



DenverDA

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July 31, 2015

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

RE: Investigation of the shooting and wounding of Chisom Nwandilibe, DOB 03/15/87, DPD #780864, in which Officers Adam Foisy, 07023 and Roman Yepishin, 13005, fired shots on May 25, 2015, at 17th Street and California Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting and wounding of Chisom Nwandilibe, in which shots were fired by Officers Adam Foisy and Roman Yepishin, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against either Officer Foisy or Officer Yepishin. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department, where non-criminal issues can be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this officer-involved shooting and the applicable Colorado law is attached to this letter.

SYNOPSIS

Shortly before midnight on the evening of May 25, 2015, Mr. Nathan Hartje, a cleaning service employee, was cleaning the windows at the Ruth's Chris Steakhouse located at 15th and California Streets in downtown Denver. Mr. Hartje's attention was drawn to a disturbance near the outdoor patio of Tarantula's bar. He then saw a male, whom he believed was causing the disturbance, walk in his direction. When the male, later identified as Nwandilibe, closed the distance, Mr. Hartje noted that he was holding a black semi-automatic pistol which he then pointed directly at Mr. Hartje. Nwandilibe walked on and Mr. Hartje called 911.

Officers Yepishin and Foisy, each driving a marked patrol car and each dressed in full blue police uniforms took the call. They were in the area of 19th and Arapahoe Streets completing another call so they drove up 19th and turned "in-bound" on California Street. Officer Yepishin was in the

lead and Officer Foisy was a short distance behind him. The officers saw Nwandilibe at the intersection of 17th Street and California Street. Before they were able to contact him, Nwandilibe opened fire, apparently aiming at Officer Yepishin. Both officers returned fire. Nwandilibe was hit once and suffered a wound in his lower right arm.

STATEMENT OF FACTS

Three primary sources of information provide the facts upon which this investigation is based: surveillance videos of the downtown area, statements of witnesses and the involved parties, and the forensic evidence derived from the firearms fired in the incident. These sources of information provide a remarkably detailed picture of the events resulting in Nwandilibe's shooting.

Surveillance videos

The RTD station at the Denver Convention Center at 14th and Stout Streets has a myriad of surveillance cameras. Nwandilibe, wearing a dark hoodie with the hood pulled up over his head, is first captured on a camera labeled "Conv. Cntr. NB HB #2" at 11:34: p.m.¹ when he walked into the frame and sat on a bench. He remained seated at the bench for several minutes. He was alone and appeared to be engaged in rolling either a cigarette or a marijuana cigarette. A few minutes after he sat down, he lit and appeared to start smoking the item he had rolled.

At 11:47, a white male rode past Nwandilibe on a bike, reversed his direction and rode directly up to him. The two had a brief conversation, and then the bicyclist reached into his waist area and started to pull out an object out. Nwandilibe jumped up from the bench, grabbed the man, and a struggle ensued (lasting long enough for two other men to come in to the frame and appear to try to break up the fight.) At 11:49, the combatants separate and Nwandilibe can be seen holding and inspecting an object that appears to be a handgun.² He walks away from the station, holding the object in his right hand. The bicyclist follows him for a few yards before leaving in another direction. At 11:50, a uniformed security guard can be seen running in Nwandilibe's direction.

Nwandilibe is picked up on an RTD surveillance camera recording in the area of 16th and California Streets at 11:55:27, according to that camera's digital clock. (The video is labeled 16/Cal 1 PTZ East-843). He is walking toward the camera at a leisurely pace. Between 11:56:27 and 11:56:34 he approaches and then walked past and underneath the camera. Throughout this time, he was holding his right hand down along his side and a gun is visible in this hand.³ A second camera at this placement (16/Cal 2 PTZ West -844), then shows Nwandilibe walk away from the camera and toward the 16th Street Mall, still holding the pistol in his right hand. He walked by at least one individual standing at the corner of 16th and California Streets. On the video two other people can be seen as they step out onto the corner, appear to look in Nwandilibe's direction, and immediately turn and walk away and out of the view of the

¹ We are unaware whether the times recorded on the videos have been reconciled with either the DPD dispatch clock or any official U.S. clocks, however any minimal variances from other time records are not material to this investigation.

² A still photo captured from this video showing Nwandilibe inspecting the handgun is attached on page 12.

³ A still photo captured from this video showing Nwandilibe as he walks underneath the camera carrying the handgun is attached on page 12.

camera. A few moments later several people gather at the corner of 16th and California Streets. They appear to be looking down the street toward 17th Street.

A surveillance camera placement at a building at 600 17th Street had two cameras – one designated “17th West” and the other “17th East.” These are motion activated cameras, sensitive to actions only in close proximity to the cameras. At 11:58:52, camera 17th East shows two men walking in an easterly direction on the south side of the street. At 11:58:57, they both turned and looked back toward California Street. A second later, they turned and ran east toward Welton Street. The camera continued to record until 11:59:06 and then “jumped” to 11:59:38. The camera designated “17th West” shows those same two men approaching the camera position at 11:58:44. As they walked under the camera position, a party can be seen at the top of the frame, entering the crosswalk at 17th Street and California Street from the south side. The camera captured the party as he walked part of the way across the street. The motion-activation then engaged and the video “jumped” from 11:58:52 to 1:59:43. When it reactivated at 11:59:43, the party - who was in all probability Nwandilibe - cannot be seen. (Nwandilibe was too far away from the camera for his motion to have engaged the activation function).

An RTD surveillance camera, posted at 18th and California, was positioned to record looking south down California Street. The video captured from this camera (labeled 18/Cal 1 PTZ So.B-264) shows a police car enter the frame, drive down California Street and stop at 11:58:45. Some of the police car’s emergency lights appeared to be activated. At 11:58:49, the driver opened the door and began to get out. He then moved quickly around the back of the police car and took a position at the rear passenger corner at 11:58:57. A second police car comes into the frame at 11:58:55. At 11:59:10, this second car stopped a short distance behind the first car and an officer can be seen getting out of the driver’s side. Because of the position of this second car, the first officer can no longer be seen. The second officer then moved from his car to the light-rail tracks where, at 11:59:08, he briefly stopped. The camera is too far away to allow one to determine exactly what he does, but one second later he started running in an easterly direction.

Other surveillance cameras located on 17th Street closer to Broadway or on Broadway recorded the aftermath of the shooting. Cameras pick up Nwandilibe as he ran up to Broadway and then south on Broadway, show police cars responding to the location and, ultimately, show officers taking Nwandilibe into custody. However, investigators were unable to locate any surveillance video that captured the actual incident, other than those detailed above.

Statements

Investigators were unable to locate the male on the bicycle with whom Nwandilibe had the original confrontation. Chris Mapps, an RTD security officer, did see that initial confrontation and attempted to intercede. A written statement was obtained from Security Officer Mapps. Two individuals were confronted by Nwandilibe as he walked toward 17th Street on California. Both individuals, Willie Leaks, and Nathan Hartje, gave statements to investigators. Other witnesses told investigators that they heard gunshots; none stated they had seen anyone firing a gun. Written statements were obtained from these witnesses one of whom also provided a video statement. Both Officers Foisy and Yepishin volunteered to give video-recorded statements to investigators. The officers’ statements were taken under oath in compliance with our protocols.

Witness statements and video records establish that Nwandilibe left the Convention Center, walked up Stout Street to 15th Street, and then turned up 15th Street and walked toward California Street. As he approached California Street, he encountered Nathan Hartje.

Mr. Hartje was working for a commercial cleaning company and was cleaning the exterior windows at the front entrance to Ruth's Chris Steak House, located at 707 15th Street. He first noticed Nwandilibe standing at the patio of Tarantula Billiards on the corner of Stout and 15th Street talking to the people on the patio. Nwandilibe then walked toward him and, as he approached, Mr. Hartje "could see that he had a gun out." In his video statement, Mr. Hartje told investigators that at first he did not believe that the gun was real

and then I looked again and he had a gun, so, I didn't have keys to get into the restaurant – there was nowhere for me to go, so I just kinda stayed there and, uh, kept working and pretended like I didn't see him. . . . He was mumbling something, I couldn't really hear him, and he walked past me, he still had the gun out, at his side in his right hand,⁴ and, um, and then he got maybe about, he was saying something, and then he got maybe ten feet past me, maybe 15 feet past me, closer to the little box, uh, the signal box for the - on the corner there. And he turned around and he started yelling at me and I took my headphones off and I turned and faced him and, uh, he was saying, like "where you at? Like . . ." And then he said some other stuff like he was trying to start a fight with me. And, uh, he had the gun out – he was like pointing it at me. He didn't like put it up (demonstrating a two hand aiming pose) but he had it by his side and he was like kinda pointing it at me and he started gesturing with it when he was talking. The only thing I really understood from him was, like 'where you at?' And then he said, maybe something like 'what side are you on?' or something. I didn't really understand what he wanted from me, so I just tried to convince him that I wasn't going to be a problem for him.

Mr. Hartje told investigators Nwandilibe was "aggressive for a second" and then became "disinterested" in him and turned and walked across the street. As soon as Nwandilibe walked away, Mr. Hartje called 911.⁵ Mr. Hartje walked up to the corner and watched as Nwandilibe started walking up California Street toward the 16th Street Mall. His concern, as he watched, was that Nwandilibe "might start shooting people at the mall." He recalled telling the 911 call taker "you need to get this guy off the street!" In an answer to a follow-up question, Mr. Hartje stated that he thought Nwandilibe was either "nuts or he's intoxicated," adding later in the interview, that when Nwandilibe came back to confront him, "I thought he was gonna shoot me!" Mr. Hartje indicated that one or two minutes after Nwandilibe walked away from him he heard gunshots.

Nwandilibe walked up California Street and encountered Mr. Willie Leaks at the 16th Street Mall. In a video-recorded statement, Mr. Leaks reported he, his cousin, Marquis Bell and "two lady friends" – Vanessa (LNU) and Stephanie (LNU), were on the 16th Street Mall "by Taco Bell" at 16th and California when he saw an African-American male, later identified as

⁴ Mr. Hartje stated that although Nwandilibe was holding his pistol in his right hand when he first noticed him, the gunman would switch hands, at times holding the pistol in the left hand. He stated Nwandilibe was holding the gun in his left hand when he pointed it at Mr. Hartje.

⁵ At 23:56:11 hours Nathan Hartje placed a call to Denver 911. In the first few seconds, he advises the call taker, "there's a guy with a gun that was just, like, yelling at me and, uh, it looks like he's carrying around a pistol."

Nwandilibe, wearing a blue coat and dark jeans, “coming from the Convention Center.” He noticed Nwandilibe was holding something in his left hand and was pointing the object “to everybody” as he walked down the street (Mr. Leaks indicating by gesturing in various directions, holding his left hand extended, index finger pointed in a manner simulating a handgun). Mr. Leaks described the object as a gun but stated that at first he was unsure whether it was real. He told investigators at one point, Nwandilibe pointed it directly at him from a distance of no more than five feet away and Mr. Leaks ducked away in fear it might be a real handgun. In his words, “my reaction was to move. We didn’t know if he was going to pull the trigger or what type of person he was looking for . . .” Mr. Leaks told investigators Nwandilibe pointed the gun directly at his chest. He described the gun as an “all black” semi-automatic pistol. In answer to the question whether he thought he was going to get shot, Mr. Leaks responded “kind of, because I didn’t know if [the gun] was real or fake.” Mr. Leaks felt that Nwandilibe was either “on something” or something was “really eating at him,” because of the way he was walking around pointing at people.

Mr. Leaks stated Nwandilibe walked past him and down California Street toward 17th Street and as he passed a Chipotle’s store, he pointed the gun at three homeless individuals sleeping on or near the sidewalk – pointing his gun at one person, lifting it, then pointing it at the second and third person in the same fashion. According to Mr. Leaks, Nwandilibe continued walking northbound and, as he did so, pointed the gun at a man and woman who were walking in the opposite direction. The couple “took off across the street.” Mr. Leaks stated that Nwandilibe continued pointing the gun at people as he walked toward 17th Street:

[At 17th Street] one of your officers hit the [police emergency] light. [Nwandilibe] seen that. The officer turned the light off. [Nwandilibe] stood at the corner. [Nwandilibe] pointed. And we heard ‘POW!’ So everybody ducked. So we looked around, everybody is patting [themselves] make sure there wasn’t nobody was hurt. So, then, we [were] still standing there and then, all of a sudden we hear ‘POW! POW! POW! POW! POW! POW!’ Then it stopped.

Mr. Leaks later clarified the sequence, stating that Nwandilibe crossed 17th Street, turned and raised his gun, and Mr. Leaks heard at least one gunshot. Nwandilibe then turned and started to run up 17th Street “and that’s when it really opened fire – we just heard “POW, POW, POW, POW, POW, POW, POW! And then, after that, we heard the sirens.”

An investigator asked a series of follow up questions, during which these exchanges took place:

Q: Did you see the guy shooting?

A: Yes [nodding his head in affirmation]. Cuz that’s what made us duck, . . .

Q: Is he pointing [the gun] in the direction where you saw the police car?

A. Yes sir. Yes sir. [Nodding in apparent emphasis.]

Q. O.K. And when he points it in the direction that you saw the police car, does he fire in that direction?

A. Yes he does!

Q. How many times does he fire?

A. Once.

At 23:57, Denver Police Dispatch aired this call:

641 David⁶ – I'll get you a car to cover – 15th and California, 15th Street and California Street, northbound on California on a weapons call, [reporting party] is calling in, advising of a male with handgun, walking, it's gonna be a black handgun. It's gonna be in front of Anthony's Pizza.

Car 632D advised he would cover. Just as the officers assigned to cars 641D and 632D indicated they were heading to the scene, Cars 651D and 651B advised the dispatcher they had finished a previous call and would respond. These latter two cars had been handling a call at 19th Street and Arapahoe Street and were close to the California Street location. Officer Yepishin was assigned to 651D; Officer Foisy to 651B. Both officers were driving fully marked DPD patrol vehicles. Each was dressed in a blue DPD police uniform.

The officers drove up 19th Street from Arapahoe and turned inbound on California Street, Officer Yepishin in the lead and Officer Foisy a few car lengths behind him. As he crossed 18th Street, Officer Yepishin advised the police dispatcher that he was in the area. As he arrived at 17th street, he saw a male crossing the intersection at 17th Street and California Street:

So, I stop right there at the light. Right – right at the intersection – I stop and I watch the guy for a minute and, uh, as he's walking, he's swinging, swinging his hands and he's walking at a pretty, pretty brisk pace, uh, it appears to me. And as he's swinging his hands, his right and comes up and, uh, I see what a – definitely appears to be a gun in his right hand. At that point in time, I'm kind of thinking "I'm in a bad spot" cuz I'm already in the intersection and the guy's walking across the crosswalk towards me – not towards me, but in my general direction!"

Officer Yepishin told investigators that he decided his best option was to use his police car as cover so he opened the driver's door, got out and moved around to the rear passenger's side. As he did so, he drew his service pistol and "start[ed] giving him commands. I start[ed] saying 'Police! Drop the gun!'" As he took these actions, Officer Yepishin saw Nwandilibe make what he described as a "kind of shuffling sideways" motion⁷. He then saw Nwandilibe's gun hand "come up" and he heard a gunshot.

Um, from that point on I think, within a fraction of a second – I just kind of collect myself for a second, you know trying to see if I'm hit anywhere – and then I refocus back on the, on the guy with the gun and, uh, he's still moving in the same direction, kind of sideways to my left. Um, and I get a, I get as good a sight picture on him as I possibly can – make sure there's, you know, the background's clear, there's nobody on the other side of the block and, uh, I shoot one round.

Officer Yepishin estimated that about 15 yards separated him and Nwandilibe and told investigators he fired because he believed he was under fire. The round Officer Yepishin discharged had no apparent impact. Nwandilibe continued to move sideways for a short distance but then wheeled around and started running up 17th Street toward Broadway. Officer Yepishin's concern was now that Nwandilibe would find a position of cover and

⁶ The car's radio call sign is "641D" – the "6" establishes the car is assigned to District 6; the "51" signifies the sector and precinct and that it is a late shift car (at other times the same sector/precinct would be "21"), the "D" signifies there are at least three other cars working that sector on that shift – 651A, 651B and 651C.

⁷ In a follow-up question, Officer Yepishin elaborated on the way Nwandilibe was moving: "The, the best way I can describe it is kind of like moving, moving tactically. Like, as, you, know, if, if I wanted, li[ke] on the range, if I wanted to keep myself facing a target and still shooting at, but move sideways, I- that's basically how he was doing it."

You know, keep shooting at me, cuz, you know, I, you know, I don't -- I don't even know why he did it to -- in the first place. So I'm thinking he's gonna continue, continue the gunfight. So I get another sight picture on his and, uh, fired, maybe another two -- I don't know how many rounds.

None of these additional rounds stopped Nwandilibe. Officer Yepishin indicated he stopped firing when Nwandilibe rounded the corner of a building and ran out view. At about the same time, Officer Foisy came up on Officer Yepishin's left. The two officers moved to the building corner and verified Nwandilibe was not laying in ambush on the other side. They then looked down the street and saw him running "already a block away" and gave chase on foot.

Officer Foisy was a few seconds behind Officer Yepishin as the two approached 17th Street. As he drove up California Street approaching 17th Street, Officer Foisy saw that Officer Yepishin was getting out of his car. It appeared to Officer Foisy that Officer Yepishin was issuing commands to someone. He then saw:

[Officer Yepishin] start to take cover and then that's when I start hearing the, uh, bangs, or gun shots. I saw a male come around -- as I was looking down, there's like a, I want to say I think it's a newspaper array -- so I saw him come around by a cylindrical sign for the, for the, uh, Courtyard Plaza. [The subject] was moving away from [Officer Yepishin] but was turned, shooting back at [Officer Yepishin].

Officer Foisy told investigators he saw the muzzle flash from the suspect's pistol. He stopped his police car, jumped out, and brought his pistol to bear on Nwandilibe. As he did so, Nwandilibe

fired the second round at [Officer Yepishin]. I then cleared the backstop for the rounds, which [the backstop was a] closed business and, uh, I can tell, a shaped, tan brick wall -- I didn't see anybody in sight. Um, [Nwandilibe] turned again and, I believe, he fired. But as he turned, I was, I di-I saw [Officer Yepishin] moving to take cover, so I fired, I believe, three to four rounds.

Nwandilibe started running up 17th Street with the two officers in pursuit. According to the dispatch audio tape, Officer Yepishin arrived at 17th and California Streets at 23:58. Twenty-six seconds after he called out on the radio that he was on scene, Officer Yepishin aired this transmission: "51-David, we have shots fired-- one running from us!" The entire critical incident took place in less than 30 seconds.

Numerous officers responded to the area. Some were responding to the original weapons call, others to the shots fired, and some to the radio calls made by the officers following Nwandilibe on foot. At 12:01 a.m., responding officers advised the dispatcher that they had one party in custody at Broadway and Cleveland Place. Neither Officers Yepishin nor Foisy were among the officers who took Nwandilibe into custody but they arrived at the location within moments and confirmed the party arrested was the individual who had shot at Officer Yepishin. Arresting officers quickly determined Nwandilibe had sustained a gunshot wound to his lower right arm. An ambulance was called to the scene, and Nwandilibe was taken to Denver Health Medical Center where he received treatment for his wound -- it appears the bullet perforated the

arm and was not recovered by physicians. The wound was not life-threatening and Nwandilibe was ultimately released to the custody of the Denver Sheriff.⁸

Officers retracing the route taken by Nwandilibe located a black .40 caliber “Hi-Point” model JCP semi-automatic pistol near the corner of 17th and Welton Street, on the southwest side of a 7-11 convenience store located on the corner. There appeared to be blood on the pistol. The firearm safety was in the off position. The magazine was empty. The pistol appeared to have malfunctioned while firing – the evidence technician who recovered the pistol noted that the “chamber contained one jammed ‘Perfect’ 40 S&W cartridge case.” Crime scene investigators located two spent shell casings of the same caliber and make at the “east corner of 17th Street and California Street.” This evidence suggests Nwandilibe fired at least twice.⁹

Officer Yepishin was armed with a Glock 17 9mm semi-automatic pistol. This firearm has a 17-round magazine capacity and may be carried with an additional round in the chamber. Based upon the firearms examination and the scene investigation, investigators determined Officer Yepishin fired four rounds. Officer Foisy was armed with Glock 37 45-G.A.P. semi-automatic pistol. This firearm has a ten-round magazine capacity and may be carried with an additional round in the chamber. Based upon the firearms examination and scene investigation, investigators determined Officer Foisy fired three rounds.

On May 27, 2015, investigators spoke briefly with Nwandilibe who confirmed he had been confronted by a man with a gun at the light rail station and that he fought with the man and had taken his gun. He claimed he was walking away from the light rail station when he saw a “bunch of cops” chasing him. He heard them yell “Stop! Stop! Stop!” and then they shot him in the hand whereupon he dropped all of the items he was carrying and ran.¹⁰

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. As the evidence establishes that Nwandilibe’s injuries were caused by one of the shots fired by Officers Foisy and Yepishin, the determination of whether their conduct was criminal is primarily a question of legal justification.

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

⁸ Nwandilibe was charged with two counts of felony menacing (victims - Mr. Leaks and Mr. Hartje), and counts of Criminal Attempt First Degree Murder and First Degree Assault (victims – Officers Yepishin and Foisy). Those charges are pending in the Denver courts.

⁹ Photographs of the scene are attached on pages 13 and 14.

¹⁰ Two detectives attempted to interview Nwandilibe. He interrupted them while they were attempting to advise him of his Miranda rights and made this statement. He was argumentative while the detectives attempted to complete the advisement and they terminated the interview due to concerns Nwandilibe was not listening to the advisement.

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

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to affect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using **deadly physical force** upon another person . . . only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

or

(b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:

1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
2. Is attempting to escape by the use of a deadly weapon; or
3. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

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

“**Deadly weapon**” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

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

As Nwandilibe survived his wounds, the issue in this case revolves around the question whether the use of physical force by the officers was justified and whether the nature of the force used was appropriate. The test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances

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).

As the evidence does not permit us to say with any degree of certainty which officer's bullet struck Nwandilibe, we must analyze each officer's action to determine whether it was justified. With respect to Officer Yepishin, the question presented is whether he reasonably believed his use of physical force was necessary to defend himself against the use of physical force brought to bear by Nwandilibe when Officer Yepishin attempted to take him into custody. As concerns Officer Foisy, the question presented is whether he reasonably believed his use of physical force was necessary to defend Officer Yepishin from Nwandilibe's use of physical force. In order to establish criminal responsibility when an officer knowingly or intentionally causes injury to another, the state must prove beyond a reasonable doubt that the officer who caused the injury either did not really believe the force used was necessary, or, if he did hold such belief, that belief was, in light of all available facts, objectively *unreasonable*.

CONCLUSION

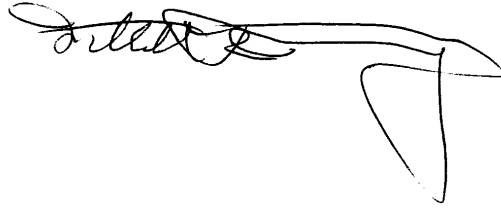
Nwandilibe's injuries are a direct result of his decision to walk through downtown Denver threatening citizens with a handgun he had moments before taken from a man who threatened him. His actions led citizens to call 911.

Officers Yepishin and Foisy were responding to a radio call of a man with a gun. Officer Yepishin arrived on scene first and saw the suspected party, armed with a handgun, walking on a downtown Denver street. Officer Yepishin got out of his car; Nwandilibe started shooting at him. Finding cover and returning fire was the response any reasonable peace officer, confronted with the same facts and circumstances, would most likely have taken and it was Officer Yepishin's response. Officer Foisy, following closely behind Officer Yepishin, saw him come under fire. His response was immediate and appropriate – he fired to protect Officer Yepishin from death or serious bodily injury. Each officer's actions were reasonable, appropriate, and justified pursuant to C.R.S. § 18-1-707 (1). Their quick response forced Nwandilibe to run from the scene, discard his weapon, and led to his apprehension within minutes of his flight. Their willingness to confront the threat Nwandilibe presented is in the highest tradition of civilian law enforcement. We are grateful neither officer was injured or killed and that Nwandilibe was not more seriously injured.

The Denver Police Department is the custodian of record related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil

Liability Division of the Denver Police Department. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. § 16-5-209.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mitchell R. Morrissey". The signature is written in a cursive style and is positioned above a horizontal line that extends across the width of the signature.

Mitchell R. Morrissey
Denver District Attorney

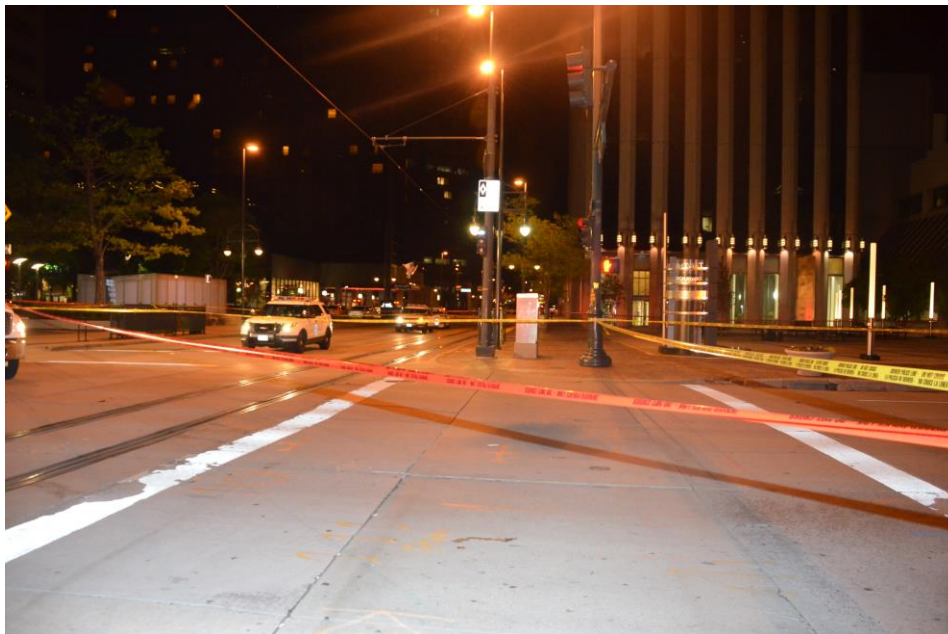
cc: Off. Adam Foisy; Off. Roman Yepishin, Brian Reynolds, Attorney at law; David Bruno, Attorney at law; Michael Hancock, Mayor; All City Council Members; Scott Martinez, Denver City Attorney; Stephanie O'Malley, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Matt Murray, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Tony Lopez, Commander of District Six; Gregory Laberge, Crime Lab Commander; Joseph Montoya, Commander of Internal Affairs; Division; Lieutenant Matthew Clark, Major Crimes; Lieutenant Adam Hernandez, Major Crimes Division; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Detective John Meoni, Homicide; Detective Bruce Gibbs, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor; Rev. William T. Golson, Jr.



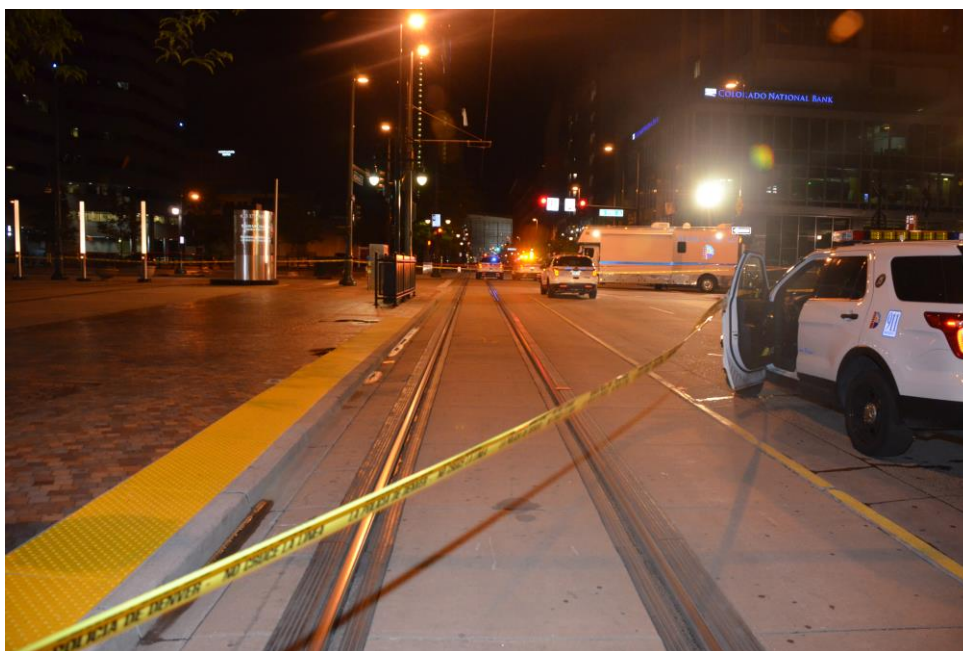
RTD Surveillance Photo – Convention Center. Nwandilibe is standing on left, inspecting the gun.



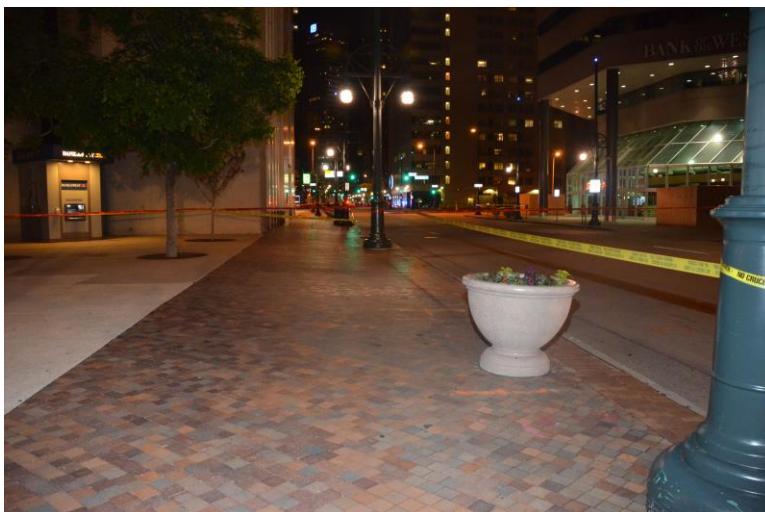
RTD Surveillance Photo – 16th Street and California Street. Nwandilibe is on left – handgun is visible in his right hand.



Officer Yephishin's patrol car at 17th and California Street.



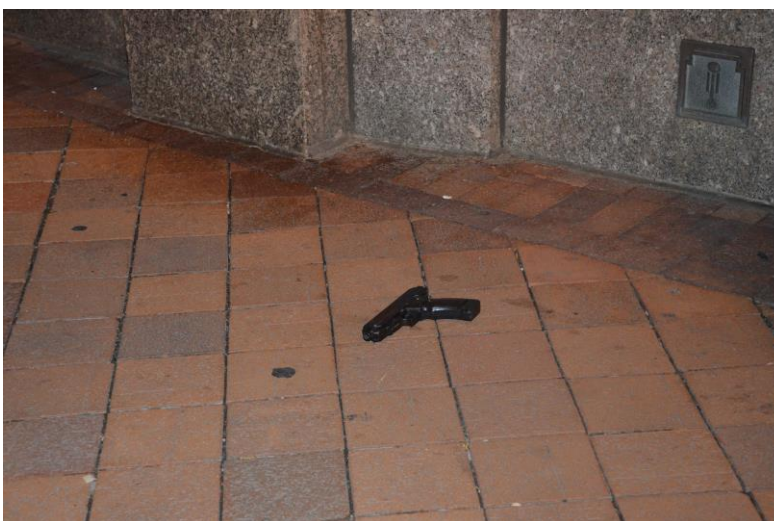
California Street. Officer Foisy's patrol car is in the foreground on right. Officer Yephishin's patrol car is in center of the photo.



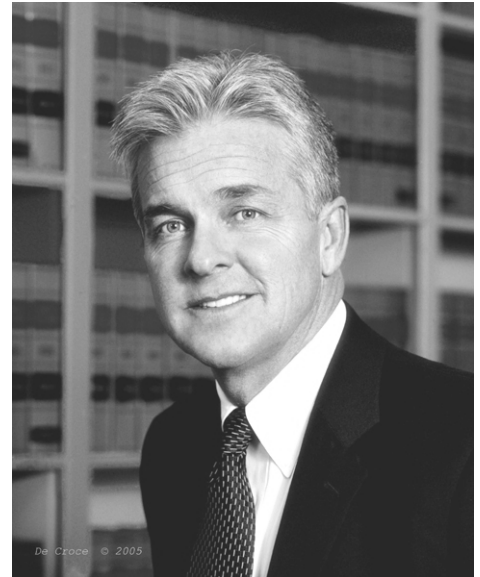
17th Street looking from California Street toward Welton Street.



Corner of 17th Street and Welton Street. Nwandilibe's pistol can be seen.



"Hi-Point" pistol recovered at 17th Street and Welton Street.



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**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) 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.¹

¹ However, the complete official file of the investigation remains in the custody of the Denver Police Department, which is the custodian of the case

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

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.

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 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.

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Denver District Attorney

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