



DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

201 W. Colfax Avenue, Dept. 801, Denver, CO 80202

Bus. Phone: 720-913-9000
Fax: 720-913-9035

August 8, 2014

Robert White
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Ryan Ronquillo, DOB 7/12/93, DPD # 684119, in which Officers Jeffrey DiManna, 08002, Brian Marshall, 06084, Toni Trujillo, 95107, and Daniel White, 04114, fired shots on July 2, 2014, at 4750 Tejon Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting death of Ryan Ronquillo, in which shots were fired by Officers Jeffrey DiManna, Brian Marshall, Toni Trujillo and Daniel White, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against any of the involved officers. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where tactical 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 July 2, 2014, investigators with the Safe Streets Task Force ("Task Force"), comprised of Federal, State and local investigators, were conducting fugitive apprehension operations. Sometime on that date, Task Force member and Jefferson County Sheriff's Deputy Luke Ingersoll, #1407, received a call from a member of the Metropolitan Auto Theft Task Force requesting aid in locating and apprehending Ryan Ronquillo ("Ronquillo"). Detective Ingersoll was informed Ronquillo was wanted for a domestic violence incident occurring in Lakewood, CO., on or about June 29, 2014. Det. Ingersoll was also advised Ronquillo was an active car thief who stole "Hondas, Acuras and Subarus." Det. Ingersoll was also provided information calculated to assist Task Force investigators in locating and tracking Ronquillo who they quickly learned had a "Facebook" page on which he had posted several pictures of himself, using the name or alias "*Brutal Gowob*". Shortly before 3:00 p.m., investigators began receiving information indicating Ronquillo was in an area west of I-25 in the I-70 corridor. The detectives spent approximately two hours searching in an attempt to narrow the

geographic area and locate Ronquillo. At about 5:00 p.m., investigators received additional information leading them to believe Ronquillo was in the area of 37th Avenue and Osage Street in Denver. Undercover officers drove by that location and observed Ronquillo sitting in a stolen black Honda stopped or parked at that location.¹ (The stolen car will be referred to, hereafter as the “Honda” the “suspect vehicle” or “Ronquillo’s vehicle.”) Investigators then began forming a plan to apprehend Ronquillo at this location. As part of the plan, they requested uniformed officers to assist in making the arrest – all Task Force members were in plain clothes and driving undercover cars.

DPD Gang Bureau and District One officers, all of whom were in uniform and driving marked patrol cars, responded to make the arrest. Also responding were additional undercover officers assigned to the Denver Police Fugitive Unit, who would assist in surveillance and support the arrest teams. Denver police Sgt. Joel Bell, 91009, a supervisor in the DPD Fugitive Unit told investigators he received a call from Task Force and DPD Sgt. Dino Gavito, 82037, requesting aid from his team. Sgt. Bell had his team respond - among them was Det. Toni Trujillo. However, as the additional officers were arriving to this location, Ronquillo drove away from the curb, commencing what may best be described as a “rolling surveillance operation.”

Task force and DPD Fugitive Unit investigators surreptitiously followed Ronquillo while advising the uniformed cars as to his location and theirs, thus assuring marked cars were nearby but not poised so as to alert the suspect. Ronquillo drove around the area, back tracking on at least one occasion. At 46th and Tejon, Sgt. Bell aired that Ronquillo had come to a stop on the side of the road. As officers began to establish position, Sgt. Bell aired that Ronquillo was “rolling.” Ronquillo drove up 47th and pulled into the parking lot at 4750 Tejon Street. Det. Ingersoll told investigators he drove to the corner of 47th and Tejon and from this position, saw Ronquillo backing into a parking space in the lot.² Det. Ingersoll also saw three marked DPD gang unit patrol cars approaching the location and, on the radio, advised them to follow his car into the lot. His intention was to use his unmarked vehicle, a Ford Expedition, to “pinch” or block the suspect vehicle on one side, have Sgt. Bell, also in an unmarked police car, do the same on the other side, and allow the uniformed police officers to make the arrest.³ The time was approximately 6:00 p.m.⁴

Det. Ingersoll entered the parking lot from the south; Sgt. Bell, driving a silver Lexus SUV, with red and blue emergency lights mounted in the front and rear windshields, drove in from the north. Although Sgt. Bell was in plain clothes, he was wearing a ballistic vest with “POLICE” in large print on the right front chest and on the back. As Sgt. Bell drove up to the Honda he activated his emergency lights. Det. Ingersoll made “bumper contact” with Ronquillo’s vehicle, got out of his police car and moved to the passenger’s side of the Honda. Sgt. Bell placed his vehicle at the left

¹ An investigator drove by in a covert vehicle and obtained the license plate of the car. Other investigators “ran the plate” and confirmed the Honda was, in fact, stolen. Investigators later confirmed the car was reported stolen on June 24, 2014, from a private lot at N. Zuni and W. 30th Avenue by the owner, Mr. James Huff. DPD Go # 2014-324086.

² The parking lot was the private lot of Romero’s Family Funeral Home. There was a service going on at the funeral home at the time of the incident.

³ The photo seen on page 13 depicts the position of vehicles as described by Det. Ingersoll.

⁴ Sgt. Bell told investigators he saw Ronquillo back into a space in a parking lot he later learned belonged to a funeral home. In his words, “We made a decision that this would be a good place to approach him, it appeared that he was blocked in, um, and requested the uniforms to join us.”

front end of the Honda, jumped out of his car and ran to the driver's side. Ronquillo was sitting in the Honda with the motor running, the driver's side window open and the front passenger window closed. As the officers reached the car, Ronquillo stepped on the gas. Det. Ingersoll told investigators "it's gas, but the car's in neutral, so the motor just revs."⁵ Det. Ingersoll opened the passenger door and reached in to the Honda with the intent of grabbing Ronquillo before he could put the car in gear. Sgt. Bell saw Det. Ingersoll reach in and he moved in to assist Det. Ingersoll in removing Ronquillo from the Honda before he or the Honda moved. As Det. Ingersoll reached for Ronquillo, Ronquillo managed to get the Honda into reverse gear and, as Sgt. Bell described it "took off at a high rate of speed."⁶

The Honda began backing up. Det. Ingersoll backed or swung away from the car. Sgt. Bell was hit or grazed on his left hip by the side of the Honda, possibly the driver's side mirror. As multiple officers yelled at Ronquillo to stop his vehicle, the Honda backed over a small earthen berm, across the sidewalk and into an unmarked car driven by Detective Toni Trujillo, which was stopped in the middle of the street.⁷

Det. Ingersoll realized he was now in a position, where, first, if the Honda drove forward he would be struck and second, officers standing on the driver's side had drawn pistols and he was in the line of fire. He moved to a position on the driver's side of the Honda, his handgun also drawn. Det. Ingersoll stated he stepped "around. The car goes into drive. It lurches forward and, uh, shots started going."

Investigators later obtained video from a surveillance camera maintained by the funeral home. The video graphically shows officers scrambling out of the way and then the Honda slamming into Sgt. Bell's and Det. Ingersoll's police cars. It is incorporated herein by reference and may be accessed here: [SURVEILLANCE VIDEO](#)

Det. Ingersoll later told investigators that just before the shots were fired he

remember [ed] consciously thinking he's-- this is gonna turn into a shooting if he doesn't stop, cuz he's either gonna kill someone or seriously hurt somebody when he comes forward.

Det. Ingersoll heard a burst of gunfire and saw the Honda drive forward into his and Sgt. Bell's vehicles, the "motor just wrapped, uh, just going, but it's pinched." Sgt. Bell was unable to determine the sequence of gunshots but formed the opinion that some of the shots may have been fired before the Honda hit Det. Trujillo's vehicle and others when Ronquillo was "accelerating forward, again . . . I could see officers running, trying to get out from in front of the vehicle, or from behind the vehicle. . . ."

⁵ Several of the officers remarked upon Ronquillo's actions. See, e.g., statements of Sgt. Bell and Officer White: Sgt. Bell: "The suspect starts revving the engine. And, I don't know if he can't get over the parking block [behind the car] or what, but he's not going anywhere. You can hear the RPM's just keep going, everybody's yelling 'shut off the car'. And he -- it looks like he's trying to get it in gear, or, he can't figure out why it's not going." Officer White told investigators he saw officers attempting to break the passenger window and could hear the Honda's engine revving "like he was stepping on it but it wasn't in gear."

⁶ Other officers told investigators the Honda first lurched forward and then was placed in reverse gear and backed up.

⁷ This area of the sidewalk and the grass median separating the sidewalk from the parking lot are seen in photos on page 13.

After the Honda came to a stop, Det. Ingersoll approached it and saw Ronquillo had suffered a gunshot wound to the head or face rendering him unresponsive. He opened the driver's side door, reached in to turn off the engine and found no key in the ignition.⁸ The detective then reached down and removed Ronquillo's foot from the gas pedal and "backed away" so as to not further disturb the scene.

Neither Sgt. Bell nor Det. Ingersoll fired their handguns. Four officers did: Detective Toni Trujillo, dressed in plain clothes, and uniformed gang unit officers Jeffrey DiManna, Brian Marshall, and Daniel White.

Det. Trujillo was one of Sgt. Bell's team members. She was driving an unmarked 2014 Silver Ford Fusion, and dressed in plain, casual clothing, with a DPD metal badge suspended around her neck on a lanyard. She was part of the team that picked up surveillance of Ronquillo at 37th and Osage and followed him as he drove around the neighborhood. She saw Ronquillo drive into the parking lot at 47th and Tejon, saw the two unmarked cars block him in and drove northbound up Tejon St. and stopped her car in the middle of the street behind the Honda, so as to preclude him from running in that direction in the event he got out of his vehicle and tried to evade the arresting officers. Det. Trujillo saw Det. Ingersoll banging on the Honda's passenger window, got out of her car and started walking toward the Honda. Events quickly unfolded and, in Det. Trujillo's words:

So, I get out of my car. I walk, I come around my car – at that very moment, before I get to the curb 'cuz I'm walking towards [Det. Ingersoll], the suspect puts the vehicle into reverse and he comes back at a high rate of speed, that's where, I'm standing right here [demonstrating on a diagram] and, um, when he comes back, that's when he grazes my leg and I felt my leg buckle and once I felt my leg buckle he crashes right into my car . . .⁹

Det. Trujillo was now standing in front of the Honda and she could see the suspect was attempting to get the vehicle into drive. She told investigators

at that point I felt like I was being threatened because I felt that his car was now going to be used as a weapon against me. I felt threatened because I looked right at him. And he looked right at me. . . I looked at him, I looked at him, he's trying to get into gear and when he's doing that, that's when I fired one round at him – I felt like he was going to hit me with that car.

Officer DiManna was among the gang unit officers who had responded to assist. He was partnered with Officer Ernest Sandoval, 06154, -- Officer DiManna was driving; Officer Sandoval was in the passenger seat. The two officers heard a member of the surveillance team air the suspect had come to a stop in the parking lot at 47th and Tejon and they moved in, preparing for a high risk stop. Officer DiManna told investigators a detective came on the air and said something to the effect of "uniform cars, follow me!" He then saw an unmarked black Expedition approach. He fell in behind it and drove into the parking lot where he saw the Expedition drive up to and block the right front corner of a vehicle. Officer DiManna stopped his car, got out and, because this was to be a "high risk" stop, drew his handgun. He moved around the back of a car parked next to the suspect vehicle. He saw the detective who had been driving the Expedition on the passenger's side of the Honda "and one or two officers on the

⁸ A close-up of the ignition port is shown in the photo on page 14.

⁹ Photos showing the damage to Det. Trujillo's car are found on page 14.

driver's side." Officer DiManna later told investigators he also heard "this constant, high-pitched revving -- like [Ronquillo] had the car redlined."

Officer DiManna stepped behind a car parked just south of the Honda and saw a plainclothes officer pull the passenger door open. He also saw officers at the driver's side attempting to "gain control of the driver."¹⁰ He returned his firearm to his holster and prepared to assist in removing the driver from the car, noting "[a]ll the while I was thinking 'how are we going to stop the car' because there was no key in the ignition." Officer DiManna and several other officers were commanding Ronquillo, "show me your hands! Shut off the vehicle! Shut off the vehicle! Show me your hands!"¹¹ Officer DiManna told investigators he and a plainclothes detective were at the passenger door when Ronquillo managed to get the vehicle into drive and

at a high rate of speed, slammed forward into the detective's Expedition -- we had the passenger door open, the detective and I, and that's when he was able to get it into reverse. And all the while he still had it, like the throttle, pinned. He lunged backwards, catching both the detective and myself with his door open. So I was able to sk-step back and as [the vehicle] was going by, I kinda grabbed the detective and kinda held on to him so he didn't get trapped behind the door as the car backed-up. Uh, it jumped the curb, went over the grass, slammed into a parked car that was on, parked on Tejon Street and continued on and slammed into, I believe, a detective's car which was on the street on, uh, Tejon.

As the Honda backed up Officer DiManna moved north, took a position at the front of the driver's side and pulled his handgun from the holster. He estimated he was "3 to 5 feet from the left front corner of the vehicle" with Det. Trujillo to his left. Officer DiManna continued to give

loud verbal commands -- You know, 'Shut off the car! Shut off the car!' And he's still revving the engine, revving the engine. And he slams it into drive, uh, Detective Trujillo was right next to me and we were both, poten- we were both, coulda been in the line of the vehicle. ...

[Question by an investigator]

From where we were standing we were both put in, uh, the line of the vehicle. So, in fear for my safety -- in fear for Det. Trujillo's life, uh, I heard one of her roun- I heard her fire one round and I shortly fired right after her.

Officer DiManna told investigators when the Honda advanced it "lunged forward at a high rate of speed" and he saw Det. Trujillo "kind of spin like she had been hit by the vehicle."

Officer Daniel White was another one of the gang bureau officers who responded to assist. He followed Officer DiManna's vehicle into the parking lot and got out of his patrol car. He, too, saw Det. Ingersoll move to the passenger's side of the vehicle and he took a position behind and to the south of the Honda so that he would not be struck if it backed up. From his position he saw officers attempting to break the passenger window. He could also hear the Honda's motor revving "like [Ronquillo] was stepping on it but it wasn't in gear."

¹⁰ One of the officers he saw at the driver's door was his partner, Officer Sandoval, who had run to that door after the police car stopped. Officer Sandoval told investigators the driver's window was open and he reached in to try to pull the suspect from the car, without success. He released Ronquillo when the Honda backed up and moved to a position of cover because he felt the suspect would run the officers down if he had to in order to get away.

¹¹ See, e.g., Officer Brian Marshall's statement ("I think I'm yelling 'shut off the car! Shut off the car! Shut off the car!'")

Officer White told investigators he saw one of the officers manage to open the passenger door. He then saw the vehicle drive forward and strike one of the cars blocking it after which the suspect managed to get the car into reverse gear. Officer White told investigators he was

trying to get out of the way and scramble, and it looks to me, as I'm moving out of the way, that the door hits [the undercover officer]. . . . At this point, quite frankly, I'm a little feared for my life. This vehicle, you know, to me, my opinion, he hit another officer, looks like it's trying to hit me.

Officer White saw the Honda crash into Det. Trujillo's police car. He then heard a gunshot and saw the car moving forward. Officer White had taken a position on or near the sidewalk just south of the vehicle's path as it came forward. He stated that when the car drove forward, it was his first perception that the Honda would turn south "down the sidewalk – the only route that, of escape, I could see." The Honda did not turn and Officer White concluded the suspect was "trying to hit me. . . ." Officer White had his handgun drawn and, as the Honda came abreast of him he had a good sight picture of Ronquillo through the open passenger doorway. He fired "three or four rounds."

The fourth officer who discharged his weapon was Gang Bureau Officer Brian Marshall. Officer Marshall and his partner, Cpl. Ethan Antonson, 05031, were among the Gang Bureau officers who responded to assist. They arrived shortly after the initial cars made contact with the Honda and stopped on Tejon Street behind Det. Trujillo's police car. As Officer Marshall got out of the patrol car, he saw "about six fugitive or FLAG [Fugitive Location Apprehension Group] unit officers around [the Honda]" attempting to extricate Ronquillo "while his tires are spinning and he's trying to go backwards! . . . So the guy has nowhere else to go but back if he wants to evade capture." As Officer Marshall approached the Honda it "backs up, is able to jump over the curb and into the street and crashes into another [undercover] police car." Officer Marshall described his next actions:

I take a position in front of him, with my service weapon pointed at him, and I think I'm yelling 'shut off the car! Shut off the car! Shut off the car!' I kinda realize I'm kind of his way, so I put half my body behind [a car parked at the sidewalk] and I continue to giving him commands at this point.

Officer Marshall determined he might be able to either jump in the car and turn it off or move into a position where he could deploy his TASER. He had started moving into that position when he heard a single gunshot. He moved back to his position of cover because he was unclear who had fired.

[Ronquillo] starts coming forward, and when he starts coming forward I remember consciously thinking 'there's nowhere he can go over here – the only thing that's over here that I know of is six officers standing right there. So there's no reason for him to go forward – he can't escape out of there. That's blocked in as far as it can be. So I make a conscious decision at that point 'if he goes any farther, I'm going to have to shoot him, not the car, nothing like that. I'm going to shoot him to stop the threat.

Officer Marshall was now on the passenger side of the Honda. The threat he perceived was to the several officers standing in front of the Honda. He saw Officer DiManna on the driver's side and it appeared to him Officer DiManna was firing his service pistol and "kind of hopping back." Officer Marshall estimated he was "a half a car length . . . ten feet" from the Honda. He moved slightly to assure there was no crossfire risk, acquired a sight picture and fired his pistol. The suspect appeared to have been hit. The Honda moved forward and crashed into the unmarked police cars.

In addition to the officers whose interviews are discussed above, investigators obtained video-taped interviews from eight officers and detectives who were present or involved in the initial attempts to locate and apprehend Ronquillo. There were a number of people at the funeral home and in the neighborhood who were identified by investigators as potential witnesses. Eleven of those citizens agreed to respond to police headquarters and make a statement. Several other witnesses provided written statement to investigators.¹²

The statements of the witnesses are largely corroborative of those provided by the involved and witness officers. That afternoon there was a rosary being held for a young man who had died by his own hand earlier in the week. Several of the citizens told officers that the decedent and Ronquillo had been close friends and some of the witnesses knew Ronquillo well. While some of the witnesses questioned the actions of the officers, there was general agreement regarding the facts.¹³ Witness Tammy Griffen wrote:

On 7-2-14 I was sitting in my car just smoking a cigarette. He pulled in and was parking when two to three undercover cars came and blocked him in. He then tried to escape[,] reversing back into some cars. He then went forward [and] at some point the officers attempted to break out his windows. The officers than began to shoot ten to twelve times.

Witness Danny Luevano provided investigators with a written statement followed by a video-taped statement in which he provided additional detail. In his written statement he recounted:

...I was in my car on the street for my nephew's funeral and I was trying to leave and the guy hit me. The guy backed up into my car. The cops told me to park my car so I did.

I saw the guy had a small black Honda and I just seen the cops bum[p] the Honda and then the Honda hit me and then the cops started shooting at him cause he was trying to get away. ...

QUESTION BY AN OFFICER: What was the guy doing in the Honda, before the shooting?

ANSWER: He was revving his engine. He did hit my car.¹⁴

¹² At least twenty other individuals, some of whom claimed to have "seen the whole thing" refused to provide investigators with either written or video-taped statements. This is consistent with what many of the covering officers described as the "hostile" nature of the crowd.

¹³ One witness, Angelo Duran, provided a video-taped statement describing the incident in a manner inconsistent with the other witnesses, the surveillance video and with physical evidence. Mr. Duran claimed he and several friends had spent several minutes talking to Ronquillo, whom he alleged was the decedent's best friend, in front of the funeral home. Mr. Duran said that, after about 5 minutes of conversation, Ronquillo walked across the street to get a soft drink and then returned to his car where he sat for 2 to 3 minutes before police cars raced into the parking lot. In Mr. Duran's account, Ronquillo's car was completely blocked in, with the doors pinned, and not moving. According to Mr. Duran there was, thus, no reason for the officers to fire.

¹⁴ Ronquillo hit two cars parked on the street as he was backing up and before he hit Det. Trujillo's police car. Witnesses Vanessa Jaszczk and Danny Luevana indicate their vehicles were struck by the Honda.

Witness Vanessa Jaszczk also provided investigators with a written statement followed by a video-taped statement in which she provided additional detail. In her written statement she described the initial encounter as follows:

We were here for a funeral & we were getting ready to leave & then the cops pulled up & blocked a guy in a black Honda in. Then the cops were yelling, telling the guy to get out & he was revving the engine to try & get away. Then he went backwards over the grass & hit a few cars, then he went forward again. Then the cops started shooting at him. It was over from there.

Ms. Jaszczk's husband was driving the car and she was in the passenger seat. She told the investigators that as Ronquillo backed up he struck their car and two others.

PHYSICAL AND FORENSIC EVIDENCE

Det. Trujillo was carrying a Glock 19, 9mm semiautomatic pistol; Officer DiManna and Officer White were both carrying Glock 17, 9mm semiautomatic pistols. Both models have 15 round magazines and may be carried with an additional round in the chamber. All three officers carried their pistols loaded in this fashion. Officer Marshall was armed with a Glock 37, 45 GAP semiautomatic pistol. This handgun has a ten round magazine and also may be carried, as Officer Marshall did, with an additional round in the chamber. Firearms examiners determined Det. Trujillo fired one round, Officer DiManna fired two, Officer Marshall five and Officer White three. Shell casings at the scene were consistent with these determinations.

Following the shooting, an ambulance was requested "CODE 10." Upon arrival, paramedics examined Ronquillo. He was pronounced dead at the scene. Investigators with the Office of the Medical Examiner responded to the scene to conduct a preliminary examination of Ronquillo's body before it was taken to the morgue. Coroner's Investigator Chip Whitley located a film canister containing a quantity of suspected controlled substances in Ronquillo's front pants pocket. He provided it to DPD crime scene investigators. The substance was later analyzed by a forensic chemist with the DPD Crime Lab; it was determined to be 3.06 grams of methamphetamine. (Crime scene investigators also recovered a "crack" or "meth" pipe in the driver's seat of the Honda.)

On July 3, 2014, an autopsy was conducted by Dr. Meredith Lann, a forensic pathologist with the Office of the Medical Examiner. Dr. Lann documented three penetrating bullet wounds to Ronquillo's head, one bullet entered at the left cheek, one entered at the left neck below the ear and a third entered at the upper left back part of the head. A fourth penetrating gunshot wound was documented at the left arm near the elbow. Other injuries, caused by "grey metal" fragments, were observed on the right arm, right forearm and left abdomen. The cause of death was determined to be gunshot wounds to the head and neck.

DPD Firearms Examiners examined the spent bullets and bullet fragments recovered at autopsy. The Firearms Examiner's report indicates the examiners compared "two (2) fired bullet fragments" removed from Ronquillo's left arm, one "fired bullet fragment" removed from his neck, one "fired bullet" removed from his skull, one "fired bullet" removed from the right face, two "small fired bullet fragment" recovered in the upper airway and one "small fired bullet fragment" found in the upper neck with the bullets fired from each of the involved officers' firearms. Examiners

determined the bullets recovered from the “right face” and skull were “.45 caliber bullet[s] most commonly loaded into a 45 Auto or 45GAP cartridges,” however, under microscopic comparison “there was insufficient detail observed on the evidence bullets as well as the test fired bullets [and] the results of these comparisons were inconclusive.” As there is no evidence anyone other than Officer Marshall was armed with a 45 caliber pistol, the evidence suggests these two bullets were fired from his pistol.

Firearms Examiners stated the microscopic analysis of the bullet or bullet fragment recovered from Ronquillo’s neck was “inconclusive.” Examiners also stated it “was damaged and further classification could not be made. The other bullet fragments “contained no marks of value for further comparison or classification.” Accordingly, there is insufficient evidence to suggest which officer fired these bullets and bullet fragments.

Crime scene investigators documented a number of bullet strikes to the Honda. These were consistent with bullets being fired from behind and from the right front of the Honda. The investigators also noted that

There was fresh damage to the driver’s side door of the vehicle extending the entire length of the vehicle. There was fresh damage to the back left bumper area and fresh damage to the passenger side of the vehicle. There was also fresh damage to the front of the vehicle.

Immediately following the incident, Det. Trujillo complained of pain to her right hamstring and, in her interview with investigators, stated she believed she sustained “a pulled hamstring, maybe a strained hamstring muscle.” However, in a follow-up examination conducted by Dr. Lori Szczukowski at Denver Health Medical Center, the injury was determined to be a “complete tear of prox. hamstring from ischium -- tendon retracted 2.5 cm.” On August 4, 2014, Det. Trujillo underwent surgery to have the injury repaired.

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. The evidence establishes that the shots fired by Officer Marshall would have resulted in Ronquillo’s death *but* there is an attendant possibility one of the other officers fired a bullet that would also have caused a fatal wound. We will, therefore, consider each officer may have used deadly physical force. The determination of whether any of the officers’ 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 justifiably 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.**¹⁵

“**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.

¹⁵ Colorado case law establishes a motor vehicle may, in certain circumstances be used or deployed as a deadly weapon. See, *People v. Stewart*, 55 P.3d 107 (Colo. 2002).

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 question presented in this case is whether, at the instant each officer fired his or her handgun, he or she reasonably believed that level of force was necessary to defend against Ronquillo's use of force or to effect his arrest. In order to establish criminal responsibility for an officer knowingly or intentionally causing injury 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 incident is a direct result of choices made by Ronquillo: He first chose to steal a car. He then chose to flee despite almost no viable options – backing up and hitting two private cars, one occupied by several members of a family, then running into a police car. He then chose to drive forward toward armed law enforcement officers who had given him repeated commands to stop and repeated opportunities to surrender. As noted previously, the violence of his actions can be seen in the surveillance video; that fact that no civilians and only one officer was injured is remarkable.

Four officers fired within seconds of one another. This fact makes it clear the threat was patent. When an automobile is used as a weapon in close quarters there are few options available to an officer other than to disable the driver – shooting at the tires, as some critics have suggested the officers should have done, is generally ineffective. Det. Ingersoll's statement best captures an objective view of the threat posed by Ronquillo – he was “either gonna kill someone or seriously hurt somebody when he comes forward.” Ronquillo's actions gave the officers little choice other than to use deadly physical force to stop the threat he presented. Based upon the facts presented here, each officer's individual decision to use the degree of force he or she used was objectively reasonable and, accordingly, must be considered justifiable under Colorado Law. Accordingly, I will not file criminal charges against the officers involved in this incident.

The attached document entitled Officer-Involved Shooting Protocol 2014 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 [as was true in this investigation] circumstances of a case require more time. The 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 may be addressed by the Manager of Safety and Chief of Police in their review and administrative decision letters they choose to issue.

August 8, 2014

In accordance with the protocol attached below, our file may be open for in person review in accordance with the provisions of the Officer-Involved Shooting Protocol 2014. 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. 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: Det. Toni Trujillo; Off. Jeffrey Dimanna; Off. Brian Marshall; Off. Daniel White; Sean Olson, Attorney at Law; Brian Reynolds, Attorney at Law; David Bruno, Attorney at law; Michael Hancock, Mayor; All City Council Members; Scott Martinez, Denver City Attorney; Stephanie O'Malley, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Mary Beth Klee, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Mark Fleecs, Commander of Investigative Support Division; Gregory Laberge, Crime Lab Commander; Lt. Ron Thomas, Commander of Internal Affairs, Lieutenant Steve Addison, Major Crimes Division; Lieutenant James Haney, Major Crimes Division; Sgt. James Kurukis, Homicide; Sgt. Ed Leger, Homicide; Detective Troy Bisgard, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor; Rev. William T. Golson, Jr.



The stolen car Ronquillo was driving is seen in the center of this photo; Det. Ingersoll was driving the black SUV on the left side of the photo; Sgt. Bell was driving the silver SUV seen on the right side of the photo.



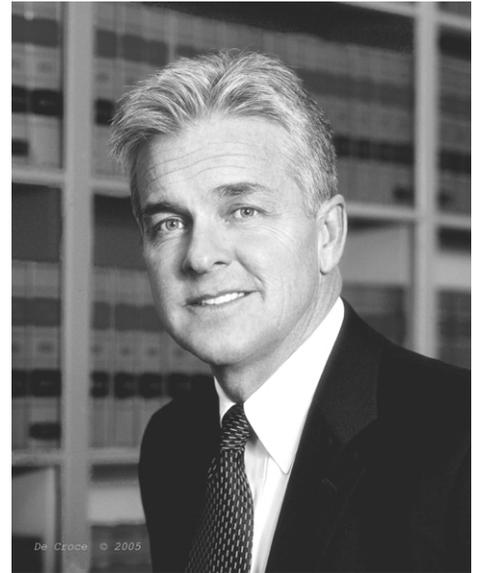
The raised earthen berm and sidewalk over which Ronquillo first backed and then drove forward are depicted in this photo. The scuff marks left by the the vehicle are clearly seen. The Jeep parked at the curb was one of the vehicles hit by Ronquillo.



The keyless ignition port can be seen in this photo.



Photos depicting Det. Trujillo's undercover police car after the collision



Mitchell R. Morrissey
Denver District Attorney

**OFFICER-INVOLVED SHOOTING
PROTOCOL
2014**

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, headed by the Executive Director of the Department of Safety. The Executive Director of the Department of Safety (“Executive Director”), 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, Executive Director, 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 Executive Director now writes an exhaustive letter at the conclusion of the administrative review of the shooting. The Executive Director's letter can include additional facts, if any, developed during the administrative investigation. Therefore, the Executive Director'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 Executive Director 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.¹⁶ As a result of the positive changes the Executive Director has now instituted and that office's 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 Department of Safety and Denver Police Department ongoing administrative investigation and review. After the Executive Director has released her 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

¹⁶ 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 three 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 5 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.

Mitchell R. Morrissey

Denver District Attorney

CONTACT FOR INFORMATION

S. Lamar Sims, Senior Chief Deputy District Attorney,
Denver District Attorney’s Office, 201 West Colfax
Avenue, Dept. 801, Denver, CO 80202 720-913-9019