



**Second Judicial District**  
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## Decision Letter

June 6, 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 Ray William Hagedorn, (seven aliases listed), dob 3/6/62 (five others listed), DPD #256774, FBI #863746T3, by Officer Michael Wyatt, # 97007, on May 25, 2000, in the area of the Denver Trolley tracks and lower Old Colfax Avenue (vicinity of 2560 West Colfax Avenue), Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting of Ray William Hagedorn have been completed, and **I conclude that under applicable Colorado law no criminal charges are fileable against Officer Michael Wyatt.** 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 at the conclusion of the criminal prosecution of Hagedorn, and I invite any interested party to review the investigation and my decision in greater detail.

### STATEMENT OF FACTS

On May 25, 2000, at 12:06 a.m., Denver police officer Ben Aloia (car 635), 88016, attempted to make a traffic stop of a 1979 Subaru station wagon that was traveling the wrong way on East 13<sup>th</sup> Avenue between Broadway and Lincoln Street. The suspect driver, later identified as Ray William Hagedorn, fled in response to the officer's attempt to stop him. Officer Aloia pursued Hagedorn to East 14<sup>th</sup> Avenue and Sherman Street with his emergency equipment activated. Officer Michael Wyatt (car 633A) had just been at a domestic-violence

call with Officer Aloia. He joined the pursuit with his emergency equipment activated. At East 13<sup>th</sup> Avenue and Sherman Street, Hagedorn drove through the stop sign and then continued westbound on 13<sup>th</sup> Avenue. The suspect reached speeds of 60 to 65 mph on 13<sup>th</sup> Avenue. The suspect ran both red lights at Speer Boulevard, the red light at Kalamath, and the red light at Mariposa Street. At West 13<sup>th</sup> Avenue and Shoshone Street the suspect turned off his lights. At the intersection of West 13<sup>th</sup> Avenue and Decatur Street, Hagedorn jumped over the curb and entered Denver's Rude Park. Hagedorn drove across the park to a bridge that connects the park to a bicycle path along the creek. Officer Aloia pursued Hagedorn down the bicycle path to the point it reaches the South Platte River. The pursuit then went northbound on the bicycle path along the South Platte River to its intersection with lower Old Colfax Avenue. Hagedorn then drove off the bicycle path onto lower Old Colfax Avenue where he ran over a wooden pole. He was stalled briefly and Officer Aloia was able to pull up behind Hagedorn in an effort to block him from backing up.

Officer Wyatt had also been in pursuit of Hagedorn. He pulled to the north curb of lower Old Colfax Avenue and got out of his marked police car. Officer Wyatt quickly approached the vehicle while Hagedorn continued to attempt to free his vehicle from the pole. As Officer Wyatt approached toward the driver-side window, which was open about 6 inches, he ordered the suspect to turn off his engine. When the suspect refused, Officer Wyatt attempted to open the door, but it was locked. Officer Wyatt then broke the window with the butt of his gun and reached inside in an effort to apprehend Hagedorn. At this moment, the suspect freed his vehicle and made a sharp left turn into Officer Wyatt. Officer Wyatt fired a single shot. At 12:10 a.m., Officer Wyatt radioed that the shot had been fired.

Hagedorn fled in a continued effort to escape. He drove back onto lower Old Colfax Avenue, then went eastbound. Officers Wyatt, Aloia, and Daniel O'Bannon, 95009, continued the pursuit. At 7<sup>th</sup> and Walnut Streets, Hagedorn entered an Auraria Campus parking lot. He attempted to elude the officers by driving over medians and in large circles. Eventually he returned to 7<sup>th</sup> and Walnut Streets and drove northbound on 7<sup>th</sup> Street towards the Pepsi Center.

At this time, Officer Aloia was given permission by Sergeant Tim Rusk to use extraordinary means to stop the suspect from leaving the Pepsi Center parking lots. Officer Aloia then rammed Hagedorn's vehicle. The vehicle swerved and then flipped over. The pursuit was over.

Denver officers took Hagedorn into custody. It was 12:12 a.m. when the officers informed radio dispatch that the accident had occurred and an ambulance was needed. He was transported to Denver Health Medical Center where he was treated for a single through-and-through gunshot wound to the right arm. Doctor Brister indicated that Hagedorn received no serious injuries.

It was later determined that in addition to his criminal conduct in this incident, Hagedorn was wanted for parole violation warrant #61947 and for an Arapahoe County traffic warrant #00W5035. Hagedorn was held on the warrants and for investigation of assault to a police officer. On May 30, 2000, Hagedorn was formally charged with Assault in the First Degree (To a Police Officer), Vehicular Eluding, and felony Menacing.

## STATEMENT OF INVESTIGATION

This investigation involves the shooting of Ray Hagedorn by uniformed Denver Police Officer Michael Wyatt. The investigation was conducted in accordance with the protocols established for officer-involved shootings. Based on the totality of the facts developed in the investigation of this incident, there are no significant disputes as to what occurred.

After the suspect and scene were secured and cover officers arrived, the involved officers were separated and brought to the Denver Police headquarters building in accordance with the protocol established for officer-involved shootings. Sergeant Vince Lombardi transported Officer Wyatt. Officers Michael Wyatt, Ben Aloia, and Daniel O'Bannon gave voluntary video-taped statements to investigators. 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.

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, Officer Wyatt's weapon was given to Denver Police crime-lab personnel for appropriate testing. Officer Wyatt was armed with his Sig Sauer, model 226, 9mm semi-automatic service pistol. This weapon has a 15-round magazine capacity and was being carried with an additional round in the chamber.

Investigators located a 9mm shell casing at the scene. Crime laboratory firearms examiners identified it to Officer Wyatt's pistol. The bullet fragment investigators recovered from the right front door "kick panel" of Hagedorn's 1979 Subaru was too damaged for comparison purposes.

Denver Police Department records indicate that on November 24, 1999, Hagedorn registered as a parolee with the Denver Police Department. His file contains a telex indicating that he was being sought as a parole violator at the time of this incident. A note in the telex states, "Caution – violent tendencies. Caution parole violator assaultive."

Denver Police radio call-card notes indicate that car 635 radioed that he is either attempting to contact or is following a car with possible Colorado license PAG3509. The time was 12:06 a.m. The officer continues to call out the pursuit, noting speeds of up to 45 mph on residential streets (13<sup>th</sup> & Osage). At times the suspect is going the "wrong" way down the street. Later, the accident is called out and an ambulance is requested at 12:12 a.m.

After the accident that ended the pursuit, Hagedorn was transported to Denver Health Medical Center where Dr. Brister determined that the suspect did not suffer serious bodily injury. Hagedorn suffered a minor through-and-through gunshot wound to the right arm. The entry and exit wounds were less than an inch apart in the fleshy inside area of the upper-right arm. This is consistent with the single shot fired by Officer Wyatt and the bullet recovered from the right front door "kick panel" of Hagedorn's Subaru.

In his voluntary video-taped statement, Officer Wyatt's description of the chase is consistent with the "Statement of Facts" in this letter. Officer Wyatt said that when he saw the suspect attempting to free his vehicle after being briefly stopped by the pole, he drew his weapon

as a precaution. As he approached the driver's side window, which was open about 6 inches, he ordered the suspect to turn off his engine. The suspect refused and Officer Hagedorn attempted to open the door, but it was locked. He then broke the window with the butt of his gun. He reached inside in an effort to apprehend the suspect. At this moment, the suspect freed his vehicle and made a sharp left turn into Officer Wyatt. Officer Wyatt stated that he believed that the suspect was going to drive into him in an attempt to flee the situation. Feeling he was in "imminent danger," he fired a single shot at the suspect. The suspect ducked down in the seat, continued to turn left, and made his escape. Officer Wyatt, in response to a question from investigators, indicated that when he got out of his police car his police baton fell out on the ground next to his car. This is the reason he used his gun to break the car window.

In his voluntary video-taped statement, Officer Aloia's description of the chase is also consistent with the "Statement of Facts" in this letter. Officer Aloia said he saw Officer Wyatt on foot approaching the suspect vehicle by the driver's side window. As he was approaching, the suspect started to get the vehicle free. As the car got free, he spun to the left towards Officer Wyatt and attempted to run over him. Officer Aloia said that Officer Wyatt was yelling something at the suspect, but he could not hear it because of the sirens and radio talk. He said Officer Wyatt was trying to move out of the way of the suspect's vehicle when he fired the single shot at the suspect. The suspect then continued to flee. Officer Aloia stated that after the accident he got the suspect out of the vehicle and checked him for weapons. He found drug paraphernalia in his pants pocket: two syringes and a cooking spoon. When asked by Officer Aloia why he didn't just stop, he stated that he was wanted for escape and was under suspension.

After giving a Miranda advisement, Detective Bart Malpass interviewed Hagedorn at Denver Health Medical Center. Hagedorn stated that he was going the wrong way on a one-way street when officers attempted to stop him. He said he intended to slow down by braking, but hit the gas pedal instead. He felt the officers probably thought he was running so he decided to try and get away. Hagedorn said that at one point in the park he was approached by an officer who told him to stop. He said the officer then broke out the driver's side window with the butt of his gun, then shot him. He said he then drove away and was eventually struck by one of the pursuing police vehicles. Hagedorn said he had outstanding warrants for a parole violation related to a criminal trespassing conviction. He was also wanted on a warrant for Eluding Police Officers and Reckless Driving.

The following is a synopsis of a statement given by Michael Conway. Conway told investigators that he was leaving the Conoco Station near Auraria Parkway about 12:10 a.m. when he heard sirens and saw several police cars chasing a vehicle through an Auraria Campus parking lot. The vehicle was attempting to force the police vehicles out of the way while leaving the lot. When the vehicle crossed 7<sup>th</sup> Street, the driver tried to ram a police car. He said that after impacting with a police car, the suspect vehicle flipped. The officers then took the suspect out of the driver's side door and cuffed him.

## **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 injury to another human being is generally prohibited as assault in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. As the evidence establishes that Officer Wyatt intended to shoot Hagedorn, the determination whether his conduct was criminal is primarily a question of legal justification.

Colorado Revised Statutes, Section 18-1-707 states the law concerning “justification and exemption from criminal responsibility. It states as follows:

18-1-707            Use of physical force in making an arrest or in preventing an escape.

- (1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate **physical force** upon another person when and to the extent that he reasonably believes it necessary:
  - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
  - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.
- (2) A peace officer is justified in using **deadly physical force** upon another person for the purposes specified in subsection (1) of this section only when he reasonably believes that it is necessary:
  - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
  - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
    - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
    - (II) Is attempting to escape by the use of a deadly weapon; or
    - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Section 18-1-901 of the Colorado Revised Statutes defines “**deadly weapon**” as 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. Therefore, a vehicle could be considered to be a deadly weapon if intentionally used in an effort to seriously injure or kill a citizen or police officer.

Section 18-1-901 of the Colorado Revised Statutes defines “**deadly physical force**” as force the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death. Therefore, under Colorado law, Officer Wyatt, by definition, only used “**physical force**,” because the shot he fired wounded but did not kill Hagedorn.<sup>1[1]</sup>

Therefore, the question presented in this case is whether, at the instant Officer Wyatt fired the shot that caused the injury to Hagedorn, Officer Wyatt reasonably believed that he or another person was in imminent danger of serious bodily injury or death. In order to establish criminal responsibility for knowingly or intentionally causing the injury 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

There is no material dispute concerning the facts of this case. Officer Wyatt stated that he fired the single shot to protect himself because he feared for his safety as a result of what he perceived to be Hagedorn’s attempt to strike him with his car. Hagedorn’s vehicle could be considered to be a deadly weapon under Colorado law, because in the manner it was being used by Hagedorn it was capable of producing serious bodily injury or death. There are no witnesses who dispute Officer Wyatt’s account and there is no other evidence to the contrary. The physical evidence is consistent with Officer Wyatt’s statement. Officer Wyatt’s statement is also consistent with the citizen witness and the other officer witnesses. The issue is not whether every officer would have fired under the facts and circumstances of this case, but rather, whether criminal charges would have been fileable had they done so.

From beginning to end, Hagedorn’s conduct was aggressive, non-compliant, and reckless. He had every opportunity to comply with the officers’ lawful right to stop him. During his flight, he placed the officers and numerous citizens at risk by his behavior. By his own admission, he had a criminal motive for attempting to elude the officers. When his vehicle became stuck on the pole, rather than complying with Officer Wyatt’s commands to stop and surrender, he broke free and intentionally turned at Officer Wyatt. Based on Hagedorn’s behavior that preceded this, Officer Wyatt believed he was attempting to run him down. In

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response to this perceived vehicular attack, Officer Wyatt fired a single shot. Under the circumstances that faced him at that instant, an intermediate weapon response was not available in that split-second time frame. Confirming his intent to escape at any cost, even after being shot, Hagedorn led officers on a further high-risk pursuit until extraordinary means were used to end the chase. Based on Hagedorn's conduct throughout this incident, it was reasonable for Officer Wyatt to believe that Hagedorn was attempting to injure him at the time he fired the shot. We clearly could not disprove this beyond a reasonable doubt, which would be our burden if criminal charges were filed.

**I conclude that under applicable Colorado law no criminal charges are fileable against Officer Wyatt.** 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:

Officer Michael Wyatt  
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 Dave Neil, Homicide Unit  
Chuck Lepley, First Assistant District Attorney  
Lamar Sims, Chief Deputy District Attorney  
Dick Reeve, General Counsel, Deputy District Attorney  
Doug Jackson, Chief Deputy District Attorney  
Eric Perryman, Chief Deputy District Attorney  
All City Council Members  
Phil Hernandez, 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 strategical 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.

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