



# DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

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March 17, 2009

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

RE: Investigation of the shooting death of Davlon Royall Reagor, dob 4/14/71, DPD #413362, by Officer Edward Ash, #06059, on February 26, 2009, at the intersection of 5<sup>th</sup> Avenue and Lafayette Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the death of Davlon Royall Reagor (Reagor) have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officer Edward Ash (“Officer Ash”). My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed 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 officer-involved shooting and the applicable Colorado law is attached to this letter.

### **STATEMENT OF FACTS**

On February 26, 2009, at approximately 10:00 p.m., Reagor “got into a fight” with his girlfriend and “took her car and her money.” She resides in the 7600 block of East Harvard Avenue. Her car was a maroon 1986 Ford Escort.<sup>1</sup> Approximately 30 minutes later Denver police officer Daniel Swint, 96-24, was using radar to detect traffic violators in the 500 block of Speer Boulevard. Officer Ash, working a DUI-Traffic assignment, was on routine patrol in the area and assisting Officer Swint with stops. Officer Swint requested assistance over his police radio for Officer Ash to stop a Ford Escort that was clocked at 51 mph in a 35 mph zone. Officer Ash saw the vehicle and activated his emergency lights. The subject vehicle

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<sup>1</sup> She reported the incident to the Arapahoe County Sheriff’s Department the next morning at approximately 10:00 a.m.—11 ½ hours after the shooting incident at 5<sup>th</sup> Avenue and Lafayette Street.

initially slowed and moved with Officer Ash to the right side of the street while driving east on 5<sup>th</sup> Avenue from Speer Boulevard. However, the subject vehicle did not stop. It continued to travel at a slow speed. Officer Ash then sounded his air horn to get the driver (later identified as Reagor) to pull over and stop.

Rather than stop, Reagor accelerated away from Officer Ash, running a stop sign as he fled east on 5<sup>th</sup> Avenue from Downing Street with his headlights turned off. Officer Ash turned off his emergency equipment. He radioed other officers that the subject he was attempting to stop on the traffic violation had fled. Other Denver officers began to cover into the area. Reagor continued to flee eastbound on 5<sup>th</sup> Avenue. Officer Ash then saw the vehicle spinning around in the street. As Officer Ash believed an accident was occurring and thought he would possibly end up in a foot chase with the driver, he closed distance on the vehicle. As he approached, he saw the vehicle was now accelerating in reverse eastbound on 5<sup>th</sup> Avenue toward the Lafayette Street intersection. A Toyota Tacoma truck traveling westbound on 5<sup>th</sup> Avenue attempted to avoid being struck by Reagor, who was backing directly at the truck. The driver of the truck [later identified as Scott Davies (“Mr. Davies”)] began backing up. Mr. Davies also observed Reagor doing what he described as “donuts” in the street. Officer Ash thought Reagor’s vehicle made contact with Mr. Davies’ truck in the intersection. The stolen vehicle driven by Reagor came to rest facing north on Lafayette Street near the southwest corner of the intersection.<sup>2</sup>

Officer Ash immediately stopped his fully marked Denver police car at approximately a 45 degree angle to Reagor’s stolen vehicle, with his right-front bumper approximately five feet from Reagor’s left-front bumper. Officer Ash immediately got out of his police car and drew his service pistol. As he moved around his car door to make contact, still feeling Reagor might flee on foot, he shouted

commands at him: “Show me your hands ... Show me your hands ... Show me your hands.” It was dark outside and Officer Ash had his headlights and driver’s-side spotlight turned on. He aired that he had the suspect at gunpoint. Reagor did not comply with the commands. As Officer Ash started to move forward to go to the right between



the two cars to remove Reagor and take him into custody, Officer Ash told investigators that Reagor’s “eyes got big” as he suddenly revved the engine. At this instant, Mr. Davies accelerated into the front-right bumper and quarter panel of the vehicle.<sup>3</sup> Mr. Davies told investigators he did so because “the officer was all alone—I did not want him to get hit.” He said he saw the vehicle’s back-up lights go out and the vehicle go into gear and lurch forward, then the driver gunned the engine. The engine was revving at a high rate when Mr. Davies drove into the vehicle. He said, “I was afraid he was going to run the officer over.” It was at this same instant that Officer Ash fired multiple shots at Reagor through the right-front windshield. Mr. Davies said he thought “he (Reagor) was trying to go through my car at the

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<sup>2</sup> See attached photograph of location with involved vehicles identified. Page 13.

<sup>3</sup> See attached photographs of area where Reagor’s stolen vehicle was struck. Pages 14-15.

officer.” Officer Ash said he fired because he believed Reagor was intending to run over him. Officer Ash was within three-to-five feet of the front of Reagor’s stolen vehicle when he fired. Officer Ash said he stopped firing when Reagor slumped over to the passenger seat. Mr. Davies stated the high engine revving continued for a few seconds.

Reagor was struck by two of the nine shots. The shots were fired in rapid succession. Reagor slumped to his right across the console area with his head and upper body coming to rest on the passenger seat. Denver Police cover cars arrived quickly. Officers removed Reagor from the vehicle. They determined he had a pulse and began CPR. Paramedics arrived and he was taken by ambulance to Denver Health Medical Center for treatment of the two gunshot wounds. Medical personnel were unable to save his life and he was pronounced dead at 12:04 a.m. by Dr. Jason Hoppe.

In a follow-up statement to lead detective Joe Delmonico on March 3, 2009, after reflecting on the incident, Mr. Davies wrote in pertinent part:

What I forgot to mention and later realized is that after he was shot, and at the point when I started to back off the suspect’s car, the Escort’s engine continued to rev really hard for about 5 – 10 seconds and then stopped revving. As if it was still in neutral gear or “park” with the suspect’s foot still on the gas. He must have then taken his foot off the gas even though he’d been shot.

I’m no cop but to this civilian this means to me and only me that ultimately, the suspect had every intention of either escaping, running Officer Ash down or both, but ultimately failed to get the car into a “D” gear. I believe he did try to get it into gear and thus hit the gas thinking he had gotten it into gear.

So, therefore, I suspect he panicked and forgot about the brake/shift in the unfamiliar car. I assume the Escort was an automatic based on my research and as you know, most automatics (if it was an automatic) require you to shift out of “park” with the brake depressed. The Ford Escort does.<sup>4</sup> I never saw any brake lights and I’m sure he wasn’t thinking “brake.” He was thinking “go” from what I saw.

Michael Dichter (“Mr. Dichter”), who resides on Lafayette Street in the second house from the northwest corner, heard tires squealing, looked out his back window across his neighbor’s backyard, and saw a car weaving. He thought the vehicle might have gone up on a lawn. He then saw a police car moving slowly behind the vehicle. When he lost sight of the vehicle, because his neighbor’s house blocked his view, he ran to the front of his residence, which faces Lafayette Street. When he reached the front door he “heard multiple shots in rapid fire.” When he opened his front door, he saw a police officer pointing his weapon at a car facing him at the intersection of 5<sup>th</sup> Avenue and Lafayette Street. He saw a man in a ball cap (Mr. Davies) get out of a pick-up truck and talk to the officer. Mr. Dichter did not see

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<sup>4</sup> The stolen Ford Escort driven by Reagor does have an automatic transmission.

Officer Ash fire the shots.

Officer Ash and Scott Davies were the only eyewitnesses to the shooting. A number of earwitnesses were located during a neighborhood canvass. Their statements ranged from hearing two shots to seven shots. Officer Ash thought he had only fired about 3 shots until he later saw the holes in the front windshield. Officer Ash's videotaped statement to investigators is consistent with and corroborated by all witnesses and all of the physical evidence developed in the investigation. The witness statements in combination with the physical evidence paint a very clear picture of what occurred in this incident.

Dr. Amy Martin performed an autopsy on the body of Reagor at 9:00 a.m. on February 27, 2009. She determined the cause of death was a single gunshot wound to the head. She identified one penetrating gunshot wound to the left side of his head just above the temporal area. This bullet was recovered at autopsy. The second was a penetrating gunshot wound across the back of the left shoulder. This was a through-and-through gunshot wound which entered the skin and immediately exited the skin approximately one inch apart from the entrance wound. This wound was not life threatening. The wound likely occurred when Reagor was turning to his right as he went down to the passenger seat. The other seven shots did not strike Reagor. It is not possible to determine which shots, in the sequence of nine shots, caused the two gunshot wounds. The described wounds are consistent with Officer Ash's statement concerning Reagor and his position at the time the shots were fired.

Officer Ash fired the nine shots from his model 92-FS, 9mm Beretta semi-automatic pistol. His weapon has a magazine capacity of fifteen rounds. At the time of the shooting he was carrying his weapon with the magazine loaded with fifteen rounds and one additional round in the chamber—a total of sixteen rounds. When the weapon was unloaded by Denver Police Department Crime Laboratory personnel after the shooting there were six live rounds in the magazine and one live round in the chamber. Nine 9mm cartridge cases were recovered at the scene in locations consistent with Officer Ash's position at the time of the shooting. There were nine bullet holes through the front windshield of Reagor's stolen vehicle.<sup>5</sup>

On February 27, 2009, Lieutenant Jon Priest assisted the Crime Laboratory detectives with the analysis of the bullet trajectories through the subject vehicle—1986 maroon Ford Escort. The main purpose of this analysis was to determine, as best as practical, the position of the officer and the subject at the time the shots occurred. Lieutenant Priest stated it appears that the shooting officer either fired two distinct volleys from his semi-automatic pistol from two close but separate positions or a continuous volley while moving perpendicular to the position of the subject vehicle. The muzzle to target trajectory relationship for the officer's firearm is the driver's compartment of the subject vehicle from a position approximately 3'6" north of the front of the vehicle and approximately 4'6" from the level roadway surface.<sup>6</sup> This is consistent with Officer Ash's statement of his position when he fired the shots.

Sergeant Michael Farr, Traffic Investigations Bureau, searched the area where Reagor was observed driving out of control—spinning around or doing “donuts.” Sergeant Farr

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<sup>5</sup> See attached diagram of evidence location and photographs. Page 16.

<sup>6</sup> See attached Trajectory Analysis and photographs. Pages 16-20.

located “fresh yaw marks” in the 1300 block of East 5<sup>th</sup> Avenue—between Marion and Lafayette Streets. He placed yellow markers #15 to 25 to identify the “yaw marks.”<sup>7</sup> Sergeant Farr determined the Ford Escort was traveling eastbound on 5<sup>th</sup> Avenue and the driver “over-steered twice.” This caused the vehicle to go out of control moving from one side of the street to the other until coming to rest at its final location. His findings are consistent with the observations made by Officer Ash, Mr. Davies and Mr. Dichter.

At the time of this incident, Reagor was wanted on an active warrant issued on December 12, 2007 by the Colorado Department of Corrections for a Parole Violation. An additional active warrant was issued by the Arapahoe County Sheriff’s Office for Escape on December 31, 2007. Reagor’s girlfriend told investigators that Reagor told her that he was on the run.

In January of 2007, Sheila Pitt, Reagor’s Parole Officer, made the following comments in a “Report of Investigation:”

“Mr. Reagor also shows a history of having a quick temper and being violent. Mr. Reagor is not appropriate for community supervision ... his continued disrespect for the law and his parole ... continued violations cannot be tolerated ... we are thankful that no one has been hurt or injured in the process so far.”

In her “RECOMMENDATIONS” she stated: “Mr. Reagor is at VERY HIGH RISK to recidivate and has already demonstrated that he cannot comply with parole by his many revocations. He also continues to break the law. Mr. Reagor fails to take responsibility for his own actions, and cannot continue to use excuses to deny his own mistakes. He has a new conviction, and although pled down, *he hit someone with a car and took off, at a time when he had no valid license. This is a serious public safety issue.* The division recommends REVOCATION for the remainder” (until 10/17/09).

Reagor’s adult criminal record began soon after he turned 18 in 1989. The following are the crimes for which he has been arrested spanning the past 20 years. This includes 4 separate occasions in which he has been incarcerated in the Colorado Department of Corrections—periods of time when he could not commit crimes:

Illegal Use of Credit Cards, Vehicle Theft, Felony Larceny, Criminal Mischief, Illegal Use of Credit Cards, Larceny, Assault, Aggravated Assault, Weapon Offenses, Disturbing the Peace, Disrupting Public Peace, Assault, Disturbing the Peace, Failure to Appear, Fugitive, Assault, Felony Menacing, Burglary, Obstructing Police, Interference, Assault, Threats, Disturbing the Peace, Receiving Stolen Property, Resisting Officers, Assault, Threats, Making False Report, Assault-domestic, Assault & Battery, Assault, Assault, Threat to Commit Assault, Disturbing the Peace, Assault, Resisting Officers,

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<sup>7</sup> See attached photographs showing the yellow cones #15 to #25 tracking the marks on the pavement created by Reagor’s stolen vehicle. Page 21.

Larceny, Resisting Officers, Assault, [ **First DOC Incarceration**], Dangerous Drugs, Criminal Mischief, Possession of Dangerous Drugs, Possession of Dangerous Drugs, Obstructing Police, Resisting Officers, Dangerous Drugs, FTA on Assault, Obstructing Police, False Information, FTA on Trespass, Public Order Crimes, Possession of Narcotic Equipment, Fugitive, Possession of Dangerous Drug, FTA-false information, Distribution Dangerous Drugs, Disturbing the Peace, Destruction of Private Property, [ **Second DOC Incarceration - 2000 – 6 years**], Dangerous Drugs x3, Parole Violation, Parole Violation, [ **Third DOC Incarceration – 1/11/06**], Fugitive, Parole Violation, [ **Fourth DOC Incarceration - 3/7/07 – 3 years** ]. At the time of this incident, Reagor was wanted on two active warrants.

## 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 death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. As the evidence establishes that Reagor was shot by Officer Ash, the determination of whether his conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707 defines the circumstances under which a peace officer can use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate **physical force** upon another person when and to the extent that **he reasonably believes it necessary**:

- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to affect such an arrest or while preventing or attempting to prevent such an escape.

(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; or
3. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the terms “Deadly weapon” and “Deadly physical force” as follows:

**“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.

**“Deadly physical force”** as force the intended, natural, and probable consequences of which is to produce death, and **which does, in fact, produce death.**

Officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 p.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P.274, (Colo. 1910).

The test for justifiable self defense or defense of others requires that, given the totality of the circumstances, a person reasonably believed that he or another person was being subjected to the use or imminent use of unlawful physical force or deadly physical force and that he used a degree of force that he reasonably believed to be necessary to protect himself or another person.

Therefore, the question presented in this case is whether, at the instant Officer Ash fired the shots that caused the death of Reagor, he reasonably believed that Reagor was directing or was about to direct deadly physical force against him or another person. In order

to establish criminal responsibility for an officer knowingly or intentionally causing death to another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

## CONCLUSION

This encounter began as a routine traffic stop to issue a traffic citation. Officer Ash had only a description of the suspect vehicle and the request from his fellow officer to make the stop and issue the speeding ticket—51 mph in a 35 mph zone. Officer Ash was unaware that the driver was Davlon Reagor who had just been in a fight with his girlfriend and had stolen her Ford Escort and money. He was also unaware that Reagor was an escapee wanted on two active warrants for violation of parole and other criminal conduct. It is reasonable to conclude Reagor's non-compliant behavior was motivated by those facts. Reagor knew if he were stopped he would be returning to incarceration at the Colorado Department of Corrections for the fifth time.

Reagor first refused to stop in response to Officer Ash's lawful attempt to stop him for the traffic violation. Reagor then fled and drove with his lights turned off in a reckless and dangerous manner through a Denver neighborhood. When confronted by Officer Ash at gunpoint, Reagor continued his non-compliance by refusing to show his hands as commanded. These are all behavioral cues by Reagor that heighten Officer Ash's threat assessment. Officers must assess the behavior of suspects to determine what level of force may be required to control them upon contact. The officer is continuously preparing mentally, physically and tactically to respond to the suspects next action. Officers instinctively interpret a suspect's refusal to show his hands as an indication he may be armed.

As Officer Ash began to approach Reagor at gunpoint with the intent to take him into custody, Reagor revved his engine. This action combined with Reagor's prior behavior caused Officer Ash to reasonably conclude Reagor was going to attempt to run him down. In this instant, Officer Ash had to recognize the potential attack, determine the available response options, and take the action before there was zero reaction time—the point where he could not repel the attack. In these situations, officers do not have the luxury of calm reflection—reaction to the threat and action often must occur in a split second.

Officer Ash had an additional circumstance to assess while focused on Reagor in this critical moment—the truck in close proximity to his immediate left with an unknown driver. While Mr. Davies knew his intentions were to assist Officer Ash, to the officer this was an additional mental distraction and uncertainty. While officers are trained to maintain a positional and tactical advantage over a suspect, the dynamics of a fluid confrontation can add complexity to that effort. With the left front of his police car to his immediate right and now Mr. Davies truck moving in from the left, Officer Ash's escape options were severely narrowed. Additionally, if Mr. Davies truck struck Reagor's vehicle in the side it would cause the vehicle to be aimed at the most likely, if not only, escape route available to Officer Ash. Homicide Lieutenant Jon Priest's Trajectory Assessment indicates Officer Ash's firearm likely moved from left to right as he fired the shots. This would be the only



reasonable direction to be moving to avoid being run down by Reagor. And, based on the facts developed in this investigation, trying to escape through the gap between the two cars could have been a fatal decision, had Reagor, in fact, sped forward. If Mr. Davies' assessment is correct, it was only Reagor's failure to properly shift into gear that kept that from happening.

Officers have a right to defend themselves from a perceived imminent attack. There is no justification to attack a police officer who is performing his lawful duty. It was Reagor's aggressive and non-compliant conduct throughout this confrontation that forced Officer Ash's split-second decision to shoot. Had Reagor complied with Officer Ash's commands, the confrontation would have ended peacefully at that time. But, that would be out of character for Reagor based on his criminal history and his parole officer's statement. He has lived a life of non-compliance, criminal conduct and aggressive behavior. His actions turned a routine traffic stop into a deadly confrontation.

A motor vehicle is a deadly weapon if in the manner in which it is used or intended to be used is capable of producing death or serious bodily injury. Under the specific facts of this case the Ford Escort driven by Reagor was a deadly weapon.

It is not often that we have a citizen and a police officer taking action simultaneously against an assailant in a life-threatening situation. The statement in the "Legal Analysis" section of this letter; "Apparent necessity, if well grounded and of such a character as to appeal to a *reasonable person, under like conditions and circumstances, as being sufficient to require action*, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity," is directly applicable to the facts of this case. Both Officer Ash and Mr. Davies reacted to the "*like conditions and circumstances*" created by Reagor's aggressive conduct and both took defensive action at precisely the same time, perceiving that Reagor was attempting to run over Officer Ash with the stolen vehicle. Irrespective of Reagor's actual intent, which we will never know, his actions clearly suggest an ill intent and imminent deadly threat to Officer Ash, justifying the actions taken by both Mr. Davies and Officer Ash.

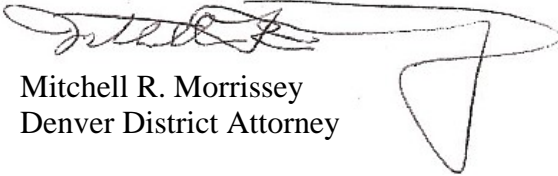
Based on a review of the totality of facts developed in this investigation, we could not prove beyond a reasonable doubt that it was unreasonable for Officer Ash to fire the shots that caused Reagor's death. Therefore, no criminal charges are fileable against Officer Ash for his conduct in this incident.

The attached document entitled Officer-Involved Shooting Protocol 2009 is incorporated by this reference. The following pertinent statement is in that document: "In most officer-involved shootings the filing decision and release of the brief decision letter will occur within two to three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly." In accordance with the protocol, the administrative and tactical aspects of the event will be addressed by the Manager of Safety and Chief of Police in their review and administrative decision letter.

Mr. Davies actions in coming to the aid of the solo Officer Ash, while not encouraged by law enforcement because of the inherent dangers involved, are nevertheless praiseworthy and deeply appreciated. He, too, had no time for calm reflection and was clearly acting out of a good faith desire to protect a vulnerable Denver police officer. His selfless actions are commendable.

We will open our file for in-person review at our office 60 days from the date of this letter. The Denver Police Department is the custodian of records related to this case. 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,



Mitchell R. Morrissey  
Denver District Attorney

cc: Officer Edward Ash; 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; Mel Thompson, Deputy Manager of Safety; Mary Malatesta, Deputy Manager of Safety; David Fine, Denver City Attorney; John Lamb, Deputy Chief; Michael Battista, Deputy Chief; Dave Fisher, Division Chief; David Quinones, Division Chief; Mary Beth Klee, Division Chief; Tracie Keesee, Division Chief; Gregory LaBerge, Crime Lab Commander; Joe Montoya, Captain; Jon Priest, Lieutenant, Homicide; Kathleen Bancroft, Lieutenant; Sergeant James Kukuris, Homicide; John Coppedge, Sergeant, Homicide; Detective Joe Delmonico, Homicide; Detective Jaime Castro, Homicide; John Burbach, Commander, Civil Liability Bureau; Chuck Lepley, First Assistant District Attorney; Lamar Sims, Chief Deputy District Attorney; Doug Jackson, Chief Deputy District Attorney; Henry R. Reeve, General Counsel, Chief Deputy District Attorney; Justice William Erickson, Chair, The Erickson Commission; Richard Rosenthal, Office of the Independent Monitor.



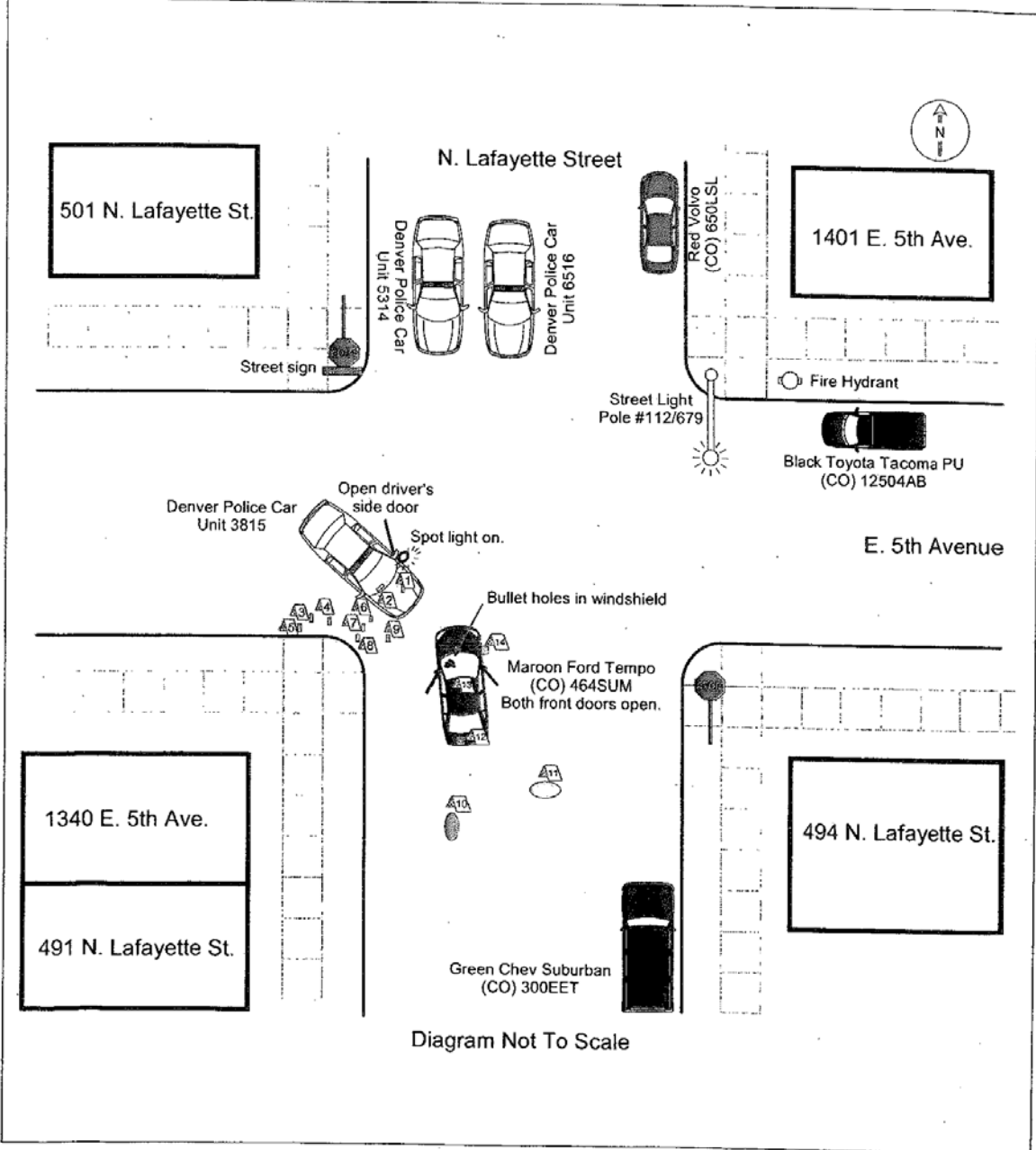
Case Number: 2009-125235

Date: 02/26/09

Location: E. 5th Avenue and N. Lafayette Street

Description:

Police Officer Involved Shooting, diagram prepared by Detective John Meoni #94005





Case Number: 2009-125235 Date: 02/26/09

Location: E. 5th Avenue and N. Lafayette Street

**Narrative:**

**Measurements:**

- Marker #1, shell casing- 5' 6" north of the south curb line of E. 5th Avenue and 2' 10" east of the west curb line of Lafayette Street.
- Marker #2, shell casing- 4' 0" north of the south curb line of E. 5th Avenue and at the west curb line of Lafayette Street.
- Marker #3, shell casing- 2' 1" north of the south curb line of E. 5th Avenue and 9' 4" west of the west curb line of Lafayette Street.
- Marker #4, shell casing- 2' 5" north of the south curb line of E. 5th Avenue and 7' 6" west of the west curb line of Lafayette Street.
- Marker #5, shell casing- At the south curb line of E. 5th Avenue and 9' 9" west of the west curb line of Lafayette Street.
- Marker #6, shell casing- 2' 10" north of the south curb line of E. 5th Avenue and 1' 3" west of the west curb line of Lafayette Street.
- Marker #7, shell casing- 1' 0" north of the south curb line of E. 5th Avenue and 1' 10" west of the west curb line of Lafayette Street.
- Marker #8, shell casing- 11" south of the south curb line of E. 5th Avenue and 3' 3" west of the west curb line of Lafayette Street.
- Marker #9, shell casing- 8" south of the south curb line of E. 5th Avenue and 8" east of the west curb line of Lafayette Street.
- Marker #10, brown colored jacket- (center of jacket) 25' 8" south of the south curb line of E. 5th Avenue and 9' 10" east of the west curb line of Lafayette Street.
- Marker #11, green colored pants- (center of pants) 17' 10" south of the south curb line of E. 5th Avenue and 21' 0" east of the west curb line of Lafayette Street.
- Marker #12, wallet- 11' 8" south of the south curb line of E. 5th Avenue and 11' 8" east of the west curb line of Lafayette Street.
- Marker #13, keys- 7' 2" south of the south curb line of E. 5th Avenue and 12' 8" east of the west curb line of Lafayette Street.
- Marker #14, pieces of orange colored plastic- 1' 8" south of the south curb line of E. 5th Avenue and 13' 10" east of the west curb line of Lafayette Street.

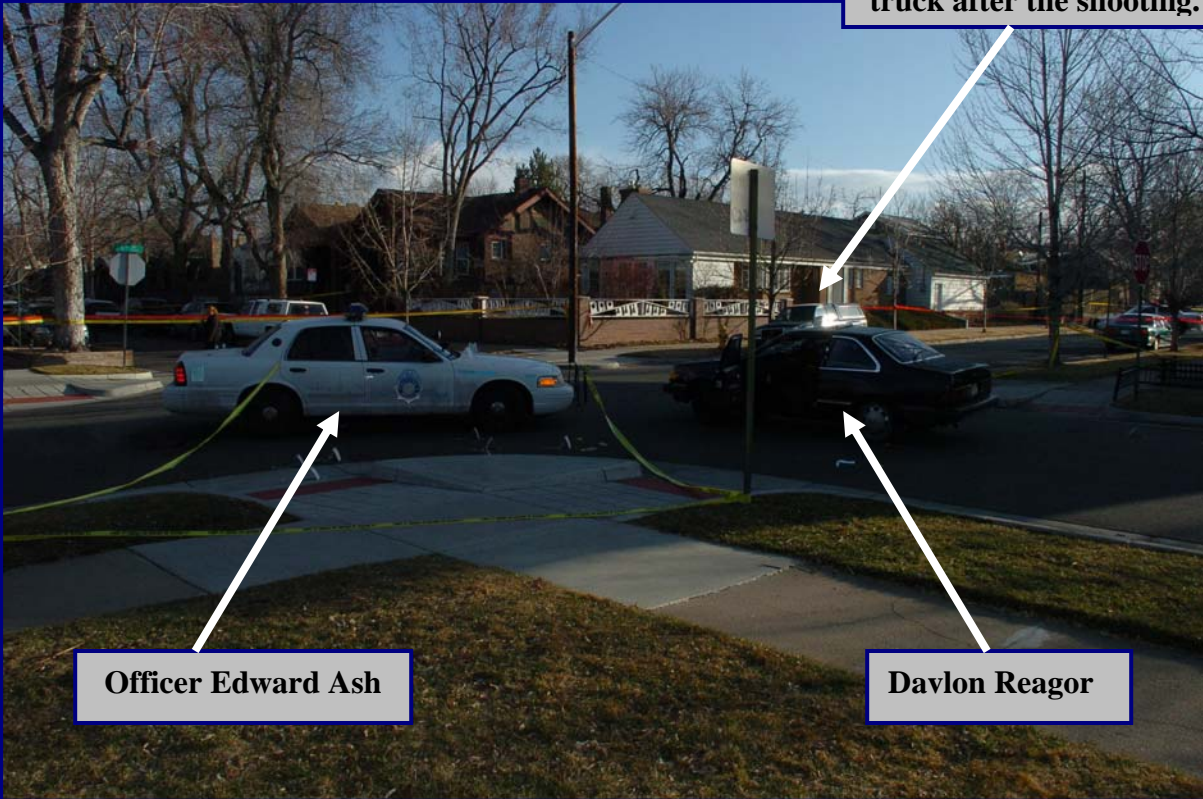
The positions of three of the tires on the Ford Tempo are as follows:

- Right front tire- 9' 8" south of the south curb line of E. 5th Avenue and 15' 10" east of the west curb line of Lafayette Street.
- Left front tire- 9' 8" south of the south curb line of E. 5th Avenue and 10' 11" east of the west curb line of Lafayette Street.
- Left rear tire- 18' 3" south of the south curb line of E. 5th Avenue and 10' 0" east of the west curb line of Lafayette Street.

The positions of the tires on the Traffic Unit police car are as follows:

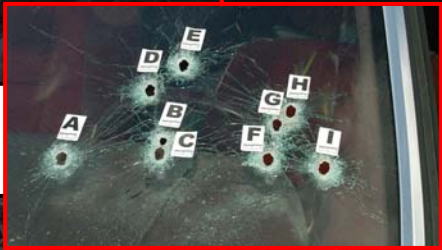
- Right front tire- 3' 4" north of the south curb line of E. 5th Avenue and 1' 0" east of the west curb line of Lafayette Street.
- Left front tire- 7' 8" north of the south curb line of E. 5th Avenue and 4' 0" east of the west curb line of Lafayette Street.
- Right rear tire- 7' 11" north of the south curb line of E. 5th Avenue and 16' 0" west of the west curb line of Lafayette Street.
- Left rear tire- 12' 5" north of the south curb line of E. 5th Avenue and 4' 8" west of the west curb line of Lafayette Street.

**Incident occurred at night ... all photos shown were taken the next morning.**











[ Statement provided by Lieutenant Jon Priest of the Homicide Unit ]

## **Trajectory Analysis Officer Involved Shooting 5<sup>th</sup> and Lafayette**

On February 27, 2009, Lieutenant Priest assisted the Crime Laboratory detectives with the analysis of the bullet trajectories through the subject vehicle involved in the Officer-involved shooting incident occurring on February 26, 2009. The main purpose of this analysis was to determine, as best as practical, the position of the officer and the subject at the time the shots occurred.

Lieutenant Priest conducted an evaluation of a maroon colored Ford, license plate #464-SUM. The windshield of the vehicle showed evidence of nine (9) separate defects consistent with bullet strikes. Viewing the interior of the vehicle, Lieutenant Priest observed eight (8) defects that represented a variety of terminus and intermediate points consistent with bullet strikes.

Lieutenant Priest placed several trajectory rods into these intermediate and terminus points and with the assistance of a laser, determined which associated with the defects observed to the vehicle's windshield. Lieutenant Priest then placed corresponding alpha characters matching the windshield defects with the intermediate and terminus points in the vehicle. Once completed, Lieutenant Priest pulled strings from the trajectory rods to a point in space to the north of the subject vehicle.

After pulling several strings, Lieutenant Priest determined that the areas of origin for the bullets causing the defects to the subject vehicle began at two different locations, approximately 3 to 4 feet north of the subject vehicle and at a height approximately 4'6" from the ground.

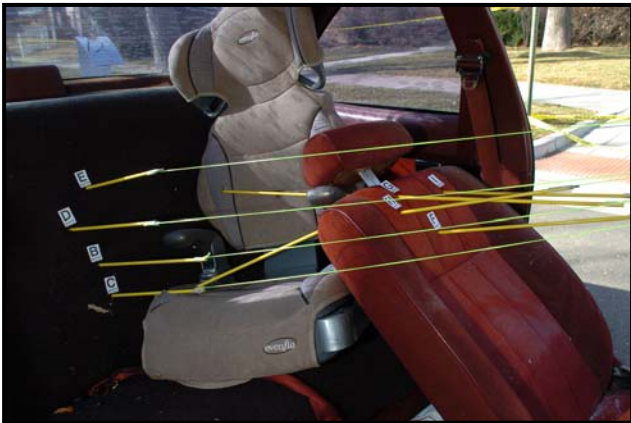
### **Opinion**

Given the two areas of origin for the trajectory lines reconstructed from the terminus points in the subject vehicle, it appears that the shooting officer fired two distinct volleys from his semi-automatic pistol from two separate positions, or a continuous volley while moving perpendicular to the position of the subject vehicle.

The muzzle to target trajectory relationship for the officer's firearm is the driver's compartment of the subject vehicle from a position approximately 3'6" north of the vehicle and approximately 4'6" from the level roadway surface.



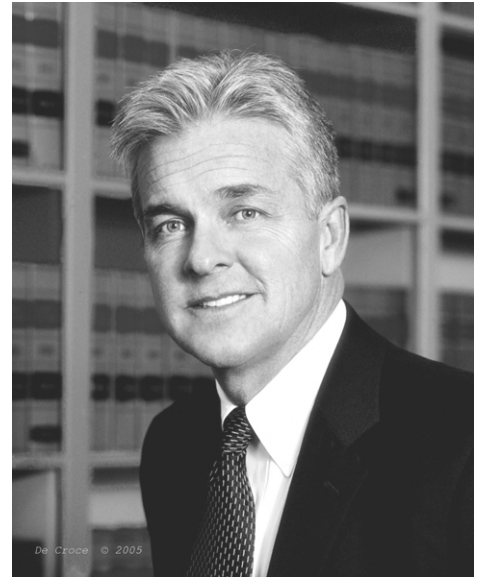








# OFFICER-INVOLVED SHOOTING PROTOCOL 2009



*Mitchell R. Morrissey*  
*Denver District Attorney*

The Denver District Attorney is a State official and the Denver District Attorney's Office is a State agency. As such, although the funding for the operations of the Denver District Attorney's Office is provided by the City and County of Denver, the Office is independent of City government. The District Attorney is the chief law enforcement official of the Second Judicial District, the boundaries of which are the same as the City and County of Denver. By Colorado statutory mandate, the District Attorney is responsible for the prosecution of violations of Colorado criminal laws. Hence, the District Attorney has the authority and responsibility to make criminal charging decisions in peace officer involved shootings.

The Denver Police Department was created by the Charter of the City and County of Denver. Under the Charter, the police department is overseen by the Office of the Denver Manager of Safety. The Manager of Safety and the Chief of Police are appointed by and serve at the pleasure of the Mayor of Denver. The District Attorney has no administrative authority or control over the personnel of the Denver Police Department. That authority and control resides with City government.

When a peace officer shoots and wounds or kills a person in Denver, Colorado, a very specific protocol is followed to investigate and review the case. Officer-involved shootings are not just another case. Confrontations between the police and citizens where physical force or deadly physical force is used are among the most

important events with which we deal. They deserve special attention and handling at all levels. They have potential criminal, administrative, and civil consequences. They can also have a significant impact on the relationship between law enforcement officers and the community they serve. It is important that a formal protocol be in place in advance for handling these cases. The following will assist you in understanding the Denver protocol, the law, and other issues related to the investigation and review of officer-involved shootings.

For more than a quarter century, Denver has had the most open officer-involved shooting protocol in the country. The protocol is designed to insure that a professional, thorough, impartial, and verifiable investigation is conducted and that it can be independently confirmed by later review. The fact that the investigative file is open to the public for in-person review at the conclusion of the investigation and review process, permits not only formal legal reviews to occur, but also allows for any citizen to review the case. This, perhaps more than any other single factor, helps to insure that the best possible investigation is conducted by all involved parties.

When an officer-involved shooting occurs, it is immediately reported to the Denver police dispatcher, who then notifies all persons on the call-out list. This includes the Division Chief of Investigations, First Assistant District Attorney and Chief Deputy District Attorney, Division Chief of Patrol, Captain of Crimes Against

Persons Bureau, Homicide Unit personnel, Director of the Crime Lab, Crime Lab Technicians, and others. These individuals respond first to the scene and then to DPD headquarters to take statements and conduct other follow-up investigation. The Denver District Attorney, Manager of Safety, and Chief of Police are notified of the shooting and may respond.

The criminal investigation is conducted under a specific investigative protocol with direct participation of Denver Police Department and Denver District Attorney personnel. The primary investigative personnel are assigned to the Homicide Unit where the best resources reside for this type of investigation. The scope of the investigation is broad and the focus is on all involved parties. This includes the conduct of the involved officer(s) and the conduct of the person who is shot. Standard investigative procedures are used at all stages of the investigation, and there are additional specific procedures in the Denver Police Department's Operations Manual for officer-involved shootings to further insure the integrity of the investigation. For example, the protocol requires the immediate separation and sequestration of all key witnesses and all involved officers. Involved officers are separated at the scene, transported separately by a supervisor to police headquarters, and sequestered with restricted visitation until a formal voluntary statement is taken. Generally the officers speak with their attorney prior to making their voluntary statement. A log is kept to document who has contact with the officer. This is done to insure totally independent statements and to avoid even the appearance of collusion.

In most cases, the bulk of the criminal phase of the investigation is concluded in the first twelve to twenty-four hours. Among other investigative activities, this includes a thorough processing of the crime scene; a neighborhood canvass to identify all possible witnesses; the taking of written statements from all witnesses, and video-taped statements from all key witnesses and the involved officer(s). The involved officer(s), like any citizen, have a Constitutional Fifth Amendment right not to make a statement. In spite of this fact, Denver officers have given voluntary sworn statements in every case, without exception, since 1979. Since November of 1983, when the videotape-interview room was first used, each of these statements has been recorded on videotape. *No*

***other major city police department in the nation can make this statement.***

Officers are trained to properly secure their firearm after an officer-involved shooting. The protocol provides for the firearm to be taken from the officer by crime lab personnel for appropriate testing. The officer is provided a replacement weapon to use pending the completion of the testing. The protocol also allows for any officer to voluntarily submit to intoxicant testing if they chose. The most common circumstance under which an officer might elect to do so would be in a shooting while working at an establishment that serves alcohol beverages. Compelled intoxicant testing can be conducted if there are indications of possible intoxication and legal standards are met.

The Denver Chief of Police and Denver District Attorney commit significant resources to the investigation and review process in an effort to complete the investigation as quickly as practicable. There are certain aspects of the investigation that take more time to complete. For example, the testing of physical evidence by the crime lab—firearm examination, gunshot residue or pattern testing, blood analyses, and other testing commonly associated with these cases. In addition, where a death occurs, the autopsy and autopsy report take more time and this can be extended substantially if it is necessary to send lab work out for very specialized toxicology or other testing. In addition to conducting the investigation, the entire investigation must be thoroughly and accurately documented.

Officer-involved shooting cases are handled by the District Attorney, First Assistant District Attorney, and Chief Deputies District Attorney specifically trained for these cases. At least two of these district attorneys respond to each officer-involved shooting. They are notified at the same time as others on the officer-involved shooting call-out list and respond to the scene of the shooting and then to police headquarters to participate in taking statements. They are directly involved in providing legal advice to the investigators and in taking video-taped statements from citizens and officer witnesses, and from the involved officer(s). They continue to be involved throughout the follow-up investigation.

The Denver District Attorney is immediately informed when an officer-involved shooting occurs, and if he does not directly participate, his

involved personnel advise him throughout the investigative process. It is not unusual for the District Attorney to personally respond and participate in the investigation. At the conclusion of the criminal investigation the District Attorney personally makes the filing decision.

If criminal charges are not filed, a brief decision letter describing the shooting is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, other appropriate persons, and the media. The letter is intentionally brief to avoid in any way impacting the integrity and validity of the Denver Police Department administrative investigation and review, which follows the criminal investigation and review. This represents a 2005 change from the very thorough decision letters that have previously been written by the District Attorney in these cases.

This change has been made because the Denver Manager of Safety now writes an exhaustive letter at the conclusion of the administrative review of the shooting. The Manager of Safety's letter can include additional facts, if any, developed during the administrative investigation. Therefore, the Manager of Safety's letter can provide the most comprehensive account of the shooting. In contrast to the criminal investigation phase, the administrative process addresses different issues, is controlled by less stringent rules and legal levels of proof, and can include the use of investigative techniques that are not permissible in a criminal investigation. For example, the department can, under administrative rules, order officers to make statements. This is not permissible during the criminal investigation phase and evidence generated from such a statement would not be admissible in a criminal prosecution.

The Manager of Safety has taken a more active role in officer-involved shooting cases and has put in place a more thorough administrative process for investigating, reviewing, and responding to these cases. The critical importance of the administrative review has been discussed in our decision letters and enclosures for many years.<sup>8</sup> As a result of the positive

changes the Manager of Safety has now instituted and his personal involvement in the process, we will not open the criminal investigative file at the time our brief decision letter is released. Again, we are doing this to avoid in any way impacting the integrity and validity of the Manager of Safety and Denver Police Department ongoing administrative investigation and review. After the Manager of Safety has released his letter, we will make our file open for in-person review at our office by any person, if the City fails to open its criminal-case file for in-person review. The District Attorney copy of the criminal-case file will not, of course, contain any of the information developed during the administrative process. The City is the Official Custodian of Records of the original criminal-case file and administrative-case file, not the Denver District Attorney.

## THE DECISION

By operation of law, the Denver District Attorney is responsible for making the criminal filing decision in all officer-involved shootings in Denver. In most officer-involved shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly.

The same standard that is used in all criminal cases in Denver is applied to the review of officer-involved shootings. The filing decision analysis involves reviewing the totality of the facts developed in the criminal investigation and applying the pertinent Colorado law to those facts. The facts and the law are then analyzed in relation to the criminal case filing standard. For criminal charges to be filed, the District Attorney must find that there is a reasonable likelihood that all of the elements of the crime charged can be proven beyond a reasonable doubt, unanimously, to twelve jurors, at trial, after considering reasonable defenses. If this standard is met, criminal charges will be filed.

One exception to the Denver District Attorney making the filing decision is if it is necessary to use the Denver Statutory Grand Jury. The District Attorney will consider it appropriate to refer the investigation to a grand jury when it is

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<sup>8</sup> See the "Conclusion" statement in the "Decision Letter" in the December 31, 1997, shooting of Antonio Reyes-Rojas, where we first pointed out issues related to the importance of



necessary for the successful completion of the investigation. It may be necessary in order to acquire access to essential witnesses or tangible evidence through the grand jury's subpoena power, or to take testimony from witnesses who will not voluntarily cooperate with investigators or who claim a privilege against self-incrimination, but whom the district attorney is willing to immunize from prosecution on the basis of their testimony. The grand jury could also be used if the investigation produced significant conflicts in the statements and evidence that could best be resolved by grand jurors. If the grand jury is used, the grand jury could issue an indictment charging the officer(s) criminally. To do so, at least nine of the twelve grand jurors must find probable cause that the defendant committed the charged crime. In order to return a "no true bill," at least nine grand jurors must vote that the probable cause proof standard has not been met. In Colorado, the grand jury can now issue a report of their findings when they return a no true bill or do not reach a decision—do not have nine votes either way. The report of the grand jury is a public document.

A second exception to the Denver District Attorney making the filing decision is when it is necessary to have a special prosecutor appointed. The most common situation is where a conflict of interest or the appearance of impropriety is present. As an example, if an officer involved in the shooting is related to an employee of the Denver District Attorney's Office, or an employee of the Denver District Attorney's Office is involved in the shooting. Under these circumstances, there would exist at a minimum an appearance of impropriety if the Denver District Attorney's Office handled the case.

### **THE COLORADO LAW**

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 causing injury or death to another human being is generally prohibited as assault or murder in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force is justified. As there is generally no dispute that the officer intended to

shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Section 18-1-707 of the Colorado Revised Statutes provides that while effecting or attempting to effect an arrest, a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. Therefore, the question presented in most officer-involved shooting cases is whether, at the instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person, was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for knowingly or intentionally shooting another, the state must prove beyond a reasonable doubt that the person doing the shooting either did not really believe he or another was in imminent danger, or, if he did hold such belief, that belief was, in light of the circumstances, unreasonable.

The statute also provides that a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to effect an arrest . . . of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon; or otherwise indicates, except through motor-vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In Colorado, deadly physical force means force the intended, natural, or probable consequence of which is to produce death and which does in fact produce death. Therefore, if the person shot does not die, by definition, only physical force has been used under Colorado law.

### **GENERAL COMMENTS**

The following statement concerns issues that are pertinent to all officer-involved shootings.

The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called

the split-second decision to shoot. It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a split-second decision to shoot. The split-second decision is generally made to stop a real or perceived threat or aggressive behavior by the citizen. It is this split-second time frame which typically defines the focus of the criminal-review decision, not the string of decisions along the way that placed the participants in the life-or-death final frame.

When a police-citizen encounter reaches this split-second window, and the citizen is armed with a deadly weapon, the circumstances generally make the shooting justified, or at the least, difficult to prove criminal responsibility under the criminal laws and required legal levels of proof that apply. The fact that no criminal charges are fileable in a given case is not necessarily synonymous with an affirmative finding of justification, or a belief that the matter was in all respects handled appropriately from an administrative viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt, unanimously, to a jury. This is the limit of the District Attorney's statutory authority in these matters. For these reasons, the fact that a shooting may be "controversial" does not mean it has a criminal remedy. The fact that the District Attorney may feel the shooting was avoidable or "does not like" aspects of the shooting, does not make it criminal. In these circumstances, remedies, if any are appropriate, may be in the administrative or civil arenas. The District Attorney has no administrative or civil authority in these matters. Those remedies are primarily the purview of the City government, the Denver Police Department, and private civil attorneys.

Research related to officer-involved shootings indicates that criminal charges are filed in approximately one in five hundred (1-in-500) shootings. And, jury convictions are rare in the filed cases. In the context of officer-involved shootings in Denver (approximately 8 per year), this ratio (1-in-500) would result in one criminal filing in 60 years. With District Attorneys now limited to two 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 8 or more District Attorneys.

In Denver, there have been three criminal filings in officer-involved shootings in the past

40 years, spanning seven District Attorneys. Two of the Denver officer-involved shootings were the result of on-duty, work related shootings. One case was in the 1970s and the other in the 1990s. Both of these shootings were fatal. The cases resulted in grand jury indictments. The officers were tried and found not guilty by Denver juries. The third criminal filing involved an off-duty, not in uniform shooting in the early 1980s in which one person was wounded. The officer was intoxicated at the time of the shooting. The officer pled guilty to felony assault. This case is mentioned here, but it was not in the line of duty and had no relationship to police work. In 2004, an officer-involved shooting was presented by the District Attorney to the Denver Statutory Grand Jury. The Grand Jury did not indict. A brief report was issued by the Grand Jury.

Based on the officer-involved shooting national statistics, there is a very high likelihood that individual District Attorneys across the country will not file criminal charges in an officer-involved shooting during their entire tenure. It is not unusual for this to occur. In Denver, only two of the past seven District Attorneys have done so. This, in fact, is statistically more filings than would be expected. There are many factors that combine to cause criminal prosecutions to be rare in officer-involved shootings and convictions to be even rarer. Ultimately, each shooting must be judged based on its unique facts, the applicable law, and the case filing standard.

The American Bar Association's *Prosecution Standards* state in pertinent part: "A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction. In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions. Among the factors the prosecutor may properly consider in exercising his or her discretion is the prosecutor's reasonable doubt that the accused is in fact guilty." The National District Attorneys Association's *National Prosecution Standards* states in pertinent part: "The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial. The prosecutor should not attempt to utilize the

charging decision only as a leverage device in obtaining guilty pleas to lesser charges.” The standards also indicate that “factors which should **not** be considered in the charging decision include the prosecutor’s rate of conviction; personal advantages which prosecution may bring to the prosecutor; political advantages which prosecution may bring to the prosecutor; factors of the accused legally recognized to be deemed invidious discrimination insofar as those factors are not pertinent to the elements of the crime.”

Because of the difference between the criminal, administrative, and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three uniquely different arenas. While criminal charges may not be fileable in a case, administrative action may be very appropriate. The legal levels of proof and rules of evidence that apply in the criminal-law arena are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the split-second decision to shoot are most effectively addressed by the Denver Police Department through the Use of Force Review Board and the Tactics Review Board process and administrative review of the shooting.

The administrative-review process, which is controlled by less stringent legal levels of proof and rules than the criminal-review process, provides both positive remedial options and punitive sanctions. This process also provides significantly broader latitude in accessing and using information concerning the background, history, and job performance of the involved officer. This type of information may have limited or no applicability to the criminal review, but may be very important in making administrative decisions. This could include information concerning prior officer-involved shootings, firearm discharges, use of non-lethal force, and other conduct, both positive and negative.

The Denver Police Department’s administrative review of officer-involved shootings improves police training and performance, helps protect citizens and officers, and builds public confidence in the department.

Where better approaches are identified, administrative action may be the only way to effect remedial change. The administrative review process provides the greatest opportunity to bring officer conduct in compliance with the expectations of the department and the community it serves. Clearly, the department and the community expect more of their officers than that they simply conduct themselves in a manner that avoids criminal prosecution.

There are a variety of actions that can be taken administratively in response to the department’s review of the shooting. The review may reveal that no action is required. Frankly, this is the case in most officer-involved shootings. However, the department may determine that additional training is appropriate for all officers on the force, or only for the involved officer(s). The review may reveal the need for changes in departmental policies, procedures or rules. In some instances, the review may indicate the need for changing the assignment of the involved officer, temporarily or permanently. Depending on the circumstances, this could be done for the benefit of the officer, the community or both. And, where departmental rules are violated, formal discipline may be appropriate. The department’s police training and standards expertise makes it best suited to make these decisions.

The Denver Police Department’s Use of Force Review Board and the Tactics Review Board’s after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision to shoot is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high.

It is clear not every officer will handle similar situations in similar ways. This is to be expected. Some officers will be better than others at defusing potentially-violent encounters. This is also to be expected. To the degree officers possess skills that enhance their ability to protect themselves and our citizens, while averting unnecessary shootings, Denver will continue to have a minimal number of officer-involved shootings. Denver officers face life-

threatening confrontations hundreds of times every year. Nevertheless, over the last 20 years officer-involved shootings have averaged less than eight annually in Denver. These numbers are sharply down from the 1970s and early 1980s when there were 12-to-14 shootings each year.

Skill in the use of tactics short of deadly force is an important ingredient in keeping officer-involved shootings to a minimum. Training Denver officers receive in guiding them in making judgments about the best tactics to use in various situations, beyond just possessing good firearms proficiency, is one of the key ingredients in minimizing unnecessary and preventable shootings. Denver police officers handle well over a million calls for service each year and unfortunately in responding to these calls they face hundreds of life-threatening encounters in the process. In the overwhelming majority of these situations, they successfully resolve the matter without injury to anyone. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. It should be a part of the review of every officer-involved shooting, not just to look for what may have been done differently, but also to see what occurred that was appropriate, with the ultimate goal of improving police response.

#### **RELEASE OF INFORMATION**

Officer-involved shootings are matters of significant and legitimate public concern. Every effort must be made to complete the investigation and make the decision as quickly as practicable. The Denver Protocol has been designed to be as open as legal and ethical standards will permit and to avoid negatively impacting the criminal, administrative, or civil procedures. “Fair Trial—Free Press” standards and “The Colorado Rules of Professional Conduct” limit the information that can be released prior to the conclusion of the investigation.

Officer-involved shooting cases always present the difficult issue of balancing the rights of the involved parties and the integrity of the investigation with the public’s right to know and

the media’s need to report the news. The criminal investigation and administrative investigation that follows can never keep pace with the speed of media reporting. This creates an inherent and unavoidable dilemma. Because we are severely restricted in releasing facts before the investigation is concluded, there is the risk that information will come from sources who may provide inaccurate accounts, speculative theories, misinformation or disinformation that is disseminated to the public while the investigation is progressing. This is an unfortunate byproduct of these conflicted responsibilities. This can cause irreparable damage to individual and agency reputations.

It is our desire to have the public know the full and true facts of these cases at the earliest opportunity, but we are required by law, ethics, and the need to insure the integrity of the investigation to only do so at the appropriate time.

#### **CONCLUSION**

The protocol that is used in Denver to investigate and review officer-involved shootings was reviewed and strengthened by the Erickson Commission in 1997, under the leadership of William Erickson, former Chief Justice of the Colorado Supreme Court. The report released after the 15-month-long Erickson Commission review found it to be one of the best systems in the country for handling officer-involved shootings. We recognize there is no “perfect” method for handling officer-involved shooting cases. We continue to evaluate the protocol and seek ways to strengthen it.

*Mitchell R. Morrissey*

*Denver District Attorney*

#### **CONTACT FOR INFORMATION**

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