



Second Judicial District
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Decision Letter

May 31, 2001

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 Joseph
Martinez, DOB 9/9/73, D.P.D. #462857, by
Officer Andrew Raiser, 99-58, on April 8, 2001
at 2749 King Street, Denver, Colorado

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Joseph Martinez have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officer Andrew Raiser. 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 addressed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this shooting by a peace officer and the applicable Colorado law is attached to this letter. The complete file of the investigation will be open to the public at our office and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

On April 8, 2001, at approximately 4:10 a.m., uniformed members of the Denver Police Department entered the house at 2749 King Street, Denver, Colorado, in pursuit of a suspect in two separate assaults arising out of domestic disputes that had occurred earlier in the morning. The officers followed the suspect, Joseph Martinez, into a short hallway. The officer closest to Martinez, Officer Raiser, moved in to place Martinez in an arm lock and then saw that Martinez was holding a steak or kitchen-type knife. The officers had no prior notice that Martinez had armed himself. Raiser saw the knife, pushed himself back from Martinez, and yelled "knife!" or "he has a knife!" Martinez dropped the knife when Raiser pushed away from him, but immediately stooped and retrieved it. Raiser heard Martinez say "you're gonna have to shoot

me," and saw him raise the knife to about chest height. Raiser then saw Martinez lean forward with the knife raised. Based on this series of non-compliant behavior and aggressive actions and words, Raiser concluded that he and the other officer near him in the hallway were in immediate grave danger. Raiser had drawn his handgun after he pushed off of Martinez and when Martinez leaned forward with the knife raised, Raiser fired his service pistol twice. Martinez took one or two steps back and fell to the floor. Emergency medical assistance was requested immediately and Martinez was taken by ambulance to Denver Health Medical Center. He was pronounced dead at the hospital.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Joseph Martinez, by uniformed Denver Police Officer Andrew Raiser. Officers had twice previously been called to a single family home at 2749 King Street where Martinez was alleged to have first assaulted his wife or girlfriend and later returned and assaulted a family friend, fleeing after each assault. Following the second assault, Officers had suggested to Martinez's wife, Delores Archambault, that if Martinez called, she should attempt to convince him to return to the house. To this end, officers had established surveillance points near the house. At approximately 4:10 a.m., Martinez returned to the home. Officers saw him approaching the front door and attempted to intercept and apprehend him before he entered the residence. Martinez made it inside with the officers in close pursuit. Officer Rodney Romero, 00-13, Officer Danier Clark, 00-21, and Officer Raiser followed Martinez into the home. Raiser and Romero followed Martinez into a short hallway. Martinez, armed with a knife, turned and confronted Raiser. Raiser shouted a warning to the other officers that Martinez had a knife. Martinez dropped the knife and immediately picked it up and raised it to chest height. Martinez then stated "you're gonna have to shoot me! " At this point, the distance between Raiser and Martinez was no more than three feet. Martinez moved in such a fashion that Raiser believed that he and the other officers were about to be attacked, and Raiser fired his service pistol twice. Immediately after Raiser fired his weapon, the police dispatcher was advised that an ambulance was needed and that an officer-involved shooting had occurred. This call was made at 4:12 a.m. Martinez was taken into custody and taken by ambulance to Denver Health Medical Center and treated for his gunshot wounds. Despite the efforts of the medical staff, Martinez succumbed to his wounds and was pronounced dead at 4:32 a.m.

All three of the officers who followed Martinez into the house were dressed in full blue Denver Police Department uniforms. Raiser was armed with a Glock, model 21, .45 caliber semi-automatic pistol. This weapon has a magazine capacity of thirteen rounds and may be carried with an additional round in the chamber. At the time of the incident, Raiser's weapon was fully loaded with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, Raiser's weapon was secured by the Denver Police Crime Lab personnel for appropriate testing.

On April 11, 2001, Dr. Thomas Henry, chief medical examiner for the Denver Medical Examiner's office, performed an autopsy on Martinez's body. The cause of death was determined to be multiple gunshot wounds. Dr. Thomas documented two gunshot wounds. The

first wound was to Martinez's upper left chest. The bullet entered the body 13.5 cm (about 5.3 inches) left of the midline. This bullet fractured a rib at the junction of the sternum, and then passed through the sternum and the right lung. This bullet was recovered from the back of Martinez's upper right arm. The second wound entered the body just above the left nipple and 11cm (about 4.3 inches) left of the midline. This bullet entered the left chest, perforated the left lung and then passed through the heart, causing extensive damage to that organ. The bullet was recovered from the "subcutaneous" tissue of the right back. Both bullets were retained for comparative analysis by the Denver police crime lab. Toxicological analyses of blood and urine samples obtained from Martinez's body were positive for the presence of ethanol, cocaine and cocaine metabolites. The blood-alcohol level was determined to be .161%. The blood-cocaine level was 49 nanograms per millileter (ng/ml); the blood-benzoylcegonine level (a cocaine metabolite) was found to be 804 ng/ml. Of note, in light of witness statements describing Martinez's earlier assaultive behavior, was evidence of bruising found on the back of Martinez's right thumb, index and middle fingers.

Investigators found two spent .45 caliber shell casings in the hallway area at 2749 King Street in areas consistent with the location of the incident as described by Raiser and the other witnesses. These shell casing were identified to Raiser's pistol by Denver Police Crime Laboratory firearms examiners. Two bullets were recovered from Martinez's body at autopsy. These slugs were tested by the Denver Police Crime Laboratory firearms examiners who determined that they had been fired from Raiser's pistol.

After the shooting, Raiser maintained his position with his weapon trained on Martinez until paramedics and additional cover officers arrived. Raiser did this because Martinez was still moving slightly and, although he believed that Martinez had fallen on the knife, Raiser was unsure of its location. When the paramedics arrived, Raiser and Romero rolled Martinez back, and Romero moved the weapon out of Martinez's reach. After Martinez was taken to the ambulance, Romero placed the weapon near the location from which he had taken it so that investigators could complete their scene investigation. This knife was recovered by crime scene investigators and placed into the Denver Police Property Bureau. During the course of the investigation, it was inspected, measured, and determined to have a blade length of 4 ½ inches and an overall length of 8 5/8 inches

At the time of the shooting, there were six adults and several small children in the house. The adults were identified as Delores Archambault, 2/7/77, Elaine Archambault, 6/26/82, Janice Archambault, 1/11/51, Micco Fobb, 2/4/76 and Rene Smith, 11/3/70. Each witness agreed to respond to Denver Police headquarters and each witness provided a video-taped statement (Fobb provided two statements, providing numerous details in his second statement that he had been reluctant to provide at first). A party named Manuel Catches, 10-5-76, was identified by several of the citizen witnesses, and the officers who had been at the house following the earlier domestic incidents, as the person whom Martinez had punched in the face. This assault had taken place at about 3:30 a.m. Denver Police Computer Aided Dispatch (CAD) reports confirm that police and paramedics had been called to this incident and that Catches was transported to St. Anthony's Central hospital where he was treated for a possible broken nose. He was not present at the time of the shooting, but in view of his role in the earlier incident, investigators sought him out. He was located and he, too, agreed to provide a video-taped statement at Denver Police

headquarters.

After covering officers arrived, and in accordance with the protocol for officer-involved shootings, Officers Romero and Clark were instructed not to discuss their actions with other officers at the scene. A supervisor took them to Denver Police headquarters where they each provided video-taped statements regarding their respective roles in the incident.

Also, following the shooting, and in accordance with protocol, Officer Raiser was separated from the other witnesses and was separately transported downtown by an uninvolved supervisor. Raiser was given an opportunity to speak to his attorney and then voluntarily provide a video-taped statement concerning his role in the incident.

There is no dispute regarding the assaults which preceded the shooting, nor are there questions regarding the salient facts surrounding the shooting. As noted earlier, there were several people at the home at 2749 King Street in the early morning hours of April 8, 2001. Present were the residents Janice Archambault, Elaine Archambault, Delores Archambault, Joseph Martinez, relatives and friends of the Archambaults identified as Manuel Catches, Micco Fobb, Renee Smith, and several small children (because so many of the witnesses have the same surname they will be referred to by their first names). The children were sleeping; the adults were watching television and drinking beer. The witnesses all agree that Martinez and Delores Archambault ("Delores") were arguing. Martinez struck Delores in the face, she fell to the floor, and he struck her in the legs with either his fists or his feet. Fobb and Smith had been resting in the northwest bedroom, but Fobb heard the sounds of struggle and went to the living room area and pulled Martinez off of Delores. (Fobb, in his first statement, states that he slept through all of the relevant events and was awakened by the gunshots. In a second interview, when confronted with facts learned by investigators after talking with other witnesses, he admits his role in this first altercation. To the extent that statements attributed to Fobb are mentioned in this letter, they will be based upon his second interview.) Elaine confirmed Fobb's actions, stating that she had gone to bed but arose and went into the living room when she heard a banging noise. In the living room, Elaine saw Fobb pulling Martinez off of Delores. She assisted in separating the two. Once Delores was freed from Martinez's grasp, she grabbed the telephone and made a 911 call. As she was doing so, Martinez left the house, taking her car.

Clark and Raiser were the officers who responded to this initial call. The officers spoke with Delores who related those facts set forth in the paragraph above. After determining that Delores would sign a complaint, the officers completed the paperwork for a "GW" [city charge] warrant and a domestic violence summary report. Raiser told investigators that, among the statements Delores attributed to Martinez, were threats that he would "stalk her," and that he would kill her. As they were taking the report, Raiser told Delores that, if the suspect returned, she should again call 911 and simply leave the telephone receiver off the hook.

Denver 911 operators received another call to the King Street address at 3:24 a.m. The CAD reports noted that the operator "could hear commotion in the background between a possible male and female." The records also disclose that the call taker could hear a baby crying in the background, but "still no one responding // line is open." The next notation indicates:

"Elaine picked up and said her sister Delores had called earlier about [boyfriend] fighting at [the location] and had gone when officers arrived. Suspect, Joey Martinez, punched [complainant's] friend in the nose and it is broken."

Officer Romero was dispatched to the call. Romero told investigators that after he advised the dispatcher that he was responding, patrol cars 131 and 132 (Clark and Raiser) each advised the dispatcher that they, too, would respond as they had a "GW warrant" signed on a party who had been involved in the earlier dispute. CAD records indicate that officers arrived at the house at 3:29 a.m. and, immediately upon their arrival, requested an ambulance, "code 10," for the party with the broken nose. This call was made at 3:30 a.m. A couple of minutes later, after speaking with the people in the house, one of the officers told the dispatcher that the suspect was driving a turquoise Dodge Colt and that the vehicle was stolen. (This last report was based upon the fact that the car belonged to Delores and she had not given Martinez permission to take it when he left).

Upon their arrival, the officers determined that, after Martinez left following the first incident, Martinez had started calling the house. Delores advised him that she had signed a restraining order, but Martinez persisted in calling. Finally, he returned to the house. Manuel Catches told investigators that he had remained in the living room because he believed that Martinez would return. When Martinez returned, Catches confronted him and told him that he could not remain at the house. Catches attempted to place Martinez in a "bear hug" and escort him from the house. Catches told investigators that he pushed Martinez out the front door and Martinez turned and punched him in the face. Martinez then fled the scene, again. Most of the adults present saw this altercation or the immediate aftermath. As Janice described it, "Joey socked Manuel right in the face -- Manuel didn't even get a chance to fight." Paramedics examined Catches and transported him to St. Anthony's Central Hospital.

Based on Martinez's prior actions, the officers decided to wait for a while to see whether he would return or telephone again. He did call again. Romero had taken Delores to his patrol car so that he could obtain information from his computer regarding the car in which the suspect had fled. While they were at the police car, Raiser called Romero from inside the house, stating that the suspect was calling the house. He asked Romero to bring Delores back to the house. Delores went inside, picked up the telephone, and told Martinez "I didn't call the police, they're not here, just come home." She told Martinez this as she was cooperating with the officers in an attempt to get Martinez placed in custody.

Martinez made several calls to the house. The officers listened in on some of the calls and heard Delores encouraging Martinez to come home. The evidence suggests that Martinez returned to the area at one point as, in one of the telephone calls, he told Delores that he could see that police were still at the house. She told him, in response, that there had been some kind of shooting incident down the block and that was the reason there were a number of police cars in the area. Delores told investigators that in one of the telephone calls, Martinez told her that he had armed

himself with a knife and that if he arrived and the police were there "I'm gonna stick myself in the chest." She also stated that she did not provide this information to the police officers (it appears that this statement was made in a call after the police officers left the house).

Romero, Clark, and Raiser decided that it was likely that Martinez would return and they determined to set up surveillance on the house and apprehend him when he returned to the neighborhood. Romero drove his police car to a position in the alley behind the house; Clark and Raiser removed their cars to a location at 27th between Lowell and King Streets. A few minutes after 4:00 a.m., Romero saw a car fitting the description of the suspect's car drive towards the house. Romero pulled out of the alley and followed. As he did so, he advised Clark and Raiser that he believed the suspect was returning to the house. Clark and Raiser each returned to the house, arriving shortly after Romero.

Romero used his car loudspeaker to order Martinez to stop. Martinez did not respond but proceeded into the house at a "slow jog -- fast walk." Romero got out of his car and ran into the house behind the suspect. When Romero entered the house, he turned left toward the living room and dining-room area. Romero noted that there were lights on in the living room and that the lighting was adequate. He did not see the suspect and he started asking, "Where is he? Where is he?" A female party, sitting on a couch, directed Romero's attention toward the bedroom area. When Romero turned, he saw Raiser and Clark in the hallway area. Romero told investigators, "It looked like there may have been contact, I'm not sure, between Raiser and the suspect." (In follow-up questions, Romero stated that it appeared that Raiser was either attempting to grab the suspect or had grabbed him momentarily). Romero was about 25 feet from Martinez, but Martinez was standing partially behind a corner. Romero believes that Raiser was no more than 3 feet from the suspect (he used the words "arm's length") and Clark, no more than 4 feet away from Martinez. Romero then heard Raiser say, "He's got a knife! He's got a knife." Romero had lost sight of Martinez during this time and was not in a position to see all of the suspect's actions or motions before the shots were fired, but he told investigators that he did see the suspect crouch down at the same time he heard Raiser say "he's got a knife." Romero saw Raiser step back and draw his gun. Romero believes Raiser then said, "Drop the knife," and then he heard two shots. Romero indicated that the shots came within 5 seconds of the last warning.

When the three officers entered the house, Elaine, Delores and Janice were in the dining area watching television. From this room, they were unable to see the actual shooting incident. Elaine told investigators that, first, Martinez walked in the house and said, "Delores." He walked straight to the back room and said, "Delores," again. She heard "a light flick on. About 30 seconds later the police came in -- they didn't knock, they just came in." She stated that one officer walked into the dining room and asked where the suspect was and she directed his attention to the back area. She heard Martinez make a sound she described as either a kind of grunt or cough and then she heard three gunshots. Janice told investigators that she, too, was sitting in the dining room. She stated that when she heard the sound of a police radio she realized that police had arrived. When she heard the radio, she got up, took a quick look around the corner into the living room area, and then returned to her seat in the dining room. She stated that about ten seconds after she heard the radio noise she heard gunshots.

Delores told investigators she was sitting on a couch in the dining room when Martinez "pushed

open the [front] door." She did not see the ensuing events, but heard people come running in to the house behind him. She stated that she then heard someone yell "He's got a weapon! He's got a knife!" She then heard some "rustling" noises, as if someone was moving quickly, after which she heard three gunshots.

Fobbs and Renee Smith were resting in the northwest bedroom. Smith told investigators that she heard Martinez open the bedroom door and turn on the light. She looked up and saw Martinez, but was unable to see his hands. She stated that after he turned on the light switch, Martinez turned around toward the door (so that he was facing the hallway). Smith heard someone say "he's got a knife." She then heard two gunshots. She estimated that about 30 seconds elapsed from the time Martinez turned on the light in the bedroom until she heard the gunshots. Fobbs told investigators that he heard footsteps and then heard a person say "he's got a knife, drop it!" Two or three seconds after he heard that warning, Fobbs heard gunshots.

As noted above, Raiser and Clark followed Romero into the house. When Romero turned to the left, Raiser and Clark took a few steps straight ahead and then turned into the hallway on the right. The hallway is a very small area. Martinez stopped at the northwest bedroom door (where Smith heard and saw him). Raiser stopped behind him, reached out and started to grab Martinez's arm in order to take him into custody. None of the officers were aware that Martinez was armed with a knife when they followed him into the house. Clark told investigators that when he entered this hallway area, he saw Raiser was facing Martinez, no less than three feet away from him. Clark took a position behind Raiser.

Raiser told investigators that when he entered the hallway, he saw Martinez standing at or near the northwest bedroom door with his back to Raiser. Raiser was able to see that the door to that room was open and there was light emanating from that room. Raiser stepped forward to grab Martinez's left arm and, as he did so, he recalled saying something to the effect of "Denver Police! Let me see your hands!" Raiser, as he moved in to grab Martinez's left arm, for the first time saw that Martinez was holding a knife in his right hand. He yelled to the other officers, "He has a knife!" and started to back up by pushing off of Martinez. As he did so, Martinez dropped the knife to the floor and immediately stooped, picked it up, and held it raised in his right hand to chest height. Raiser heard Martinez say, "You're gonna have to shoot me." Raiser told investigators that Martinez leaned forward and Raiser believed that Martinez was going to stab Officer Clark, who was next to and behind Raiser. At this point, he drew his service pistol and fired twice. He estimated that he was approximately 3 feet away from Martinez when he fired the shots.

The suspect fell and Raiser held him at gunpoint. Raiser also advised the police dispatcher that he had been involved in a shooting and that an ambulance was needed "code 10." As Raiser took these actions, Romero approached and looked around the corner into the bedroom. He saw two people back in the room and heard Raiser yelling at them to stay put. Clark moved back into the living room in order to keep the witnesses back and out of the crime scene. The scene was thus secured until additional officers arrived and took control of the scene.

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 killing another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. As the evidence establishes that Officer Raiser shot Martinez, the determination whether his conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes reads as follows:

1. A peace officer is **justified** in using **deadly physical force** upon another person ... only when he reasonably believes that it is necessary:
 - a. **To defend** himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - b. **To effect the arrest or to prevent the escape** from custody of a person whom he reasonably believes:
 - 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 Officer Raiser fired the shots that caused Martinez's death, he reasonably believed, either that Martinez was about to direct deadly physical force toward him or another, that Martinez had just committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or, finally, that Martinez 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 or bodily injury to 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 all available facts, unreasonable.

CONCLUSION

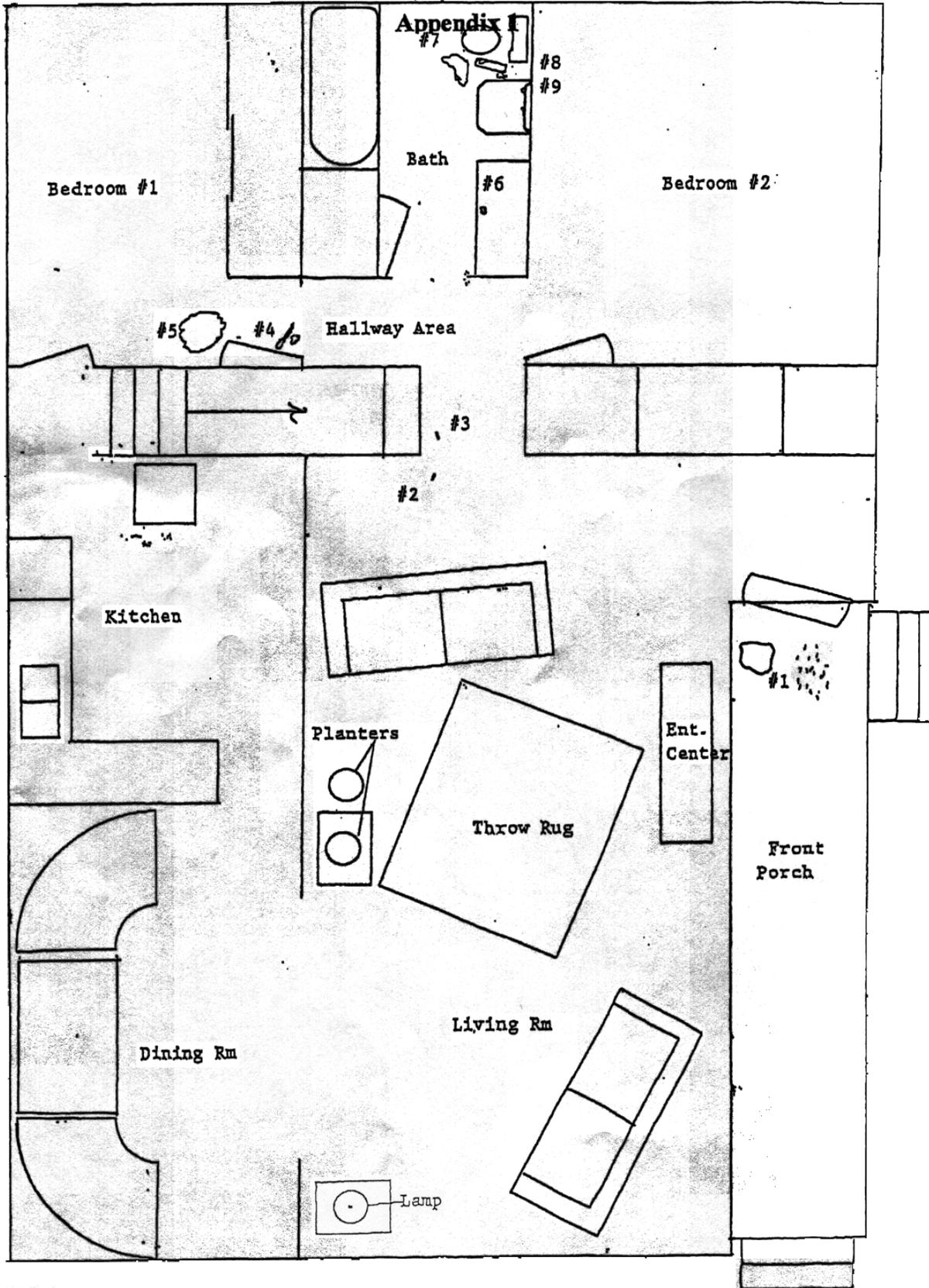
Based on the totality of the facts developed in this investigation, as summarized in this letter, there is no reasonable likelihood of proving beyond a reasonable doubt that Officer Andrew Raiser committed any criminal act. In fact, there are three distinct affirmative defenses available to Officer Raiser to justify his actions. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against Officer Raiser.

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 Off. Andrew Raiser
: Tina Hobbes, Esq.
Wellington Webb, Mayor
Aristedes Zavaras, Manager of Safety
Dave Abrams, Deputy Chief
Mary Beth Klee, Deputy Chief
Dan O'Hayre, Division Chief
Armedia Gordon, Division Chief
Steve Cooper, Division Chief
Juan Maldonado, Division Chief
Tim Leary, Captain, Crimes Against
Persons Bureau
Jon Priest, Lieutenant, Homicide
Martin Vigil, Detective, Homicide
Chuck Lepley, First Assistant District
Attorney
Lamar Sims, Chief Deputy District
Attorney
Mitch Morrissey, Chief Deputy District
Attorney
Dick Reeve, Deputy District Attorney,
General Counsel
Justice William Erickson, Erickson
Commission
All City Council Members



To Scale

Footnotes:

1. A diagram showing the layout of the house is attached as Appendix 1.
2. "Code 10" is the designation used in Denver Police and Emergency service radio communications to signify that response should be with full emergency equipment (lights and siren)."
3. Although these witnesses indicate they heard three shots, the physical evidence confirms the fact that only two shots were fired.