



**Second Judicial District**  
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## Decision Letter

December 27, 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 Tony Sise, DOB 1/5/56, DPD # 488461, by Officer Scott Hartvigson, 90-13, on October 15, 2001, at 3636 W. Colfax Avenue, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Tony Sise have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officer Hartvigson. 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 approximately 10:30 p.m. on Monday, October 15, 2001, Mr. Tony Sise, a resident at the Beacon Place facility at 3636 W. Colfax Avenue, became engaged in a verbal confrontation with a staff member, Mr. Darryl Quintana. The confrontation began when Quintana caught Sise attempting to bring a bottle of liquor into the building. Quintana refused Sise access to the building and Sise made several efforts to regain entry before leaving the immediate area. At about 11:00 p.m., Quintana, who had returned to his office, heard a noise upstairs. He went upstairs to check and found Sise in a confrontation with other residents. Quintana ordered Sise to leave the property, whereupon Sise went into his room and armed himself with a knife. After Sise threatened Quintana with that knife, Quintana left the room, went downstairs and called

911.

The first officer to respond to the 911 call was Officer Scott Hartvigson. Hartvigson met Quintana in the corridor and Quintana directed Hartvigson to the room where he had left Sise. Hartvigson entered Sise's room with his pistol drawn. Sise was still holding the knife and began to advance on Hartvigson. Hartvigson ordered Sise to stop and put down the knife. Sise refused to comply with Hartvigson's orders and continued to advance. When Sise closed the distance to within twelve feet, Hartvigson fired his pistol several times. Sise fell to the ground and dropped the knife. He then made a motion to grab the knife again and Hartvigson fired again. Sise stopped moving and Hartvigson advised the police dispatcher that he had been involved in a shooting and that an ambulance was needed immediately. Denver Health Medical Center paramedics responded and determined that Sise had died at the scene.

## **STATEMENT OF INVESTIGATION**

This investigation involves the shooting death of Tony Sise by uniformed Denver Police Officer Scott Hartvigson, on October 15, 2001. Officer Hartvigson had responded to a call of a man threatening other individuals with a knife. Hartvigson was led to the room in which Sise lived and found him armed with a knife. Hartvigson ordered him to drop his weapon. He repeated this command several times. Rather than comply, Sise advanced toward Hartvigson. He fired his service pistol at Sise several times. Immediately after he ceased firing, Hartvigson advised the dispatcher of the shooting and that an ambulance was needed. Covering officers arrived almost immediately after the shots were fired. Denver Health Medical Center paramedics arrived shortly after the officers.

Hartvigson was dressed in a full-blue Denver Police Department uniform. He was armed with a Sig Sauer model P226, 9mm semi-automatic pistol. This weapon has a magazine capacity of fifteen rounds and may be carried with an additional round in the chamber. At the time of the incident, Hartvigson's weapon was fully loaded with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, Hartvigson's weapon was given to Denver Police Crime Lab personnel for appropriate testing.

On October 16, 2001, Dr. Thomas Henry, Chief Medical Examiner of the Denver Medical Examiner's office, performed an autopsy on Sise's body. The cause of death was determined to be multiple-gunshot wounds. Dr. Henry found evidence of 13-gunshot wounds. Two of the wounds were to the face, three to the chest, one to the left hip, one to the upper-right arm, two to the right forearm, one graze wound and one penetrating wound to the left-upper arm and one wound to the left forearm. Several of the injuries may have been the result of a single bullet causing more than one wound. Dr. Henry noted in the autopsy report, "many of the wounds have an atypical appearance and most likely represent re-entrances and exits." A review of the autopsy report shows that two of the chest wounds caused mortal injury. These two bullets were recovered from Sise's body, as was one other. Toxicological analyses of blood and urine samples obtained from Sise's body were positive for the presence of ethanol. The blood-alcohol level was determined to be 0.142%. Colorado law presumes that one is driving under the influence of alcohol when the blood-alcohol level exceeds 0.100%.

Denver Police Firearm Examiners examined Hartvigson's weapon and determined that he had fired nine times. Scene investigators recovered nine shell casings in the room where the shooting took place. Each of these casings was identified to Hartvigson's weapon. Three bullets were recovered at the scene along with several bullet fragments. Sise's clothing was examined at the morgue and a spent bullet was found lodged in the left sleeve of his sweatshirt. As noted above, three bullets were recovered from Sise's body at autopsy. All of the recovered bullets were examined by firearm examiners and identified to Hartvigson's pistol. The firearm examiners also completed powder-pattern testing on those articles of Sise's clothing, which had bullet strikes or defects. No evidence of gunpowder residue was found on his clothing. Testing of Hartvigson's firearm resulted in the determination that the "firearm will deposit powder residue to a distance of approximately four feet." This suggests that Hartvigson was more than four feet away from Sise when he fired his pistol.

Investigators located a knife near Sise's body. The knife was a black-handled folding knife with the blade extended. The investigation disclosed that Denver Health Medical Center Paramedics, Ryan Dockery and Daniel Reinis, responded to render aid to Sise. Each separately advised investigators that when they arrived, they found Sise lying on the floor with a knife under his right hand. Dockery noted that they rolled Sise over to check his wounds. In so doing, they would have moved Sise's hand away from the knife.

Darryl Quintana, 6/26/68, the individual who called the police, was party to the initial confrontations with Sise and was witness to the shooting. He provided a written statement to investigators, then agreed to respond to Denver Police headquarters where he provided a video-taped statement. An individual with whom Sise shared the bedroom, Mr. Joseph Johnson, 10/30/45, was in the bedroom at the time of the shooting. He also provided a written and video-taped statement. A third eyewitness, Samuel Grass, 8/12/42, was in the hallway at the time the shots were fired. He saw Hartvigson's position at the time that he fired the first shots. He, too, provided a written and video-taped statement. In addition to these statements, written statements were obtained from building residents who advised investigators that they had witnessed the initial confrontation or heard gunshots, but had not been an eyewitness to the shooting.

Following the shooting, and in accordance with protocol, Officer Hartvigson was separated from the other witnesses and was separately transported to Denver Police headquarters by an uninvolved supervisor. Hartvigson was given an opportunity to speak with his attorney and then voluntarily gave a video-taped statement to investigators concerning his role in the incident.

There is no dispute regarding the facts that led to the initial police response, nor is there significant disagreement regarding the shooting incident itself. Quintana told investigators that he had seen Sise walking to a local liquor store and advised him that he should not return with liquor or he would be 'kicked out permanently.'<sup>1</sup> Despite Quintana's warning, Sise attempted to return. Quintana confronted him again and he left. A short while later Sise managed to gain entrance to the building without Quintana's knowledge. Quintana learned that Sise was in the building when he heard a noise on the second floor and went there to determine the source. In the corridor, he saw Sise with three or four other men. Quintana said Sise was "in a fighting stance – his fists were clenched." Quintana ordered Sise to leave and Sise, instead, went into his room and armed himself with a folding knife. In his written statement, which he later confirmed on

videotape, Quintana stated that he told Sise to put the knife away,

"but he was coming at me and I backed off and backed out the door because I saw he had a look in his eye and was determined – I was afraid he would cut me or stab me. Then I thought I should get the knife away before I called the police so I went in again and, again, asked him for the knife. But he opened it again and started towards me."

Quintana backed out of the room again. This time he placed a call to the police 911 dispatcher on his cellular phone.<sup>2</sup>

Joseph Johnson corroborates Quintana's account of this first incident. He told investigators that earlier, he and Sise had been talking in their room and then Sise left the room. He next saw Sise when he heard a noise as if someone had slammed a door and then Sise re-entered their room with the "attendant" [Quintana – whom Johnson referred to as "the twin."]. Johnson saw Sise "with his right hand behind his back" approach Quintana. Johnson stated, "I didn't see the knife but I assume he had one because I had seen it before." Johnson described the knife he had seen as having a black handle and a blade of about three inches in length. Johnson stated that Sise approached Quintana in a threatening manner and said, "You put me out, I'll kill you."

Hartvigson received the radio call and responded immediately. Another officer in a "TAC" or gang-unit car, also advised the dispatcher that he would cover, but that he was coming from a distance. Hartvigson arrived and entered the building expecting to meet the night-time supervisor. When he arrived, an individual directed him upstairs. As he went up the stairs, he encountered Quintana, who quickly told him that Sise had threatened him with a knife. Quintana led Hartvigson to Sise's room and used a master key to open the door to the room.<sup>3</sup> The room lights were on and when Hartvigson looked in he saw Sise lying on the bed in the south east corner of the room. Due to the nature of the call, Hartvigson had drawn his weapon as Quintana opened the door. Hartvigson recalled that Sise appeared to be "very angry. He had a very concentrated look on his face. He reached down and grabbed something, sat up, started coming off the bed and he had a knife in his hand." Quintana had entered the room with Hartvigson. Hartvigson pushed Quintana back into the hall and then took one or two steps into the room. Sise was, at this time, "already off the bed coming towards me with the knife in his hand." Hartvigson started moving back and simultaneously began ordering Sise to drop his weapon. Sise continued to move towards Hartvigson and Hartvigson heard him say, "you're gonna have to shoot me." When Sise closed the distance to within about twelve feet, Hartvigson began to fire his weapon. He continued firing until Sise fell. Sise was between five and seven feet away from Hartvigson when he fell. However, Hartvigson told investigators that after Sise fell,

"I'm thinking, okay, it's done and then he grabs at the weapon again. I'm like.. you shouldn't be doing that, I mean, where I was aiming and where you're at and where I still am, you shouldn't be grabbing your weapon again. And then, that's when I shot, I believe, two more times."

Johnson confirms this sequence. He told investigators that he was on his bed when Hartvigson and Quintana entered. In his written statement he stated that the lights were on in the room and he saw the door open. "[Sise] got out of bed and started walking toward the door. I heard the officer say 'Stop!' and 'Drop it!', about one to three times. Tony was on the other side of the

lockers in the room. I heard five shots, a pause, and two shots. I heard the officer get on the radio and call for help."

Samuel Grass was the individual whom Hartvigson had met when he entered the building. After he directed Hartvigson to the second floor, he locked the front building door and then followed Hartvigson up the stairs. Upon arriving at the second level, he saw Quintana in the hall and the officer "in front of the door partially in the apartment and partially out. [The officer] said, 'Drop the knife!', or something like that. I heard the shots, maybe 5 or 6."

Quintana also corroborates the sequence of events described by Hartvigson. He told investigators that, after he opened the door, Hartvigson told him to get out of the way and entered the room with his pistol drawn. Quintana saw Sise across the room and saw Hartvigson proceed about six feet into the room. He saw Sise approach Hartvigson and reach a point which he estimated to be between eight and ten feet from the doorway as Hartvigson backed up to the doorway. Quintana heard Hartvigson order Sise to "put the knife down" several times, but Sise, instead, continued to approach Hartvigson. Quintana stated that Sise closed the distance to less than seven feet and he then heard Hartvigson fire four or five shots. He stated that there was a quick pause and then he heard two or three additional shots followed by one or two more. Hartvigson then told Quintana to direct arriving officers to his location.

The first covering officers to arrive were in the "TAC" or Gang Unit car that was responding. This car, staffed by Gang officers Mark Miller, 87-31, and Alex Golston, 93-30, arrived at the building just as Hartvigson called out that he had been involved in a shooting. Although they assisted in immediately securing the crime scene, they did not witness the actual shooting. Miller did tell investigators that as he approached the room, Hartvigson turned and said "the guy ran at me with the knife." Miller looked in the room and saw Sise lying on his left side "mostly on his stomach with a black-handled knife under his right hand."

## 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. Because the evidence establishes in this case that the officer shot Sise, the determination whether his 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:

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

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 Hartvigson fired the shots that caused Sise's death, he reasonably believed that Sise was or was about to direct deadly physical force against him 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 the death of 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 Hartvigson committed any criminal act. Therefore, I conclude that under applicable Colorado law no

criminal charges are fileable against Hartvigson in the shooting death of Sise.

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

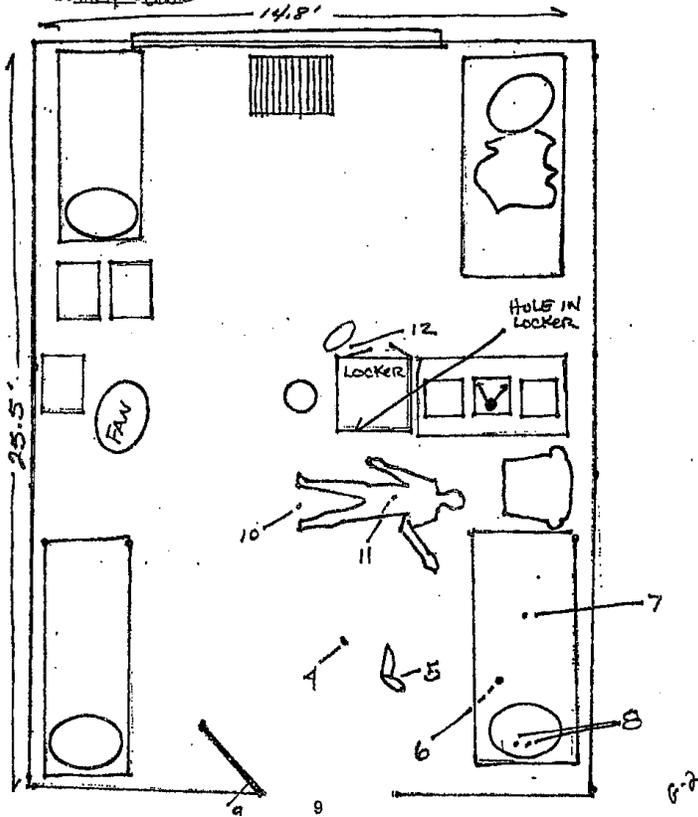
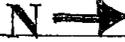
cc: Off. Scott Hartvigson  
Andrew Carafelli, Esq.  
Wellington Webb, Mayor  
All City Council Members  
Aristedes Zavaras, Manager of Safety  
Dave Abrams, Deputy Chief  
Mary Beth Klee, Deputy Chief  
Dan O'Hayre, Division Chief  
Armedia Gordon, Division Chief  
Steve Cooper, Division Chief  
Juan Maldonado, Division Chief  
Tim Leary, Captain, Crimes Against Persons Bureau  
Jon Priest, Lieutenant, Homicide  
Detective Dale Wallis, Homicide Detective  
John Weber, Captain  
Chuck Lepley, First Assistant District Attorney  
Lamar Sims, Chief Deputy District Attorney  
Henry Cooper, Chief Deputy District Attorney  
Henry R. Reeve, General Counsel, Deputy District Attorney  
Justice William Erickson, Chair, The Erickson Commission

APPENDIX 1

NOT DRAWN TO SCALE

DIAGRAM 3636 W. Colfax #17

DATE 10/10/01  
 TIME 0025  
 BY MEV #80012



Footnotes:

1. Quintana told investigators that one reason for his concern was a previous incident with Sise. In his written statement, Quintana wrote that Sise had been "kicked out about three weeks ago (he was intoxicated and cut a guy up with a box cutter – I had to take a knife away from him then). Somehow he made it back in as a resident about a week or a week-and-a-half ago."
2. Denver Police computer-aided dispatch (CAD) records show that Quintana placed the 911 call at 11:44 p.m. The call-taker's notes reflect the nature of the call as "DK [drunk] male fighting with other residents]. He has a knife / he is Tony Sise." Hartvigson was dispatched at 11:47 p.m. He arrived within a minute and was the first officer on the scene. At 11:52 p.m., Hartvigson advised the dispatcher that he had been involved in a shooting and requested an ambulance "Code 10 [with emergency lights and siren]."
3. A diagram of the room is attached at Appendix 1.