



DenverDA

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October 28, 2015

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

RE: The investigation of the officer-involved shooting by Denver Police **Detective Jon Crowe**, Badge 04091, and by Denver Police **Officer Jimmy Sheppard**, Badge 13059, on August 22, 2015, in the 2800 block alley between Fairfax Street and Forest Street, in Denver, Colorado, which resulted in the wounding of Mr. Kylear Antonio Williams, (D.O.B. 8/26/1997).

Chief White:

I have reviewed the investigation of the officer-involved shooting incident in which Detective Jon Crowe and Officer Jimmy Sheppard fired their weapons at Mr. Kylear Williams. Based on the investigation, which followed the protocol for officer-involved shooting investigations attached at the end of this letter, I conclude that the force used by the officers was legally justified under Colorado statutes. Therefore, criminal charges will not be filed against either officer.¹

A class 5 felony criminal charge of menacing has been filed against Mr. Williams for his actions with a handgun which precipitated this shooting.² That case is pending in court (Case No. 15CR04535).

SUMMARY OF FACTS

On August 22, 2015, **Detective Jon Crowe** (Badge 04091) was working in an undercover assignment in the Park Hill neighborhood. Detective Crowe is an 11 year veteran with the Denver Police Department assigned to the DPD Vice Bureau. He was driving a gray colored 2014 Jeep Patriot that had no markings or emergency lights indicating it was a police vehicle. Detective Crowe was alone in the vehicle. He was wearing a protective vest with a Denver Police badge displayed on the upper left chest area. The handgun he carried was a Springfield XD9, 9 millimeter semi-automatic handgun.

¹ Per Colorado law, an interested party may seek judicial review of my decision under C.R.S. 16-5-209.

² A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. When menacing is committed by the use of a deadly weapon it is a class 5 felony. See C.R.S. 18-3-206.

During the investigation after the shooting, Detective Crowe voluntarily agreed to give a statement to investigators at DPD headquarters. Detective Crowe explained that shortly after 7:00 p.m. he was driving eastbound on 28th Avenue when he saw a black colored sedan traveling southbound on Fairfax Street that failed to properly stop at the stop sign at the intersection with 28th Avenue. The black car “rolled through the stop sign” and turned left to go eastbound on 28th Avenue. Detective Crowe read the rear license plate (Colorado 329VGQ) and radioed other officers in the area, asking them to check the status of the license plate. This call occurred at 7:07:29 p.m. per DPD radio transmission logs.

The black car then turned left and went north in the alley between Fairfax Street and Forest Street. Detective Crowe did not follow the car into the alley. Instead, he drove east of the alley and turned left (north) on Forest Street. Detective Crowe learned over the police radio from other officers that the black car, a 2 door, 2008 Infiniti, had been forcibly stolen at gun point earlier in the morning in a “carjacking” in Aurora, Colorado. The suspects in the carjacking were described as two black males.

Detective Crowe proceeded to 29th Avenue, turned left (west) and then turned left into the alley to go southbound. In the alley, Detective Crowe saw the black car. It was traveling north, facing him. Detective Crowe’s Jeep Patriot and the black car were the only two cars being driven in the alley at that time.

The driver of the black car maneuvered it to the east side of the alley, apparently to allow more room for Detective Crowe’s Jeep to pass by. However, Detective Crowe remained in front of the black car. The black car then backed up and again moved to the side to allow Detective Crowe to pass. Detective Crowe drove forward but again did not pass by. After a few moments, based on gestures he saw by the driver and the front seat passenger in the black car, Detective Crowe believed they concluded he was a police officer. The black car then began to back up again, southbound in the alley. Detective Crowe drove forward and radioed for a marked police car to come into the alley from the south, behind the black car.

A marked police car pulled into the alley from 28th Avenue, northbound, behind the black car. This car was a fully marked white Ford Explorer SUV with black push bars on the front, spotlights on both the driver and passenger sides, and with a light bar on top. Officer Lee Ingersoll was driving the SUV and Officer Jimmy Sheppard was in the front seat passenger seat. Both officers were wearing full DPD uniforms.

Detective Crowe saw the black car back into and impact the front of the police SUV. He stopped the Jeep about a car length in front of the black car. He got out of the Jeep, drew his handgun, and moved forward near the front left corner of the Jeep. He was facing the front of the black car and was about one car length north of it. He saw the driver of the black car get out and run a few feet to the fence that was on west edge of the alley on the driver side of the car. He saw Officer Sheppard outside of the police SUV on its passenger side. Detective Crowe saw the front passenger of the black car (later identified as Mr. Kylear A. Williams) open the passenger door, get out, and begin to run northbound toward him.

Mr. Williams ran north along the passenger side of the black car toward Detective Crowe. When he reached the front of the black car, Mr. Williams turned at an angle to the northwest and continued running to the west edge of the alley and to the passenger side of the gray Jeep.

On the photo below, the markings were made by Detective Crowe during his interview. The blue markings depict the movement by Detective Crowe before the shooting when he got out of the Jeep and moved southward. Red markings on the passenger side of the black car show the path taken by Mr. Williams.¹ Detective Crowe indicated that Mr. Williams ran along the side of the car north toward Detective Crowe, then turned northwest and ran toward the west edge of the alley before the shots were fired.



As Mr. Williams was running, Detective Crowe observed him pull an object from his waistband area. Detective Crowe heard Officer Sheppard yell, “Gun!” Detective Crowe then recognized the object as a black handgun. Mr. Williams had the gun in his right hand. Detective Crowe described his observations and thoughts at this critical point:

“He kind of started coming up with the gun. And I thought for sure that he was either going to turn a little bit towards me and start shooting at me, or shooting at other officers that were on scene... I already had my gun out. So I fired three to four rounds at him.”

Detective Crowe clarified that, although Mr. Williams did not extend his arm to aim the gun directly at him, the muzzle of the gun was pointed in Detective Crowe’s direction. He described that he fired after Mr. Williams turned in front of the black car and ran northwest.

After the shots were fired, Mr. Williams moved along the passenger side of the Jeep on the west edge of the alley and then ran northbound. Detective Crowe and Officer Sheppard chased after him. Mr. Williams stopped running and submitted to arrest at a point in the alley north of the shooting.² Officers attended to Mr. Williams’ wounds while awaiting the arrival of paramedics. Paramedics arrived and transported Mr. Williams to the hospital. DPD radio logs show that a radio call that shots had been fired was placed at 7:09:29 p.m.

¹ The red markings on the driver side of the black car depict the movement of the driver to the fence.

² Scene investigation determined that Mr. Williams was arrested about 286 feet north of the Jeep.

On the photo below, the markings in red made by Detective Crowe depict the path Mr. Williams took immediately after the shooting. Blood droplets can be seen on the ground. The blue markings depict the path taken by Detective Crowe in pursuit north in the alley. (North is toward the bottom of the photo).



Officer Jimmy Sheppard (Badge 13059) was interviewed after the shooting. He explained that he was the front passenger of the police SUV being driven by Officer Lee Ingersoll. He learned over the police radio that the black Infiniti had been taken in a car-jacking, that it was backing southbound in the alley, and that Detective Crowe was requesting uniform support to come into the alley from the south. Officer Ingersoll drove the SUV into the alley from the south. Officer Sheppard saw the black car reversing. As the police SUV came to a stop, the black Infiniti backed into the front push bars of the SUV.

Officer Sheppard immediately got out of the SUV on the passenger side and drew his handgun. Officer Sheppard's handgun is a 9 millimeter semi-automatic Glock, model 17. He saw the passenger door of the black car open and saw Mr. Williams get out on the passenger side. Officer Sheppard was about a car length to the south of Mr. Williams and Mr. Williams was momentarily facing him. Mr. Williams reached into his waistband, turned around to his left, and ran northbound toward Detective Crowe's Jeep. Officer Sheppard moved to the north as well. In his interview, he described, "As he's running, I see him pull out a gun. I yelled, 'Gun!'"

Officer Sheppard explained that Mr. Williams reached for the gun with his right hand and that as he ran he pulled the gun "out and up" so that the gun was directed toward Detective Crowe. Officer Sheppard said he stopped and fired one or two shots at Mr. Williams because he feared for Detective Crowe's safety and for his own. Just before firing, Officer Sheppard heard other shots being fired.

In the photo below, the red markings made by Officer Sheppard depict the path Mr. Williams ran after getting out of the black car.



Officer Lee Ingersoll (Badge 06110) was interviewed at DPD headquarters. He was the driver of the police SUV. He said that when he turned north into the alley from 28th Avenue he saw the black car reversing southbound at an estimated speed of five to ten mile per hour. Officer Ingersoll stopped the SUV behind the black car. The black car continued to reverse until it hit the left front push bumper of the SUV. Officer Ingersoll’s focus was on the driver of the black car. The driver got out of the black car and immediately ran to a fence on the west edge of the alley and escaped over the fence.¹ Another male, who was in the rear seat of the car, also exited on the driver’s side and tried to get over the same fence but Officer Ingersoll apprehended him.² As Officer Ingersoll was apprehending this person, he heard several gunshots fired from a location in the alley to his right. He said that these events happened “really, really fast.” He did not see Mr. Williams get out of the car, nor did he see the shooting take place.

During the investigation in the alley after the shooting, DPD crime scene investigators observed blood droplets on the ground on the passenger side of the gray Jeep and a trail of blood from that point leading north in the alley to the area where Mr. Williams submitted to arrest. The length of the blood trail was about 286 feet.

The handgun Mr. Williams possessed was found on the ground in front of the black car. The Denver Crime Laboratory Latent Print Unit identified a thumb print of Mr. Williams on the magazine of the gun. This handgun is a dark green 9 millimeter semi-automatic KelTec PF-9 Luger. It was fully loaded with eight bullets, including one bullet in the firing chamber, ready to fire. Tests of this gun by the Denver Crime Lab Firearm Unit prove that it will fire.

¹ The driver of the black Infiniti was later arrested nearby and identified as Keandre Oshoa Mims (2/12/1994).

² The back seat passenger was identified as Jaryll Isiac Douglas (6/20/1996)



Four spent cartridge casings were found at the scene. The Firearms Unit determined that two shell casing were fired in Officer Sheppard's gun, and two shell casings were fired in Detective Crowe's gun.

Three fired bullets were found at the scene, two of which struck Mr. Williams:

(1) A fired bullet struck the gray Jeep Patriot next to the driver side headlight and traveled into the engine compartment where it was recovered. This bullet was identified by the Firearms Unit as having been fired by the Glock used by Officer Sheppard. Based on the apparent trajectory of this bullet and the fact that no blood was found on this bullet by the Denver Crime Lab Forensic Biology Unit, it is reasonable to conclude that this bullet did not strike Mr. Williams.

(2) A fired bullet was found under some clothing where Mr. Williams was arrested and attended to by paramedics. This bullet was identified by the Firearms Unit as having been fired by the Glock used by Officer Sheppard. The Forensic Biology Unit detected blood from swabs of this bullet. This bullet struck Mr. Williams.

(3) A fired bullet was found under the Jeep Patriot. This bullet was identified by the Firearms Unit as having been fired by the Springfield 9 mm handgun used by Detective Crowe. The Forensic Biology Unit detected blood from swabs of this bullet. This bullet struck Mr. Williams.

Bullet fragments were recovered from Mr. Williams at the hospital but these fragments are not identifiable.

Mr. Williams suffered wounds to both of his hands and to his right upper back, right shoulder, right side of his neck, and the right side of his cheek and jaw. His medical records that are protected by the doctor-patient privilege were not made available to investigators.

LEGAL ANALYSIS

Colorado statutes and case law provide the legal framework for determining whether physical force used on another person is legally justified.

Regarding self-defense generally, C.R.S. 18-1-704(1) provides:

(1) ... 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.

Regarding a peace officer's use of force when making an arrest or when preventing an escape from custody, C.R.S. 18-1-707(1) is applicable to this case. It states:

(1) Except as provided in subsection (2) of this section¹, 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

¹ Subsection (2) of the statute is inapplicable to this case. It pertains to the use of "deadly physical force" which, by definition, was not used in this case because death was not caused.

physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

C.R.S. 18-1-710 declares that the legal justifications described above are “affirmative defenses.” This means that if a criminal charge is brought against an officer based on the use of physical force, the prosecution must prove beyond a reasonable doubt that these defenses do not apply. The jury would have to unanimously find beyond a reasonable doubt that these defenses do not apply in order to return a guilty verdict.

Colorado case law instructs us that the principle of “apparent necessity” is embodied in these statutes concerning defensive use of force. These statutes allow defensive force that is based on “apparent necessity” if the conditions and circumstances are such that the person using force would reasonably believe that the defensive action was necessary. *See, People v. La Voie, 395 P.2d 1001 (1964); Beckett v. People, 800 P.2d 74 (Colo. 1980); Riley v. People, 266 P.3d 1089 (Colo. 2011)*. The significance of this principle to this case is that it renders immaterial whether or not Mr. Williams intended to fire his gun at an officer. What is material is whether the officers believed firing at Mr. Williams was a necessary defensive action, and whether it was objectively reasonable for the officers to have that belief in this case.

CONCLUSION

The investigation shows both officers believed the use of unlawful force against them was imminent, and that Mr. Williams was about to fire his handgun. Under the circumstances, these beliefs were reasonable. No credible evidence contradicts that.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer’s beliefs when using physical force:

“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.” *Graham v. Connor, 490 U.S. 386 (1989) at pp. 396-397.*

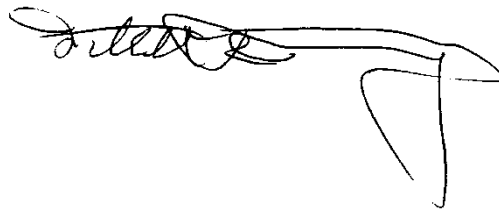
The Supreme Court also instructed that the standard of *reasonableness at the moment* applies, judged from the perspective of a reasonable officer at the scene, not “in the peace of a judge’s chambers” or with the perspective of 20/20 hindsight. *Id.*

In this case, the officers knew that the black Infiniti had been stolen at gunpoint earlier in the day in a carjacking (aggravated robbery). The officers saw Mr. Williams hurriedly get out of the car and immediately turn to run away from Officer Sheppard, who was in full police uniform. This demonstrated Mr. Williams’ choice to not comply with the officers. Both officers saw Mr. Williams grab his handgun. Mr. Williams was then immediately ready to fire. At this point he posed an imminent deadly threat to Detective Crowe. According to both officers, he then pulled the gun up from his waist area and directed the muzzle of the gun toward Detective Crowe. Since his gun was loaded with a bullet cartridge in the firing chamber, Mr. Williams easily could have fired at Detective Crowe in an instant with slight effort.

Perhaps there are some people in our community who wish that police officers were legally required to be fired upon first before they are allowed to use their weapons. The law governing an officer's justifiable use of force does not require that. On the other hand, the law requires citizens to not threaten or use unlawful force against officers, and the law requires citizens to comply with lawful police authority and commands. This shooting is yet another example of a justified officer-involved shooting where the prime causal factors are the non-compliance and the unlawful actions of a citizen who threatened the use of deadly force.

I find that the use of force by both officers in shooting Mr. Williams was defensive, reasonable, and legally justified under Colorado law. Accordingly, criminal charges will not be filed against Detective Crowe or Officer Sheppard.

Very truly yours,

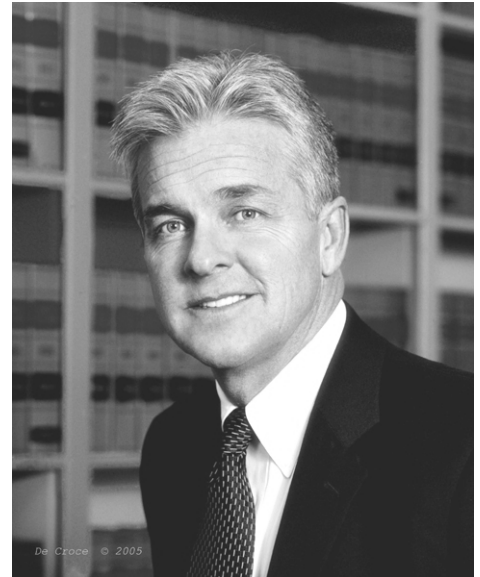
A handwritten signature in black ink, appearing to read "Mitchell R. Morrissey". The signature is written in a cursive style with a long horizontal stroke extending to the right, ending in a vertical line that drops down.

Mitchell R. Morrissey
Denver District Attorney

cc: Detective Jon Crowe; Officer Jimmy Sheppard; Brian Reynolds, Attorney for Detective Crowe and Officer Sheppard; 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; Matt Murray, Deputy Chief of Police DPD; Ron Saunier, Commander of Major Crimes Division DPD; Marcus Fountain, Commander; Joe Montoya, Commander Internal Affairs Bureau; Gregory Laberge, Denver Crime Lab Commander; Lieutenant Matt Clark, Homicide DPD; Sgt. James Kukuris, Homicide DPD; Sgt. Tom Rowe, Homicide DPD; Detective Aaron Lopez, Homicide DPD; Detective Jami Sisneros, Homicide DPD; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Denver Independent Monitor, Rev Golston.



OFFICER-INVOLVED SHOOTING PROTOCOL 2015



Mitchell R. Morrissey
Denver District Attorney

The Denver District Attorney is a State official and the Denver District Attorney's Office is a State agency. As such, although the funding for the operations of the Denver District Attorney's Office is provided by the City and County of Denver, the Office is independent of City government. The District Attorney is the chief law enforcement official of the Second Judicial District, the boundaries of which are the same as the City and County of Denver. By Colorado statutory mandate, the District Attorney is responsible for the prosecution of violations of Colorado criminal laws. Hence, the District Attorney has the authority and responsibility to make criminal charging decisions in peace officer involved shootings.

The Denver Police Department was created by the Charter of the City and County of Denver. Under the Charter, the police department is overseen by the Office of the Denver Manager of Safety, 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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