



Second Judicial District
303 West Colfax Avenue, Suite 1300, Denver, Colorado 80204
Phone (720) 913-9000 Email: Info@denverda.org

Decision Letter

November 29, 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 wounding of Christopher Olguin, 12-29-65, DPD # 594237, by Denver Police Officer Dominick Salinas, 97-18, on July 7, 2001, in the 800 block of South Irving Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the wounding of Christopher Olguin have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against the involved officer. 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 July 7, 2001, at approximately 4:45 p.m., Denver Police Officers were dispatched to cover a stabbing at 873 South Irving Street, Denver, Colorado. The responding officers found Angie Roberts suffering from multiple stab wounds. Ms. Roberts told the officers that her boyfriend, Christopher Olguin, a 35 year old, Hispanic male, had stabbed her at that location.

Officer Dominick Salinas later located Olguin driving a car in the area. When Officer Salinas attempted to stop Olguin, he fled. Officer Salinas, with his emergency equipment activated, pursued Olguin for a few blocks until Olguin turned onto the 800 block of South Irving Street. He had returned to the location of the stabbing. Olguin accelerated down the street and intentionally swerved toward an on-foot police sergeant who had been monitoring the chase on his police radio. Officer Salinas then struck the back of Olguin's car as Olguin attempted to turn left into the mid-block alley. As a result, Olguin's car missed the alley entrance and crashed into an adjacent garage. Olguin immediately exited the car and ran toward the driver's-side door of Officer Salinas' patrol car. Olguin was armed with a knife, which he held in a threatening manner, as he rapidly closed distance on Officer Salinas, who was still seated in his patrol car. As Olguin neared the driver's-side door, Officer Salinas fired two shots in rapid succession from his seated position in the patrol car. The first shot blew out the driver's-side window. Olguin was

struck by a single shot in the shoulder. He fell to the pavement, dropping the knife. Officers moved in quickly, kicked the knife away from him, and then placed him in custody. The officers immediately radioed for medical personnel to respond and that there had been an officer-involved shooting. In a later statement, Olguin told investigators that he had been upset with his girlfriend (Angie Roberts) for spending the rent money on drugs, and that he had intended to have the officer kill him in front of her to teach her a lesson.

STATEMENT OF INVESTIGATION

This investigation involves the shooting and wounding of Christopher Olguin, by uniformed Denver Police Officer Dominick Salinas. Immediately after the shots were fired, an ambulance was requested. Olguin was transported to Denver Health Medical Center for treatment of a single gunshot wound to the shoulder area. The injury was not life threatening. At the appropriate time he was transferred to the Denver County Jail.

Also, immediately after the shots were fired, the officers notified the Denver Police dispatcher that they had been involved in an officer-involved shooting. The protocol for such events was immediately implemented. The scene was secured and all necessary personnel were notified to respond.

Soon after the shooting incident, officers and detectives conducted a neighborhood canvass to locate witnesses. The witnesses to the vehicular pursuit of the suspect and witnesses to the actual shooting incident in the 800 block of South Irving Street were identified and taken to Denver Police headquarters for statements.

Officer Salinas was driving a Denver Police patrol car marked with blue Denver Police badge emblems on the sides and other police insignia. Officer Salinas, who fired two shots, was armed with a Denver Police-authorized handgun loaded with Denver Police-issued ammunition. Following the incident, and in compliance with the protocols established for officer-involved shootings, Officer Salinas' handgun was secured by Denver Police Crime Lab personnel for appropriate testing.

In compliance with the officer-involved shooting protocol, Officer Salinas was separated from other officers and witnesses at the scene and then transported by a Sergeant to Denver police headquarters. Officer Salinas voluntarily provided a video-taped statement regarding his role in the incident. The other officers who witnessed at least some of the actual shooting incident also voluntarily provided written or video-taped statements.

Results of testing conducted on Officer Salinas' firearm by the Denver Police Department Crime Laboratory "found that the weapon was functional and that the shell casing that were recovered (from the driver's seat of Officer Salinas' patrol car) were fired from that weapon." The weapon is a 9mm Glock, model 17, which holds 17 rounds in the magazine and one round in the chamber. Officer Salinas carries the weapon fully loaded with 18 rounds. Other testing determined that "no gunpowder residue was found on the shirt of Christopher Olguin." "The test on the officer's weapon indicated that the weapon will deposit powder up to 3.5 feet, so it is assumed that the suspect was farther than 3.5 feet from the officer when shot." The testing of the blood on the knife recovered at the scene (recovered near the left-front of Officer Salinas' patrol car where it came to rest after being kicked) found "the blood on the knife matched the blood on Angie Roberts' shirt."

Dr. Feldhaus, Denver Health Medical Center, treated Ms. Roberts for her multiple stab wounds. Among other injuries, the eight stab wounds collapsed both of her lungs and caused intra-abdominal bleeding. She was stabbed in both the front and back of her torso. Dr. Feldhaus concluded this was "serious bodily injury, which posed a substantial risk of protracted loss or impairment of the function of a part or organ of her body."

Based on the witness statements, the suspect's statement, and the review of the physical evidence, a clear picture of the events emerges. The following is a composite presentation of the facts as viewed by a variety of police and citizen witnesses.

The video-taped statement of Officer Salinas is in pertinent part consistent with and confirmed by the overwhelming weight of the other evidence gathered in this investigation. Officer Salinas stated that at about 5:27 p.m., on July 7,

2001, he was southbound in the 800 block of South Raleigh Street approaching West Kentucky Avenue when he saw a vehicle matching the description aired concerning a stabbing in the 800 block of South Irving Street. The stabbing had occurred within the prior hour. The vehicle, a blue Honda Accord, and the Hispanic male driver, both matched the description that had been aired. Officer Salinas activated his emergency lights and siren in an effort to stop the car. The driver increased his speed as he drove northbound on South Quitman Street and then turned eastbound on West Exposition Avenue. There was a passenger in the front-right seat, later identified as Johnny Borrego. He radioed in the car's license plate number (410ECK) and was later informed that this car listed to the suspect, Christopher Olguin.

Officer Salinas went on to state that Sergeant Chapman was monitoring the pursuit, which was only at speeds of 35 to 40 miles per hour. Olguin was not driving recklessly at this time but was refusing to stop. Salinas called out his pursuit as they passed Lowell, Knox, and then came to South Irving Street. Olguin then turned southbound on South Irving Street with Salinas following him. They continued southbound until they reached the 800 block. Salinas was relieved when Olguin turned down South Irving Street because he knew other officers would be there. He spotted Sergeant Chapman standing in the street, two or three feet from the west curb. As Sergeant Chapman attempted to wave Olguin over, Olguin swerved in an obvious attempt to hit him with the car. Sergeant Chapman thought he was going to be hit. Olguin then attempted to turn left into the 800-block alley. He felt that Olguin was not only using the car in an effort to escape, but was also attempting to use it to hurt someone. Therefore, Salinas attempted to terminate the pursuit by striking the car in the left rear wheel area. This caused the car to come to a stop over the sidewalk by a garage.

Officer Salinas stated he began to unbuckle his seatbelt and then began to kick open his car door to get out. He noticed Olguin had already exited his car and was running straight toward him. Olguin appeared to have a gray object in his hand. He said a number of things were going through his mind, including why Olguin was running toward him and what did he have in his hand. Olguin did not attempt to escape on foot and did not run by the car door. Officer Salinas said Olguin was on him within two seconds. With his right hand, Olguin reached for the right-top corner of the car door that was swinging open. Salinas saw a "Leatherman" knife in Olguin's left hand. He knew it was a "Leatherman" because he used to carry one. He stated that Olguin appeared to be really angry about something. Olguin held the knife up for a downward striking motion with the blade protruding from the bottom of his hand. Officer Salinas said it happened so fast that he had nowhere to go and no opportunity to find cover or concealment from the attack. He knew he was in serious trouble because he was still in a sitting position. Officer Salinas said he pulled his gun and shot from the hip because he did not have time to even take aim. He fired one shot and the window shattered. Olguin momentarily drew back in reaction to the shot, then raised the knife again and came at him. Salinas fired a second shot and Olguin fell to the ground. He did not know if one or both of the shots struck Olguin. Salinas said he knew Olguin had already stabbed someone and believed Olguin was willing to stab him. He got out of his patrol car with his weapon still drawn. Sergeant Chapman approached with his weapon drawn. They ordered Olguin to turn over. Olguin did not respond in any way. Salinas saw blood on his clothing in the area of his shoulder. The knife was laying on the pavement next to him. As they approached Olguin, Officer Salinas kicked the knife away from Olguin in the direction of the front of his patrol car. Olguin was turned onto his stomach and another responding officer handcuffed him.

Officer Salinas stated that an ambulance was called immediately. Then Sergeant Chapman made certain everyone was okay. Officer Salinas was then segregated away from everyone and placed in Sergeant Chapman's Cruiser. Sergeant Newton then drove him to Denver Police headquarters. Salinas was placed in a room to wait his turn to provide a video-taped statement to investigators. During this wait, he was taken to the 6th floor, where Denver Police Department Crime Laboratory personnel took his weapon for testing.

The following is a brief synopsis of the history of the relationship between Angie Roberts and Olguin and the knife attack on her by him. Angie Roberts, 2-8-70, told investigators that she met Olguin about two years ago in West Palm Beach, Florida. She stated that he had beaten her repeatedly during the past two years, including blackening her eye(s) approximately a dozen times. She said he had broken her ribs by putting all of his weight on her with his knees and bouncing up and down. She said he would choke her until she could not breathe. She stated that he had

beaten her so many times she could not keep count. She provided more details of the beatings to investigators, which I will not discuss in this letter. She went on to say that Olguin was on probation for assaulting one of her coworkers out of jealousy and when she tried to intervene, Olguin assaulted her. She stated he was on probation for those attacks. She said that she and Olguin came to Colorado together about six months ago. She stated he is a very jealous, violent person, who follows her all the time.

Ms. Roberts told investigators that on July 7, 2001, she and Olguin had an argument because he accused her of "smoking up the rent money." This was in reference to smoking crack cocaine. She had gone to a friend's house to shower and relax. Olguin showed up and began verbally attacking her. Because of his prior assaults on her, she went to the bathroom. Olguin followed her to the bathroom and Ms. Roberts believes that Olguin thought she was calling the police. He then attacked her and stabbed her multiple times. She did not see the knife, but felt burning sensations as Olguin struck at her repeatedly. He eventually stopped. Her friend called 911 to report the stabbing. An ambulance responded very quickly and took her to Denver Health Medical Center for treatment.

The stabbing of Angie Roberts occurred at the home of Aurelio Garcia. His statement to investigators was consistent with Ms. Roberts' statement concerning the stabbing incident. Garcia was also an eyewitness to the shooting incident. In pertinent part, Garcia said that when the car crashed, the driver got out and ran toward the officer as if to attack him. He stated that the officer was still in the patrol car when he fired two shots. The attacker fell to the ground. He said the driver was the same person who had attacked and stabbed Ms. Roberts.

Johnny Borrego was the passenger in Olguin's car during the pursuit that ended in the shooting. Borrego's statement to investigators is consistent with the statement given by Officer Salinas. He also provided the following pertinent information. He said that during the pursuit Olguin pulled out a knife that looked like a wrench. Borrego recalls Olguin saying that the officers were going to have to shoot him. Borrego said that when the car was struck (he did not see who struck the car), Olguin stated that he was not going to go down like this and got out of the car while it was still moving. Borrego said he heard shots and knew the officers were shooting at Olguin, but he did not see the shooting. He knew that Olguin was armed with the knife when he got out of the car.

In a statement to Officer Larry Graham, 97-05, Johnny Borrego also stated that Olguin told him that he would rather die than be without Ms. Roberts. He also heard Olguin mumbling about dying during the time Officer Salinas was pursuing him. He also described Olguin opening a pair of pliers that looked like a butterfly knife and saying that he would rather die than be without Ms. Roberts.

Sergeant Eric Chapman's, 94-42, video-taped statement to investigators was consistent in pertinent part with Officer Salinas' statement, the physical evidence, and the statements of Borrego and Olguin. He said Olguin had swerved toward him, forcing him to move back toward the curb. When Olguin's car went up on the curb, Sergeant Chapman ran to assist Officer Salinas. Olguin got out of his car and ran toward Officer Salinas. He said he saw an object in Olguin's hand when Olguin reached Officer Salinas' car door. Olguin grabbed the car door with one hand and had what appeared to be a knife in the other hand. Sergeant Chapman then heard a shot and Olguin fell to the ground. Officer Salinas and he approached Olguin with their guns trained on him. The knife was kicked away from Olguin and he was placed in custody. An ambulance was immediately requested.

Officer Aimee Rivera-Lumbano, 97-26, told investigators in pertinent part that Olguin got out of his car and ran straight back toward Officer Salinas. He had a hand in the air and went to the driver-side door. She heard shots as she was trying to get to a better position. She then moved to the suspect's car and took the passenger, Johnny Borrego, into custody.

Steve Campbell, a resident of the area, was an eyewitness to the shooting from his living room window. He told investigators in pertinent part that he saw a man go to the police car and he thought the man punched out the police car window. Campbell then saw the police officer fire two shots. The man was shot in the arm and arrested.

Officer Michael O'Neill arrived at the scene after the shooting. He went to the hospital in the ambulance with Olguin. Olguin asked Officer O'Neill if he knew why he (Olguin) had done it. Officer O'Neill said that he did not

know, and Olguin said that he had done it because he wanted to die.

On July 7, 2001, at approximately 8:40 p.m., Detective Steve Shott, Denver Police Homicide Unit, interviewed Christopher Olguin at Denver Health Medical Center. Olguin told Detective Shott that he had returned to the scene of the stabbing because he knew the police would be there and he wanted one of them to shoot and kill him. He said he knew he was in a lot of trouble and he knew the police would attempt to stop him. He went on to say that when his car jumped the curb, he got out of the car with a knife in his hand and approached the officer in a threatening manner. He said that he held his knife in his right hand with his arm extended over his head and lunged at the officer as he was trying to exit his car. He stated that he wanted the officer to believe that the officer's life was in danger and Olguin wanted the officer to react by shooting him dead. Olguin went on to say that he wanted the officer to shoot him in front of his girlfriend and he wanted her to see him die. The first shot the officer fired missed Olguin. The second shot hit him. He fell to the ground and expected to die. Olguin said the officer was still sitting in his police car when he fired the shots. He then commented that he was very disappointed that the officer's shot was not fatal and that the officer was a bad shot. Olguin said he did not hold bad feelings toward the officer and that he never intended to harm the officer in any way. He just wanted to die.

Guy Lucero made a statement to investigators, which is clearly inaccurate and inconsistent with the other witnesses, the physical evidence, and with the statements of Borrego and Olguin. He said that the driver got out of the car and the police grabbed him. When he pulled away and tried to run, the officers pulled their guns and shot him in the arm. He also stated that the driver (Olguin) punched the police car window and broke it. The officer then got out of the car and shot him.

Stephanie Maciel also gave a statement to investigators, which is clearly inaccurate and inconsistent with the other witnesses, the physical evidence, and with the statements of Borrego and Olguin. She stated that the driver got out of the car and was staggering and appearing to be dazed. He then stumbled toward the officer, put his hands up and the officer shot him. She said the man did not have a weapon and did not reach for anything. She also stated that the man did not run at or approach the police car. She said the officer was between the police car and the suspect's car when he fired his weapon. When first contacted at the scene, Ms. Maciel would not give her name or any information concerning the shooting. She later decided to give a statement.¹

Patsy Perkins is a neighbor of Aurelio Garcia, whose home was the location of the stabbing. Ms. Perkins saw the suspect's car swerve toward the uniformed police officer who was attempting to wave him down. She told investigators that when the suspect's car went onto the curb, the driver jumped out of the car and ran toward the officer's car. She said he appeared to be "mad as hell" and "wanted to fight." She said she saw his face and he looked angry. She said he was yelling something at the officer. She heard the other officer yelling "stop" or something like that. She said the driver kept running toward the officer. She said the officer's car door opened and the suspect was right at the door. She thought the other officer (Sergeant Eric Chapman) fired the two shots at the suspect.² She stated that Olguin was then arrested. Ms. Perkins stated that if she had had a gun, she would have shot. She told investigators that she believed the officers had acted properly.

Ms. Perkins stated that she initially did not want to get involved because she is not that comfortable in dealing with the police. She said she decided she needed to come forward and make a statement because her neighbor had stated to her that the officer in the shooting had been harassing her family, and that the officer had just shot the suspect down for no reason. Ms. Perkins said that she (Ms. Perkins) saw very clearly what had happened and that she knew that the officer had not done anything wrong. She knew her neighbor was saying things that were not the way it happened. This is the reason Ms. Perkins came forward to make a statement about the shooting. Her statement is consistent with other witnesses, the physical evidence, and with the statements of Borrego and Olguin.

Charges of Assault in the First Degree (Victim Angie Roberts), Criminal Attempt to Commit First Degree Murder (Victim Angie Roberts), Assault in the First Degree (Victim Officer Salinas), Felony Menacing (Victim Officer Salinas), and Vehicular Eluding are pending in Denver District Court against Christopher Olguin. Christopher Olguin remains in custody at the Denver County Jail pending the prosecution of his case.

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 physical force and deadly physical force is justified. Because the evidence establishes in this case that Officer Salinas shot Olguin, 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 the Officer Salinas fired the shot that wounded Olguin, he reasonably believed that Olguin was or was about to direct deadly physical force against him.³ In order to establish criminal responsibility for an officer knowingly or intentionally shooting and wounding 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 the 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 Salinas committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against Officer Salinas in the wounding of Olguin.

This case is a good example of how quickly a determined assailant can close distance and attack an officer with an edged weapon. The beginning and completion of the attack can occur in just a couple of seconds, as it did here. In that brief time, the officer must perceive the threat, evaluate the response options, and take defensive action quickly enough and with sufficient force to counter and repel the attack. It is difficult, from the comfort of our 20/20-hindsight review of these matters, to get a true feel for the survival instinct these attacks evoke in the endangered officer. Under the circumstances of this case, Officer Salinas displayed excellent control of his firepower. He fired only two shots in neutralizing and controlling what he perceived to be a very determined and aggressive attack by Olguin. We know from Olguin's statement that this is precisely the fear he intended to evoke in Officer Salinas.

We know from Olguin himself that this was an attempt "suicide by cop." Olguin stated that he was intent on returning to the location where he inflicted multiple stab wounds on Ms. Roberts, and then force the police to kill him in front of her. In fact, he was upset with the officer for not killing him. The justification for shooting Olguin could not be more clear-cut.

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 Dominick Salinas
Doug Jewell, 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
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

Footnotes:

1. A review of the video-taped statements of Stephanie Maciel and Patsy Perkins suggests that Stephanie Maciel may have intentionally made inaccurate statements to investigators about the shooting incident. It should also be noted that Maciel was inaccurate in positioning the two vehicles and that based on where she told investigators she was standing during the incident, she could not have seen what she claims. Olguin's statement, standing alone, refutes her claims.
2. We know that this is a misperception on her part. We know with 100% certainty that Officer Salinas fired the two shots, one of which struck Olguin.
3. Although the facts of this case make it clear that Officer Salinas fired at Olguin to defend himself, justification could also be present if Officer Salinas reasonably believed it was necessary in order to effect his arrest or to prevent his escape from custody because he had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon or was attempting to escape by the use of a deadly weapon. Even though officers would be justified under the statute to do so, Denver officers, to their credit, have traditionally not acted under this section of the statute. Almost without exception, shootings in Denver are under the "to defend" section of the statute.