



# DenverDA

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April 20, 2016

Nicholas Metz  
Chief of Police  
Aurora Police Department  
15001 E. Alameda Parkway  
Aurora, CO 80012

RE: The investigation of the officer-involved shooting by Aurora Police Officers Teresa Fields (Badge 310722) and Josh Stuteville (Badge 25640) on December 21, 2015, in the parking lot of the 7-11 store located at 1103 Yosemite Street, Denver, Colorado, which caused the death of Mr. Chan Duol Lieth, DOB 1-1-90.

Dear Chief Metz:

I have reviewed the investigation of the officer-involved shooting that resulted in the death of Mr. Chad Duol Lieth. I have concluded that a jury would find the use of deadly physical force against Mr. Lieth was justified because of his actions. Therefore, criminal charges against officers Teresa Fields and Josh Stuteville are not appropriate. My decision, based on criminal law standards, does not limit administrative action by the Aurora Police Department or civil actions where non-criminal issues may be reviewed and where less stringent laws, rules and legal levels of proof apply. Any interested party may seek judicial review of this decision under C.R.S. 16-5-209. Attached to this letter is a description of the procedure used by the multi-agency team that investigated this shooting.<sup>1</sup>

## SUMMARY OF FACTS

A silver Jeep Grand Cherokee with Colorado license plate number 112-VQZ was stolen in Denver on December 14, 2015. On December 18, 2015, and each day thereafter until this shooting on December 21, 2015, the Jeep was seen being driven in Aurora, mostly on East Colfax Avenue. Police officers attempted to pull the vehicle over several times but each time the driver would elude them. The police did not chase the vehicle. However, it appeared to Aurora

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<sup>1</sup> C.R.S. 16-2.5-301 requires that a multi-agency team participate in the investigation of officer-involved shootings that occur in 2016 or later. The Denver Police Department and the Aurora Police Department began to conduct these investigations as a multi-agency team in late 2015. This change in procedure is reflected in the attached "Officer-Involved Shooting Protocol 2016."

officers that the driver was “taunting” the officers to engage them in a chase. They observed that when they tried to pull the Jeep over, the driver would speed up and drive to elude them, but would then slow down when the officers discontinued pursuit, and would then speed up again if the officers got closer.

On Monday December 21, 2015, at approximately 11:33 p.m., Officer Ricky Romero saw the stolen silver Jeep in the parking lot of a 7-11 store located at 1103 Yosemite Street. Several Aurora police officers drove into the parking lot in separate police vehicles. The first officer to enter the parking lot was Officer Barry Gomez. When he pulled his marked police car behind the Jeep, the driver of the Jeep began to violently maneuver the Jeep back and forth several times, first hitting Officer Gomez’s police car, then hitting the front doors of the 7-11, and finally driving in reverse toward Officer Teresa Fields who was on foot behind the Jeep. Several Aurora officers witnessed these actions. Officer Josh Stuteville and Officer Fields fired their weapons at the driver of the Jeep. He was struck six times and died as a result of his wounds. The time of the shooting was approximately 11:36 p.m. The driver of the Jeep was identified as Mr. Chan Lieth. Several warrants for his arrest were outstanding on the date of this incident. One was from the Colorado Department of Corrections for violation of parole.

### **7-11 videos:**

This shooting occurred in the parking lot of the 7-11 store located at 1103 Yosemite Street in Denver. Yosemite Street runs north-south and is the border between Denver and Aurora jurisdictions. The 7-11 store is on the west side of Yosemite Street in Denver. The events that precipitated the shooting were recorded by two surveillance cameras directed toward the parking lot. The video recordings of the parking lot show the aggressive, violent and unlawful actions of Mr. Lieth as he used the Jeep as a battering ram in his efforts to get away from Aurora police officers. Other video recordings from 7-11 cameras show the reactions of customers and clerks inside the store as these events are unfolding outside. There is no audio associated with the 7-11 video recordings.

At 23:34:38 on the video timer, the stolen Jeep Cherokee being driven by Mr. Lieth stopped in a parking space directly in front of the 7-11 store. The front of the store is mostly glass, comprised of tall windows in metal frames atop a short brick wall, and two large glass and metal doors. The Jeep was facing west toward the front of the store, approximately ten feet from the windows. A black sedan was parked in the space adjacent to the passenger side of (north of) the Jeep. This black car was directly in front of the doors to the store. See photo below.



About thirty seconds after the Jeep parked, two Aurora police vehicles drove into the parking lot from Yosemite Street, from behind the Jeep to the east.<sup>2</sup> Officer Barry Gomez was driving the first police car and Officer Fields was right behind him in a police SUV. Officer Gomez pulled up directly behind the Jeep. Before Officer Gomez came to a full stop, however, Mr. Lieth reversed the Jeep and ran it into the front of the police car.<sup>3</sup> See photo below.



Officer Gomez immediately got out of the police car. At this time, Officer Fields was coming to a stop on the driver side of Officer Gomez's car, just to the south of him. Mr. Lieth quickly drove the Jeep forward. He drove the front wheels of the Jeep over two yellow cement parking blocks and onto the raised concrete walkway in front of the store. He had angled the Jeep to the right and stopped just inches away from the front windows of the store after hitting a temporary advertising sign in front of the windows.<sup>4</sup> A customer standing on the walkway a few feet north of the store entrance was obviously startled by the sudden movement of the Jeep. He hurriedly moved away. See photo below.



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<sup>2</sup> All Aurora police vehicles that arrived at the 7-11 before the shooting were fully marked police vehicles. None of them had their emergency lights activated when they pulled into the parking lot.

<sup>3</sup> 23:35:14

<sup>4</sup> 23:35:18

The Jeep remained stopped for approximately eight seconds on the walkway. During this time, several things occurred as seen on the videos: Officers Gomez and Fields, each with a gun drawn, began approaching the driver side of the Jeep on foot. Officer Stuteville arrived and drove his police car into the parking lot. He stopped behind and to the passenger side of Officer Gomez's car and behind the black sedan that was next to the Jeep.<sup>5</sup> Officer Stuteville immediately got out of his car. Mr. Lieth closed the driver's side window of the Jeep.

Mr. Lieth then reversed the Jeep a second time, going backward a few feet until his front tires impacted the yellow cement parking blocks. He immediately changed directions and drove forward, hitting the temporary sign again before stopping.<sup>6</sup> Officers Gomez and Fields were behind and on the driver's side of the Jeep, guns drawn. See photo below.



Immediately, Mr. Lieth turned the front wheels of the Jeep to the left and backed up a third time, causing officers Gomez and Fields to retreat out of the way. He backed over the yellow cement parking blocks, then stopped and drove forward, over the blocks and onto the walkway again and stopped.<sup>7</sup> The front of the Jeep was angled to the northwest almost touching the front of the store.

Mr. Lieth turned the front wheels of the Jeep to the left, and began to back up a fourth time.<sup>8</sup> As he was backing up, another Aurora police car drove into the parking lot from 11<sup>th</sup> Avenue and blocked a path of escape to the southeast. See photo below.



<sup>5</sup> The black sedan was occupied by an adult and a child. It backed out of the parking space just after Mr. Lieth drove the Jeep onto the walkway. It stopped after backing only a few feet, however, as Officer Stuteville's car stopped directly behind it.

<sup>6</sup> 23:35:31

<sup>7</sup> 23:35:37

<sup>8</sup> 23:35:39

Mr. Lieth then immediately drove forward, turning the Jeep more to the north. He rammed the front left corner of the Jeep into entry doors to the store, breaking the doors.<sup>9</sup> At this point, Officer Fields was directly south of the Jeep on the walkway near a large “Redbox” video vending machine. Officer Gomez moved to the east, away from the Redbox machine, and repositioned on the driver’s side of his police car. See photo below.



At 23:35:46 on the video timer, Mr. Lieth was reversing the Jeep for a fifth time. Officer Fields retreated backwards on the walkway to a spot between the “Redbox” machine and a large metal cage that contained propane tanks. Officer Stuteville, who had remained east of the Jeep, had moved to a position between the black sedan and Officer Gomez’s police car. Officer Stuteville was now aiming his handgun at Mr. Lieth.



Officer Stuteville

<sup>9</sup> 23:35:42

Mr. Lieth turned the steering wheel to cause the Jeep to travel backward to the southwest, toward the spot where Officer Fields stood. As the Jeep moved backward, Officer Stuteville appears to be firing. At 23:35:50 the video shows the driver's side window glass, having shattered, falling outside the Jeep onto the pavement.<sup>10</sup> See photos below.



<sup>10</sup> The shattering of the driver's window appears to have been caused by a shot fired by Officer Stuteville.

After this, Officer Stuteville lowered his gun and stopped firing. Officer Fields was next to the Redbox machine. The wall of the store was behind her. The Jeep continued in reverse, turning towards her. She began firing her weapon at the driver. See photos below.



At 23:35:54 the Jeep came to a stop about three feet in front of Officer Fields. (What cannot be seen on the video is that the rearward progress of the Jeep was stopped when it hit one of two sturdy red posts constructed of steel and concrete that were at the edge of the cement walkway to protect the propane tanks from vehicles. See photos below taken after the shooting.)



A few seconds after the Jeep came to a stop, smoke began to come from beneath it and engulfed the Jeep. Officer Fields ran north away from the smoke. The view from the video camera became obscured by the smoke.<sup>11</sup>

A different recording from a camera inside the store showed customers and store employees fleeing from the front of the store to the back during these events before the shooting. The people inside were obviously fearful of the movements of the Jeep.<sup>12</sup>

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<sup>11</sup> After the Jeep stopped moving, the right rear wheel continued to spin because the engine was still running and the accelerator was being depressed. The friction from the tire spinning on the pavement caused the tire to emit a large amount of smoke.

<sup>12</sup> After the scene was secured, as a police officer was escorting one man out of the store, the man thanked the police officer for "saving his life." The clerk of the 7-11 later told investigators that he thought the man driving the Jeep was going to drive into the store in order to escape the police, perhaps thinking he could drive through the store and out the other side to escape.

**Officer Josh Stuteville**

Officer Stuteville agreed to be interviewed by investigators after the shooting. The interview took place at DPD Headquarters and was video recorded. Officer Stuteville said he was aware of someone driving a stolen silver Jeep who had been trying to “entice” Aurora officers to chase him. On the night of December 21, 2015, he learned that other Aurora officers saw the Jeep go into the 7-11 parking lot at 11<sup>th</sup> Avenue and Yosemite Street. He was nearby on Yosemite Street, so he drove southbound on Yosemite Street to the 7-11. He was driving a marked Aurora police car. He turned right into the 7-11 parking lot but did not drive up to the parking spaces at the front of the store. He stayed behind the other police cars that were already there.

He described seeing the Jeep “violently” slam the patrol car behind it and then go forward and in reverse, repeatedly, and the driver was able to turn the Jeep until it was facing north instead of west. Officers were yelling commands at the driver. Officer Stuteville saw officers behind the Jeep and he saw them “scatter.” He expressed that the situation was “*escalating to a point where, you know, he’s got to be stopped.*” Everything was happening fast. He saw a black sedan back away from the 7-11 but it couldn’t get past his police car. He saw the passengers in the front seats of the car and he saw a “little kid” in the back seat. At that point he recalls seeing the Jeep ram the front doors of the store. He saw Officer Fields behind the Jeep, near the Redbox machine. In his interview he explained, “*Every time he moves, I know she’s there and I know that he’s either going to crush her -- or -- shove that Redbox...onto her and crush her.*”

He explained the moments just before he fired his weapon at the driver of the Jeep:

*I’ve got, I don’t know how many people inside this 7-11. And, I’ve got this family that’s sitting right beside me [in the black sedan] and I know that at any moment, he’s either going to crush [Officer Fields] and kill her -- or, he’s going to drive into the store -- ‘cause he’s hitting that glass really hard -- and injure or kill somebody in there. ... Or he’s going to turn right and drive right into that car I sat beside. And, it’s got this little kid and these parents sitting inside of it. I’m like, it’s got to stop now.*

*... So, he slams it in reverse one more time, and he’s almost even with me. I can’t really tell you how far he was. Twenty feet maybe, twenty-five, somewhere in that area. ... I took, let’s just say a very methodical aimed shot, ‘cause ... I was like, the only option I have at this point is I’ve got to incapacitate this guy now, or he’s going to kill somebody or multiple people. There’s -- there is no doubt. He is so violently trying to get away with this car, he’s going to run over somebody. And, there’s nowhere for him to go except through people just because of how all the civilian cars had parked at the 7-11, and then how subsequent patrol cars had pulled in.*

Officer Stuteville fired three shots at Mr. Lieth. He said he was aiming at Mr. Lieth's head and was firing through the passenger side window:

*So, I fired one shot. ...I'm fairly sure I hit him, but, not a hundred percent 'cause I was a little ways away. But, I saw him flinch and he pauses for a second. And, then he keeps throwing it in gear and he starts slamming the vehicle back and forth again ... probably more violent at that point than he had before. So, at that point I took two more really methodical shots. And the third shot, I saw him slump over and hit the steering wheel.*

*And at that point his ... foot, which was already on the gas as he was going back, just slams down on it and there's these concrete blocks that are drove into the pavement there at that 7-Eleven. His vehicle hit that. I could still see [Officer Fields] wedged up against the building and she starts firing.*

The investigation that was conducted after the shooting confirmed that Officer Stuteville fired three shots. The handgun he used was a Kimber, model Custom TLE/RLII .45 caliber semiautomatic pistol. Three spent .45 caliber cartridge casings were recovered at the scene of the shooting. This number comports with the bullet count conducted after the shooting by lab personnel that indicated three bullets were fired by Officer Stuteville. The three spent .45 caliber casings were later microscopically examined by the DPD Firearms Unit and were confirmed to have been fired in Officer Stuteville's gun.

### **Officer Teresa Fields**

Officer Fields voluntarily agreed to be interviewed by investigators at DPD Headquarters after the shooting. On December 21, 2015, she was working a "graveyard shift" in her assignment as a patrol officer for the Aurora Police Department. She was in a fully marked police SUV and was wearing a standard Aurora police uniform. She said she was aware of the stolen Jeep and its actions during the week. She had tried to pull the Jeep over the day before the shooting but it eluded her.<sup>13</sup> On the night of the shooting, she heard Officer Gomez on the police radio say he was following the Jeep but the Jeep eluded him. Shortly thereafter, Officer Fields and Officer Gomez met on the street.

They were discussing the stolen Jeep when Officer Romero aired that he saw the Jeep southbound on Yosemite Street. Officer Fields drove west on Colfax Ave. and then south on Yosemite Street, following Officer Gomez. She drove into the parking lot of the 7-11 just after he did. She stopped her police vehicle just to the south of Officer Gomez, who had pulled his police car directly behind the Jeep. She got out of her SUV very quickly. She said she was yelling commands in a very loud voice at the driver of the Jeep to show his hands and to turn the vehicle off.

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<sup>13</sup> Officer Fields said after she activated her emergency lights to pull the driver of the Jeep over on December 20, 2015, the driver "took off and then he...slowed down almost like he was trying to bait us into a chase."

Officer Fields said she was concerned for the safety of the people in a black sedan in the parking lot because of how aggressively Mr. Lieth was driving back and forth in his attempts to get out of there. She said he was *“being so reckless that he had no regard for anybody’s life.”* She saw him drive the Jeep back and forth several times and ram the front of the store.

She said he then *“puts it in reverse, and I feel like he’s going to run me over.... Once he backs up, I feel like I have no avenue of escape. I feel like he’s going to run me over ... so, I fire my weapon.”* She said she feared for her own life and for the safety of others who were in the parking lot. She was aiming at him when she fired, with the intent to stop him from running her over. When she fired, she was firing through the driver’s side of the Jeep, not through the back windshield. The view she had of Mr. Lieth was the *“back of his head and the side of him.”* She said she fired her shots while the Jeep was backing toward her and she felt that she was in imminent danger. She stopped firing after the Jeep came to a stop and she realized the Jeep had hit the post near her.<sup>14</sup>

The investigation that was conducted after the shooting confirmed that Officer Fields fired thirteen shots. She was armed with a Glock, model 17, 9 mm Luger caliber semiautomatic pistol. Thirteen spent 9 mm cartridge casings were found at the scene. This comports with the bullet count conducted after the shooting, indicating that Officer Fields fired thirteen times. The thirteen spent 9 mm casings were microscopically examined and identified as having been fired in Officer Fields’ gun.

### **Autopsy**

An autopsy was performed on Mr. Lieth. The Autopsy Report indicates that he was struck by six bullets, three of which struck the back of his left shoulder<sup>15</sup>, and three which struck his “upper left back,” “upper right back” and his “left back.” The course and direction of each bullet wound was from back to front. The bullets caused major wounds to both of his lungs and to his heart. One bullet transected his left carotid artery. Bullets and bullet fragments were recovered inside Mr. Lieth’s body.<sup>16</sup> Toxicological analysis of Mr. Lieths’ blood was positive for methamphetamine and cannabinoids. The Autopsy Report notes “gunshot wounds of the trunk” as the cause of death, and “homicide” as the manner of death.

## **LEGAL ANALYSIS**

The designation by the Medical Examiner that the manner of Mr. Lieth’s death was a “homicide” does not indicate that a crime was committed. In some circumstances, the killing of another person is considered to be with legal justification and is not unlawful. Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification or excuse.

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<sup>14</sup> At the time she fired, Officer Fields had not heard other shots. She learned later that Officer Stuteville also fired his weapon.

<sup>15</sup> These wounds are to his “posterior, superior left shoulder”, “posterior left shoulder”, and “posterior, lateral left shoulder”.

<sup>16</sup> The DPD Crime Laboratory Firearms Unit examined the bullets recovered from Mr. Lieth’s body and determined that none were fired by Officer Stuteville’s handgun. The sum of the evidence from the autopsy, lab report and video indicates that all of the shots that struck Mr. Lieth were fired by Officer Fields.

The legal justification of self-defense or defense of another is described in **C.R.S. 18-1-704**.<sup>17</sup> The legal justification for a peace officer's use of physical force and deadly physical force while attempting to make an arrest, or to prevent an escape, is described in **C.R.S. 18-1-707**.<sup>18</sup> Both of these justifications would be considered by a jury in this case if charges were brought against either officer.

These legal justifications are designated as "affirmative defenses" in Colorado. This means that a person accused of a crime for using physical force does not need to prove that he or she was justified in using the force. Instead, the prosecution has the burden to prove that justification for the force used did not exist. Lack of justification, like other elements of a crime, must be proved to a jury by proof beyond a reasonable doubt.

It should also be noted here that policy decisions of a police department regarding shooting at a driver of a vehicle do not alter these Colorado statutes which provide justifications for a police officer's reasonable use of force. So, my application of the statutes to the facts of this case is not governed by whether or not this shooting was in compliance with the policies of the Aurora Police Department.

Accordingly, to make a decision whether to file criminal charges under the facts of this case, the question I must consider is: **Would a jury unanimously find beyond a reasonable doubt that the officers lacked legal justification to use deadly physical force against Mr. Lieth?**

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<sup>17</sup> As pertinent to this case, **C.R.S. 18-1-704** states:

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.
- (2) *Deadly physical force* may be used only if a person reasonably believes a lesser degree of force is inadequate and:
  - (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury; ....

<sup>18</sup> As pertinent to this case, **C.R.S. 18-1-707** states:

- (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 effect 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 for a purpose specified in subsection (1) of this section 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 an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
    - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
    - (II) Is attempting to escape by the use of a deadly weapon; or
    - (III) 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.

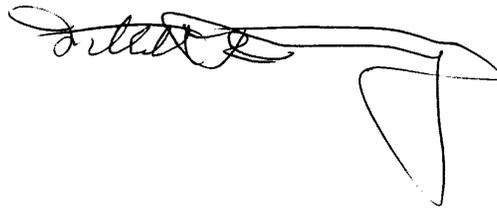
## CONCLUSION

I conclude that a jury would not find the officers lacked justification for firing their weapons at Mr. Lieth. To the contrary, the evidence shows that both officers were legally justified to use deadly physical force. Officer Fields was justified in firing her weapon in order to defend herself as well as to defend others who may have been put in harm's way from Mr. Lieth's dangerous actions with the stolen vehicle. Likewise, Officer Stuteville was justifiably firing in order to defend others at the 7-11, including Officer Fields.<sup>19</sup>

It is clear from the 7-11 videos that Mr. Lieth was using the stolen vehicle as a deadly weapon.<sup>20</sup> He was driving the Jeep back and forth violently and intentionally, without regard for what or who was in the way. The people inside and outside the 7-11 were frightened by his use of the vehicle and tried to get out of his way. Based on what the officers observed, it was reasonable for them to fear for the safety of the others at the 7-11, both inside and outside. It was reasonable for Officer Stuteville to believe that firing his weapon at Mr. Lieth was necessary in order to stop him from hurting or killing someone. When Mr. Lieth drove in reverse the final time, turning and accelerating rearward toward Officer Fields, it was reasonable for her to feel that the vehicle was being used as a deadly weapon against her and that deadly physical force was being directed at her. It was reasonable for her to believe that she was in imminent danger of receiving great bodily injury or death. Under these circumstances, she was justified in shooting Mr. Lieth.

Accordingly, criminal charges will not be filed as a result of this shooting.

Very truly yours,



Mitchell R. Morrissey  
Denver District Attorney

cc: Officer Theresa Fields; Officer Josh Stuteville; Michael Lowe, Attorney for Officer Fields and Officer Stuteville; Michael Hancock, Denver Mayor; All Denver City Council Members; Scott Martinez, Denver City Attorney; Stephanie O'Malley, Executive Director; David Quinones, Deputy Chief of Police DPD; Matthew Murray, Deputy Chief of Police DPD; Ron Saunier, Commander of Major Crimes Division DPD; Gregory Laberge, Denver Crime Lab Commander; Joseph Montoya, Commander of Internal Affairs DPD; Lieutenant Matthew Clark, Major Crimes Division DPD; Sgt. James Kukuris, Homicide DPD; Sgt. Tom Rowe, Homicide DPD; Detective Eric Bueno, Homicide DPD; Detective Mike Martinez, Homicide DPD; Lt. Scott Torpen, Aurora Police Department Major Investigations Section; Sgt. Matt Fyles, Aurora Police Department; Lamar Sims, Senior Denver Chief Deputy District Attorney; Doug Jackson, Senior Denver Chief Deputy District Attorney; Nicholas E. Mitchell, Denver Office of the Independent Monitor; Rev. William T. Golson, Jr.

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<sup>19</sup> Since Officer Stuteville's shots did not produce Mr. Lieth's death, he did not use "deadly physical force" by definition. [See C.R.S. 18-1-901 (3)(d)].

<sup>20</sup> C.R.S. 18-1-901 (3)(e) defines a "deadly weapon." Included as a deadly weapon is "any ... device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury."



*Mitchell R. Morrissey*  
*Denver District Attorney*

## **OFFICER-INVOLVED SHOOTING PROTOCOL 2016**

**T**he 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. Members of the Aurora Police Department also respond and participate in the investigation, evaluation and review as part of a multi-agency team, per C.R.S. 16-2.5-301 which became effective in 2016.

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.<sup>1</sup>

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

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<sup>1</sup> C.R.S. 20-1-114, enacted in 2015, requires Colorado District Attorneys to publicly release a report when they have decided not to file criminal charges against an officer in an officer-involved shooting. In Denver, this has been our protocol for decades before the legislation was enacted. Indeed, as is explained herein, we provide even greater "transparency" than the new legislation provides because, in addition to distributing the decision letter publicly, we make our files of the underlying factual investigation available for inspection by members of the public, including the media.

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>2</sup>

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

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<sup>2</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 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.

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, 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 require 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*

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