



DenverDA

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March 20, 2013

Gary Wilson
Undersheriff and Director of Corrections
Denver Sheriff Department
Van Cise-Simonet Detention Center
490 West Colfax Avenue
Denver, CO 80204

RE: Investigation of the shooting death of Ronette Morales, DOB 9/16/82, DPD # 759476, in which Sheriff's Deputy Eric Givens, S94012, fired shots on January 30, 2013, at 305 Park Avenue West, Denver, Colorado.

Dear Director Wilson:

The investigation and legal analysis of the shooting death of Ronette Morales in which shots were fired by Deputy Sheriff Eric Givens have been completed. I conclude that under applicable Colorado law no criminal charges are fileable against Deputy Givens. My decision, based on criminal-law standards, does not limit administrative action by the Denver Sheriff 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 Wednesday, January 30, 2013, Deputy Sheriffs Donald Travis, S01035, and Eric Givens, S94012, were the two deputies assigned to the Warrant Detail ("Warrant Car") of the Denver Sheriff Department's Civil Unit. The Warrant Car is tasked with the apprehension of those for whom the Denver District Court has issued warrants, and other fugitives as workload permits.¹

The deputies started their shift at about 4:00 a.m., at their offices on the first floor of the Webb Municipal Office Building, where they reviewed outstanding court warrants and the Denver Police Department's ("DPD") Bulletin, a daily publication which contains a list of probable cause warrants obtained by Denver Police detectives and Denver District Attorney investigators. One of the warrants

¹ See the discussion of the Warrant Detail at footnote 10, supra.

listed on the bulletin was for Ronette Morales, 9/16/82 (“Morales”).² They then obtained “web mug” photos and criminal histories for those wanted parties they felt they might be able to locate. They left the office around 6 a.m., driving an unmarked white GMC Sierra pick-up truck equipped with emergency lights and a siren behind the grill. Neither deputy was wearing a full uniform, but each was wearing a Sheriff’s Department “entry jacket”, which is a dark jacket displaying an embroidered Denver Sheriff’s Badge on the left breast pocket, “SHERIFF” printed in large capital letters on the right breast pocket, and “SHERIFF” printed in capital letters on a large panel on the back. Each deputy was also wearing his metal Deputy Sheriff badge, suspended on a chain hanging around the neck.

The deputies first located and arrested a wanted party in west Denver and brought that individual to the Downtown Denver Correctional Center (“DDC”). They then drove to east Denver in an attempt to locate some fugitives in the Park Hill area. They were unsuccessful in these attempts and decided to return to their office. While on the way, Deputy Travis recalled or noted that Morales’s address, listed in the DPD Bulletin as 305 Park Avenue West, was on their route and they decided to make an pick-up attempt.

305 Park Avenue West is the Benedict Parkways Apartment Complex (the “complex”) operated by the Denver Housing Authority. The complex is a multi-story “L” shaped structure, with one face on Park Avenue West and the other on Court Place, with the main entrance at the northwest corner of Park Avenue West and Court Place. The inner part of the L is a courtyard; on the first floor of the Park Avenue West leg are business offices; on the first floor of the Court Place leg are apartments. Morales lived in apartment 112. This apartment is close to the junction of the two legs and has a balcony which opens to the courtyard.³

The deputies had been to the complex in the past on unrelated pick-up attempts and they went to the management office and showed Morales’s photo to Kimberly Bedford, a staff member, who confirmed she still lived there but was unsure if she was home.⁴ The front door to Morales’s apartment opens to an inner corridor. After speaking with Ms. Bedford, the deputies spoke with a member of the maintenance staff, Benjamin Velasco. In his video-taped statement, Deputy Givens told investigators that when he was speaking with Mr. Velasco he was told “most of the time she doesn’t use her front door. She likes to climb over the balcony but she has kids and we’re all scared that she’s gonna drop the kids, from putting them over the balcony.” Mr. Velasco then showed the deputies where Morales’s balcony overlooked the courtyard. The deputies realized the patio balcony was visible through large glass doors that opened from the office into the courtyard.

Deputy Travis and Mr. Velasco then walked to the front door of Morales’s apartment, while Deputy Givens kept an eye on the patio balcony from the area of the glass doors. Both Deputy Travis and Mr. Velasco told investigators that Mr. Velasco knocked and asked Morales to come to the door, telling her he needed to come inside to check a water leak. She refused to open the door, stating that

² The bulletin indicates a felony warrant for Ronette Aiesha MORALES with the address listed as: 305 Park Ave #112. The charges indicated were: Burglary/Assault/Harassment. A caution at the end notes: “VIOLENT BEHAVIOR”.

³ See the photo on page 10.

⁴ Ms. Bedford provided a video-taped statement to investigators. She provided background information about Ms. Morales, telling investigators that she and other members of the staff were afraid of Morales and, as a result of these concerns, a security camera had been installed in the offices a few days before the incident in question.

“she has nothing to say to the people that work there”, and to “go away – don’t come back.” The men returned to the office where they met with Jerry Wilmer, one of the complex managers. Mr. Wilmer placed a call to Morales’s apartment. She answered and told him she would not answer the door or come to the office and ended the call. As Deputy Travis recalled, Morales called back and said, “well, I know the cops are here.” Morales told Mr. Wilmer to “get the officer’s name and badge number and have him call me.”

Deputy Travis called Morales back, identified himself and advised her that the sheriff’s deputies were present with warrants for her arrest. Deputy Travis told investigators Morales stated she was being harassed and they would hear from her attorney. Deputy Travis responded that the matter was not going to “go away” and she would need to take care of it. Ms. Morales hung up on Deputy Travis.

While Deputy Travis attempted to convince Morales to surrender, Deputy Givens maintained visual surveillance of Morales’s patio. The deputies watched the backdoor because, as Deputy Travis told investigators, “the assistant manager [Mr. Wilmer] said that she never uses the front door, ever.” The deputies discussed their options including whether to obtain a key to the apartment from the building staff. The deputies spoke with members of the management staff and were told that because of the staff’s concerns regarding Morales’s volatile nature, they were reluctant to provide a key. Deputy Givens was talking to management staff and Deputy Travis was watching Morales’s balcony from the courtyard door when he saw Morales step out onto the balcony. Deputy Travis approached the patio:

I seen [sic] two kids that were facing out towards me as I was approaching the wall to step up onto the patio to jump over the wall to get to her. And as I got to the patio and started to go over, she turned and seen me and I told her “Sheriff’s Department! You need to stay where you’re at. We have a warrant for your arrest.” And, the kids were in between us. She had her back still to me so I put my hand on her shoulder to keep her from getting the door back open to get inside. And, she turned in, turned in, turned to face me, and when she turned to face, I seen something pink here [indicating Morales was holding the object in her right hand, close to the chest]. And, right away, I knew it had to be a gun and about that time she pulled the trigger. The bullet, I remember moving my head just a little bit and I could feel, like, the concussion and powder from the gun as it went off.

Deputy Travis fell backwards onto the patio. He fell on his right side so that his handgun was between his hip and the ground. He had his left hand up in a warding manner. He heard Morales say, twice, “you’re gonna leave” but was unclear as to her meaning and could not determine whether she was saying it to him or to Deputy Givens. He then heard another shot. He believed Deputy Givens had begun exchanging gunfire with Morales, but from his position behind the wall, he was unable to see what Deputy Givens was doing. Deputy Travis managed to un-holster his firearm, but he was unable to fire at Morales because the two children were in the line of fire. Morales ducked back inside the apartment at which point, Deputy Travis got up, advised Deputy Givens that he had “been hit,” and climbed over the wall. He was moving away from the building and heard but did not see Deputy Givens fire additional rounds. The two men retreated to a position of cover. In follow-up questions, Deputy Travis told investigators the he did not know at what point during the gunfight he was

wounded, but he felt “excruciating pain” in his hand within the first couple of seconds of shooting. He was also unable to say who fired the round that injured him.⁵

Deputy Givens told investigators he was inside the office, talking to members of the staff when he heard Deputy Travis say, “Oh! There she goes!” He turned and saw Deputy Travis stepping over the wall to Morales’s balcony and he started toward the balcony. He saw Morales and

some kids. And all of a sudden [Deputy Travis], you know, puts his hands up. I mean it was so fast, he puts his hands up and kind of moves [demonstration a dodging type motion] and it was just like a “POW!” And [unintelligible] shot. And I knew it was a gunshot. And from then my partner just hit the ground, boom.

Deputy Givens told investigators that when he heard the gunshot and saw his partner fall, he took a quick evasive step and that, although he did not recall actually pulling his service pistol, he started “engaging the suspect.”

Deputy Givens stated that he had taken a position on a raised ledge alongside the building which led to the balcony when he saw his partner raise his hands and then heard the gunshot. He heard one shot and told investigators he was “fearing for [his] partner’s life. I thought she might have killed him.” He saw Morales “moving around,” and, operating under the belief that she had fired the shot, began returning fire. Contributing to this belief was the fact he heard Deputy Travis say something to the effect “she has a gun!”

Although he did not see Morales wielding a weapon, Deputy Givens started firing. Morales retreated into the apartment and out of his sight. Deputy Givens told investigators,

She goes inside the door. I’m trying to get over here [onto the balcony] - get my partner. And then she comes back outside the door. From there, then, I coulda swore I saw a gun in her hand, from there.

Deputy Givens stated that when Morales came back out on the balcony, he saw two young children standing next to her legs. He fired additional rounds and then helped Deputy Travis over the balcony and they retreated to a position a short distance away from the patio where Deputy Givens advised the radio dispatcher that he and Deputy Givens had been involved in a shooting.

Deputy Givens stated that the first time he fired his handgun, he was advancing from outside the office patio doors toward the balcony and believes he fired between four and six shots. It was at this point that Morales ducked inside her apartment. She reappeared a few seconds after she stepped into the apartment. Deputy Givens was within arm’s length of the balcony because he was intending on aiding Deputy Travis and he was now able to see Morales was armed with a handgun. He fired four or five additional rounds. He saw Morales fall to the ground and knew that one of his rounds had struck her. The children were still on the patio. Indeed, Deputy Givens told investigators he was “shooting high” because he was aware two young children were in Morales’s proximity. Deputy

⁵ Deputy Travis believed Morales fired twice. It was not until firearms examiners completed their investigation that investigators learned the bullet that struck Deputy Travis had been fired by Deputy Givens. This is, however, consistent with Deputy Travis’s statement that when he went to the ground, he was holding his left hand up in a defensive posture. Crime scene photos suggest at least one of the round fired by Deputy Givens perforated the balcony wall separating him from Deputy Travis and Morales.

Givens stopped firing because he felt the slide on his pistol lock to the rear and he believed the threat posed by Morales no longer existed.

The deputies retreated to a position behind a concrete pillar several yards away from the balcony. Deputy Givens was now able to confirm that Deputy Travis had been shot. He took Deputy Travis's handgun, made the radio calls and maintained visual surveillance on the balcony until cover officers arrived. Neither he nor Deputy Travis re-approached or had further contact with Morales or her apartment.

Denver police officers responded to the radio calls for assistance. They arrived to find Morales on the patio and not responsive. Paramedics responded and transported Deputy Travis to the hospital for treatment to a gunshot wound to the left hand. Morales was pronounced dead at the scene.

A number of employees and residents of the complex were contacted by the investigators. Most of the residents indicated they heard the gunshots but did not see the shooting. Several of the employees, in addition to Ms. Bedford, Mr. Velasco and Mr. Wilmer, either saw or spoke with the deputies while they were in the office but did not see the actual shooting.⁶ Investigators also determined that an interior surveillance camera recorded the door which led from the offices to the patio. A copy of the surveillance tape from this camera was obtained. The video corroborates the statements provided by the deputies. It first shows an employee pointing out Morales's balcony from the door.⁷ This occurs at 8:56 on the video time clock. One can then see Deputy Givens watching the patio and, at one point, walking over to the patio. He returns, reenters the office and has a brief conversation with Deputy Travis. Deputy Travis steps away, and a short while later returns and the two deputies have a conversation at the door. The video time clock indicates more than a half hour passes, during which time one deputy is almost always keeping an eye on the door and, on occasion, residents, visitors or employees enter or leave the office through the patio door. At 9:35:15, Deputy Travis looks out the door and then quickly opens the door, moves toward the patio, and out of the frame. Deputy Givens follows him out the door at 9:35: 22. Almost immediately, Deputy Givens can be seen ducking down and retreating to the entryway where he draws his pistol. He then rushes the patio apparently firing his pistol (the video does not include sound). At 9:35:48, Deputy Travis can be seen jumping back over the patio wall and moving toward the pillars. Deputy Givens is three seconds behind him. The entire incident took less than 35 seconds.

Deputy Givens was armed with a model 21 Glock 45 caliber semi-automatic pistol. This firearm has a 13 round magazine and may be carried with an additional round in the chamber. Deputy Givens carried his firearm fully loaded with 14 rounds of ammunition issued by the Denver Police Department firearms bureau.

⁶ Office workers Ellen Baskerville and Emily Desimone and complex resident Ahmed Tlamcani gave statements indicating they saw at least part of the shooting. To the extent that the witnesses saw the exchange of gunfire, they corroborate the statements provided by the Deputies. Mr. Tlamcani, for example, wrote that he heard gunshots and looked outside "to see cops shooting back at the patio with two little kids."

⁷ The doorway, part of the courtyard and the patio wall can be seen in the video. The patio door to Morales's apartment and the interior patio are out of the frame.

Morales was armed with a .40 caliber Taurus Model PT24-7 semi-automatic pistol. It was recovered in her right hand as she lay on the patio floor.⁸ When investigators recovered it they found three live cartridges remaining in the magazine and a live cartridge in the chamber.

Crime scene investigators recovered 14 spent cartridge casing at the outside scene on and around the patio. Firearms examiners determined each had been ejected from Deputy Givens's pistol. An additional spent cartridge case was recovered from just inside the patio door to the apartment. Firearms examiners determined this casing had been ejected from Morales's handgun. As detectives processed the scene, the resident of apartment 307 advised them that a bullet had broken her window. Apartment 307 overlooks the courtyard and Morales's apartment.⁹ Investigators determined that a bullet had passed through the window and struck an interior wall. Crime scene investigators were able to locate the projectile behind the drywall. Firearms examiners determined this "fired bullet . . . was microscopically identified as having been fired from the submitted Taurus pistol. . . ."

On Thursday, January 31, 2013, Dr. Dawn Holmes, a forensic pathologist with Denver Medical Examiner's Office, conducted an autopsy on Morales's body. Dr. Holmes documented a single "penetrating indeterminate-range gunshot wound to the face". The bullet struck just to the left of Morales's nose, passed through the nasal bones, skull and brain. The "deformed large-caliber copper-jacketed lead" bullet was recovered in the area of "the right occipital skull." No other signs of trauma were documented. The cause of death was determined to be "a gunshot wound to the face." Blood toxicology screens were positive for THC.

Denver police crime lab firearms examiners compared the bullet recovered from Morales's skull with bullets test-fired from Deputy Givens's pistol. They reported the bullet was "microscopically identified as having been fired from" Deputy Givens's pistol.

Deputy Travis sustained a gunshot wound to the left hand. The bullet entered near the web separating the thumb and forefinger and penetrated the hand. It broke at least two bones before coming to rest. It was recovered by the treating physicians and provided to Denver Police investigators for analysis. Crime lab firearms examiners compared the bullet recovered from Deputy Travis's hand with bullets test fired from the Taurus wielded by Morales and Deputy Givens's pistol. They reported the bullet was "microscopically identified as having been fired from" Deputy Givens's pistol.

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 is generally prohibited as assault or 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.¹⁰ As the

⁸ See the photos on page 11.

⁹ See the photo on page 12.

¹⁰ The status of Deputies Travis and Givens as peace officers must be here addressed. Denver Sheriff's Deputies, although not POST certified, are statutory peace officers pursuant to C.R.S. §16-2.5-103(2) which provides:

evidence establishes that Morales's death was caused by shots fired by Deputy Givens, 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 justifiably 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

A noncertified deputy sheriff or detention officer is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, *an official who has the duties of a sheriff in a city and county*, or chief executive of the employing law enforcement agency. [Emphasis added.]

The Denver Sheriff's Department Order 2000.1D, dated November 17, 2011, establishes parameters for which a deputy sheriff's "EXERCISE OF AUTHORITY AS A PEACE OFFICER TO STOP OR ARREST SUSPECTS." Subsection 7 of the document sets for the Specific Grant of Authority by the Manager of Safety and provides, in part:

A. Denver Deputy Sheriffs are specifically authorized by the Manager of Safety to exercise their authority as peace officers to stop suspects or effect arrests while on duty and when reasonably necessary to effectively fulfill the following duties and responsibilities: ...

3. Executing arrests warrants or other orders of the court; ...

Deputies Givens and Travis were assigned to the Sheriff's Warrant Detail of the Court Service/Civil Unit. A POST ORDER, revised 12/21/12, sets forth the duties and responsibilities of the Warrant Detail. Subsections 4, and 6 of Section I provide:

4. The primary duty of the Warrant Car will be to safely apprehend fugitives on outstanding Denver District Court Criminal Warrants.

6. Dependant [*sic*] on workload, the Warrant Car may attempt to apprehend individuals from the Denver Police Department Bulletin.

When the state law is read in conjunction with the Departmental Bulletins it is clear deputies were acting within the scope of their employment as Colorado Peace Officers. Accordingly, the appropriateness of the force used must be analyzed pursuant to provisions of C.R.S. § 18-1-707.

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**” means 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 Deputy Givens fired the shots, he reasonably believed that Morales was directing or was about to direct deadly physical force against either Deputy Travis, him, or another person. 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

Deputy Givens acted quickly in an untenable situation – his partner was in close proximity to an armed assailant who had fired a shot which narrowly missed his partner’s head. Deputy Givens’s judgment that it was necessary to fire his pistol to save the life of his partner and his own cannot be questioned. This was an encounter where, had he not taken the action he did, his partner would likely have been shot by Morales at close range.

Based on a review of the totality of the facts developed in this investigation, we could not prove, beyond a reasonable doubt that it was unreasonable for Deputy Givens to fire the shots that caused Morales’s death and the unintended injury to Deputy Travis. He only used deadly force when it was necessary to defend against the imminent deadly threat posed to him and his partner by Morales and his actions were clearly justified under Colorado law. Therefore, no criminal charges are fileable against Deputy Givens for his conduct in this incident.

The attached document entitled Officer-Involved Shooting Protocol 2013 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. The more compressed time frame will allow the Denver Sheriff Department’s administrative investigation to move forward more quickly.” In this case, some additional time was taken in order to obtain preliminary laboratory results. In accordance with the protocol, the administrative and tactical aspects of the event will be addressed by the Manager of Safety and Director of Corrections in their review and administrative decision letter.

Because there will be no criminal prosecutions related to this shooting incident, we will open our file related to this Officer-Involved Shooting for in-person review at our office 60 days from the date of this letter. The Denver Police Department is the custodian of record related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department in consultation with the Denver Sheriff’s Department. 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: Deputy Eric Givens; Eric James, Attorney at Law; Michael Hancock, Mayor; All City Council Members; Doug Friednash, Denver City Attorney; Alex Martinez, Manager of Safety; Robert White, Chief of Police, David Quinones, Deputy Chief of Police; William Nagel, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Anthony Lopez, District 6 Commander; Gregory Laberge, Crime Lab Commander; Mary Beth Klee, Commander of Internal Affairs; Captain Kris Kroncke, Major Crimes Division; Lieutenant Steve Addison, Major Crimes Division; Lieutenant James Haney, Major Crimes Division; Sgt. James Kurukis, Homicide; Sgt. James Dixon, Homicide; Detective Martin Smith, Homicide; Detective Randy Denison, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Henry R. Reeve, General Counsel, Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor.



THE BACK COURTYARD.

Morales's patio balcony can be seen to the left of the photo; the white door in the center right is the door leading from the office to the courtyard.



THE BACK COURTYARD

The ledge which the deputies used to step up to Morales's patio can be seen to the right of the patio.



MORALES'S PISTOL

Close up of the Taurus semi-automatic pistol in Morales's right hand.



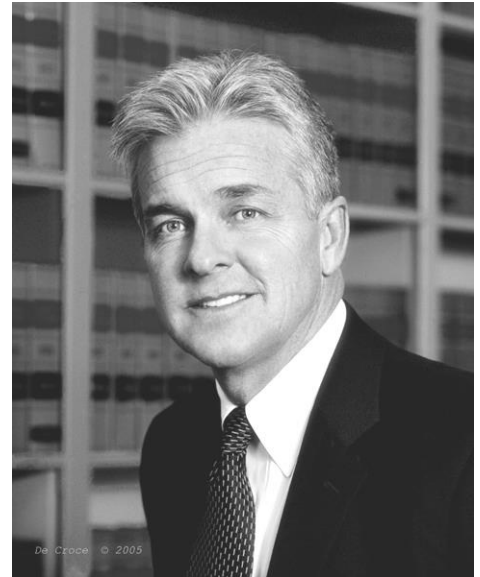
MORALES'S PISTOL



View of Morales's apartment patio from window of Apartment 307



OFFICER-INVOLVED SHOOTING PROTOCOL 2013



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 Major Crimes Commander, Senior 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, and the Senior 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.¹ 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

¹ 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 the Administrative review of officer-involved shootings. Subsequent letters continued to address this issue.

is 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 that 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.

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