



# 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

May 5, 2016

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

Re: Investigation of the shooting death of Phillip Munoz, DOB 7/26/80, DPD # 482089, in which Technician James Bradley, 00087, and Technician Brett Titus, 93013, fired shots on December 2, 2015, at 2530 N. Meade Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting death of Phillip Munoz, in which shots were fired by Technicians James Bradley and Brett Titus, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against either Technician Bradley or Technician Titus. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where tactical issues may 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

In late November of 2015, Phillip Munoz was a wanted man. A police bulletin, prepared and circulated by the Aurora Police Department's Fugitive Apprehension and Surveillance Team ("FAST"), provided identification information, a photo (along with photos of known associates) and the information that his father was possibly living at an assisted living facility at "28<sup>th</sup>/Sheridan 12 story building unit #1104." The bulletin included this notation regarding outstanding warrants:

**Adams [County] for shooting ex-gf NO BOND/ Arap [County] for kidnap and attempting to shoot other ex[girlfriend] NO BOND. Believed to have "green lit" Arap vic for execution/[victim]currently in hiding[.] Criminal History: Weapons, Agg Asslt,**

**Att Homicide, Agg MVT, Burg, Narcotics, Escape, FTA, Child Abuse, Asslt, Kidnapping, DV, Asslt [on] PO.**

The following additional information was in red letters, bold print, and a larger font:

**ARMED AND DANGEROUS ALWAYS ARMED ACCORDING TO CI, GKI GANGSTER, POSSIBLE DEALING METH AND HEROIN.**

On or about November 30, 2015, FAST detectives along with investigators and agents assigned to the FBI Safe Streets Task Force (“SSFT”) began intensive efforts to locate and apprehend Munoz. On December 2, 2015, investigators got a break – Munoz was supposed to be visiting his father at an assisted-living high rise apartment building at 3805 W. 26<sup>th</sup> Avenue, Denver, CO (the “building”). A number of investigators arrived at the location. At their request and based upon the threat Munoz presented, several Denver Metro-SWAT (“SWAT”) and two Metro-K9 officers responded to the area.<sup>1</sup>

Aurora Police Detectives James Giordano and Eric Bond were the primary investigators working on locating Munoz (Det. Giordano was assigned to FAST and Det. Bond was assigned to SSFT.) It was Det. Giordano who had received information that Munoz’s father was residing in an apartment at the building. Around midday on December 2, 2015, Det. Giordano went to the building and verified with building management representatives that Munoz’s father, Steve Munoz, lived in a unit on the 11<sup>th</sup> floor. At about 1:13 p.m., Det. Giordano was standing near the building entrance speaking with building management staff members when one of them “pointed out the window and stated, ‘There is Steve [Munoz].’” Det. Giordano saw the man identified as Steve Munoz in the company of a woman and a man he believed to be Munoz. Munoz was wearing what appeared to be a Denver Sheriff’s uniform shirt complete with a shoulder patch. Det. Giordano immediately notified the FAST and SSFT investigators that he believed Munoz was at the building.

The building complex had security cameras which allowed Det. Giordano to monitor the hallways and common areas. He remained in the building watching the surveillance videos where he was joined by Det. Bond sometime between 1:30 and 1:45 p.m. Other plainclothes fugitive investigators also began arriving in the area – some of whom drove around looking for possible suspect vehicles; others set up surveillance posts around the building.

In a written statement, Det. Giordano reported that

At approximately 1500 hours, Munoz, his dad and the female exited the apartment. They headed towards the elevator. This time, it appeared Munoz was wearing a long sleeve Denver [Sheriff’s Office] uniform shirt with a badge and a gun in a holster on his hip. Another female exited the elevator as Munoz, Munoz Sr. and the female were waiting for the elevator. The unknown female appeared to know our parties and they all returned to unit #1104.

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<sup>1</sup> DPD Computer-aided dispatch (“CAD”) printouts show entries at 14:03:57 for “MULTIPLE OFFICERS SURVEYLANCE [sic]”, at 14:04:01, for “MULTIPLE UNMARKED VEHS,” and, at 14:04:25, that “SWAT IS ON WAY AS WELL.” Fifteen investigators from FAST and the Safe Streets Task Force were involved in the surveillance operation; At least 19 SWAT and Metro K9 officers responded to cover and assist the fugitive investigators.

Approximately 15 minutes later, Munoz, Munoz Sr. and the first unidentified female left the apartment again and head[ed] towards the elevators. Via radio this was aired by Ofc. Bond and [me] to surveillance and SWAT units.<sup>2</sup>

FAST team member and Aurora Police Officer Emily Hitchings was one of the investigators who responded to the area. She parked her unmarked police car facing north on east side of Newton Street, “just south of 26<sup>th</sup> Avenue.”<sup>3</sup> From this position she was able to monitor the front door of the building. She was in this position when she heard the broadcast Det. Giordano aired at about 3:00 p.m. and the follow-up announcement, made “at approx.. 1520 hours” that the parties of interest had left the apartment and were “headed toward the elevator.” Officer Hitchings saw the three individuals described by Det. Giordano come out of the front door and walk across 26<sup>th</sup> Avenue toward her car. One male was “was wearing a Denver Sheriff’s uniform shirt (w/patches). The shirt was still untucked but at his waist [and she] could see a gun on his hip & a badge clipped on the front of his belt on the opposite side.” She aired this information but neither she nor Investigators Giordano or Bond were able to say conclusively that the party wearing the uniform shirt was Munoz and, thus, although Metro-SWAT teams were in place, they held back and did not attempt to contact Munoz on the street. The three people walked past Officer Hitchings’s car and “headed toward a silver Dodge Charger parked 2 veh[icles] behind [her] on the same side of the street.” Officer Hitchings compared the male wearing the sheriff’s shirt with the photo of Munoz that had been provided to investigators. She made a positive identification and aired that Munoz and two other individuals were getting into a silver Dodge Charger (the “Charger”). SWAT and Metro K-9 officers immediately began moving in to apprehend Munoz.<sup>4</sup>

SWAT technicians Joshua Bollwahn and Chris Gruenther were on 26<sup>th</sup> Avenue just west of Newton Street when they heard that Munoz was positively identified as being in the Charger. They drove south on Newton Street from 26<sup>th</sup> Avenue and attempted to block the Charger and prevent it from driving away. As they pulled up to the Charger, Technician Bollwahn deployed a noise-flash diversionary device<sup>5</sup> and both he and Technician Gruenther got out of their police car and began ordering Munoz to show his hands. Munoz, instead, turned the Charger around and began to drive southbound on Newton Street. This course led him directly into the path of the police vehicle manned by SWAT technicians David Albi and Kent Pietrafeso. Technician Pietrafeso, who was behind the wheel, described the next events,

As I continued northbound on Newton I observed the silver Dodge Charger traveling south bound at a high rate of speed towards our police vehicle. The suspect vehicle then attempted to turn eastbound in the 3700 block alley between W. 25<sup>th</sup> Avenue and W. 26<sup>th</sup> Avenue. I then with my front bumper rammed the front passenger area of the suspect vehicle. The rear of the suspect vehicle spun south and the vehicle came to a rest next to a garage facing westbound. I continued to push the suspect vehicle up against the garage in an attempt to keep him from driving away. I could see the suspect through the windshield in the drivers[sic] seat. He was moving around in the seat and appeared to [be] reaching for something. The suspect then put

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<sup>2</sup> Photos captured from the surveillance video are found on page 16.

<sup>3</sup> A map depicting the relevant streets and alleys is attached on page 16.

<sup>4</sup> Most of the SWAT officers were in Ford Expeditions. These police vehicles did not have light bars or police markings on the sides but they were equipped with sirens and covert emergency lights, generally placed in the grills, front and rear windshields and headlight housings. The Metro K9 officers were driving fully marked SUVs.

<sup>5</sup> This device is often referred to as a “flash bang.” In their statements, most of the SWAT technicians refer to it as an “NFDD.”

his vehicle in reverse and was able to pull away from my vehicle and drove eastbound in the alley at a very high rate of speed.

With SWAT and Metro K9 officers following in vehicles and on foot, Munoz drove *backwards* down the alley at what, by all accounts, was a high rate of speed. As the Charger crossed Meade Street, it careened out of control and crashed into a garage on the east side of Meade Street at the northwest corner of the alley. Four SWAT vehicles immediately pinned the suspect vehicle in – Technician John Ruddy placed his police vehicle “bumper to bumper” with the driver’s side front quarter panel of the Charger, Sgt. Marco Martinez drove his vehicle up to the driver’s side door and pinned the door shut with the push-bumper of his car, Technician Pietrafeso pulled in next to Sgt. Martinez and pinned the driver side rear of the Dodge Charger, and Cpl. Robert Broden drove up and positioned his police vehicle at the rear of the Charger.<sup>6</sup> Munoz had nowhere to go. Thus began a stand-off which would last for almost 20 minutes.<sup>7</sup>

Once the Charger was pinned in, several SWAT officers converged on the location and took positions at the front, driver’s side and rear of the Charger.<sup>8</sup> Metro K9 Technicians Brett Titus and Kenneth Brown were among those who moved in. Technician Brown took his dog out of his car so as to be prepared to deploy his dog. Technician Titus also took his police dog out but then saw that Technician Brown had gotten his dog out. For tactical reasons, the Metro K9 teams prefer to have only one dog involved in a take-down, so Technician Titus returned his dog to his vehicle and then, as the stand-off unfolded, moved to various positions of cover. Several officers immediately began commanding the occupants of the Charger to get out of the vehicle and surrender. Shortly after the stand-off began, officers saw the passenger door open and the female, later identified as Brittany Talmich, and the older male, identified as Munoz’s father, Steven Munoz, get out of the Charger. They were quickly taken into custody and moved away from the vehicle. Technician Albi told investigators the female party first got out of the car with

her hands in the air. She was ordered to move away from the vehicle and she complied. Several more announcements were made to the suspect to exit the vehicle and he did not. An older Hispanic male exited the vehicle with a ball cap and light colored shirt. He was told to put his hands up and move away from the vehicle and he complied. The suspect continued to again rev and accelerate the vehicle. I heard him yell, “I’m going to shoot myself!” I told him to put the gun down and come out. I could not see the suspect because of the tinted windows and side airbags that had deployed.

After the passengers were removed from the Charger, the officers continued efforts to get Munoz to surrender. Despite the fact that the Charger was pinned in, Munoz continued to

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<sup>6</sup> Photos and a diagram showing the positions of the vehicles pinning the Charger are attached on pages 17 and 18.

<sup>7</sup> A CAD entry “EB IN THE ALLEY” is made at 15:21:52 hours; an entry. An entry “SHOTS FIRED ONE DOWN – OFFICER SHOT” is made at 15:40:16 hours.

<sup>8</sup> In alphabetical order, the SWAT officers directly involved in attempting to get Munoz to surrender and exit the Charger were: David Albi, 95090, Joshua Bollwahn, 00015, Rob Broden, 90026, Kenneth Brown, 98039, Richard Eberharter, 92063, Mark Garcia, 90017, Chris Gruenther, 97023, Marco Martinez, 95086, Vincent Mathews, 95003, David Miller, 04055, Craig Moen, 91027, Jeff Motz, 93014, Randy Penn, 79061, Kent Peitrafeso, 92003, John Ruddy, 00089, Perry Speelman, 92045, and the two officers who discharged their firearms, James Bradley, 00087, and Brett Titus, 93013. Technicians Broden, Ruddy and Brown provided investigators with video-recorded statements. The other witness officers completed written statements. Technicians Bradley and Titus provided investigators with sworn, voluntary statements that were video-recorded as is provided in the Officer-Involved Shooting Protocol. Technician Ruddy provided a statement to investigators after he was medically cleared to do so.

try to escape by revving the engine and attempting to back up or lurch forward. As Technician Albi described matters, he and

other METRO officers gave the suspect the command to exit the vehicle with his hands up. He did not and continued to try and escape with the vehicle. He kept revving the engine and putting it in drive and reserve. Less than lethal 40MM impact sponge rounds were deployed and I deployed a Noise Flash Diversionary Device in the area of the driver's door on the ground in an effort to get the suspect to stop trying to use the vehicle to escape. More 40MM sponge rounds were used in an effort to break the heavily tinted windows that [were] preventing officers from seeing inside the vehicle.<sup>9</sup>

As Technician Albi stated, in addition to repeated shouted orders that Munoz show his hands and surrender, officers fired numerous "less lethal" 40mm rounds in largely futile attempts to break the windows so that they could see inside the vehicle (Sgt. Randy Penn, for example, told investigators that he, alone, "deployed approximately 12 exact impact rounds<sup>10</sup> from the 40mm, mostly through the driver's side rear window.") The 40mm rounds were not having the desired effect and some officers began attempts to break out the car windows by throwing bricks and pieces of paving stone.<sup>11</sup> Officers also continued to deploy noise-flash diversionary devices for a short while. However, few minutes into the standoff, some of the officers noted the smell of natural gas and realized that when the Charger hit the house it had broken a gas pipe or pipe housing. As Sgt. Penn noted in his statement, "it was aired that we had a gas leak and not to deploy any further NFDD's." (A CAD entry stamped 15:27:46 hours notes that "GAS METER LEAKING 2500-BLK MEADE ON THE EAST SIDE.")

SWAT officers were in front, along the driver's side and behind the Charger. Initially, SWAT officers also entered the garage on the passenger's side of the Charger to see whether they could better approach Munoz from that side. Technician Broden told investigators he could hear the gas leak so and Technician Motz decided to go through a breezeway and to the back door of the house to determine whether there was anyone inside and, if so, to evacuate them. There was no answer when they knocked on the door. The two officers then went into the attached garage where they had good vantage point of the passenger's side of the Charger from a garage window. Technician Broden stated he was

going to try and shoot the 40 [mm] and try and take out that back window so we could at least try and see inside the vehicle, cuz' it was still very hard 'cuz of all this tint. But the ga – the garage was filling up with gas. A lot. So I told [Tech. Motz] "we got to get out of here."

The two officers left the garage and returned to a position behind Tech. Broden's police vehicle. At some point thereafter, Technician James Bradley went into the garage and advised other officers of his location by police radio. Technician Broden returned to the garage to cover and assist Technician Bradley. Technician Broden told investigators

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<sup>9</sup> The statements of the SWAT officers who were engaged in the attempts to get Munoz out of the Charger are consistent and corroborative. See, e.g., the statements of Technician Bollwahn, Technician Gruenther, and Technician Miller.

<sup>10</sup> The manufacturer describes the *eXact iImpact™ 40 mm Sponge Round* as appropriate for use in "Crowd Control, Patrol, and Tactical Applications."

<sup>11</sup> In the photo of the Charger found on page 18, a number of bricks are visibly, strewn along the side and rear of the car. In his statement, Technician Titus estimated he "probably threw a dozen bricks, finally breaking through the windshield and the side window."

it was still “really bad with gas” and then smoke started emanating from the back seat of the Charger. Technician Broden and Technician Bradley, concerned about the risk of fire or explosion, left the garage. Technician Broden returned to his position behind his police vehicle. He told investigators

flames started coming out of the back of the car. Both windows. And at some point, the suspect ended up crawling out of the driver’s seat. I’m sorry, of the passenger’s seat. He was laying [*sic*] in the area – in the nook area between the garage and the car. . . . He was laying here once he crawled out. And he had the gun, he had the gun in his left hand. And he had it to his, uh, the temple [indicating] and it was like a black, semi-automatic, and I have no idea what kind it was.

Munoz, now out of the Charger, continued to hold his handgun to his head while Technician Broden and other officers repeatedly ordered him to drop the gun. Technician Broden shot Munoz with the 40MM, striking him “in the leg. In the buttocks” in attempts to gain his compliance. Technician Broden then attempted to disarm Munoz with the 40mm launcher. In his words, he “shot. I hit his hand. The gun flew out. . . . So, he was unarmed for a second.” However, the gun landed close to Munoz and he reacquired his grip on the pistol. Munoz grabbed the gun and “stuck it in his mouth, this time. And, uh, guys were yelling, continuously yelling to ‘drop the gun. Drop the gun!’”

Technician Broden fired several 40mm rounds at Munoz to no effect.

After several moments, he slid down the wall towards the 6-foot wood fence. I, uh, from my angle here [indicating on a drawing] I actually ended up losing sight of him. So, I moved over here and then to the front of my car, here, to get an angle on him, because I didn’t want him to, obviously, jump over the fence – we wanted to contain him right there. He still had the gun in his mouth. At that point he had stood up, I was gonna try and, you know, while I went to hit him again. When I came up on sight, he had jumped up and, uh, started climbing over [the fence]. I shot the forty – I think I hit him in the leg as he was going over.

Several officers saw Munoz place his handgun in his mouth and hold it in his mouth while he jumped the fence. For example, Technician Bollwahn wrote he “observed the suspect standing with the gun in his mouth. He then left the gun in his mouth and put his hands up. He then jumped over the fence with the gun in his mouth.”<sup>12</sup>

When Munoz got out of the car, some of the officers realized that while he was contained on the front, back and driver’s side of the car, there was no containment on the passenger’s side other than the fence described by Technician Broden. Among them was Technician Bradley. Technician Bradley was Technician Ruddy’s partner and was in the Expedition that had pinned the Charger in from the front. He had originally taken a position of cover behind their vehicle but, as discussed above, moved to the garage to see whether that was a better tactical position. When he left the garage because of the risk posed by the gas, he

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<sup>12</sup> See, also, statements of Technician Eberharter – “Munoz then grabbed the fence with both hands leaving the gun in his mouth and jumped over the fence,” Sergeant Marco Martinez – “[Munoz] was disregarding their [officers’] pleas and started walking back and forth with the gun in his mouth. He was turning around and appeared to be looking for an escape route,” Technician Matthews – I could “see him behind a large tree with what appeared to be a semi-automatic handgun in his mouth. The suspect continued to say that he would not put the gun down and that we just wanted to kill him so he was going to kill himself.”

moved to a position near and to the east of the fence. He was at that position when he realized, that

everyone had converged onto this one area where we were at. And I thought to myself, he gets over that fence, he's gone. He's armed. He's in a neighborhood – he could take hostages. He could bust into homes. You know, what, whatever. So, at that point, I leave my position and I go around from where I came from, into the back yard, and I can hear him climbing over the fence.

Due to his concern that Munoz might escape, Technician Bradley, armed with a Colt AR .223 caliber carbine, walked around the detached garage belonging to the house at 3650 W. 26<sup>th</sup> Street and took a position in backyard of that house. He was now directly east of the 2530 N. Meade Street address and from this position he had a clear view of the backyard of that residence.<sup>13</sup> He told investigators he saw Munoz drop down “from the fence that he climbed over and he starts going in what I would guess is a northerly direction across the backyard of the house that [his car] struck.”

Technician Bradley told investigators that he yelled “stop” one or two times but Munoz continued to run. There was another fence ahead of Munoz and Technician Bradley now became concerned that he might get over that fence but, as Munoz approached the fence,

He seems to stop. And, at this, before then I never, never saw the gun – he was just running like this. And then, at some point, he just, he, it looks like his demeanor changes from just running. And, he, now I see him push a pistol, a black pistol, away. A semi-automatic gun with, like, away from his body. And now I see gun and my brain registers gun and I think I yell “gun!” And it looks to me like he could, you know, he could either spin in my direction, this way, and, or, he could come back around to me. And right when I'm thinking he could just turn this way to me, it seem like he does one of these [demonstrating] like this and, fearing for my life, I just, I fire. I believe I fired three rounds, to the best of my knowledge.

Munoz fell to the ground and, almost immediately after he fired, Technician Bradley saw a police dog charge Munoz and control him. Technician Bradley then heard a cry across the yard at 2530 N. Meade Street. He looked up and saw Technician Ruddy fall to the ground in the front yard at 2530 N. Meade Street.<sup>14</sup>

The police dog seen by Technician Bradley had been deployed by Technician Brown. Technician Brown told investigators that, immediately after the Charger crashed, he had driven west down the alley from Lowell Boulevard and parked his marked police car behind Technician Broden's Expedition. He took his leashed police dog out of the car so that he would be able to deploy the dog if the opportunity arose. He took several different positions during the stand-off but when he heard officers yelling that Munoz was getting out of the Charger, he moved to a position near his police car and the detached garage and knelt, holding his police dog. Technician Titus moved with him to provide lethal cover so that Technician Brown could deploy his police dog as a less-lethal

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<sup>13</sup> Photos at page 20 shows Technician Bradley's approximate location and view into the backyard of 2530 N. Meade Street.

<sup>14</sup> The positions of the Technicians Bradley and Titus at the time they discharged their firearms, coupled with the forensic evidence detailed, below suggest that one of the rifle rounds fired by Technician Bradley perforated Munoz's body and then struck Technician Ruddy in the upper leg.

option if Munoz climbed the fence. Technician Brown stated that he felt that, if Munoz jumped the fence, the best point at which to unleash his police dog would be when Munoz hit the ground as he would most likely be off balance at that point. When Munoz jumped the fence, Technician Brown saw him land on all fours, with gun in hand. Munoz stood and started running and Technician Brown unleashed his police dog. He later told investigators,

I'm watching Tigger [his police dog] run down the sidewalk and I'm watching the guy at the same time and I see him turn, with the gun pointed at us, which causes me to take cover behind the garage. As soon as I lean back, I hear two shots over my left shoulder, which was [Technician] Titus standing over me. Two shots ring out. I come back [up] and I can see that my dog was now starting to engage [Munoz] as he's going to the ground. And now he's at the other end of the yard.

In response to an investigator's question, Technician Brown said that when Munoz turned towards him and Technician Titus, "I think he was moving to the left, just, come back at us this way [demonstrating turning and bringing the gun over his left shoulder.] . . . I thought, for sure, we're gonna take some rounds, here."

When Munoz got out of the Charger, Technician Titus was at a position to the rear of the passenger side of that vehicle, providing cover to Technician Brown and his police dog. He was now near the southeast corner of the fence with the southwest corner of the detached garage at 3650 W. 26<sup>th</sup> Avenue was to his right. From this position Technician Titus was able to see Munoz holding a gun to his head, threatening to kill himself as officers pleaded with him to drop his gun and surrender. As he stood at this position, he saw Technician Bradley go around the east side of the detached garage. He then saw Munoz jump over the fence and land in front of him.<sup>15</sup> Technician Titus told investigators that Munoz, landed "kind of" on his back, rolled and stood, gun in hand. Munoz pointed the gun at the officers and then turned and ran in a northerly direction. As Munoz began running, Technician Titus saw Technician Brown "send" his dog after him. Munoz then "turned around one more time and began to point the weapon, uh, towards our direction." Technician Titus's immediate concern was for the SWAT officer who was, he believed, on the other side of the detached garage and east of Munoz's position. He told investigators

wasn't sure if [Munoz] was aiming at the officer, uh, the SWAT officer, or [if] he was gonna come all the way back around at us. In fear he was gonna either shoot the SWAT officer or shoot us, I fired, I believe, two rounds as he was, um, running away. It, it was a split second later he actually ran past a tree and I, um, held off from firing again because, and then at that point Technician Brown's K9 was about to engage in, it, almost simultaneously as the dog was hitting [Munoz] I heard a shot. I believed it to be a rifle shot from my right and, as soon as that went off the suspect just dropped, instantly, where he was.

In response to a series of follow-up questions, Technician Titus stated that Munoz was holding his pistol in his right hand and turned to his right and, thus, to the east. He

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<sup>15</sup> The fence starts at the corner of the garage where the Charger crashed and runs several feet south to the alley. It then runs several yards east. These two sides of the fence are about 6 feet high. It then joins a shorter picket fence which runs on the east side of the backyard at 2530 N. Meade Street. It was over this shorter picket fence that Technician Titus saw Munoz land in the back yard. Photos on page 20 show Technician Titus's approximate position and depict the fences described in this note.



stated he "needed to take that shot so [Munoz] didn't get a round off at the officer [on the other side of the detached garage] or at us."

After the shots were fired, Technicians Brown and Titus slowly approached Munoz so that Technician Brown could control his police dog. As they drew near, Technician Brown saw that Munoz had suffered a head wound. He also saw a handgun "out in front" of Munoz. Technician Brown called his dog off of Munoz, "leashed him up" and backed away so that other officers would be able to control the scene.

Technician Ruddy provided investigators with a video-recorded statement on December 11, 2015. He described the initial pursuit and described his role in pinning the Charger and also confirmed that the emergency lights and siren were activated on his vehicle. Technician Ruddy stated he first took a position of cover behind the open driver's side door and joined other officers in attempting to convince Munoz to surrender. During the course of the stand-off, he was one of the officers who attempted to break out the Charger's windows by firing 40mm rounds at the windows. At one point he succeeded in breaking out the back window on the driver's side. Technician Ruddy then launched two 40mm OC gas rounds into the back of the vehicle in the hope that the gas would force Munoz of the car. The gas did not, however, have the desired effect.

Technician Ruddy told investigators that when the Charger caught fire, he moved his police vehicle away so that firefighters would be able to access it. He armed himself with his rifle and moved, on foot, to a position of cover behind a utility box on the east side of Meade Street near the corner of the street and alley. He was at this position when he heard other officers say that Munoz was out of the Charger. He told investigators that while he could not see Munoz at this point, he could hear him yelling. Munoz came into Technician Ruddy's view when he stepped from behind the tree and moved to the southeast corner of the fence. Technician Ruddy was able to see that Munoz was holding a pistol in his mouth.

From his position, Technician Ruddy was able to see Munoz climb the fence. He told investigators he was aware that Technician Bradley had moved into a backyard north of the area of the standoff and that firefighters were staged north of 2530 N. Meade Street. However, he did not know whether there were any officers positioned immediately north and west of 2530 N. Meade Street, so he moved to take a position at the northwest corner of the residence to prevent Munoz from escaping in that direction.

Technician Ruddy stated that when he got to the north side of 2530 N. Meade, where he was able to see into the backyard of that house, he saw

the suspect, for, uh, just like that. And at that point I just see him I don't, his hand's up here [demonstrating] like he has a gun in it, but I don't recall seeing a gun. But, in an instant, basically he's running, like, northbound and I see him, basically, jump and do a spin move. Like he's trying to jump and turn around in mid-air, turn behind him like a wide receiver would do to catch a football, or something – it was just like that fast.

In response to a question, Technician Ruddy indicated that Munoz was turning in a direction towards him. He then stated he saw Munoz for a "second and I hear gunfire

and I feel burning pain” (gesturing to his upper right thigh).<sup>16</sup> Technician Ruddy stated that he realized he had been shot and attempted to take a step back but his “leg doesn’t respond.” He went to the ground, began to put pressure on the wound, and yelled “I’m hit.” Almost immediately other SWAT officers dragged him away and began to administer aid. He was quickly taken by ambulance to Denver Health Medical Center.<sup>17</sup>

A number of citizens were contacted by investigators, 21 of whom agreed to provide statements. Many of them saw some part of the initial pursuit or heard the explosive sounds of the noise-flash diversionary devices or the noises made by, first the 40 MM launchers and, ultimately, by the gunfire. For instance, John Allman, a resident in the neighborhood, wrote:

[I] saw an officer's vehicle parked at 25th & Meade. I heard multiple loud bangs, looked outside my front door, saw grey/silver mustang in reverse at high speed going east across Meade St. from alley to alley (the alley between 25th & 26<sup>th</sup>). Several more bangs. Saw smoke from [the car] fire.

Three of the witnesses, Raymond Padilla, Kelly Stelzer and Leann Stelzer, were in a position to see or hear much of the standoff at the car. Mr. Padilla and Mr. Kelly Stelzer provided investigators with video-recorded statements in addition to their written statements. All three of these witnesses confirm that police officers repeatedly asked Munoz to put down his gun. Mr. Padilla stated, "Officers kept asking him to put it down. The man yelled your [sic] supposed to help me, not kill me. Again, officers told him to put it down, the car is on fire." Ms. Leann Stelzer wrote that she

heard officers shouting to 'put down the gun and come out of the car, it's going to blow.' This was repeated several times maybe by different people. Heard another person - suspect, I think - say he would shoot himself - 'if I come out you are going to kill me.' - officers responded, "no, we're not - just put the gun down and come out of the car, we want to help you." - repeated several times. . . .

In his written statement, Kelly Stelzer provided this information:

[I] was hearing stuff like "there's a major gas leak," "the car is on fire," "he's still trying to move the car." I could hear tires spinning. Next I see that the car is beginning to burn 5-10' orange flame – we’re smelling gas. Then the final part -- for 2-3 minutes -- the car is burning - the officers are hammering - "put the gun down and put your hands up!" over and over. [I] could hear the suspect - "You're trying to kill me." Officers: "you don't have to die. Put the gun down." Suspect, "I'm going to do myself."

Brittany Talmich, the female passenger in the Charger, provided investigators with an audio-recorded statement. Munoz’s father, Steven Munoz, provided investigators with a video-recorded statement. In her statement, Ms. Talmich claimed that she had met Munoz several days before the incident at the home of a mutual friend. After they met, she spent time with him on two or three previous occasions and that at least on one

<sup>16</sup> Later in the interview, Technician Ruddy stated that at about the same time he saw Munoz he saw an officer positioned to the east of him and Munoz and “immediately I know I’m where I shouldn’t be. . . . Crossfire situation – terrible!”

<sup>17</sup> The bullet that struck Technician Ruddy did not sever the femoral artery or any major vessels and did not break any bones. He advised investigators that the physicians who treated him told him that his prognosis was good.

previous occasion she saw him wearing a handgun “on his side.” She stated that on the night before the shooting, Munoz told her he was “in trouble with the law.” She told investigators that on the day of the shooting she had accompanied Munoz to his father’s house and she was in the car during the chase. Ms. Talmich admitted that on the day of the shooting, she saw a black handgun in a holster on the center console of the car and verified that, during the chase, Munoz was driving backwards in an attempt to escape.

In his statement, Steven Munoz told investigators that his son, in the company of a woman he did not know, came over to his residence at about 1:00 p.m. on the day of the shooting. At some point he accompanied the two of them back to Munoz’s car which, he told police, he was “sure” had been stolen.<sup>18</sup> Mr. Munoz told investigators his son routinely carried handguns and was “sure” he was armed on the day of the incident. When the conversation turned to the events immediately before the shooting, Mr. Munoz stated that he was sitting in the back of the car and, when the police first attempted to stop the car, he asked his son, “What are you doing? Just stop!” His son replied, “I ain’t stopping for nobody. We’ll all die.” Mr. Munoz said that he pleaded with his son as he was attempting to drive away and his son responded by saying things like, “Fuck, no. I ain’t stopping!” and “I don’t care anymore.” When asked whether his son has ever talked about going back to jail, Mr. Munoz recalled that on at least one occasion, Munoz stated “I will never go back to prison. They’ll have to kill me.”

#### ***FIREARMS EXAMINATION AND AUTOPSY REPORT***

The weapon fired by Technician Bradley was a Colt AR .223 caliber semi-automatic carbine, loaded with a 30 round magazine. Firearms examiners, relying on an examination of the firearm at the crime lab and the .223 shell casings recovered at the scene, determined Technician Bradley fired five rounds.

The weapon fired by Technician Titus was a .45 caliber Colt 1911 semi-automatic pistol. This firearm has a seven round magazine and may be carried with an additional round in the chamber. Technician Titus carried it loaded in this fashion. Firearms examiners, relying on an examination of the firearm at the crime lab and the .45 caliber shell casings recovered at the scene, determined Technician Titus fired two rounds.

The handgun recovered near Munoz’s body was a .380 caliber semi-automatic Kel-Tec P-3AT. It was found to be unloaded and no spent .380 caliber cartridge casings were located in the area of Munoz’s body. During the preliminary examination of Munoz’s body at autopsy, investigators located a pouch in the front pocket of his trousers which contained eleven .380 cartridges. A handgun holster was attached to the front left portion of those trousers. On April 22, 2016, Homicide and District Attorney personnel responded to 2530 N. Meade Street to complete a final scene review. While there, the residents of that house approached DPD Det. Troy Bisgard and advised him that earlier in the month of April they had been working on the lawn in the area where the Charger had crashed into their house and they found a handgun magazine which contained six cartridges. This magazine was taken to the Denver Crime Lab where firearms examiners

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<sup>18</sup> The Charger had, in fact, been stolen from a location in Adams County, CO, on November 28, 2015 (NCIC/CCIC case # 15-01156).

determined that it was a .380 caliber magazine which would fit and function in Munoz's pistol.

On December 3, 2015, a post-mortem examination of Munoz's body was conducted by Dr. Meredith Frank, Assistant Medical Examiner with the office of the Denver Medical Examiner. In her final report, amended on April 7, 2016, Dr. Frank documented "rifle wounds" to Munoz's head, right mid-back, lower left back, right thigh, left thigh<sup>19</sup> and an "apparent rifle wound to the upper right chest." Dr. Frank documented a gunshot wound to the abdomen and a gunshot wound "to the right buttock." The bullet which caused the "gunshot wound" to the abdomen was recovered from the "upper right abdominal wall." Firearms examiners examined this projectile along with a projectile found in the bag in which Munoz's body was transported and concluded both had "the same characteristics with respect to caliber and having been fired from a conventionally rifled barrel" as the Colt rifle, but "due to damage there was a lack of individual characteristics and the results of the comparison were inconclusive." The bullet which caused the wound to the right buttock was recovered from the left chest wall. Firearms examiners determined this bullet "was microscopically identified as having been fired from the Colt pistol." Toxicological screens show that Munoz had a blood alcohol level (BAC) of .96. His blood also tested positive for the presence of amphetamines and methamphetamines. The cause of death was determined to be "multiple gunshot wounds." The manner of death "is homicide."<sup>20</sup>

### 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 the involved officers caused Munoz's death. The determination of whether the officers' actions were criminal is primarily a question of legal justification.

C.R.S. § 18-1-707 is the Colorado statute which the circumstances under which a peace officer may 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

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<sup>19</sup> Dr. Frank documented nine bullet entry wounds. However, some of those wounds may have been caused by projectiles that entered, exited and then reentered Munoz's body. We are also unable to determine whether any of the bullets fired struck an intermediate object and fractured before hitting Munoz.

<sup>20</sup> "Homicide" in this context is a medicolegal definition which states, in essence, that the death was caused by the actions of another. It is not a finding or determination that the actions which caused the death were criminal in nature.

(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.

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

Section 18-1-901(2)I 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).

## CONCLUSION

The question presented in this case is whether, at the instant Technicians Bradley and Titus discharged their firearms, the legal justifications for using deadly physical force as set forth in C.R.S. § 18-1-707(2) were applicable. I conclude they were. A related issue is whether either Technician Bradley or Technician Titus is in some way criminally responsible for the injury suffered by Technician Ruddy in what has been referred, in other contexts, as a “friendly fire” incident. No such charges would be appropriate against either Technician Bradley or Technician Titus in this matter.

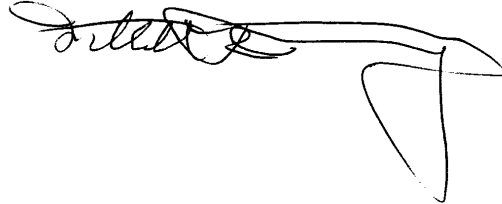
Technicians Bradley and Titus were among a number of SWAT and Metro K9 officers who were attempting to take an armed man into custody. For twenty minutes, the officers made repeated efforts to gain Munoz’s compliance and have him surrender peaceably. Officers made repeated attempts to reason with him and repeatedly deployed less-lethal devices in attempts to disarm him and get him to comply with their requests. At every juncture, Munoz refused to comply. When officers first approached him, he drove away, going so far as to back down an alley at high speed when it appeared he was trapped between police cars coming from opposite directions. When he crashed into a house and was pinned in by police vehicles, he “revved” the engine and tried to drive forwards and backwards in vain efforts to push one of the police vehicles out of the way. When he got out of the Charger, armed with a handgun, he refused to put the gun down despite repeated pleas by officers. And when an officer managed to disarm him by hitting his gun hand with a less-lethal 40mm projectile, he quickly grabbed the gun back and then he climbed over a 6 foot fence, *holding his gun in his mouth*, in an effort to flee. Any reasonable police officer confronted with these facts, would conclude that Munoz was desperate and was not going to surrender peacefully. Ultimately, Munoz while running on foot, stopped and turned quickly, and, as he did so, brought the muzzle of his handgun in the direction of Technician Bradley, moving it in such a fashion that both Technicians Titus and Brown believed it would be brought to bear on them.

Whether Munoz stopped and turned because he saw Technician Ruddy, saw the fence north of him, or decided to end the confrontation at that point is something only he knew and is, quite frankly, immaterial under these circumstances. What the officers knew was that a violent, armed and non-compliant subject was pointing a handgun in their direction. Technician Bradley’s decision fire to defend himself from what he believed to be the imminent use of unlawful force against him was objectively reasonable. Technician Titus’s decision to fire, first to protect Technician Bradley, second, to defend himself and Technician Brown was likewise, objectively reasonable. In short, Munoz gave the officers no other option. In the circumstances of this case, the actions of each officer are justified pursuant to C.R.S. § 18-1-707 and, accordingly, no charges will be filed against either officer.

The attached document entitled Officer-Involved Shooting Protocol 2015 explains the protocol followed in this investigation. Our file may be open for in-person review in

accordance with the provisions of that protocol. The Denver Police Department is the custodian of records 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,

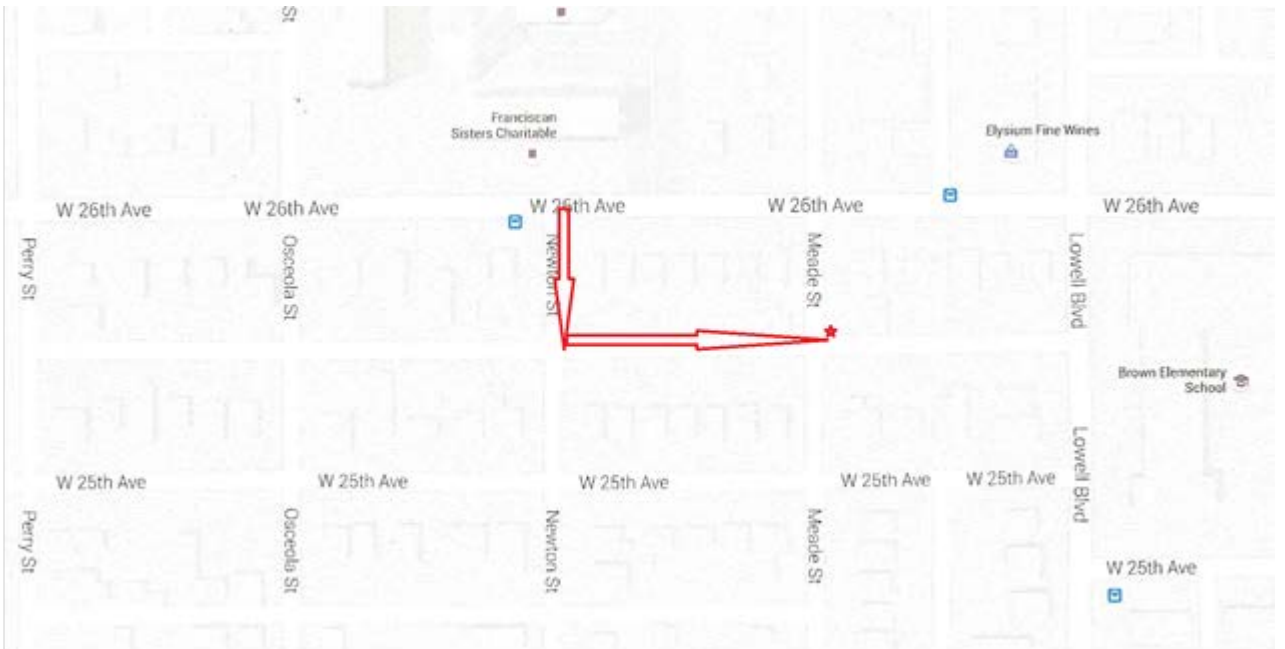
A handwritten signature in black ink, appearing to read "Mitchell R. Morrissey". The signature is written in a cursive style with a long horizontal stroke extending to the right, ending in a large, sweeping loop that curves downwards.

Mitchell R. Morrissey  
Denver District Attorney

cc: Officer James Bradley; Officer Brett Titus; Sean Olson, 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; Matthew Murray, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Patrick Phelan, Commander of Special Operations; Gregory Laberge, Crime Lab Commander; Joe Montoya, Commander of Internal Affairs; Lieutenant Matthew Clark, Major Crimes Division; Lt. Scott Torpen, Aurora Police Department Major Investigations Section; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Detective Jami Sisneros, Homicide; Detective Troy Bisgard, Homicide; Sgt. Matthew Fyles, APD Major Crime/Homicide Unit; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor; and Rev. William T. Golson, Jr.



Surveillance photos showing Munoz and Brittany Talmich walking in the hallway, with Munoz's father walking behind them. The uniform shirt worn by Munoz is clearly seen.



The red arrows mark the Charger's path from the point Munoz left the assisted living center to the point at which he crashed into the side of the house.



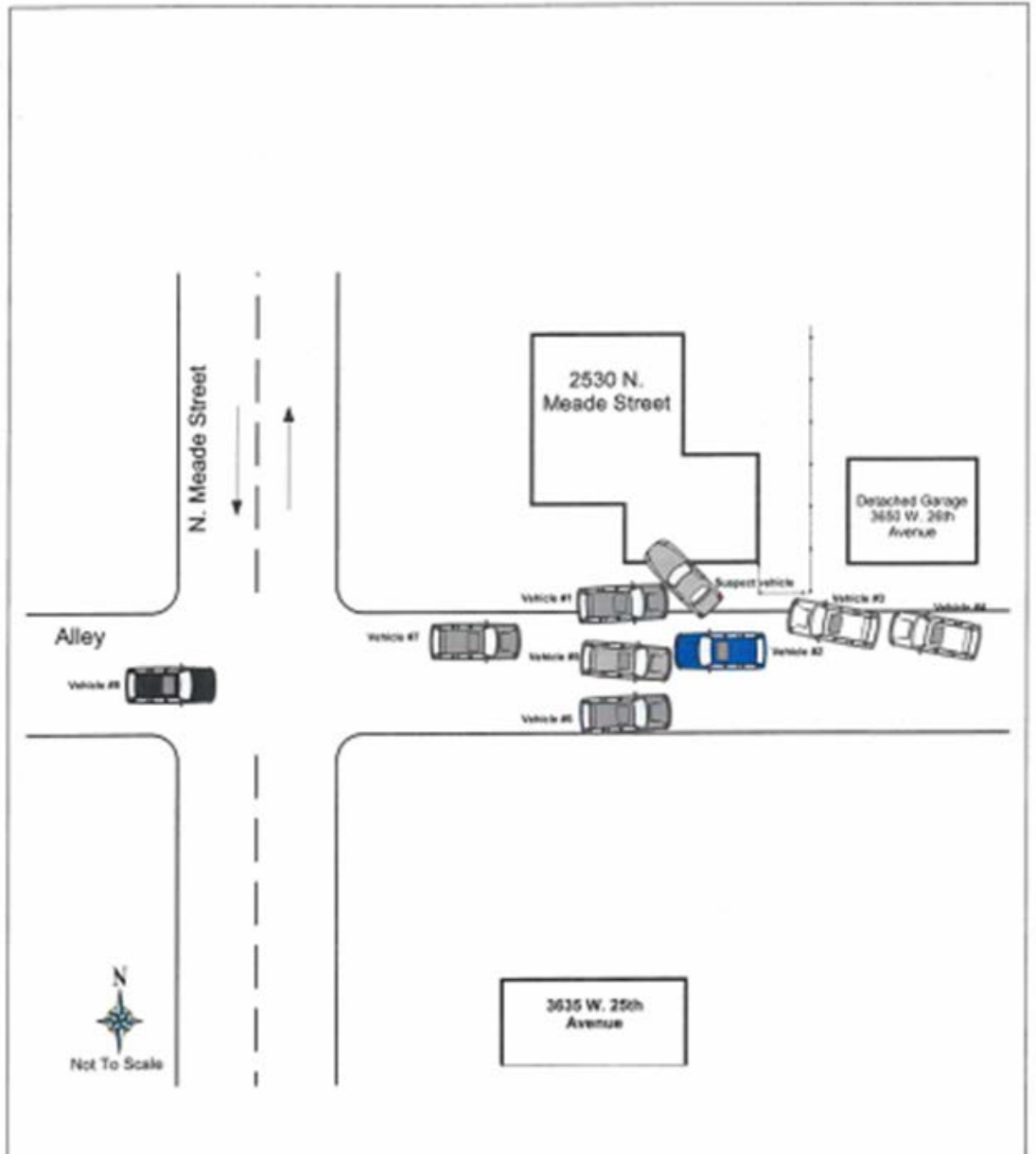


Diagram prepared by Crime Scene investigators depicting the position of the vehicles during the stand-off.



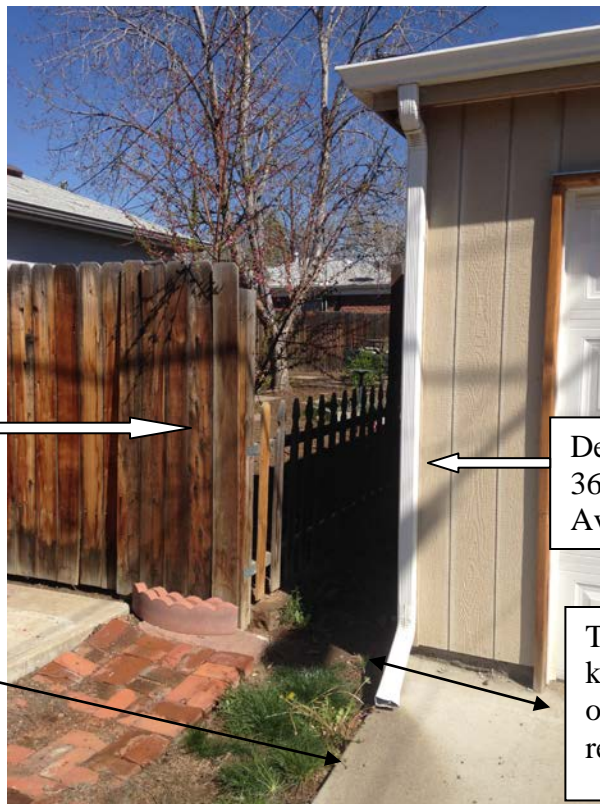
Photo depicting the Charger pinned in by Metro-SWAT vehicles. Spent 40mm projectiles and bricks and paving stones used by officers in their attempts to break out the windows can be seen on the ground.



A photo of the Charger taken after the police cars were moved. Damage caused by the fire is visible. Also visible is the garage window from which officers considered attempt contact Munoz until gas fumes in that area made that option untenable and the tree next to which Munoz went to the ground at one point after he got out of the vehicle.



Approximate position of Technician Titus at time he fired his handgun. The small picket fence is visible at the far right side of the photo.



Junction between 6 foot fence and shorter picket fence

Detached garage at 3650 W. 26th Avenue

Approximate location at which Technician Titus was standing when he fired his handgun.

Technician Brown was kneeling by the corner of the garage when he released his police dog.

Photo taken in April of 2016



Backyard of 3650 W. 26<sup>th</sup> Street.  
Fence and view into back yard of 2530 Meade Street  
Technician Bradley was positioned in this area.



Technician Ruddy's approximate position when he was shot.

Munoz's body, which Technician Brown's police dog dragged south and away from the fence.

Bush between Technician Bradley and Munoz when Technician Bradley discharged his AR15.



*Mitchell R. Morrissey*  
*Denver District Attorney*

## OFFICER-INVOLVED SHOOTING PROTOCOL 2015

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 three decades, 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 assures transparency in these investigations. This serves to enhance public confidence in the process.

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-recorded 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 video interview room was first used, each of these statements has been video-recorded. *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 -- is time consuming. 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. As a rule, 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-recorded 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 decision letter describing the shooting and the legal conclusions is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, the Executive Director of the Department of Safety, other appropriate persons, and the media. If the involved peace officer is from an agency other than DPD, the letter is directed to the head of that agency.

A copy of the decision letter is also posted on the Denver DA website ([www.denverda.org](http://www.denverda.org)) so that members of the public may learn the facts of the incident and the reasons for the decision of the District Attorney. At this time, the case file that is maintained by Denver District Attorney's Office is available and open to the public for review, unless a criminal case is pending concerning the facts of the shooting, and subject to the Colorado Criminal Justice Records Act. Allowing our file to be reviewed permits interested members of the public to learn more about the investigation; to verify that our description of the facts in the decision letter is accurate; to verify that our decision is supported by the facts; and to determine whether they wish to challenge our decision under C.R.S. 16-5-209. Allowing access for review is important to the transparency of our decision making in these important cases, and serves to foster public trust and confidence in the investigative process and in the decisions that are made.<sup>1</sup>

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<sup>1</sup> However, the complete official file of the investigation remains in the custody of the Denver Police Department, which is the custodian of the case records. If we have made a decision not to file criminal charges, the Denver Police Department begins an *administrative* investigation and review of the incident. This may result in the gathering of additional information and the production of additional documents concerning the incident. The Denver District Attorney's Office is not involved in the administrative investigation and does not receive the additional information or investigative materials

If criminal charges are filed against the officer(s), the charges are filed in compliance with the same procedures as any other criminal filing. In that event, the file maintained by the Denver District Attorney's Office becomes available and open to the public for review at the conclusion of the criminal prosecution in the same manner as mentioned above.

## 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.

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

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

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developed in that investigation. At the end of the administrative review, therefore, the files maintained by the Denver Police Department pertaining to the shooting will likely contain more information than the criminal investigation file.

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, an appearance of impropriety may exist if the Denver District Attorney's Office handled the case. This may cause our office to seek a special prosecutor.

## 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, although these certainly may be important in a case as well.

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. "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, and the "Colorado Criminal Justice Records Act" dictates that the public interest be considered before releasing criminal justice records.

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.

We encourage any interested person to read the decision letter in these cases, and if desired, to review the investigative case file at our office to learn the facts. We

find that when the actual facts are known a more productive discussion is possible.

*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 720-913-9000

**Doug Jackson**, Senior Chief Deputy District Attorney,  
Denver District Attorney's Office, 201 West Colfax  
Avenue, Dept. 801, Denver, CO 80202 720-913-9000