michael Mosco and Officer Hans Levens (car 113B), Technician Alfonso Archuleta, 78-44, and Officer Donald Hardy, 99-64, (car 115B), and Sergeant Richard Killough, 79-45, (car 730A) were dispatched to handle this domestic violence 911 call from the family for assistance. At the time the call was dispatched, the four officers in cars 113B and 115B were together handling another call for service. They immediately responded to this call. The domestic-violence confrontation continued as the officers responded. Within minutes of the call for help, the suspect, Ralph Salcido (“suspect”) left the residence in a highly-agitated state. On his way to his vehicle, he waved the Buck knife (later determined to be 9 ¼-inches overall with a 4-inch blade that is 1 3/8-inches wide) and shouted at the family. Family members saw him take a pipe from the vehicle (later determined to be 27 inches long, 1¼ inches in diameter, with duct tape for a grip) and break the back window out of their 1989 black Toyota 4-Runner vehicle, then drive away west-bound down the alley.

The 911 call for help was the culmination of a morning of domestic confrontation, verbal and physical abuse, and violence leveled by the suspect at Mrs. Salcido, her children who tried to intervene to protect her, and their property. According to separate video-taped statements given by Mrs. Salcido and her children, she was in the process of separating from the suspect. She was concerned about the suspect’s excessive drinking, his abuse of her, and the negative impact this was having on their five children. On this date, he had been drinking and became abusive to Mrs. Salcido. He had repeatedly yelled at her, kicked her in the side, tried to choke her to death, threatened to kill her, and pulled a knife and waved it around at everyone. It was at this point that the 911 call was placed. Mrs. Salcido also indicated that he had choked her the prior Thursday. The suspect had also stated that he could not live without her and he would either kill her or kill himself. When they called the police, he said he was not going back to jail. He had earlier in his life been convicted of voluntary manslaughter and received a prison sentence of 7 to 15 years. As he had done in the past, he said they could watch the police come and kill him. Mrs. Salcido indicated that he had previously tried to kill himself. He stabbed himself in the stomach. The wound was serious enough to require surgery and the removal of some internal organs.

A work associate for three months and friend of Mrs. Salcido, Eleanor Sotelo (11-11-52), provided investigators with the following information. Sotelo told investigators that about a month ago Mrs. Salcido showed up at work and her face was all black and blue. Mrs. Salcido told her that her husband beat her up. She said that he threatened to kill her and their children if she ever tried to leave. She said he even threatened to kill the family dog. She said she was very afraid of her husband but was afraid to leave him because he might hurt her or her children. She called Mrs. Salcido on the day of the shooting (April 30, 2000) to see if she was okay because she had missed some work. She was concerned for her well-being. Mrs. Salcido told her that she had been staying at a motel the last few days because her husband had been beating her. She said that morning (April 30, 2000) about 7:30 a.m., her husband had been choking her and pushing her against the wall in their home. She said he had also been pushing around their oldest

daughter, Tiana, who is pregnant. She tried to convince her to call the police. Ten minutes into the conversation her husband showed up. Mrs. Salcido suddenly stated, "He's here, he's here, don't hang up, stay on the phone with me!"

Sotelo could hear Mrs. Salcido's husband screaming in the background. He screamed, "I'm going to kill you, you fucking bitch." It sounded like he was trying to take the telephone away from her. Sotelo could hear the daughter, Tiana, screaming, asking him to stop hitting and kicking her. Someone else then yelled, "He's got a knife!" She then heard him yelling, "Go ahead and call the cops, you fucking bitch! They are going to have to take me out!" The screaming eventually stopped and Mrs. Salcido said her husband had gone out to the alley. Mrs. Salcido said that her daughter had called the police on her cell phone. Mrs. Salcido asked Sotelo to stay on the line. She then told Sotelo that her husband was breaking out the window of her truck. After that she told Sotelo that the police were there and asked her to call back in five minutes. Mrs. Salcido then called her back and said the police had just shot her husband and asked her to come to the house. She then went to Mrs. Salcido's home and later gave this statement to investigators.

At 1:44:12 p.m., Sergeant Killough was the first officer to arrive at 2425 Irving Street. After making contact with the family and receiving some initial information, he advised the dispatcher at 1:45 p.m. that the suspect had left the scene driving a "black 4-Runner, back window broken out, left one minute ago." As the responding officers arrived, Sergeant Killough left in search of the suspect.

At 1:47 p.m., car 113B arrived at the residence. Mrs. Salcido invited Mosco and Levens inside. Soon thereafter, while speaking with the family concerning the suspect's violent conduct and actions, the suspect returned. There was a sense of distress and urgency in his daughter's voice and face as she reported his return.

Mosco and Levens immediately went out the front door to contact the suspect. The officers were inside the fully fenced, elevated, front yard of the residence. The suspect came out of the 4-Runner with a beer bottle in his right hand and the large pipe and knife held in his left hand. Both officers drew their service pistols at this time. Mosco and Levens both commanded the suspect to stay where he was and to drop the weapons. Instead of complying, the suspect began walking from the vehicle toward the entry steps to the front yard. He smashed the beer bottle to the pavement, switched the knife from his left to his right hand, and continued toward the southeast corner access to the elevated, fenced, front yard. The suspect continued his advance on the officers with the pipe and knife held up in an offensive and ready position.

The suspect reached the southeast corner of the yard, then came up the four front steps and through the gate. During this entire time, Mosco and Levens continued shouting commands to stop and drop the weapons. As the suspect entered the yard, the officers began to retreat from south-to-north across the 41-foot yard (approximately 15-feet wide) in an effort to maintain a separation from the suspect. Their weapons were drawn and were trained on the suspect as they retreated. The suspect continued his advance on the officers. He continued to move the pipe and knife around in his hands while holding them up in an offensive and ready position.

During this time, Mrs. Salcido, her daughters, Ebony and Tiana, and her son, Orlando, at various times were in-and-out of the front door and on-and-off the front porch. They were also yelling at the suspect in an effort to get him to stop and drop the weapons. They told him not to do it. They were also shouting at the officers that the suspect was drunk and wouldn't do anything. The suspect was cursing at the officers and family members. Among other things, he indicated that he wasn't going back to jail. This was a statement he had made earlier to his family when they called the police. The suspect advanced on the officers, continuing to hold the pipe and knife up in an offensive and ready position.

In spite of the repeated commands from the officers and the pleas from his family, the suspect did not stop advancing on the officers, and he did not drop either weapon. His actions and demeanor conveyed no sign of compliance or surrender. Mosco and Levens were quickly consuming the remaining retreat ground. The small, fully-contained yard provided no opportunity for cover or escape. They were now within a step or two of the north fence of the yard.

When responding to the scene, Technician Archuleta and Officer Hardy, knowing that Mosco and Levens were at the residence, initially searched the streets looking for the suspect. When Mosco and Levens reported that the suspect had returned to the scene, they immediately responded. They arrived within about a minute or two of Mosco and Levens. As they pulled up they saw the suspect, armed with the pipe and knife, pursuing Mosco and Levens from near the entry gate. They ran to a position along the east fence to parallel the suspect. They yelled at the suspect to drop the weapons. He again refused to comply. When the suspect turned to look at them, they both deployed their canisters of mace at the suspect. Although intended and expected to do so, this intermediate use of force neither caused the suspect to stop advancing nor to drop either of the weapons.

With no cover available, further retreat blocked by the fence, and the threat clearly imminent, Mosco and Levens fired simultaneously. As they are trained to do to defend themselves in these life-threatening encounters, they fired for "center upper-body mass." Mosco fired three shots and Levens fired two shots. The suspect was struck by four of the shots. Three of the wounds were through-and-through. One of the bullets severed his aorta and lodged in his mid-spine.

Witness statements, including those of family members, and the physical evidence, support the conclusion that the suspect was continuing to move towards the officers as the shots were fired. The suspect's daughter, Tiana Salcido, among other things, stated that when her father came into the yard, he kept backing up the officers. He kept walking closer to the officers and an officer outside the fence maced him. She said that when maced her father shook his head and kept walking towards the two officers in the yard. She related her father was waving the knife and pipe. When her father was four or five steps from the officers, he took a big step or a fast step towards them. She related that it appeared her father was going to do something and the officers shot him three or four times. The suspect's son, Orlando Salcido, among other things, stated that his father went up into the yard where the officers were and continued to approach the officers, yelling that he was not going to jail. He said that the officers were trying to talk him out of it, but he didn't listen. Mrs. Salcido stated she heard officers yelling commands at him and her daughter kept screaming, "Dad! Dad! Don't make the officers hurt you." The officers in the yard moved back. The other officers maced him. He then moved his arms. She said she didn't know what he was going to do. She didn't know if he was going to wipe his eyes or what. She said he was swinging his arms because he could not see. She was trying to get her daughters in the house. Then the officers fired.

Technician Archuleta stated that after he maced him, the suspect shook his head, then advanced on the officers. He made a quick thrusting motion towards the officers with both weapons in his hands. The officers were backing up to the fence. Archuleta thought the suspect was going to attack the officers and try to stab them. They could not go back any further and they fired. He said the suspect was very close to the officers when he went down. The officers were telling him to drop the weapons. He said the mace did not appear to affect him.

Officer Hardy stated that when he maced him, the suspect flinched, but it did not seem to have much affect on him. The suspect was 8 to 10 feet from the other officers. The suspect then turned toward Mosco and Levens and kept moving toward them. The officers then fired. The suspect was close enough to the officer, that if he ran at them it would be a split second.

Officer Moneghan stated that when the suspect was maced he quickly closed on Mosco and Levens who could not back up any further. Technician Mosco stated that when maced, the suspect walked faster toward the officers. He felt that he was going to get stabbed, so he fired. Officer Levens said that after being maced the suspect "shook off" the mace and looked at Mosco and Levens. Levens said he was afraid for his partner's and his own life. He said his training taught him that you should not let assailants with knives get within 21 feet of you. He said they were cornered in the yard with the suspect ten to twelve feet away and they were a half step from the fence. He fired two shots.

Consistent with and confirming the witness statements, as he was struck by the shots, the pipe was dropped from his left hand, then a few feet forward the knife was dropped from his right hand, and finally he fell face down to the ground. His movement was forward towards the officers. No more shots were fired. The threat was over. It was approximately 1:53 p.m.

After the suspect went down, Technician Archuleta immediately radioed for an ambulance, "Code 10." Technician Mosco immediately secured the suspect who had fallen right

in front of him. Officer Levens, in response to Mrs. Salcido and family members rushing toward the suspect and officers, ran to intercept and control them. Officer Hardy and Officer Moneghan also moved quickly to control the family members and secure the scene. Sergeant Killough, who had been searching for the suspect, returned to the scene almost immediately after the shooting. He went directly to the location of the suspect, saw that he was bleeding from the mouth, then attempted to stop his bleeding by applying pressure to a bullet wound that he felt. Blood was coming from the wound through his clothes. He applied pressure until paramedics arrived. At 1:54 p.m. the dispatcher was advised, "suspect down make sure ambulance is *still* coming 'Code 10'." The paramedics arrived and took over from the on-scene officers. The suspect was transported to Denver Health Medical Center where he was subsequently pronounced dead.

STATEMENT OF INVESTIGATION

This investigation involves the shooting of Ralph Salcido by uniformed Denver Police Technician Michael Mosco and Officer Hans Levens. The investigation was conducted in accordance with the protocols established for officer-involved shootings.

All five of the officers who were at the scene at the time of the shooting were dressed in Denver Police Department uniforms. At Denver Police headquarters following the incident, each officer's weapon was given to Denver police crime-lab personnel for appropriate testing. Technician Mosco was carrying a Baretta .45 caliber semi-automatic pistol. This firearm has an 8 round magazine capacity and may be carried with an additional round in the chamber. Officer Levens was armed with a Sig Sauer, Model P220, .45 caliber semi-automatic pistol. This firearm has a 7 round magazine capacity and may be carried with an additional round in the chamber. The chambered round and the magazine of Levens' weapon had been removed by Technician Archuleta at the scene. Both Mosco (9 rounds) and Levens (8 rounds) were carrying their weapons fully loaded with Denver Police Department-issued ammunition. After the shooting, Mosco's weapon had 1 live round in the chamber and 5 live rounds in the magazine. He had fired 3 shots. Levens' weapon had 1 live round in the chamber and 5 live rounds in the magazine. He had fired two shots.

Investigators also located five .45 caliber spent-shell casings at the scene. Crime Laboratory firearm examiners tested these spent-shell casings. Three of the spent-shell casings were identified as having been fired from Mosco's weapon and two were identified as having been fired from Levens' weapon. One bullet recovered from the body of the suspect during the autopsy performed by Dr. Thomas Henry, Chief Medical Examiner for the Denver Coroner's Office, was identified as having been fired from Mosco's weapon.

Denver Health Medical Center medical staff determined that the suspect had bullet entrance wounds to the right shoulder, right-side stomach, right-groin area, and center chest. Three of the gunshot wounds were through-and-through. On May 1, 2000, Dr. Thomas Henry performed an autopsy on the body of Ralph Salcido. Dr. Henry indicated that he documented the four gunshot wounds described above, noting that the most medically remarkable of these wounds was the gunshot wound to the shoulder. This wound entered the body near the

collarbone and traveled from front-to-back and right-to-left. The bullet severed the aorta and lodged in the mid-spine. The exit wounds to the three through-and-through shots were to the outer-right thigh, the upper-right buttocks and the lower-left back. Dr. Henry determined the cause of death to be multiple gunshot wounds. He indicated that major blood vessels in the chest and abdomen were severely damaged. The autopsy also revealed that Salcido had only one kidney. The remaining kidney was almost severed by one of the bullets. Dr. Henry also stated that toxicological analyses of blood and vitreous samples obtained from Salcido's body were positive for the presence of ethanol. The blood alcohol level was determined to be .240 grams of alcohol per hundred milliliters of blood. Colorado law establishes a presumption that a person is driving under the influence of alcohol when his blood alcohol level is equal to or greater than .100 grams of alcohol per hundred milliliters of blood.

After the suspect and scene were secured and cover officers arrived, the involved officers were separated and brought to Denver Police headquarters building in accordance with the protocol established for officer-involved shootings. Any interested party is welcome to review the case-file synopsis or to watch any of the video-tape statements in this case in their entirety at our office. All five Denver police officers present at the time of the shooting gave voluntary, video-taped statements. This includes Technician Mosco, Officer Levens, Technician Archuleta, Officer Hardy, and Officer Moneghan. Video-taped statements were also taken from all five family members who were present at the time of the shooting. This includes Nancy Salcido (6-10-61), the wife of the suspect, and her four children, Ralph Salcido, Jr. (10-23-82), Tiana Salcido (11-15-83), Orlando Salcido (4-18-85), and Ebony Salcido (5-26-89).

The following is a synopsis of Orlando Salcido's video-taped statement. Orlando told investigators that his mother told him that his father had tried to choke her to death earlier that morning before Orlando got up. His mother had been living away from the home the past couple of days. She had returned last night. His dad started drinking again. His father had left earlier in the day after assaulting his mother. His dad had come back to the house and was yelling and arguing with his mom. His mom was crying and saying she couldn't take it anymore. His mother told his sister to call the cops. His dad pulled out a knife and open it. He said he wasn't going back to jail. He had been in prison in the past. He then left, got a pipe out of the truck and was waving it and the knife around. He then broke the back window out of the truck and drove off leaving rubber marks. He felt his father was drunk and he could smell alcohol on him. The police arrived soon after that. Orlando said that his mother wanted his dad put in jail. He said she was afraid of him and he was a danger to her. He thinks his father would have choked her and hurt her. The police were there when his dad came back. He looked out the basement window and saw his dad get out of the truck with the pipe and knife in his hands. When Orlando told him to put them down, his father told him to shut his fucking mouth. The officers were telling him to drop the weapons. His dad was saying, "I'm not going to jail." Orlando went upstairs to the front door. His mother, and sister, Tiana, were on the front porch. The officers were in the front yard. His dad was coming into the front yard at that time. Orlando said his dad was cursing and swearing at the officers loudly like he had anger in him. His arms were up with the weapons in his hands. He was going at the officers. The officers were telling him to drop the weapons. He said after the officers maced his dad, he rubbed his face with his forearm. He was taking steps closer to the officers. He thought it was like he was stumbling. He was thinking he did not want his dad to get shot. He knew his dad was going toward the officers with the

weapons raised in his hands. He said the officers were going backward and his father was coming closer to them. He said the fence would have stopped the officers if they tried to move away from his dad. He said the officers probably thought he was swinging at them. He said the officers got back to the fence and didn't have anywhere to go. That is when the officers fired 3 or 4 shots and his dad dropped to the ground. He estimated the distance to be 8 to 10 feet when the shots were fired. Orlando said the family members tried to go out to him, but the officers wouldn't let them. The officers said that they would check him. He said an ambulance then arrived.

An on-scene and a neighborhood survey by investigators produced additional witnesses. The witnesses were primarily ear-witnesses who heard shouting and heard gunshots, but did not see the shooting. The statements of these witnesses are consistent with the statements of witnesses cited in this letter.

Joseph Tem (9-29-83) was an eyewitness to portions of the encounter from his yard at 2500 Irving Street. He gave a video-taped statement to investigators. Tem said he was working in his yard when he saw police cars pull up at 2425 Irving Street. Later, he saw officers with their guns drawn on a man. He thought the officers were telling the man to put his hands behind his head. The man was yelling "fuck you" to the police. The officers repeated their commands. He said the man was swinging a long metal pipe and held the pipe above his head. The officers started spraying him with mace. Then he heard 3 or 4 shots. Then a lot more police and an ambulance came.

Michael Ortega (3-1-84) and Michael Montoya (7-27-84), who are friends of the family were in the downstairs area of the residence at the time of the incident. While they heard the shooting, they did not see the confrontation and shooting itself. They provided written statements to this effect to investigators. Montoya did see the suspect pull up and saw him carrying a bar in his hand as he went out of view toward the front of the house. Ortega had heard the arguing upstairs prior to the suspect leaving. He saw the suspect break the 4-Runner window with a pipe. He did not see the suspect return, but heard the shots. He then went upstairs and saw the suspect on the ground.

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 and causing the death of another human being is generally prohibited as murder in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. As the evidence establishes that Technician Mosco and Officer Levens intended to shoot Salcido, the determination whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes provides that while effecting or attempting to effect an arrest, a peace officer is justified in using deadly physical force upon another person . . . 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 an arrest . . . 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; . . .

Therefore, the question presented in this case is whether, at the instant the officers fired the shots that caused Salcido's death, each officer reasonably believed either that he or another person was in imminent danger of great bodily injury or death, or that Salcido was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for knowingly or intentionally causing the death of another, the state must prove beyond a reasonable doubt that the person doing the shooting either did not really believe in the existence of the requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

Ralph Salcido, with a knife in his right hand and a large pipe in his left hand, chose to methodically advance on the retreating officers, rather than comply with the officers' repeated lawful commands to stop and drop the weapons. Salcido was armed with 9-inch long knife and a 27-inch long metal pipe with a duct-tape grip at one end. These weapons were clearly capable of inflicting serious injury or death on the officers. Salcido presented a serious threat to the officers' lives from the time he entered the front yard of the residence.

The daughter's call for help involved a domestic-violence confrontation that was in progress at the time of the call. The suspect was armed with a knife and was "swinging it at everyone." Dispatchers and officers generally consider these domestic-violence calls to be high-risk activities with a heightened potential for the suspect to employ violence against the officers. While responding to the scene, the officers became aware of information that the suspect had fled from the area. As they approached the area they watched for the described vehicle and suspect.

While debriefing the family concerning the suspect's violent conduct and actions, the

suspect returned. The comments and reaction of the daughter who advised the officers that her father had just pulled into the driveway conveyed a sense of distress and urgency. When the officers went out the front door to contact the suspect, his response further heightened their threat assessment. Rather than fleeing, which is the most common response, he came out of the vehicle with a beer bottle in his right hand and the pipe and knife held in his left hand. Officers know that in domestic-violence confrontations it is not uncommon for there to be an extension of violence focused on the officers when they show up to intervene. Based on their threat assessment of the suspect's behavioral cues, both officers drew their service pistols at this time. They had a heightened sense of risk.

The officers' attempts to de-escalate the encounter through verbal commands to stop and drop the weapons were repeatedly ignored. Rather than showing any sign of compliance, the suspect smashed the beer bottle to the pavement, switched the knife from his left to his right hand, and pursued the officers who were positioned in the elevated, fenced, front yard. To do so, the suspect had to come up the front steps of the yard and through the gate. He had rejected all less-aggressive responses. He had now intentionally entered a zone that made him a direct, deadly threat to the officers. Throughout this encounter the officers were shouting commands to stop and drop the weapons. The suspect continued his advance. The suspect alone had the ability to end the deadly confrontation. He repeatedly made conscious decisions not to do so. The officers' assessment of these behavioral cues continued to increase their concern.

Although fully justified to do so, rather than holding their position and potentially responding with lethal force at this time, the officers chose to retreat in response to the suspect's continued advances. As the officers attempted to maintain distance between themselves and the suspect, the suspect continued to close distance on the officers. With the previously threatened wife and daughters on the nearby porch, the officers were now presented with a dilemma. Continued retreat could pose an increased threat to the suspect's wife and children. The family had been pleading with the suspect to stop and drop the weapons. He had cursed them and rejected their pleas. They were the target of the suspect's earlier threats. If the officers held their ground, a lethal response could be forced at this point. These concerns were in mind as they made the decision not to stop, but rather to continue to retreat in an effort to keep the suspect from closing distance on them, while still insuring he could not suddenly turn on his family. For that reason, and for numerous other physical, logistical, and tactical reasons, attempting to climb over the fence and escape the attack was clearly not an option. Although at heightened risk to their own lives, they were attempting to buy further time to get the suspect to comply with their repeated commands to stop and drop the weapons. The suspect gave no indication of an intention to peaceably end the confrontation. To the contrary, every response and action of the suspect was aggressive and rejected that notion. The suspect did not stop advancing on the officers and he did not drop either weapon. Under the circumstances that existed at that point, with the suspect perilously near the officers, he had gone far beyond the point at which a deadly-force response was permissible under the law. He was well within the zone that posed an imminent deadly threat to the officers. Now, as their avenue of further retreat was quickly diminishing to zero, blocked by the fence that enclosed the small yard and the trees and shrubs that abutted the fence, and poised to defend themselves, it was simply a matter of how much further the officers were willing to risk their lives to avoid taking his.

At this moment, Technician Archuleta and Officer Hardy paralleled the suspect on the street side of the east fence. They both deployed their canisters of mace at the suspect. Although intended and expected to do so, this intermediate use of force as a final effort to gain compliance, neither caused the suspect to stop advancing nor to drop the weapons. While stated in different ways from the varying positions and perspectives of citizen, family, and police witnesses, there are common themes to the suspect's actions after being maced. He continued to move forward. By some accounts more abruptly than before. He continued to hold onto both weapons. His arms and the weapons moved from the up and ready position. The officers were backed to the north fence. Within a couple of seconds of the mace being deployed, the officers fired simultaneously. The suspect dropped the weapons as he moved and fell forward, face down on the ground.

The fact that both officers started firing simultaneously suggests that they perceived the final threat at the same time. The shots were fired in rapid succession. These facts are all consistent with an instantaneous reaction to an immediate and significant threat to life. The officers also perceived the threat had ended at the same time. They stopped firing when Salcido went down and was no longer a threat.

If justified by an imminent threat to their life, officers are trained to shoot for "center upper-body mass" to stop the threat, and they fire until they believe the threat is neutralized. This may take one shot or it may take scores of shots, depending on the circumstances of the case. In the case of knife attacks, which are usually at close quarters, the threat is generally neutralized when the knife is dropped or the attacker either stops the attack or goes down.

The action that takes an armed suspect from threatening to attacking is the closing of distance. Throughout this encounter, the suspect continued to close distance. In these situations, the officer's survival reaction requires him to perceive the threat, make the response decision, and take the response action in the second or split-second before the suspect can initiate the edged-weapon attack. The number of distractions at the scene can slow an officer's reaction time. In this case, the close proximity of the family to the confrontation, their continuous shouting at the suspect and the officers, and concern for their safety were major distractions. Research has shown that an assailant with a knife can cover 21 to 30 feet and strike an officer in about 1.5 seconds. As the distance between the officers and the suspect narrows so does the officer's available response time. The officers' actions in this case were fully compliant with their training related to the use of deadly force to defend against edged-weapon attacks. A police officer has a right to act on reasonable appearances to protect his life or that of another.

Denver police officers and officers across the country receive training in dealing with suspects with "edged weapons." Officers are all too familiar with their vulnerability to serious injury in knife attacks. Four years ago, two Denver officers received serious, life-threatening stab wounds at the hands of a small-in-stature, juvenile burglary suspect who stabbed one of the officers and was shot by that officer prior to him then stabbing the other officer.

The investigation revealed no indication of any ill motive on the part of the officers to do anything except attempt to turn this clearly life-threatening encounter into an uneventful apprehension and arrest. From the beginning to the end, every action the officers took was

directed toward attempting to protect the family and end the armed confrontation peacefully. Every action the suspect took rejected a peaceful resolution and portended a tragic conclusion.

Individuals who intentionally choose to arm themselves with guns, knives or bludgeons, and then threaten and attack police officers, should understand that a lawful, lethal response may result. Officers are not trained to shoot weapons out of the hands of assailants or to shoot to wing or wound assailants. They are trained to shoot for “center upper-body mass” to end the threat as quickly and decisively as possible. This may or may not result in death. These violent confrontations generally look bad to witnesses. Violence in any form is disturbing and unpleasant to see. It is expected to look bad. Where police officers are performing their lawful duty, there is absolutely no right for a suspect to behave as the suspect did in this case. Officers are not supposed to be threatened or attacked by knife- and pipe-wielding assailants. And if there is an armed confrontation with an assailant, the officers have a statutory right to be the clear winners and they should not be injured or killed in the process. In this case, the officers were clearly at great risk from the time the suspect entered the yard.

It is tragic that Salcido chose to be violent with his wife and family. It was not the first time. They are the real victims in this case. You need look no further than Ralph Salcido to lay one-hundred percent of the blame for his own death. By his deliberate, intentional, and possibly suicidal conduct, Mr. Salcido backed the officers into a shoot-to-survive position. It is fortunate that none of the family members or police officers were injured or killed in this potentially life-threatening series of events. While no officer comes to work hoping to encounter a life-threatening situation like this, we trust that they will do as these officers did, and that is to respond professionally to the requests for help from endangered citizens and not fail to respond because the call is high risk or they may be unjustly criticized by those for whom they risked their lives.

I conclude that under applicable Colorado law no criminal charges are fileable against Technician Mosco or Officer Levens. 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.

District Attorney

cc:

Technician Michael Mosco

Officer Hans Levens

Doug Jewell, Attorney-at-Law

Wellington Webb, Mayor

Fidel “Butch” Montoya, Manager of Safety

Deputy Chief Dave Abrams
Deputy Chief Heather Coogan
Division Chief Armedia Gordon, Criminal Investigation Division
Division Chief Dan O'Hayre, Patrol Division
Division Chief Mary Beth Klee, Special Operations Division
Division Chief Steve Allison, Staff Services Division
Captain Tim Leary, Crimes Against Persons Bureau
Lieutenant Jon Priest, Homicide Unit
Detective Don Vecchi, Homicide Unit
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Ben Coats, Chief Deputy District Attorney
Dick Reeve, General Counsel, Deputy District Attorney
Tim Twining, Deputy District Attorney
All City Council Members
Hiawatha Davis, Executive Director, Agency for Human Rights & Community Relations
Justice William Erickson, Erickson Commission

ADDENDUM

GENERIC COMMENT CONCERNING OFFICER-INVOLVED SHOOTINGS IN GENERAL

The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called the “split-second decision to shoot.” It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a “split-second decision to shoot.” The “split-second” decision is generally made to stop a real or perceived threat or aggressive behavior by the citizen. It is this “split-second” time frame which typically defines the focus of the criminal filing decision, not the string of decisions along the way that placed them in the “life or death” final frame. When a police-citizen encounter reaches this “split-second” window, and the citizen is armed with a firearm, or with a knife in relatively close proximity to the officer, the circumstances generally make the shooting justified, or at the least, difficult to prove criminal responsibility under the criminal laws and required legal levels of proof. The fact that no criminal charges are fileable in a given case is not necessarily synonymous with an affirmative finding of justification, or a belief that the matter was handled appropriately from an administrative viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt, unanimously, to a jury.

The Denver Police Department’s Firearms Discharge Review Board’s after-incident, objective analysis of the tactical and strategical string of decisions made by the officer that lead to the necessity to make the “split-second decision to shoot” is perhaps the single most important ingredient in saving lives on both sides of these confrontations. It is clearly not always possible to do so, but to the extent through appropriate tactical and strategic decisions officers can de-

escalate, rather than intensify these encounters, the need for “split-second” decisions will be reduced. Once the “split-second decision” time frame is reached, the risk of a shooting is high. The administrative review of officer-involved shootings is a difficult responsibility and task, but one that, if done professionally and fairly, improves police performance, protects officers and citizens, and builds public confidence in the department. Where mistakes or better approaches are identified, administrative action may be the only way to effect remedial change. The administrative review process provides the greatest opportunity to bring officer conduct in compliance with the expectations of the department and the community it serves. Clearly, the department and the community expect more of their officers than that they simply conduct themselves in a manner that avoids criminal prosecution.

Because of the difference between the criminal, administrative, and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three arenas. While criminal charges may not be fileable in a case, administrative action may be appropriate. The legal levels of proof and rules of evidence which apply in the criminal-law arena are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the “split-second decision to shoot” are most effectively addressed by the Denver Police Department through the Firearms Discharge Review Board process and administrative review of the shooting.

The administrative-review process, which is controlled by less stringent legal levels of proof and rules than the criminal-review process, provides both positive remedial options and punitive sanctions. This process also provides significantly broader latitude in accessing and using information concerning the background, history, and job performance of the involved officer. This type of information may have limited or no applicability to the criminal review, but may be very important in making administrative decisions. This could include information concerning prior officer-involved shootings, firearm discharges, use of non-lethal force, and other conduct, both positive and negative.

There are a variety of actions that can be taken administratively in response to the department’s review of a shooting. The review may reveal that no action is required. Frankly, this is the case in most officer-involved shootings. However, the department may determine that additional training is appropriate for all officers on the force, or only for the involved officer. The review may reveal the need for changes in departmental policies, procedures, and rules. In some instances, the review may indicate the need for changing the assignment of the involved officer, temporarily or permanently. Depending on the circumstances, this could be done for the benefit of the officer, the community, or both. And, where departmental rules are violated, formal discipline may be appropriate. The department’s expertise makes it best suited to make these decisions.

It is clear not every officer will handle similar situations in similar ways. This is to be expected. Some officers will be better than others at defusing potentially violent encounters. This is to be expected. To the degree officers possess skills that enhance their ability to protect themselves and our citizens, while averting unnecessary shootings, Denver will continue to have a minimal number of officer-involved shootings. Denver officers face life-threatening

confrontations hundreds of times every year, yet there are an average of less than ten officer-involved shootings annually. This reflects favorably on the men and women of the department as a whole. Skill in the use of tactics short of deadly force are an important ingredient in violence reduction. Training to guide officers in making judgments about the best tactics to use in various situations, beyond just possessing firearms proficiency, is a key to minimizing unnecessary and preventable shootings. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. This should be a part of the review of every officer-involved shooting, not just to look for what may have been wrong, but also to see what occurred that was appropriate, with the ultimate goal of getting better at what they do.

Ralph Salcido

His Buck Knife

Actual Size



