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OFFICE OF THE DISTRICT ATTORNEY
DENVER

July 7, 2004

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Eli Jeremy Jiron, DOB 1/7/85, DPD #557383, by Officers Noel Ikeda, 00059, Marco Martinez, 95086, and Dominick Salinas, 97018, on March 17, 2004, at 217B Knox Court, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Eli Jeremy Jiron have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officers Ikeda, Martinez or Salinas. 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 about 3:30 p.m. on Wednesday, March 17, 2004, Denver Police District Four Neighborhood Police Officers ("NPO"), working on information provided by a Denver Police fugitive detail detective, made an "attempt pick-up" on a wanted party identified as Eli Jeremy Jiron ("Jiron"). The address to which the officers had been directed was 217B Knox Court, the second story apartment of a building on the west side of Knox Court. Several uniformed NPO officers, assisted by uniformed officers assigned to the Gang Bureau, drove to the area. Four gang unit officers took "cover" positions in the alley west of the building and five NPO's moved to the outside stairway that led to the only door to the apartment. These officers positioned themselves as follows: Officers James Mullins, 98045, and Nick Grove, 91042, stood at the base of the stairway, Officer Marco Martinez, 95086, stood part way up the staircase (where he was able to watch a window which

overlooked the stairs), and Officers Dominick Salinas, 97018, and Noel Ikeda, 00059, approached and knocked on the door at the top of the stairs. Officer Ikeda knocked once and there was no response. He tried the door knob but the door appeared locked. He knocked again and within seconds the door swung open and Jiron stood in the open doorway. Jiron turned and ran east down a short hallway, veered to his left and disappeared. Officers Ikeda and Salinas followed cautiously. Officer Ikeda came to the end of the short hallway and quickly “pied” the area to his left. He saw no one and, accordingly, made a wide approach to the left.¹ When he did so, he saw Jiron standing in the southwest corner of the kitchen area, armed with a kitchen-type knife.² Officer Salinas followed Officer Ikeda into the living room area and both officers immediately began ordering Jiron to drop his weapon.

Officer Martinez followed the other two officers into the apartment. He started to check the back bedroom area to the west, but heard Officers Salinas and Ikeda issuing commands and rushed back to the living room/kitchen area. Officer Grove came up the stairs, entered the apartment and also entered the living-room area. Four officers were now standing in the small living-room area, facing Jiron. All of the officers began commanding Jiron to drop his knife, but then Officer Salinas, who had received Crisis Intervention Training (“CIT”), took the lead and attempted to deescalate the situation by use of his training. As he did so, Officer Grove quickly went back outside and, from the landing at the door to the apartment, called to the officers standing on ground level, inquiring whether any of them had a TASER.³ Gang Unit Officer Jamie Akens, 90025, threw a TASER up to Officer Grove and Officer Grove re-entered the apartment. When he rounded the corner from the hallway into the living room/kitchen area, Officer Grove yelled “TASER! TASER! TASER!” He attempted to deploy the TASER but it did not discharge. He stepped to his left, turned slightly away from Jiron, and checked the TASER. He realized that the safety was engaged. He disengaged it and started to come back on target. Jiron had appeared to turn or shy away when Officer Grove first attempted to deploy the TASER. When Officer Grove turned away to check the TASER, Jiron began to turn back around and move toward him, with his knife held in a threatening position. When Jiron made this sudden and aggressive movement, Officers Salinas, Martinez and Ikeda fired their weapons. At the same time the three officers fired, Officer Grove deployed the TASER. Both TASER probes missed Jiron. This was a dynamic encounter with Jiron’s body moving and turning as the shots were fired. The officers were fanned out in front of Jiron and their shots came from varying angles. Jiron was struck several times and the bullet wounds are indicative of the positions of the officers and Jiron’s movements. Jiron fell to the floor and the officers immediately requested an ambulance, CODE 10, and advised the police dispatcher that they had been involved in a shooting. This call was made at 3:33 p.m. Denver Health Medical Center paramedics responded within minutes and were cleared to

1 A diagram of the floor plan of the apartment at 217B Knox Court is attached as Appendix 1. The area where the shooting took place is, in a word, constricted.

2 A photograph of the knife is attached as Appendix 3.

3 The “TASER” is a less than lethal, pistol-shaped weapon which fires two charged wires or leads a short distance (up to 21 feet). When an individual is struck by the probes an electrical charge temporarily immobilizes the individual. The devices are made by TASER International. We will refer to the weapon as a TASER, using the company name. In several of the transcripts of statements, the transcriber uses lower-case lettering, viz., “Taser.”

enter the scene at 3:36 p.m. The paramedics were unable to resuscitate Jiron and he was pronounced dead at the scene.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death Eli Jeremy Jiron, 1/7/85, DPD # 557383 (“Jiron”), by uniformed Denver Police Officers Noel Ikeda, Marco Martinez, and Dominick Salinas, who were attempting to arrest Jiron for outstanding warrants. Two warrants had been verified by Denver detective Avis Laurita, 79029, who then enlisted the District Four NPO officers to make the arrest.⁴ One warrant was for Parole Violation, the other was for felony sexual assault. The information provided to the officers by Detective Laurita was that Jiron was to be considered “dangerous,” that he had run from officers in the past, and that he would fight officers. Detective Laurita had been advised by a citizen informant that Jiron would be at 217B Knox Court, the home of his girlfriend.⁵ Detective Laurita directed the uniformed officers to the apartment and they made contact with Jiron. Jiron armed himself with a knife and four officers engaged in a brief confrontation during which they ordered him to drop his weapon. One CIT trained officer attempted to “talk him down” and another officer obtained a TASER and tried to use less than lethal force to end the situation. The incident unfolded in a constricted area of the apartment. When Jiron suddenly moved toward the officers, all four fired their weapons at Jiron: three handguns and a TASER. Immediately after the officers fired their weapons, the dispatcher was advised of the shooting and that an ambulance was requested. This call was made at 3:33p.m. Denver paramedics responded and Jiron was pronounced dead at the scene.

All of the officers who entered the house were dressed in full blue Denver Police Department uniforms. Officers Ikeda and Salinas were both armed with Glock model 17, 9mm semi-automatic pistols. This weapon has a magazine capacity of seventeen rounds and may be carried with an additional round in the chamber. Each officer carried his pistol fully loaded with Denver Police Department issued ammunition. Officer Ikeda fired his pistol five times. Officer Salinas fired his pistol four times. Officer Martinez was armed with a Sig Sauer, model P220, .45 caliber semi-automatic pistol. This weapon has a seven round magazine capacity and may be carried with an additional round in the chamber. Officer Martinez’s weapon was fully loaded with Denver Police Department issued ammunition. Officer Martinez fired his weapon two times. Following the incident and in compliance with the protocols established for officer-involved shootings, the officers’ weapons were given to Denver Police crime lab personnel for appropriate testing.

On March 18, 2004, Dr. Amy Martin, a forensic pathologist with the Denver Medical Examiner’s office, performed an autopsy on Jiron’s body. The cause of death was determined to be multiple gunshot wounds. Dr. Martin noted evidence of eight gunshot wounds, but determined that

4 Detective Laurita works with the Fugitive Location and Apprehension (“FLAG”) unit – a multi-jurisdiction task force.

5 As will be detailed below, the informant first provided information that Jiron would be going to a restaurant on Federal Boulevard. The information was updated after officers had met near the restaurant and begun to develop a tactical plan for the arrest.

some of the wounds might have been caused by the same bullet. The first wound⁶ detailed was a perforating wound⁷ which entered at the back of Jiron's right wrist and exited at the inside of the right wrist. Dr. Martin opined that this bullet then entered the right side of Jiron's face, striking the "right side of the cheek and corner of the mouth." The bullet fractured the mandible and loosened several teeth. A large fragment of this bullet was recovered from the mouth at autopsy. A second perforating gunshot wound was documented at the right thigh. This bullet entered on the "anterolateral" (front and side) right thigh, passed through skin and muscle tissue and exited "on the inner aspect of the right thigh." Dr. Martin found that "no vital structures" were penetrated.

The next wound documented was an entry wound at the "left popliteal fossa" (the area at the back of the knee) which exited "on the inside of the left knee." The bullet causing this wound passed through the tissue and "deep musculature" in this area. Dr. Martin next described a perforating chest wound which entered "on the left side of the lower chest" and exited at the right chest "below and medial to the right nipple." This bullet entered the chest cavity, "contuse[d] the edge of the right middle lung lobe, perforate[d] the sternum" and then exited Jiron's body. The next wound documented was a perforating gunshot wound caused when a bullet struck Jiron "just above the left buttock, and . . . 2 ¼ inches left of the midline. The bullet exited the body on the posterolateral (side and back) thigh. This bullet passed through skin, subcutaneous tissue and fat before leaving the body. Dr. Martin noted that "no vital structures" were penetrated. Dr. Martin then documented a gunshot wound to the "left mid-back." She determined that this bullet entered the chest cavity, causing "extensive fracturing" to the "posterior eleventh rib" and damaging the "left hemidiaphragm," the spleen, a portion of the stomach, the left lower lung, the pericardial sac and heart. It passed through the sternum, near the "second intercostal space," and came to rest under the skin where it was recovered at autopsy. The final documented wound was caused by a bullet that entered at the posterolateral upper back "6 ¾ inches left of the midline."⁸ This bullet passed through the skin and subcutaneous tissue of the back and came "to rest on the medial aspect of the left humeral head, fracturing the humeral head but not "grossly" damaging the "major vascular branches of the left arm. .

6 The wounds are numbered for ease of reference. Dr. Martin is unable to determine the order in which Jiron received the wounds.

7 A "perforating" wound is one in which the bullet enters, passes through and exits the body. This is sometimes referred to as a "through and through" wound. A "penetrating" wound is one in which the projectile enters and remains in the body.

8 The fact that Jiron received wounds in his face and the front of his body and to his left back and buttock suggests that he was turning at the time shots were being fired. Additionally, the fanned-out position of the officers suggests that when he was facing or approaching Officer Grove, Officer Ikeda would have been viewing the left side of Jiron's body. The statements of Officers Ikeda and Salinas establish this fact. As noted in the body of this report, Officer Ikeda states that Jiron was turning away from Officer Grove when Officer Grove attempted to deploy the TASER and then turned back when the TASER did not deploy. Officer Ikeda told investigators that as Jiron made his move toward the officers:

IKEDA: ... we, we fired on him and he kept going but then, then he started turning, you know, and ...but he was still alive. And then, then once, once he . . . we saw him actually going down . .

INVESTIGATOR: H-huh

IKEDA: ... that's when we stopped.

In his statement, Officer Salinas corroborates Officer Ikeda's description. During the course of his video-taped statement, an investigator asked him, "What happened when you fired?" Officer Salinas responded:

SALINAS: Um, Mister Jiron spun around a couple of times. Um, still had the knife in his hand. Uh, he then fell to the ground. Firing stopped . . .

.” Dr. Martin noted that “no vital structures [were] penetrated by this projectile. This bullet was also recovered at autopsy.

Toxicological analyses of blood and urine samples obtained from Jiron’s body were negative for the presence of blood alcohol. Urine screens were positive for THC (the active psychotropic agent in Marijuana) and for trace amounts of the cocaine metabolite, benzoylecgonine. The screens were negative for the other controlled substances that may be identified in the standard analysis (e.g., opiates, barbiturates, amphetamines, PCP and benzodiazepines). The cause of death was determined to be “complications of multiple gunshot wounds.”

The location of this shooting, 217 Knox Court, is a small two-story building on the west side of the street. Apartment B is the upstairs unit. A set of stairs on the south side of the building leads to the landing and front door.⁹ The door, which opens inward, opens into a corridor which runs east-west. To the west, the corridor leads to two back bedrooms, one on the northwest side of the apartment, the other to the southwest. To the east, the corridor runs along the south side of the apartment. It opens into the living area and forms the south wall of the kitchen area. The living room – kitchen area is essentially one area. On the west wall of the kitchen area are cabinets above a sink, a dishwasher and counter space. A refrigerator is at the west wall at the north end. On the south wall of the kitchen area are additional cabinets, which sit above a range, and additional counter space. Investigators documenting the apartment recovered multiple shell casings, bullets and bullet fragments in the kitchen area. Also recovered was a TASER in the living room, with the two probes and wires extended into the kitchen area. The entire area was photographed and the items of evidence measured and recovered.

Jiron was pronounced dead at the scene and his body was not removed until investigators had completed the initial documentation of the scene. He was found lying on his right side in the south west corner of the kitchen area. A kitchen-type knife was recovered next to Jiron’s body and placed in property. Investigators later measured the knife and determined that it had an overall length of 11 inches and a 6 inch blade. Immediately after the scene was secured, officers and investigators conducted a neighborhood survey and identified several individuals who heard shots fired. Written statements were obtained from these citizens. The two Denver paramedics who attended to Jiron, Jason Lones and Clifford Pickering, were interviewed regarding their observations at the scene. Each provided a written statement.¹⁰ Fabian Rodriguez-Torrez, 5-30-84, a friend of Jiron’s, was located by investigators. Mr. Rodriguez-Torrez told investigators that Jiron had spoken with him about the incident for which the sexual assault warrant had been issued, denying the allegation but stating that he was aware that a warrant had been issued. A written statement was obtained from Mr. Rodriguez-Torrez. Mr. Jiron’s girlfriend, Ms. Tamara Marie Esquibel, was the resident at 217 Knox Court, unit B. Although she was not in her apartment at the time of the shooting, because of her involvement with Jiron, investigators sought and received a video-taped statement from her.

⁹ A photo showing the stairs and front door is attached as Appendix 2.

¹⁰ Jones stated that when he examined Jiron, he noted “a filet knife about 6 inches long on the floor next to the male.” Pickering stated that when he and his partner arrived, they “found an adult male on the floor of the kitchen. This male was lying on his right side – a knife in I think his left hand. . . .”

Several officers were present outside the apartment at the time of the shooting. Written statements were obtained from these officers as well as those who responded after the incident to secure the scene and assist in the investigation. Detective Avis Laurita was the fugitive investigator who had enlisted the NPO in the effort to locate and apprehend Jiron. She provided a lengthy written statement in which she detailed the investigative steps she had taken in locating Jiron and described the information she had provided to the arrest team.

Jefferson County District Attorney Investigator Michael R. Russell worked with Detective Laurita in the FLAG unit. He was present at the apartment but as he was in plain clothes he did not deploy with the entry team. He provided written and video-taped statements regarding fugitive investigations and those things he heard while outside at the time of the shooting. Denver Gang Officer Jamie Akens, 90025, was the officer who provided Officer Grove with the TASER. After he did so, he ran up the stairs and entered the apartment. He was just entering the living room when the officers began firing their weapons. He provided written and video-taped statements detailing his actions and observations. Officer Randy Yoder, 91034, was outside the apartment and he heard someone yelling for a TASER and then saw Officer Akens run up the outside stairs. He followed Officer Akens and, as he entered the hallway, heard several gunshots. He provided a video-taped statement detailing his actions and observations. Officer Grove's partner, Officer James Mullins, 98045, had entered the dwelling and was positioned behind Officer Grove at the time shots were fired. He had his pistol drawn but, because of his position, he did not fire. He provided a video-taped statement detailing his actions and observations.

Following the shooting, and in accordance with protocol, all of the involved officers present in the living room were separated from each other and the other witnesses. Each was separately transported downtown by an uninvolved supervisor and each was given an opportunity to speak to their attorney. Each officer voluntarily provided a video-taped statement to investigators.

The investigation disclosed that on February 26, 2004, Detective Laurita was contacted by Denver Police Detective Barbara Wimmer, 96004, who was assigned to the Crimes Against Persons Unit. Detective Wimmer advised Detective Laurita that she had obtained a warrant for the arrest of Eli Jiron. Detective Laurita checked the police computers and learned that there was another outstanding warrant for Jiron, this one for Parole Violation. Detective Laurita noted that this "warrant had a caution indicator for violent tendencies." Over the next several days, Detective Laurita made repeated efforts to locate and apprehend Jiron, including contacting members of his family and friends and engaging in surveillance of his last known addresses. Ultimately, on March 17, 2004, Detective Laurita received a telephone call from an informant who told her that Jiron might be going to a restaurant known as Chubby's at First and Federal Boulevard. Based on this information, Detective Laurita contacted Officers Salinas and Ikeda and requested that they attempt to arrest Jiron. At that time, she provided the officers with the information she was aware of regarding Jiron. She then contacted Detective Mike Russell – a member of the FLAG group. He told her that he was in the area and that he would assist the arrest team. Shortly after Detective Laurita took these steps, she received another call from her informant, who told her that Jiron was located in an apartment in the area of Second and Knox Court. Detective Laurita had previously learned that Jiron had been staying with a

girlfriend who had a possible address of 217 Knox Court. She immediately contacted the arrest team and “sent” them to 217 Knox Court.

Officer Salinas was partnered with Officer Ikeda. When they received the call from Detective Laurita, they checked their Mobile Data Terminal (the “M.D.T.” is a computer installed in a patrol car) and verified that Jiron had outstanding warrants for felony Sex Assault and Parole Violation. Officer Salinas told investigators that there were several “indicators” provided with the warrant information, including the fact that Jiron was a “listed Northsider gang member” and that the Gang Unit was to be notified, and the further fact that Jiron had “violent tendencies.” Based on this information, the officers notified Gang Unit officers, some of whom indicated that they were familiar with Jiron and would be able to identify him.

Officers Salinas and Ikeda opted to enlist other officers in the attempt to arrest Jiron. They “got a hold of” Officers Martinez, Mullins, and Grove, and Denver police Gang Officers Akens and Christine Chavez, 91003. Officer Chavez then “confirmed Eli Jiron’s warrants” on her M.D.T. She also told investigators that she recalled Detective Laurita advising officers that Jiron “had violent tendencies and that he will run.” Officer Chavez advised Gang Unit Sergeant Les Perry, 87034, who responded to the area. She also contacted Denver Gang Officers Randy Yoder, 92034 and Danny Perez, 95032, who also responded to the area.

It was during the time that the officers were gathering and forming a plan to attempt to apprehend Jiron at the restaurant that Detective Laurita advised them that Jiron was likely to be found at the apartment at 217 Knox Court. The officers then responded to that address from their various locations.

Investigator Russell, in plain clothes, responded to the area in an unmarked car. Shortly after he arrived, he saw a Hispanic female, matching the description of an “associate” of Jiron, leave the upstairs apartment. This observation “seemed to confirm that [Jiron] was present at the location,” and the officers determined a plan by which Gang Unit officers would cover the rear and District 4 Impact (NPO) officers would attempt to contact Jiron at the upstairs apartment.

Investigator Russell took a position at the northeast corner of the apartment building; Gang Unit officers Yoder and Perez took a position in the alley, west of the building, where they could watch the “rear and windows” of the apartment. Gang Unit officers Akens and Chavez were also at the rear of the building, monitoring the southwest corner. Sergeant Perry remained in his patrol car, parked on Second Avenue, near the Knox/King alley, in order to serve as a “chase car” and monitor the radio.

Officers Salinas and Ikeda took a position at the door to the apartment at the top of the stairs. Officers Mullins and Grove positioned themselves at the base of the stairs and Officer Martinez moved partway up the staircase. With all officers in position, Officer Ikeda opened the screen door and, holding it open with his foot, began knocking at the front door to the apartment. Officer Salinas told investigators that both he and Officer Ikeda had drawn their handguns and they “knocked

probably three or four separate times, probably three or four reps [raps?] a piece.” There was no answer to the knocks and Officer Salinas stated that

...we figure he’s probably not going to answer. So we’re just going to withdraw. At that point, the door swings wide open. I don’t know. . . I didn’t s-..I didn’t hear the knob turn, I just .. .the door swings open.

Officer Ikeda told investigators that when the door swung open,¹¹ Jiron was standing in front of him. Jiron saw the officers and turned and ran into what Officer Ikeda would soon learn was the living room. As Officer Ikeda described events:

Um, the next thing you know the door swings open, and the, I see the suspect and he sees me. He immediately runs back, um, to the living room and, I, I don’t want to hesitate to put my head through the, uh, the hallway because it’s a fatal funnel. But, uh, um, as I slowly, uh, with my gun drawn, um go through the hall way and [Officer Salinas] is telling me, you know, “Go. Go.” So I go and as soon as I see the living room, um, I see a corner where d-..there is a corner. And so I basically tactically eying [*pieing?*] the living room and also making sure that he’s not hiding behind the, uh, the corner over here. So I swing wide, just wide around, and notice that the, the suspect there is just behind and in a corner of the kitchen with a knife. . . . I and I said “Denver Police! Drop the knife or I’ll shoot! Denver Police! Drop the knife or I’ll shoot, uh, drop the knife or I’ll shoot!” I think I said it about four or five times.

Officer Ikeda had moved to a position in the living-room area near the north wall and just in front of an entertainment center. He would later estimate that he was six to eight feet away from Jiron. From his position, he clearly saw the knife in Jiron’s hand. He described it as an eight inch knife with a curved blade.¹² Officer Salinas, who had followed close on his heels, took a position to his left and near the corner of the hallway and kitchen. Officer Martinez had followed Officers Ikeda and Salinas into the apartment. He started to clear the west end of the apartment, but when he heard Officers Ikeda and Salinas “announce that they were the police and for somebody to drop the knife,” he immediately reversed direction, entered the living room area, and took a position between and somewhat to the east of Officers Salinas and Ikeda. The three officers were now all ordering Jiron to drop his knife. In Officer Martinez’s words:

11 Officer Ikeda noted a boot mark on the front door and formed the conclusion that the door had been “booted” or kicked open, perhaps by Metro-Swat officers at some point. Investigators at the scene observed the same marks and, at first, believed that the officers involved in this incident had kicked the door. Subsequent investigation disclosed that police were called to investigate a burglary on March 13, 2004. The responding Officer, Adam Bechthold, reported that on arrival he observed “that the white front door had been kicked in. There was a large black boot/shoe print in the center of the door, about waist high, along with the wooden door frame being splintered.” The officers contacted the resident, Tamara Esquibel, who stated that she did not wish to make a report. She did, however, advise officers that persons unknown had “shot out” a window in the northwest bedroom a “couple of days before the door was kicked in.” Although officers observed a single bullet hole in the window, Ms Esquibel “refused to file a report about the window being shot out.”

12 Officer Salinas would describe it as a “filet” knife with a blade “approximately” six inches in length. Officer Martinez told investigators that the knife appeared to him to be a kitchen-type knife with a blade length of about four inches.

Okay. Um, and at that time I had my weapon drawn as well and I . . . since I heard [Officers Ikeda and Salinas] yell police re- . . .and I yelled the same thing. I said police! Drop the knife! Police . . .drop, police . . .drop the knife! [Jiron] was standing there with the knife in his hand; well it was the right hand. He was standing there with the knife in his hand pointing it toward the officers. But he was just basically standing towards the cabinets there.

Officer Martinez told investigators that when he saw the suspect he

immediately noticed he didn't have a shirt on, um, and looked for d- . . .looked at his face. I identified him to the previous [Denver Police] bulletin and noticed that he had a distinctive tattoo on his neck that Officer Salinas had earlier informed me about.

(Each of the officers concluded that the party they were confronting matched Jiron's description.)

Officer Salinas, who, as noted previously, had been CIT certified, began to use his training in an attempt to deescalate the confrontation. He told investigators that after he and the other officers had told Jiron "approximately ten to fifteen times" to drop the knife, "At one point, I even held up my hand and advised the other officers to stop talking so that I could try and, and make some kind of rapport with this guy." An investigator asked him why he took such action and he responded that he was CIT trained and that

What I did is, I, I spoke to, to the party. I said "Eli, you don't want to do this, you need to put the weapon down." I said, "you[sic], we don't want to hurt you; you don't want to get hurt; please put the weapon down; this is not the way to do this." Uh, at that point, at one point (unintelligible) I was talking to him, he appeared . . . he shifted his weight and it looked like he was going to attempt to rush us. He didn't. We held our fire. We actually called for a TASER. Somebody behind me called out for a TASER. Officer Grove came into my view. Officer Grove, actually . . . if I may. He came into the residence. . . if I was right here, he was just slightly to my front.

As previously noted, when Officers Ikeda, Salinas, and Martinez entered the apartment, Officers Mullins and Grove climbed the stairs. They, too, entered the apartment. Officer Mullins went to his left to clear the west end of the apartment and Officer Grove entered the hallway. Both officers then heard the other officers ordering someone to drop a weapon. Officer Grove proceeded toward the living room area and saw two officers¹³ with their guns drawn. He told investigators that

. . . [the officers in the living area] were telling . . .saying, "drop the knife! Drop the knife!" I went back out the door, and Officer Mullins was somewhere right in here somewhere.¹⁴ And I went to

13 The fact that he did not see all three officers is not surprising in light of the rapid pace in which the event unfolded.

14 Officer Mullins told investigators that he had started west down the hallway when he heard officers yelling "drop a knife." He started to the east but stopped so that Officer Grove could step past him, get the TASER from Officer Akens and return. At the time shots were fired, Officer Mullins was in the hallway in a position to see Officer Grove deploy the TASER but not in a position to see the actions taken by Jiron.

the top of the stairs and I yelled down to Officer [Jamie] Akens, “do you have a TASER?” He said, “yes.” I said, “throw it up to me.” So he threw up a, a TASER to me here. And I went back inside the apartment. I s...yelled TASER! TASER! TASER! I came around the corner here and I observed our suspect.

Four officers were now standing in a ragged line, confronting Jiron who was standing in the southwest corner of the kitchen armed with the knife. With the other three officers training their handguns on Jiron, Officer Grove attempted to deploy the TASER. It did not discharge. Officer Grove stepped to his left so as to get some cover from the wall separating the kitchen from the corridor, and checked the malfunction. He saw that the safety was on, so he disengaged it, stepped back and came back up on target. When he did so, he saw that Jiron had “already advanced on me to there. And he still had his knife in his hand.”

INVESTIGATOR: At that time did you announce Taser, Taser or anything?

GROVE: Uh, the second time I didn't but there was, a you know, a three to five second, uh, total lapse from the time that I tried to pull the trigger the first time and from the time I came back around the corner again. So I didn't announce Taser, Taser again. I really didn't have time.

INVESTIGATOR: Okay. And, and, again, would approximate the distant you . . . the distance between you and the suspect at that time when you . . .

GROVE: The second time?

INVESTIGATOR: The second time, yeah.

GROVE: It was about three to five feet.

Officer Grove saw Jiron approaching him and, from his perspective, it appeared that Jiron was looking directly at him. He, again, pulled the trigger of the TASER. This time it did deploy, however, the probes missed Jiron. Almost simultaneously the other three officers fired their handguns. An investigator asked Officer Grove whether he fired first or heard gunshots first:

Um, close (unintelligible) within a second of everything. Um, when the shots started being fired I went like this [demonstrating] and I dove back behind the wall here. And that's probably why my Taser went into this wall over here, at this angle here, because of me hearing the shots and then I was starting to move, and I pulled the trigger at the same time. So it was probably all this in the same second or so.

Officer Ikeda told investigators it appeared to him that when Officer Grove attempted to fire the TASER, Jiron turned as if to avoid being hit. However, when the TASER failed to discharge, Jiron began “to come after Officer Grove.” Officer Ikeda added, “[a]s soon as I saw [Officer Grove] turn around and he was exposing his back and the suspect's coming around with the knife, uh, that's when we fired.”

Officer Martinez described the critical moment and the facts that led him to fire as follows:

. . . Um, the suspect, it seemed like he moved up a little bit and Officer Grove, uh, pointed the Taser at the, at the individual. I, I wasn't, I was watching Officer Grove through my peripheral vision at the time, but I was trying to focus my attention on the suspect so that way when Officer Grove hit him with the Taser if he dropped we could immediately run in and take action. He was (unintelligible) less lethal force. We could just s- . . . take him out, get the knife, and handcuff him immediately. But, um, there was, there was a sl- . . . there was a slight delay and I yelled out to Nick [Grove] to taze him, taze him. And, uh, something happened where I kind of, I was still focusing on the suspect but I looked over at [Officer Grove] and he was having trouble with the Taser. It was malfunctioning. I couldn't tell exactly what was wrong at that time. Well at that time the suspect realizes that there was something wrong . . . in my mind . . . that there was something wrong with the Taser as well. He immediately lunges with the knife up towards these two officers and myself and Officer Ikeda.

Officer Salinas also saw Officer Grove attempt to fire the TASER and then step away and check it. He told investigators that "it appeared there was a problem with the taser." He stated that the TASER

. . . seemed to be malfunctioning. I ordered him [Officer Grove] to clear it. I could see . . . the party flinched when he saw it coming and then came back down in, in almost a fight stance. Um, I, I, yelled for . . . Officer Grove was closer than I and I was the closest one to him, uh, six feet. Well, ten feet maybe. I have Officer Grove clear for his safety. At that point, Mister Jiron lunged at us. Uh, you know, a fighting stance, had the knife out and I was in fear for my, my life.

Officer Salinas told investigators that he waited for Officer Grove to clear (move out of the way), and he then fired. In response to later questions by investigators, Officer Salinas stated that he actually placed his free hand or arm on Officer Grove's shoulder in order to make sure that he was not in the line of fire. "He's [Officer Grove] in a position that's a vulnerable pos- . . . vulnerable position. And now our safety's starting to be compromised because I can't take any action because' he's still in, he's still in my, my line of fire should I have to take that course of action." When Officer Grove moved, Officer Salinas immediately fired his handgun. He estimated that when he fired, Jiron had closed to a distance of about six feet.

From the time that Officer Grove first attempted to deploy the TASER to the time the three officers fired their pistols took just seconds. In Officer Martinez's words, it was ". . . maybe five seconds." Jiron fell to the floor but was still showing signs of life. The officers advised the police dispatcher that they had been involved in a shooting and requested an ambulance, but did not immediately approach Jiron as they did not know where the knife was and whether he was still a threat. The gang officers then stepped in to await the ambulance, thus allowing the involved officers to step away from the immediate area.

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 another human being and causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force by a peace officer is justified. As the evidence establishes that Eli Jeremy Jiron was shot by Officers Ikeda, Martinez, and Salinas the determination of 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:
 - (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:
 - 1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - 2. 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.

Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance. The degree of force required may be different in different situations. (*Boykin v. People*, 22 Colo. 496, 45 P. 419). This, of course, does not mean that an officer cannot retreat, if he or she chooses to do so.

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 killed Jiron, they each reasonably believed that Jiron was directing or was about to direct deadly physical force against them or another person 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

The officers were attempting to make the lawful felony arrest of Jiron for Sexual Assault and Parole Violation warrants. They had information that he was dangerous, had run from officers in the past, and that he would fight officers. There is no question Jiron knew they were police officers. They were dressed in full Denver Police uniforms and repeatedly indicated they were police officers. Rather than surrendering to the lawful arrest, Jiron made the conscious decision to flee and then aggressively confront the officers. He quickly fled to the kitchen, armed himself with a knife, and faced the officers. These actions by Jiron evinced an overt hostility toward them and was an indication of his potential intent to use the weapon against the officers. He refused to comply with the repeated commands to drop the knife. The confrontation was in a very constricted area of the interior of the residence. In spite of this and the inherent risk of being in this close proximity to a non-compliant armed and dangerous suspect, the officers did not fire, but rather made repeated attempts to deescalate the confrontation.

The actions of the officers reflect a clear intent on their part to attempt to avoid having to use deadly force. The officers communicated with the suspect and with one another. Officer Salinas, who is CIT trained and certified, directed the other officers to allow him to be the single source of communication with Jiron. The officers used not only verbal CIT techniques in an effort to calm the suspect and gain compliance, but also attempted to use a less lethal force option. None of the officers in the residence had a TASER. Officer Grove retrieved one from an officer outside the residence. Throughout the efforts by the officers to deescalate, Jiron made no indication of any intention to comply. He had an ongoing opportunity to surrender peacefully. Instead, his actions were consistent with the information they had concerning his prior conduct. In spite of the inherent potential danger it presented to them in this deadly-force encounter, the officers attempted to use a TASER. With Jiron still refusing to drop the weapon and surrender, Officer Grove attempted to deploy the TASER he had obtained from a fellow officer. It failed to deploy. As Officer Grove turned away to assess the TASER’s failure to deploy, Jiron, instead of dropping the knife, turned quickly and aggressively toward the officers with the knife still in hand. The three officers fired simultaneously in response to

this sudden, hostile, and threatening action from close range by Jiron.

The Taser is a less-lethal force option designed and deployed for use in non-deadly force encounters. When a party is armed with a firearm or edged weapon, the confrontation is immediately a potential deadly-force threat. There have been confrontations where the Taser has been successfully used against assailants with edged weapons, but the Taser is not specifically designed and intended for that type of encounter. While it is fortunate that on occasion under the right set of circumstances a Taser can be deployed to end an encounter without serious injury or death to anyone, there should be no expectation that a Taser will be used in confrontations with assailants armed with firearms and edged weapons. This is clearly stated in the Denver Police Department Operations Manual at “105.02 Less Lethal Force and Control Options.”¹⁵

Under the facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for the officers to perceive that Jiron was an imminent deadly threat to them or the other officers present at the instant they fired. Therefore, no criminal charges are fileable against Officers Ikeda, Martinez or Salinas for their conduct in the death of Jiron.

As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,

.....

Bill Ritter, Jr.
Denver District Attorney

cc: Officers Noel Ikeda
Marco Martinez
Dominick Salinas
David Bruno, Attorney at Law
Doug Jewell, Attorney at Law
John W. Hickenlooper, Mayor
All City Council Members
Alvin J. LaCabe, Jr., Manager of Safety
Cole Finegan, Denver City Attorney
Marco Vasquez, Deputy Chief
Michael Battista, Deputy Chief
Dan O’Hayre, Division Chief
Dave Fisher, Division Chief
Steve Cooper, Division Chief
Mary Beth Klee, Division Chief
Dave Abrams, Captain, Crimes Against Persons Bureau
Jim Haney, Lieutenant
Jon Priest, Lieutenant, Homicide
Martin Vigil, Detective, Homicide
Michael Martinez, Detective, Homicide

¹⁵ This case is an example of the fact that in these quickly evolving, tense confrontations, the presence of a TASER guarantees neither a certainty that it will be able to be deployed nor that it will be successful if deployed. In this instance, even though Jiron was only a few feet from Officer Grove when he deployed the TASER, the shot missed Jiron.

John Lamb, Commander, Civil Liability
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Doug Jackson, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission

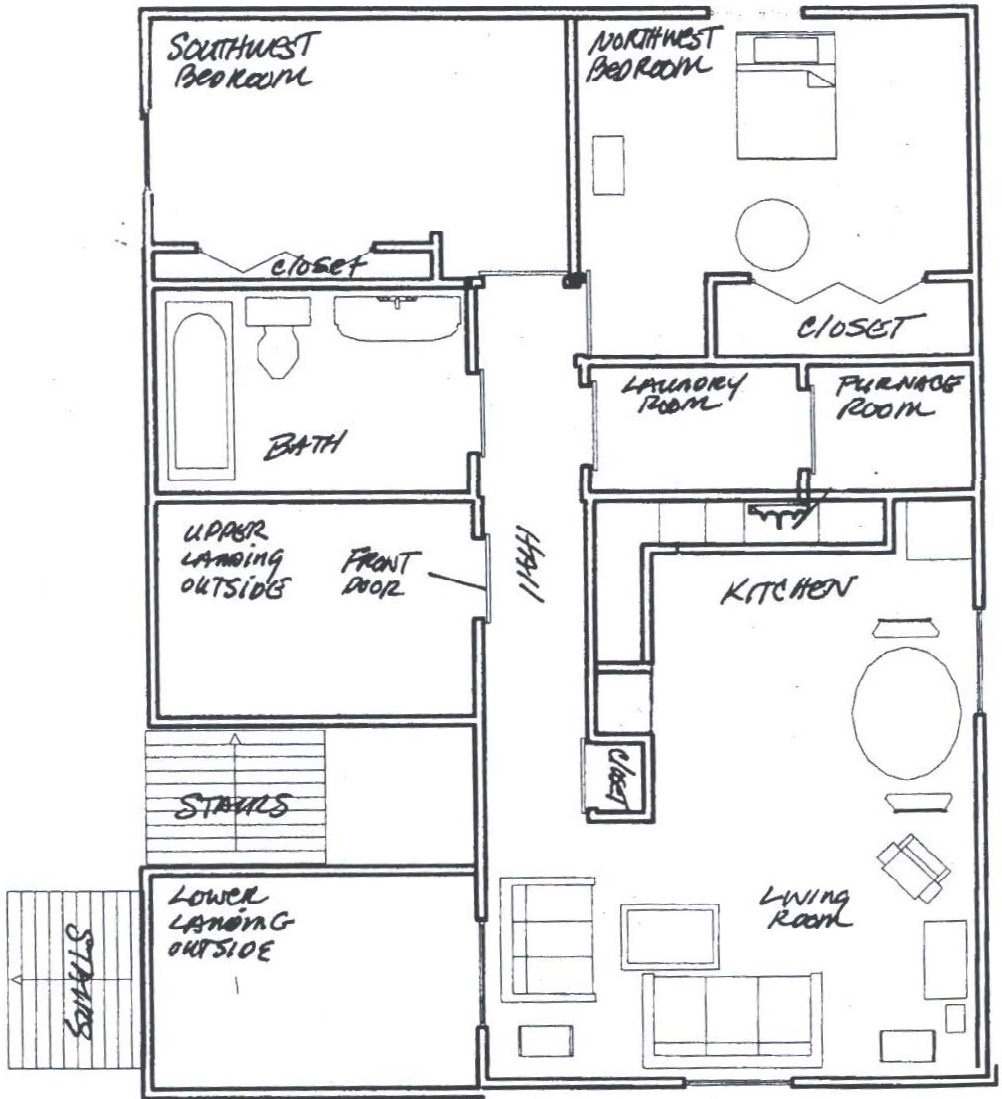
APPENDIX 1

This diagram is actually of 217 Knox Court "Unit #B." It is mislabeled here.

217 Knox Court Unit #A



NOT DRAWN TO SCALE
MEY 8 6012
031704



DESCRIPTION OF ROOMS

APPENDIX 2

Front Door



217-B Knox Court

APPENDIX 3

**This is the knife used by Jiron .
It is shown here to scale (this
photo is the actual size of the
knife).**

