



**Second Judicial District**  
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## Decision Letter

November 29, 2001

Contact: Lynn Kimbrough, 720-913-9025

Daniel Montgomery  
Chief of Police  
Westminster Police Department  
8800 North Sheridan Boulevard  
Westminster, CO 80031

RE: Investigation of the wounding of Michael David Grodny, DOB 5-12-63, DPD # 428558, by Westminster Police Officers Krista Bunten, 01-07, Daniel McIntosh, 97-2, Stephanie Topkoff, 97-6, and Matthew Trenka, 95-5, on July 23, 2001, in the 3600 block of Wynkoop Street, Denver, Colorado.

Dear Chief Montgomery:

The investigation and legal analysis of the wounding of Michael David Grodny have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against the involved officers. My decision, based on criminal-law standards, does not limit administrative action by the Westminster 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 after the completion of the criminal prosecution of Grodny, and any interested party is welcome to review the investigation and my decision in greater detail at that time.

### SYNOPSIS

On Monday, July 23, 2001, at approximately 3:20 p.m., in Broomfield, Colorado, uniformed Broomfield police officers attempted to contact a suspected shoplifter, later identified as Michael Grodny, as he left the Nordstrom's department store at the Flatirons Crossing Mall (the "Mall"). Grodny was able to get into the vehicle he was driving, a stolen Chevrolet pick-up truck, and start the motor. When Broomfield police officer Chris Teague attempted to stop Grodny from leaving, Grodny drove his vehicle directly at Teague. Teague jumped out of the way and, as Grodny sped away, advised his dispatcher that the driver of a pick-up truck had attempted to run him down. Grodny fled eastbound on the Boulder turnpike. Pursuing Broomfield officers lost sight of the vehicle. The Broomfield dispatcher advised the Westminster police of the likelihood that the pick-up would be entering their jurisdiction. Westminster was also advised that the driver of the pick-up truck was wanted for felony charges for the attempted assault on a police officer.

Westminster police officers observed the suspect vehicle as Grodny drove by the Sheridan interchange on US 36.

Several marked Westminster police cars began a pursuit. Grodney exited at Pecos Street and drove south toward Denver. He was driving at a high rate of speed, both on the turnpike and on the local roads. While on Pecos Street, he ran several stoplights. The Westminster officers followed Grodney into Denver. Grodney crossed over I-70 on Pecos Street and entered I-70 on the eastbound entrance ramp. He drove a short distance on I-70 and then took the Washington Street exit. Grodney then turned off of Washington Street, drove down a side street and turned southbound on Wynkoop Street.

The Westminster officers were still in pursuit and, once on Wynkoop Street, one of the officers determined that it was safe to attempt a "precision immobilization technique" (PIT)<sup>1</sup> to stop Grodney's car. The maneuver was successful and Grodney was brought to a stop in the 3600 block of Wynkoop Street in Denver, Colorado. The Westminster officers immediately got out of their marked police cars, took positions in front and to the side of Grodney's pick-up truck, and began ordering him to get out of the vehicle and surrender. Grodney refused to comply with their commands and, instead, put the vehicle in gear, backed up a short distance and then drove forward in the direction of the officers standing toward the front of his vehicle. Westminster police officers Krista Bunten, 01-07, Daniel McIntosh, 97-2, Stephanie Topkoff, 97-6, and Matthew Trenka, 95-5, each fired their service pistols. The pick-up truck stopped moving and officers removed Grodney. An ambulance was requested and Grodney was placed into custody. Grodney was rushed by ambulance to Denver Health Medical Center where he was treated for multiple gunshot wounds. Following his recovery, Grodney was released from the hospital to the custody of the Denver Sheriff's Department.

### **STATEMENT OF INVESTIGATION**

This investigation involves the shooting and wounding of Michael David Grodney, DOB 5-12-63, DPD # 428558, by uniformed Westminster Police Officers Krista Bunten, 01-07, Daniel McIntosh, 97-2, Stephanie Topkoff, 97-6, and Matthew Trenka, 95-5. Westminster police officers engaged in a lengthy high-speed pursuit of Grodney who was suspected of theft and attempting to run over a Broomfield police officer. Grodney led police officers through at least three jurisdictions before officers were able to bring the fleeing vehicle to a stop. Officers approached Grodney's vehicle from several directions and began ordering him to surrender. Grodney ignored their commands and drove directly toward two officers. Four officers fired their pistols. Grodney's vehicle came to a stop. He was taken into custody and an ambulance requested. Radio call cards show that this call was made at 3:56 p.m. Grodney was taken to Denver Health Medical Center where he was successfully treated for multiple gunshot wounds.

Broomfield radio dispatch records show that the initial shoplifter call was made at 3:24 p.m. The next relevant call, indicating that a suspect had attempted to run over a police officer and that Broomfield officers were giving chase, was made at 3:28 p.m. The transmission to the Westminster Police Department was made shortly thereafter and, upon receiving this call, the Westminster police dispatcher issued a "BOLO" ("be on the look-out") for the suspect vehicle. The Westminster dispatch tapes show that the BOLO was aired between 3:40 p.m. and 3:43 p.m. Westminster officers observed the suspect vehicle eastbound on the Boulder turnpike at 3:44 p.m. and at 3:45 p.m. the officers advised the dispatcher that they were pursuing the vehicle. At 3:53 p.m., the Westminster dispatcher was advised that the PIT maneuver had been executed. Almost immediately thereafter, the dispatcher was advised that shots had been fired. At 3:55, the officers at the scene advised the dispatcher that the suspect was in custody, but that he had been injured and that an ambulance was needed. Denver police computer-aided dispatch records show that Denver police officers were dispatched to cover and assist Westminster officers on an officer-involved shooting at 3:54 p.m.

All of the Westminster officers were dressed in blue Westminster Police uniforms and were driving marked Westminster Police cars. Bunten was armed with a .40-caliber Glock, model 23, semi-automatic pistol. This weapon has a 13-round magazine capacity and may be carried with an additional round in the chamber. McIntosh was armed with a .40-caliber Glock, model 22, semi-automatic pistol. This weapon has a 15-round magazine capacity and may be carried with an additional round in the chamber. Topkoff was armed with a 9mm Glock, model 17, semi-automatic pistol. This weapon has a 17-round magazine capacity and may be carried with an additional round in the chamber. Trenka was armed with a .45-caliber Glock, model 21, semi-automatic pistol. This weapon has a 13-round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, each officer had his or her weapon fully loaded with ammunition approved by the Westminster Police Department. Following the incident, and in compliance with the protocols established for the investigation of officer-involved

shootings occurring in Denver, each officer's weapon was tendered to the Denver Police Department Crime Laboratory for appropriate testing. Unloading sheets prepared by the Denver Police Department's firearms examiners and shell casings recovered at the scene show that Bunten fired once, McIntosh fired once, Topkoff fired four times and Trenka fired twice<sup>2</sup>.

Grodny was treated at Denver Health Medical Center. Dr. Scott Miner, one of the doctors who treated Grodney, completed a serious bodily injury report. Dr. Miner indicated that Grodney suffered serious bodily injury and listed multiple gunshot wounds as the cause of the injury. Due to the privileged nature of medical information, further records of treatment and diagnoses were not available to police investigators or to investigators with my office.

The shooting occurred at the intersection of 36<sup>th</sup> and Wynkoop Streets, which is in an industrial area of Denver. Investigators located six individuals who were in the area and either heard or saw aspects of the incident. Written statements were obtained from each of these individuals. Two of the witnesses, Mike Chambers, 4-11-67, and Jeffrey Steele, 6-2-62, advised investigators that they had witnessed at least part of the shooting. Video-taped statements were obtained from these witnesses. Broomfield and Denver investigators also located several witnesses to the theft of the vehicle driven by Grodney and the shoplifting incident at the Flatirons Crossing Mall. Written statements were provided by each of these individuals.

Broomfield police officer Chris Teague, #346, was the officer Grodney attempted to run down while leaving the Mall. He responded to Denver Police Department headquarters and provided a video-taped statement to investigators. Westminster police officer Scott Takahashi, 92-5, was involved in the chase and witnessed the shooting, but did not fire his weapon. He provided a video-taped statement to investigators.

Following the shooting, and in accordance with protocol, the involved officers were separated from other witnesses and were separately transported downtown by an uninvolved supervisor or Denver police officer. Each officer was given an opportunity to speak to his or her attorney. Each officer then gave a voluntary video-taped statement to investigators.

The vehicle driven by Grodney was a blue 2000 Chevrolet S-10 pick-up truck. Investigators learned that at about 2:00 p.m., Saturday, July 21, 2001, this vehicle was stolen from Cherry Creek Dodge, 2727 S. Havana Street, Denver, Colorado. According to Cherry Creek Dodge employee, Astrid Meyer, 9-14-58, a man came onto the back lot and requested that she show him the S-10 pick-up. Meyer advised investigators that the party, whom she later identified in a photo line-up as Grodney, asked her if he could take it for a test drive. She told him that he could do so, but that she would have to stop in the office and get a dealer plate. The two drove to the office where Meyer went inside to get a dealer's license plate. When she returned, Grodney and the truck were gone<sup>3</sup>.

Nordstrom's loss prevention officers and involved sales personnel at the Flatirons Crossing Mall, provided investigators with written statements detailing their observations and their investigation into Grodney's criminal activities. Based on these statements, the following facts can be established. At about 3:30 p.m., on Saturday, July 21, 2001, Grodney was observed shopping in the store. Loss prevention officers were familiar with Grodney from "previous instances where he refunded Nordstrom's merchandise with no proof of purchase." On this occasion, loss prevention officers watched as Grodney tried on some items of clothing. He then left the store wearing one of the shirts without paying for it. The sales clerk told loss prevention officer, Ricky Vazquez, 12-15-74, that as Grodney left, he stated "I'm wearing your shirt, but I'm looking for the shirt I left behind. I'm looking for my wife and I'll be right back to return your shirt."

On Monday, July 23, 2001, the same sales person called Nordstrom's loss prevention officers and advised them that Grodney had returned. Members of the security staff began watching Grodney on the closed-circuit television system and from vantage points on the floor. As they watched, Grodney took various items in and out of dressing rooms, ultimately leaving the store after returning some, but not all, of the items to shelves and counters. He left without paying for two ties. Loss prevention officers watched him leave the store and go to a Chevrolet S-10 pick-up truck. A female passenger, later identified as Katherine Hall, was seated in the vehicle. They drove a short distance and parked. Hall got out of the truck and returned to Nordstrom, where she attempted to return the two ties for a refund. While she was doing this, Grodney returned to Nordstroms and, again, began trying on articles of clothing

and jewelry. Loss prevention officers notified the Broomfield Police Department that they were engaged in a theft investigation and Broomfield police officer Christopher Teague, #346, responded to the store.

When Teague arrived, he met with the loss prevention officers in a security area where he also watched Grodney acting in the manner described above. Realizing that he would likely be arresting two individuals, he asked his dispatcher to send another officer. He continued watching Grodney while he waited for the other officer and, as he watched, Grodney started walking out of the store. The officer who responded to cover Teague was Adam Wilcox, #562. As Wilcox was walking into the store, he passed Grodney who was now leaving the store for the second time.

Teague went out to meet Wilcox at the doors to the store. From this position, they watched Grodney walk to the parking lot. Teague left the store and started walking toward Grodney. As he did so, he identified himself as a police officer and motioned for Grodney to come to him." As he did so, Grodney instead turned and walked toward a dark blue Chevrolet S-10 pickup truck parked facing into the traffic lanes. Grodney entered the driver's side of the car. Teague told investigators that he ran over to a position in the front of the truck, ordering Grodney to stop and not to move. He ordered him to get out of the truck. Teague saw Grodney lean over to the passenger side of the truck, lock the door and roll up the windows. Because of the manner in which Grodney was acting and his failure to comply with his commands, Teague drew his pistol.

Teague stated that he was

"Standing directly in front of the truck with my, middle of my body against the front of the vehicle. When I saw that he was leaning over . . . I had previously drawn my, my pistol and was pointing at the windshield telling him to 'stop! Don't move! Get your hands up! You're under arrest! Police! Get out.' The things that I'm trained to do."

Grodney refused to comply with Teague's orders and instead started the engine. While Teague continued to order him to stop, Grodney began driving forward. As Teague later recounted it, he was standing directly in front of the truck and as Grodney began pulling forward, Teague placed his free hand on the hood of the truck and started backing up. Grodney turned the vehicle sharply and started to accelerate. Teague was "able to step off to his left" and Grodney sped off at a high rate of speed. As Grodney fled, Teague got the license plate number and provided the vehicle and suspect description, plate number, and a description of Grodney's actions to the Broomfield police dispatcher. He then went back into the store to locate and detain Grodney's female partner.

Wilcox got into his patrol car and pursued Grodney. However, Wilcox was involved in a minor non-injury accident as he left the parking lot area and Grodney escaped from the Broomfield police officers. The Broomfield police dispatcher placed a call to the Westminster police dispatcher. The dispatch tapes reflect that the dispatcher asked whether Westminster had any patrol cars "in the area of 36 [the Boulder Turnpike] and probably coming up to Church Ranch . . . I had a car that fled from an officer and probably tried to run him over . . . gonna be heading eastbound 36 . . . from the 121 exit." The Broomfield dispatcher also provided a description of the suspect vehicle, stating that it was a dark blue 1998 Ford F-10 pick-up bearing Colorado License # 84522AA. The dispatcher further advised Westminster that the driver was described as a white male, 6' tall with short brown hair, moustache, and wearing glasses, a beige polo shirt, and black or blue shorts. This information was then dispatched to Westminster patrol cars, along with the fact that the truck was a stolen vehicle and that the Broomfield police department had several cars searching for the vehicle and suspect .

Westminster police officer Trenka heard the "BOLO" when he was on or near the Boulder turnpike at the Sheridan exit. Shortly after he heard that broadcast, he heard an officer advise the dispatcher that he had observed the vehicle pass under the Sheridan overpass. Trenka told investigators that he "looked over [and] saw the blue truck bearing the license plate that dispatch had gave [sic] us as being the suspect vehicle pass by me on the highway. I got on the air and I said 'I'm behind that car or behind that truck.' It was a blue Chevy with the plate given."

Trenka told investigators that the pick-up was eastbound on the Boulder Turnpike in the left lane. He pulled in behind the vehicle and it moved to the right lane. Believing that "it might be a routine stop," he activated his emergency equipment and Grodney sped up and got back in the left lane. Trenka said he knew that Grodney was not going to pull over. He said he advised his dispatcher that he was in a pursuit and then began the process of calling

out the pursuit<sup>4</sup>.

"I then advised dispatch of my speeds and the traffic conditions and everything else, uh, how heavy or moderate the traffic was. We passed by Federal [Boulevard]. I again aired that we passed by Federal and that we were continuing eastbound and that he was weaving in an' outta traffic but his speeds weren't uh, outta control and he wasn't driving extremely recklessly. At that point in time I think Officer McIntosh jumped in behind me and said that he was the number two car. And we agreed, uh, on the radio that he was calling it [the pursuit] and I would just do the driving."

As the pursuit continued, Trenka was the lead vehicle with McIntosh, 97-2, in the number-two position advising the dispatcher of the route and conditions. In the third vehicle were Officers Scott Takahashi, 92-5, and his trainee, Officer Bunten. Topkoff was trailing the other police cars. Based on dispatch transmissions, the officers were under the belief that the suspect was wanted for felony assault charges. As Takahashi later stated, "at that point I aired over the radio that we needed to confirm that Broomfield had felony charges on this truck. Dispatch answered back, 'yes, they do. They have first-degree assault on a peace officer charges on the, on the occupant of that truck.'"<sup>5</sup>

Trenka stated that as the suspect vehicle and pursuit cars approached Pecos Street, the suspect, who had been driving in the left lane, made an abrupt lane change and exited at Pecos Street. The pursuit was now proceeding southbound on Pecos Street. Trenka recalled that he told the dispatcher that, if traffic conditions permitted, he intended to attempt a "PIT" maneuver and bring the suspect vehicle to a stop. However, after Grodney passed "about 60<sup>th</sup> Avenue, [he] really picked up some speed," and Trenka determined that it would be unsafe to try to use the PIT maneuver.

Trenka told investigators that he was still the lead vehicle as "Pecos Street turn[ed] into a .. two-lane road, one each way. . . and he was making some, some inside lane changes on the right and picking up his speed a little. Um, we didn't have any incidents. He blew a couple red lights. We had to slow down to make [it] through the intersection safely." The vehicles remained southbound on Pecos until they approached the intersection of Interstate 70 and Pecos. Trenka backed off a little so that he would be able to react if the suspect got on the highway. Grodney did get onto the highway heading eastbound but Trenka was forced to slow for traffic proceeding in the opposite direction. Officer Takahashi, who had passed McIntosh on Pecos, took advantage of a gap in the on-coming traffic and "took over the lead spot." Trenka assumed the number two position in the pursuit and also assumed the responsibility of "calling the pursuit" over the police radio frequencies.

Takahashi told investigators that when Grodney got on I-70 "he started driving extremely erratic [sic]. He was goin' back an' forth, in an' out of traffic. He was .. people were run . . . actually getting out of his way. They were pulling off on shou . . . on the shoulder of the road to get out of his way." Takahashi added that both on Pecos Street and on the highway, Grodney was "extremely dangerous the way he was driving." As a result of the danger presented by Grodney's driving, the officers continued to discuss over the radio the fact that as soon as an opportunity presented itself, in Takahashi's words, "we're gonna PIT this truck."

The Westminster patrol cars followed Grodney as he exited I-70 and started traveling southbound on Washington Street. At one point, Takahashi saw Grodney driving in the on-coming traffic lane and saw several cars take evasive action. Takahashi told investigators that he followed Grodney as he crossed over Brighton Boulevard and drove into what appeared to be a dead-end. However, Grodney drove around a business, through a dirt parking lot, and turned onto Wynkoop Street. There was minimal traffic on Wynkoop Street and Takahashi began attempting to use the PIT maneuver to force Grodney to a stop.

"At that point I tried to get up next to him to PIT him. He saw that I was trying to do that, an' he started veer. . . going from side to side, drivin', well, erratic like he was . . . Um, he kept doing that. I finally got up next to him an' I, an' I PIT him. I put my left front fender on his right rear fender an' I PIT him an' spun his truck around."

Grodney's truck came to rest near the northwest corner of 36<sup>th</sup> and Wynkoop Streets, facing to the east and into on-coming traffic.<sup>6</sup> Takahashi and Bunten came to a stop with the passenger door of their patrol car up against the passenger door of Grodney's truck. Takahashi immediately pulled the patrol car forward a short distance so that Bunten would be able to open her door. Topkoff stopped her patrol car directly in front of and facing the pick-up

truck. Trenka pulled his car up to a position just to the right of Topkoff's car. McIntosh stopped his car on the east side of the intersection, several yards behind Topkoff and Trenka.

Takahashi told investigators that he got out of his police car and approached the driver's side of Grodney's truck. He saw that the truck was starting to pull forward. He had drawn his service pistol as he approached the truck. As the truck started to move forward, he hit the passenger's side window with the butt of his handgun. The window shattered and at the same time Takahashi dropped his gun into the front passenger seat of the truck. Takahashi stated, "The truck then started lunging forward again, or going forward. I reached in to pull my gun back out and, as it wen .. the truck went forward that's when the shots went off.." Takahashi had regained his weapon but did not believe he was in a position to fire his weapon because "the post of the roof was in my way." He was considering whether to fire his pistol because he knew that there were officers in front of the truck and he believed that they "were obviously in danger ... the guy was trying to run 'em over."

After Takahashi successfully executed the "PIT" maneuver, Bunten believed that the officers had the situation "contained." She told investigators she believed she was in a position to

"Exit [her car], go around and grab [Grodney] and pull him outta the vehicle. When I did that, when I tried to do that, uhm, my weapon was not drawn. I went around, I tried to open the door, he looked right at me and, at that time, he knew what I was trying to do and he backed up the car and then turned coming at me. And at that point, I felt that my life was in danger and I stepped back about five feet and then I fired one shot."

Bunten was aware that the suspect allegedly tried to run over a Broomfield officer and was convinced that he was attempting to run her over. From her position she was able to see Grodney's head and part of his upper body. It was this area that was her point of aim. As, or immediately after Bunten fired, Topkoff fired. Bunten saw that Grodney was injured and appeared to be surrendering. She ceased firing at this point.

When Takahashi brought Grodney's truck to a stop, Topkoff came to a stop facing Grodney. She immediately got out of her car and drew her pistol. She later stated that she began yelling loudly, repeatedly ordering Grodney to show his hands. She saw Grodney put his hands up and then she saw Bunten approach the driver's side of Grodney's truck. She recounted the next few seconds stating

"[Bunten] is trying to get the suspect out of the car. And we're yelling, "show us your hands! Show us your hands." And I see him with his hands up. And then he looks at Officer Bunten and she's right on his left side. And his hands go back down on the wheel, he cranks the wheel to the left and starts to g ...gun it. I'm not sure if he went forward or backward, but I see the movement of the car and him trying to move, uhm, and I, and I see Officer Bunten's face, you know, frightened. And she's kind of stumbling back and to the left and at that time I'm not sure if I fired first or somebody else fired. But I was, basically, facing the suspect and I was afraid he was going to run her over, uhm, in fear that she was gonna get killed there. That he was going to be able to get away, run her over or drive into me and whoever else was behind me. So I fire, I believe, two rounds, two or three rounds into the car of the – or the driver's side.

Trenka saw Takahashi force Grodney's truck to spin and then saw Topkoff stop her car in front of Grodney to prevent his escape. He pulled in on Topkoff's right, parked his car, and using his door to provide some cover, drew his weapon in preparation for a "high risk" or "felony" stop. From his position, he saw Grodney start to move his car back and forth. He then saw Bunten approach the driver's side of Grodney's truck in her attempt to take him out of the truck. Trenka told investigators that Bunten, by her actions, "changed the dynamics of the situation. Now, now that she had committed herself to contacting the suspect, now [it became] our commitment to contact." Trenka thus began approaching the pick-up truck. As he approached, he saw Takahashi try to open the passenger door of the pick-up truck. He saw that the "suspect was frantically getting the car into drive and [he] perceived the car to be in motion." Trenka fired his pistol twice, believing that if Grodney drove forward he was likely to hit Topkoff, whom he knew to have stopped her car directly in front the suspect vehicle. He then saw Grodney's hands come up towards

his head and his truck stop moving.

As Grodney's truck came to a rest after the PIT maneuver, McIntosh stopped his car, opened the driver's door and took a position of cover behind that door. He saw the other officers in the positions previously described with their weapons drawn. He saw the pick-up truck moving back and forth. As he was getting into position, he heard "a pop sound [and advised] dispatch that shots have been fired." McIntosh started running toward Grodney's truck. He stated that he could "see the suspect vehicle rockin' back and forth and the engine was running, revving really loud." He heard people yelling and he saw the suspect vehicle start "heading toward Officer Buntin and Officer Topkoff." Fearing that Grodney was about to run over those two officers, McIntosh fired his pistol once. He then saw the vehicle come to a stop.

The statement given investigators by Jeffrey Steele, an uninvolved citizen witness, supports the officers' recounting of the events at 36th and Wynkoop Streets. Steele was parking a truck at his place of business on the corner of 36<sup>th</sup> and Wynkoop Streets. He heard police sirens. He looked up and saw that several police officers had a vehicle stopped and appeared to have it "surrounded" by their cars. Steele told police investigators that the suspect put his vehicle into reverse and "slammed" into a police car. He was able to see that some of the officers were out of their cars and he then saw the suspect turn his steering wheel to the left and begin to move forward. Steele heard officers commanding the driver to "freeze" or "stop." He stated that he heard commands of that nature given two or three times. Steele told investigators that when the suspect turned the wheel to the left, there was an officer directly in front of him and it appeared to Steele that the suspect was "bound and determined. He wasn't going to be stopped." Steele stated that he felt that the "officers had no choice." He estimated that the officers fired between ten and fifteen shots.<sup>7</sup>

When Grodney's pick-up truck came to a stop after the shooting ceased, the officers immediately approached it. Takahashi started to pull Grodney out of the car and Trenka stepped in to assist. Trenka noted that Grodney was "covered in blood," but that as they got him out of the vehicle he continued to be combative, "screaming and hollering and yelling at us." With some difficulty, the officers were able to handcuff him. Takahashi turned his siren off and advised his dispatcher that there had been an officer-involved shooting, that "the suspect was possibly shot in the head and we need[ed] an ambulance." Denver officers began arriving almost immediately. The scene was secured and Grodney was transported by Denver paramedics to Denver Health Medical Center.

On July 28, 2001, Grodney was charged with two counts of First Degree Assault to a Peace Officer (victims were officers Teague and Buntin), class three felonies; one count of First Degree Aggravated Motor Vehicle Theft, a class three felony; and one count of Vehicular Eluding, a class five felony. These charges are currently pending in Denver District Court. At the time of the July 23, 2001 incident, Grodney was out on bond for charges of felony Second Degree Aggravated Motor Vehicle Theft which are also pending in the Denver District Court. Those charges had been filed in June of 2001. Grodney is currently in custody in the Denver County Jail.

## 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 wounding another human being is generally prohibited as assault in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. Because the evidence establishes in this case that the officers shot Grodney, the determination whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly physical force in Colorado. In pertinent part, the statute reads as follows:

2. A peace officer is **justified** in using deadly physical force upon another person ... only when he reasonably believes that it is necessary:

3.

- 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

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term "Deadly Weapon" as follows:

(2)(e) "**Deadly Weapon**" means 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.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

1. A person commits the crime of assault in the first degree if:
  - (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the "Assault in the first degree" statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

"The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable."

Therefore, the question presented in this case is whether, at the instant the officers fired the shots that wounded Grodney, they reasonably believed that Grodney was or was about to direct deadly physical force against one or more of them or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing serious bodily injury to another, the state must prove beyond a reasonable doubt that the officer 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 any of the four officers committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against any of the four officers in the wounding of Grodney.<sup>8</sup> As previously stated, multiple felony charges are pending against Grodney for his criminal conduct in this case and for prior felony conduct.

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: Officers Krista Bunten, Westminster Police Department  
Daniel McIntosh, Westminster Police Department  
Stephanie Topkoff, Westminster Police Department  
Matthew Trenka, Westminster Police Department  
Captain Matt Raia, Patrol Division, Westminster Police Department  
Thomas C. Deland, Chief of Police, Broomfield Police Department  
Michael Clement, Commander, Investigation Division, Broomfield Police Department  
Wellington Webb, Mayor  
All City Council Members  
Aristedes Zavaras, Manager of Safety  
Gerald Whitman, Chief of Police  
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  
Detective John Brinkers, 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

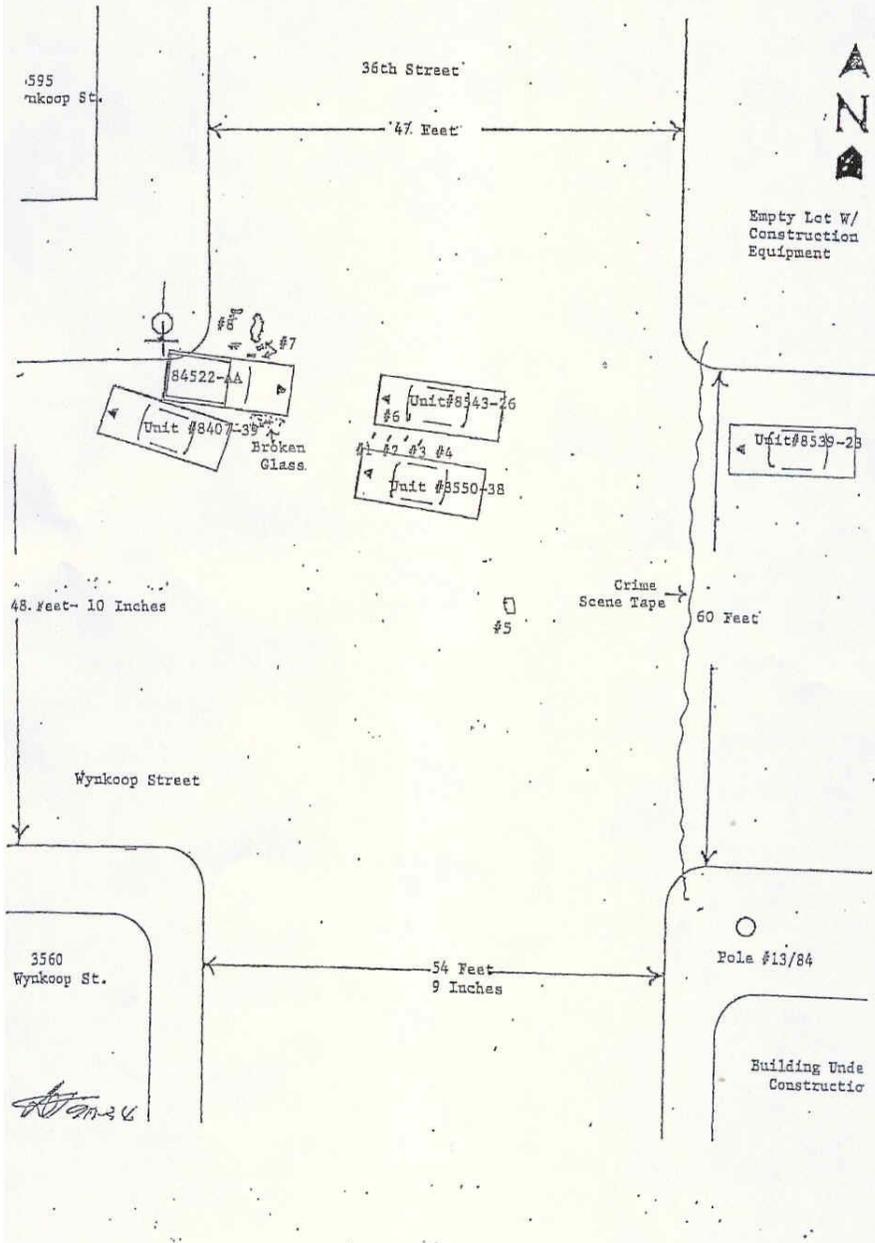
## APPENDIX 1

### LEGEND for SCENE DIAGRAM

<u>Placard #</u>	<u>Description</u>	<u>Location</u>
1.	45 Cal. Casing	27'-6" W of E Curb Line & 5'-3" S of N Curb Line.
2.	45 Cal. Casing	25'-10" W of E Curb Line & 5'-11" S of N Curb Line.
3.	9mm Casin	24'-10" W of E Curb Line & 6'-9" S of N Curb Line.
4.	9mm Casing	20'-2" W of E Curb Line & 8'-11" S of N Curb Line.
5.	Left side lens cover from Unit #8407-39	16'-5" W of E. Curb Line & 27'-6" S of N Curb Line.
6.	9mm Casing	On Unit #8543-26, in driver's side windshield housing, under hood.
7.	Eyeglasses, lighter, and suspected crack cocaine pipe.	North of driver's side door, of suspect vehicle.
8.	Teeth Retainer	North of bloody shirt.
No Marker	Bloody shirt recovered with one bullet.	4'-9" E of W Curb Line & 8'-9" N of N Curb Line, to middle of shirt.
No Marker	Position of Suspect Vehicle, with Colorado License Plate #84522-AA.	To middle of left rear tire 2'-2" W of W & 3'-9" N of N. To middle of left front tire, 33'-6" W of E.
No Marker	Position of Unit #8407-39	Approximate length of vehicle 17'. To middle of right front tire 27'-7" from middle of left front tire of Unit #8550-38. Right side touching suspect vehicle right rear.
No Marker	Position of Unit #8550-38	To middle of left front tire 28'-7" W of E Curb Line & 33'-6" N of S. Curb Line. To middle of left rear tire 18'-6" W of E. Curb Line & 30'-1" N of S Curb Line.
No Marker	Position of Unit #8543-26	To middle of right front tire 20'-10" E of W Curb Line. To middle of right rear tire 30'-7" E of W Curb Line. Distance between this unit and Unit #8550-38 at front 4'-9" and rear 5'-9".

- Approximate distance from front of suspect vehicle to Unit #8543-46, 6'-9" and from Unit #8550-38, 6'-2".
- All measurements are approximate.
- Unit #8539-23, was outside of crime scene tape on Wynkoop Street in the 3600 Block, facing west.

# APPENDIX 1



## Footnotes:

1. Sometimes referred to as the "pursuit intervention technique, the "PIT" maneuver is a low or medium speed technique used to end a chase. The driver of a pursuit vehicle drives along side the rear of the vehicle being pursued. He positions the car so that one side of the pursuit car, just in front of one of its front tires, is driving along next to one side of the chased vehicle, directly behind one of its rear tires. The pursuit vehicle then steers into the side of the chased vehicle. The chased vehicle will lose control and spin out, usually coming to a stop and often facing the opposite direction.

2. Sometimes referred to as the "pursuit intervention technique, the "PIT" maneuver is a low or medium speed technique used to end a chase. The driver of a pursuit vehicle drives along side the rear of the vehicle being pursued. He positions the car so that one side of the pursuit car, just in front of one of its front tires, is driving along next to one side of the chased vehicle, directly behind one of its rear tires. The pursuit vehicle then steers into the side of the chased vehicle. The chased vehicle will lose control and spin out, usually coming to a stop and often facing the opposite direction, one of the fragments was found to be "consistent with a 9mm bullet." The firearms examiners noted that there was "no physical evidence linking the two Glock .40-caliber firearms."
3. On Sunday evening, July 22, 2001, a Mr. Isidro Robles, 5-15-62, filed a counter report with the Denver Police Department, reporting the theft of two license plates from his 1998 Ford pick-up truck. Robles reported that the Colorado license plates, 84522AA, were stolen while his car was parked in his driveway at 4814 Chandler Court, Denver, Colorado, and that they had been taken either late Saturday night or early Sunday morning. When Grodneý was apprehended, one of these license plates was found affixed to the rear of the Chevrolet S-10 pick-up truck.
4. The Westminster dispatch tapes disclose that the officers began calling out the chase as they approach Lowell Boulevard. Speeds on the Boulder turnpike were stated to be between 60 to 85 mph in heavy traffic. At 3:47 p.m., the suspect exited the Boulder turnpike and started driving south on Pecos Street. The officers discussed making an attempt to "PIT" the car on at least two occasions, but determined that the speeds were a little too high and the traffic was a little too heavy. The tape discloses there were times Grodneý was driving 75 mph on Pecos Street. Pursuing officers advised the dispatcher that Grodneý "blew" a red light at 64<sup>th</sup>, and at 54<sup>th</sup> he was passing cars on the right by driving on the dirt shoulder.
5. On at least two separate occasions, Westminster officers asked their dispatcher to confirm that Grodneý was wanted for felony charges. At 3:50 p.m., as Grodneý drove over I-70 on Pecos Street, the dispatcher advised the cars that she had confirmed with Broomfield that the suspect was wanted on felony charges. At 3:52 p.m., in response to another query, the dispatcher stated, "we do have felony charges from Broomfield – subject tried to run a Broomfield officer over."
6. A diagram depicting the positions of the suspect's vehicle and the Westminster patrol cars after the scene was secured is attached as Appendix 1.
7. The investigation found that the four officers fired a total of eight shots at Grodneý.
8. Refer to my October 30, 2001, decision letter concerning the officer-involved shooting of Richard Dutson for additional discussion of related issues. That decision letter is available on the Denver District Attorney's Office website. [www.denverda.org/decision\\_letters.htm](http://www.denverda.org/decision_letters.htm)