



Second Judicial District
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Decision Letter

September 7, 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 death of
Hakijah
Ogbonna Ector, 3-6-77, by Denver Police
Officer
Richard Spence, 94-31, on July 18, 2001, at
3394
Ivy Street, Denver, Colorado.

Dear Chief Whitman:

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

SYNOPSIS

At 8:07 p.m., Wednesday, July 18, 2001, Denver police were called to the area of 33rd and Ivy Street on a shooting. The caller advised the 911 operator that a man had been shot in the stomach and that the gunman was still at that location. The first officers on-scene, Officers Keith Cruz, David Naysmith and Richard Spence, arrived at about 8:12 p.m. Cruz approached from the west; Naysmith and Spence from the east. The police dispatcher had provided a description of the shooting suspect and, upon their arrival, all three officers saw a party matching that description, standing in front of another male seated on the front steps of 3394 Ivy Street. The seated individual appeared wounded and both men were wrestling over a gun. Spence and Naysmith approached the two men and Spence asked one of the men, later identified as Maurice Knox, whether the man standing in front of him, later identified as Hakijah Ector, was the man who had shot him. At about the same time that Knox said, "yes," Spence realized that Ector was holding a small gun pointed at Knox. Spence immediately took cover behind a wall and began yelling commands at Ector to drop the gun. Ector did not do so. Instead, he looked at Spence and stepped back or away from Knox, while continuing to point the gun at Knox. Spence, believing Ector was about to shoot Knox, again, fired one shot. Ector took a few steps and fell. Emergency equipment was called immediately and Ector was transferred to Denver Health Medical Center. Despite the efforts of the medical staff, Ector succumbed to his wound and was pronounced dead at 10:24 p.m.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Hakijah Ogbonna Ector, 3-6-77, by uniformed Denver Police Officer Richard Spence, 94-31. Officers were called to the area of 3300 block of Ivy Street on a shooting. Upon arrival, they confronted the suspect who was struggling for the gun with the victim of the initial shooting. Denver Police radio-room records reflect one of the initial dispatches based upon the complaints received by the 911 operator included the following information:

"EMS [responding] Code 10¹ for gunshot wound to 20 [year old adult] male [wounded] to his stomach legs. Suspect is outside with the gun. Suspect [is black male wearing] black shirt, black pants, gun is in his right hand."

Because of the nature of the call, a number of officers started driving in the direction of the call. Officers Keith Cruz, 90-28, David Naysmith, 98-01, and Richard Spence, 94-31, were among the first to arrive. Cruz was in a solo car; Naysmith and Spence were working a two-officer car. All three officers were wearing full blue Denver Police uniforms and driving marked Denver Police cars. They arrived at about 8:12 p.m.; Cruz went to the front of the address; Naysmith and Spence drove to the alley, east of the address, so that they could cover the back². As Cruz approached the location from Ivy street, a neighborhood resident flagged him down and advised him that "they were between the houses . . . and that guy still had the gun." The area that the witness was describing consists of two sets of duplexes on the east side of Ivy Street. A walk-way separates the north units from the south units and there is some shrubbery near the sidewalk on the west side of the units. Cruz approached the walk-way from the west and, as he came around the bushes, he saw that Spence and Naysmith were standing just east of the duplexes with

their guns drawn. Naysmith was armed with a Denver Police department issued AR15 rifle; Spence with a handgun. Cruz then saw two men at whom Spence and Naysmith had trained their weapons. Cruz later told investigators that one of the men was "sitting on the steps [of a unit], another gentlemen facing him, uh standing up, sorta hunched over and I immediately saw they had a handgun." Cruz used the word "they" because it appeared that the two men were struggling over the gun. Spence and Naysmith saw the same confrontation. The man sitting on the steps was not wearing a shirt. He was bleeding and appeared injured. The man who was standing matched the description of the gunman that had been aired on the police radio. Spence and Naysmith were both able to see that that individual had control of the handgun and they both began ordering him to drop the weapon. He refused to comply and moved so that Spence concluded he was about to shoot the party who was sitting on the step bleeding. Spence fired his weapon once. Ector, the gunman, took a few steps and fell. He was placed in custody and the dispatcher was advised of an officer-involved shooting. This call was made at 8:17 p.m. Ector was taken by ambulance to Denver Health Medical Center and treated for a gunshot wounds to his left upper abdomen. Despite treatment, Ector died at Denver Health Medical Center.

Knox was also rushed to Denver Health Medical Center where he was treated for a gunshot wound he had suffered in the initial altercation involving Ector. Doctors found that he had been shot in the left shoulder area and determined that he had suffered serious bodily injury as Colorado Law defines that term. Knox recovered from his injury.

Spence was armed with a Sig Sauer, model P220, .45 caliber semi-automatic pistol. This weapon has a magazine capacity of seven rounds and may be carried with an additional round in the chamber. At the time of the incident, Spence's weapon was fully loaded with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, Spence's weapon was given to Denver Police Crime Lab personnel for appropriate testing.

On July 19, 2001, Dr. Amy Martin, a forensic pathologist with the Denver Medical Examiner's office, performed an autopsy on Ector's body. Dr. Martin documented one gunshot wound "in the left side of the trunk . . . midway between the hip and the shoulder." She noted that the bullet had been "reportedly removed at the hospital" and further noted extensive evidence of surgical recovery efforts³. Dr. Martin detailed the wound track, finding that the bullet passed through the front of the stomach, through the left lobe and mid-portion of the liver, and then through the right "hemidiaphragm." Dr. Martin noted that the bullet had caused extensive damage to the liver and determined the cause of death to be "complications of a gunshot wound to the left side of the chest. Blood and urine samples were obtained from Ector's body. The samples were negative for the presence of controlled substances. Ector's blood ethanol level was found to be .03%. This is a level slightly lower than that established by Colorado law for determining that a driver's ability to operate a vehicle is impaired by the consumption of alcohol.

Investigators recovered one spent .45 caliber shell casing in the area north and east of front porch of 3394 Ivy Street, near the alley. This site is consistent with the location of the incident as described by Spence and the other witnesses. This shell casing was identified to Spence's pistol by Denver Police Crime Laboratory firearms examiners.

After the shooting, Cruz, Naysmith, and Spence approached both Ector and Knox and ordered them to the ground. Cruz told investigators that he saw Ector move a few steps and drop his gun. In Cruz's words, "[Ector] stood right through this area [indicating on a diagram] and we had to, facing us, we had to order him to show us his hands and after that ordered him down on the ground. He was not complying with our orders immediately." Additional officers arrived and the area was secured. Cruz guarded the handgun he had seen Ector discard until he was relieved so that he could go downtown to make his statement. This firearm was thereafter recovered by crime-scene investigators and placed into the Denver Police Property Bureau.. It was examined by Denver police firearms examiners who determined it to be a .22 caliber Smith & Wesson Air-lite model revolver. This revolver has a cylinder with an 8-round capacity. When the weapon was recovered, it was found to have seven live rounds and one spent round in the cylinder. Firearms examiners test-fired this weapon and determined that it was in good mechanical condition and that it would fire in both single-action and double-action modes.

The initial shooting occurred in a small park west of Ivy Street and south of 35th Street. There were several witnesses to this first incident and the aftermath (during which Knox and Ector struggled over the gun and moved to the area between the duplexes on the east side of Ivy Street.) Written statements were obtained from nine citizens. Six of these individuals, Edsel Bolden, 12-1-35, Arthur Jackson, 5-1-56, William Small, 1-15-32, Dianna Spencer, 2-25-85, Francis Vaughn, 12-31-61, and Louis Warren, Jr., 10-27-91, were eyewitnesses to either the shooting in the park or the subsequent officer-involved shooting. Each of these individuals also provided a video-taped statement to investigators at Denver Police headquarters.

Knox was transported to Denver Health Medical Center where he was treated for the gunshot wound to his shoulder. Denver police officer Anthony Montoya, 00-132, rode with him in the ambulance. While en route to the hospital, Knox provided Montoya with a brief description of the altercation. After he arrived at Denver Health Medical Center, and while he was first being treated by the medical staff, Knox again spoke to Montoya and uniformed Denver Police Officers Christian Blessing, 88-30, and Brad McKiernan, 93-06. At about 10:15 p.m., Denver homicide investigator Steve Shott met with Knox at Denver Health Medical Center and verified the information Knox had earlier provided to the uniformed officers. Because Knox was still undergoing treatment, Detective Shott did not attempt to make a video or audio recording of the interview.

As previously noted, Officers Cruz and Naysmith were present at the time Spence fired his pistol. Each of these officers provided a video-taped statement at Denver police headquarters. Numerous officers arrived as or just after Spence fired his pistol. These officers completed written statements that are included in the case file.

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

statement.

There is no dispute regarding the initial confrontation between Knox and Ector, and the statements of the witnesses regarding the officer-involved shooting aspect of this investigation provide a clear account of what occurred. A review of all of the witness statements, and the physical evidence, establishes the following facts.

On the night of the incident, Knox was living at 3394 Ivy Street. Knox was in the park across the street when he saw a man whom he did not know (later identified as Ector) challenging a friend of Knox's to a fight. Knox stated that his friend, whom he referred to as "Chester," had a broken hand and he, therefore, attempted to stop the fight. Knox claimed that, at this point, Ector began fighting with Knox but that Knox gained the upper hand. During the fight, Ector pulled out a handgun and fired one shot, striking Knox in the shoulder. Knox then grabbed at the gun and worked one of his fingers into the trigger guard so as to prevent Ector from shooting him again. Knox stated that, with the two men grappling over the gun, he pulled Ector across the park, across the street and up to his front porch.

William Small was playing dominoes with Edsel Bolden on the patio of his home at 3503 Ivy Street. He saw two men scuffling in the park, then he heard one gunshot. He told investigators that it appeared to him that both men were holding onto a gun. Small had a telephone next to him and, when he heard the gunshot, he called 911. He continued to watch the two men and saw them scuffle all the way across Ivy Street and up into the walk-way between the duplexes. Bolden, too, saw the men struggling in the park. Bolden stated that, after he heard the first shot, it appeared to him that one of them was trying to keep the other from shooting. Another witness to the fight in the park was Edidacion Blaz-Vasquez, 11-09-52. Blaz-Vasquez provided a written statement in which he indicated that two men fighting in the park were

"[t]wo black guys. One guy had no shirt on and another guy had a black shirt on . . . I heard one shot and I saw the guy with the black shirt holding up the guy with no shirt. I saw the guy with the black shirt push the guy with no shirt on, across the street, into some duplexes.

Blaz-Vasquez's son, Giankarlo Reynoso, 11-06-91, was helping his father fix their car. He provided a written statement in which he indicated that he, too, saw the two men in the park. He thought that they were playing until he saw the man wearing a black shirt "pull out a gun." Reynoso noted that the other man was shirtless. Reynoso stated that he heard one gunshot and then heard one of the men

"screaming and crying, saying [that] the other guy shot him." He added that the "guy in the black shirt was pulling the guy with no shirt on over to the duplexes. The two guys went into the duplexes. A little later the cops showed and went to the duplexes, then I heard one more shot."

When Ector fired the shot that injured Knox, Arthur Jackson was painting the interior of the duplex at 3398 Ivy Street. Dianna Spencer, Knox's sister, was walking back to the duplex at 3394 Ivy Street following a trip to the store. Frances Vaughn was inside her home at 3392 Ivy

Street as was her son, Louis Warren, Jr., 10-27-91. Kim Williams, Knox's girlfriend, was sitting on the porch at 3394 Ivy Street. These individuals all saw Knox and Ector at or near the porch in front of 3394 Ivy Street. Spencer heard the gunshot and then saw the two men "struggling over the gun all the way to the house on 3394 Ivy." Spencer stated that, when the men were in front of 3394 Ivy Street, the "shooter was saying 'I am sorry, man. I didn't know you knew martial arts. I didn't mean to do this to you. Gimme the gun.' My brother was like 'hell, naw! You might shoot me again.'"

Williams told investigators that she heard the shot and saw Knox come up to the porch, bleeding profusely from his chest. "There was a dude with him and he was holding a gun up to his chest. It was a small black and silver gun. . . . He kept saying, 'I'm sorry I shot you. I'm sorry.'" Williams told Ector that she was going to call the police. She asked him to put the gun down, but he refused. She then called 911 and then ran to get assistance from a relative who lived on Kearney Street. She was, thus, not present when the first officers arrived.

Vaughn heard some conversation outside her home and looked to see her neighbor, Knox, along with another male and one or two women. She saw that Knox was pleading and heard the female asking for help, so she called 911. Vaughn then went outside with a towel her son brought her. She saw that both men were holding onto the gun and neither would release his hold. She used the towel to apply pressure to Knox's wound and, while she was so engaged, she heard Ector saying something to the effect of "I didn't know he knew martial arts." While she was attempting to help, Vaughn saw police officers arrive in the alley and from across the lawn. She then heard officers ordering Ector and Knox to "let go of the gun! Get down on the ground!" Vaughn heard officers issue those commands twice and then she heard a gunshot.

Jackson told investigators that when he looked outside he saw two men and one woman. One of the men was holding a gun and the other man was bleeding. He heard the woman saying, repeatedly, "drop the gun." Jackson went outside and saw police officers arriving from the direction of the street and the alley. He stated that "the officer in the alley had his gun out, telling the guy to drop the gun. The guy didn't do it and got his ass shot." Jackson told investigators that he heard the officers screaming "drop the gun!" He estimated that the commands were issued "about three times."

It was early twilight when the officers arrived and visibility was good. Cruz, Naysmith and Spence were clearly able to see Knox and Ector struggling over the gun on the porch of 3394 Ivy Street. As noted above, Cruz approached from the west and Naysmith and Spence entered the alley to the east of the duplexes and made their approach from that area. Denver Police officers Jeffrey Cook, 99-10, and Patrick Mulhern, 99-07, arrived to cover Cruz as he approached the buildings. Both heard someone say, "drop the gun! Drop the gun!" Each then heard one gunshot but did not see the shooting.

In his statement to investigators, Naysmith described the approach that he and Spence made to the location. He stated that, as they approached the scene, the police dispatcher provided information that the possible suspect, dressed in black pants and a black shirt, was still at the

scene. They stopped in the alley and, as they got out of the car, Naysmith heard Spence say that he saw two black males on the porch. Naysmith told investigators that, as they approached, he saw two males, one of whom was sitting on the porch. This individual did not have a shirt and he was "bleeding from somewhere." The other man Naysmith saw was wearing black pants and a black shirt. Naysmith saw that the two men were "struggling with their hands somehow." Naysmith, who had armed himself with his AR-15 urban rifle, took a position of cover behind a wall. He heard the injured male say "help me!" and Naysmith "called out to him. . . 'is that the guy who shot you?' He said, 'yes.' " At about the same time Naysmith had this exchange, he heard Smith say "the guy with the black shirt on has a gun, he's got a gun!" Naysmith said that he and Spence "ordered him to drop the gun several times and he – they were still struggling. He refused to comply and I heard a gun shot go off." Naysmith told investigators that he did not fire his rifle for two reasons; first, he did not see the gun from his position and, second, he was concerned that if he fired the rifle the round might pass through the man wearing the shirt and injure the party without the shirt.

Spence corroborated Naysmith's description of the manner in which they arrived at the scene. He told investigators that as he approached the area between the duplexes, he saw two men, one seated and the other standing. He also saw that the man sitting on the porch was bleeding. When the injured party identified the other man as the person who had shot him, Spence moved to a position where he could better see both parties' hands. Spence stated:

Because they were leaning over in such a way it looked like they mighta (sic) been holding hands, or something. And it was that this was the guy who shot him so I started going left so I could see their hands and see if there's a gun. And I took a -- I started going to the left and I could see that the guy that was standing up had a gun in his hand. And it was pointed, it was pointed at the guy sitting down. It was pointed real low.

Spence moved back behind a wall and he, too, began ordering Ector to drop the gun. He issued the commands at least twice. Spence saw Ector look directly at him and then break free from the struggle for the gun with Knox. When Ector quickly stepped back from Knox, he had control of the gun. Spence told investigators that he could "see the whole gun now and the gun's pointed right at the, right at the guy who had already, who appeared to have been shot, had blood all over right here." This happened very quickly and Ector had the gun pointed at Knox's upper chest. Spence stated that at this point he believed that Ector was intending to shoot Knox. Based upon this belief, he fired his pistol once to protect Knox from being shot again by Ector. Spence estimated that he was about 10 yards away from Ector when he fired.

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 Spence shot Ector, 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 Spence fired the shot that caused Ector's death, he reasonably believed that Ector was about to direct deadly physical force against Knox. 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 these requisite circumstances, or, if he did hold such belief, that belief was, in light of 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 Spence committed any criminal act. It is clear that Officer Spence fired the single shot at Ector to save Knox's life. The efforts of officers Spence, Naysmith, and Cruz ended this life-threatening confrontation without further injury or death to innocent parties. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against Officer Spence.

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,

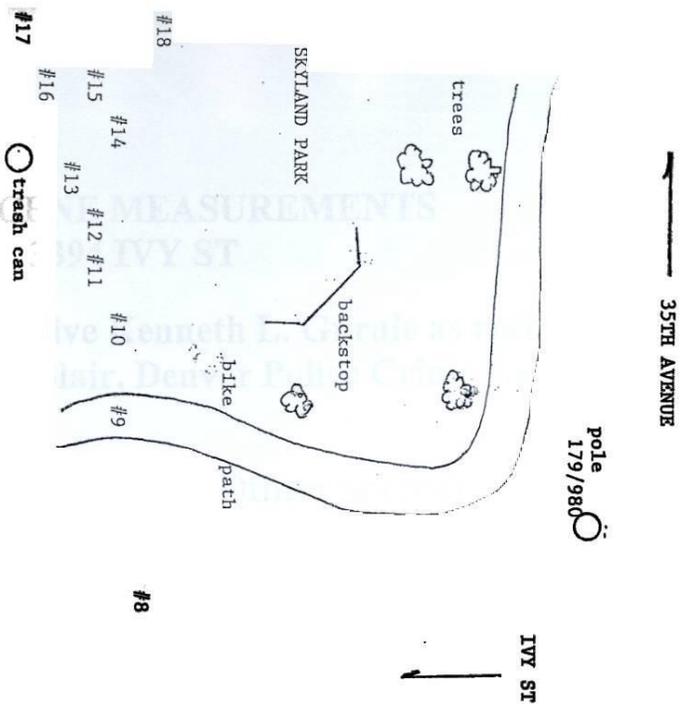
Original Hard Copy is signed

Bill Ritter, Jr.
District Attorney

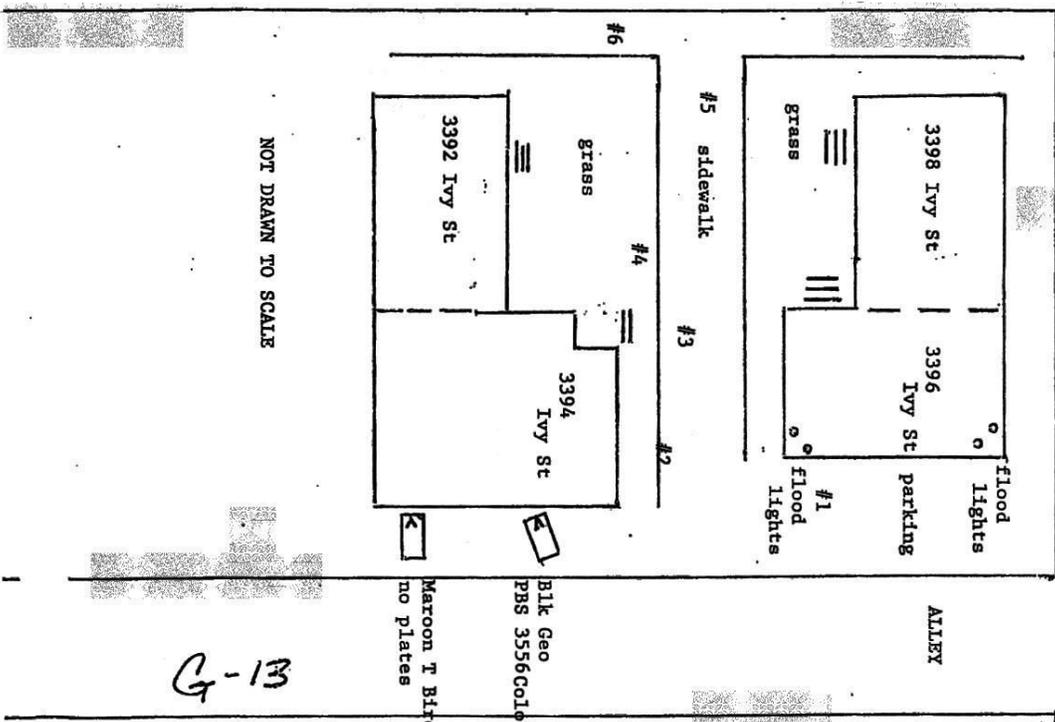
cc: Officer Richard Spence
David Bruno, Attorney at Law
Wellington Webb, Mayor

All City Council Members
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
Ken Gurule, Homicide Detective
Steve Shott, Homicide Detective
Shane Webster, Homicide Detective
John Weber, Captain
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission

Appendix 1



CRIME SCENE DIAGRAM for 3394 IVY ST
 BY Detective Kenneth L. Gurule, 82p27



**CRIME SCENE MEASUREMENTS
3394 IVY ST**

**Prepared by Detective Kenneth L. Gurule as received from
Sgt. Ron Blair, Denver Police Crime Lab**

ITEM #1	spent shell casing (Officer Spence)
ITEM #2	bloody towel
ITEM #3	bloodstain, shoes, shirt (M. Knox)
ITEM #4	gun (suspect/H. Ector)
ITEM #5	blood
ITEM #6	blood
ITEM #7	blood
ITEM #8	blood
ITEM #9	blood
ITEM #10	bottle of soda
ITEM #11	blood
ITEM #12	blood
ITEM #13	blood
ITEM #14	blood
ITEM #15	blood
ITEM #16	bottle
ITEM #17	coins
ITEM #18	coins
ITEM #19	bottle

G14

1. "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)"
2. A diagram showing the area is attached as Appendix 1.
3. The bullet was removed by doctors treating Ector and taken to and retained by the Denver Police Crime Lab.