



DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

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July 28, 2016

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

RE: Investigation of the shooting and wounding of James E. Bronish, DOB 6/15/59, DPD # 303373, in which Sergeant Theodore Maher, 04008, Corporal Joseph Duncan, 95092, and Officer Christopher Fayles, 15006, fired shots on June 12, 2016, at 1955 Arapahoe Street, 17th Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting and wounding of James Bronish, in which shots were fired by Denver Police Officers Theodore Maher, Joseph Duncan and Christopher Fayles, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against any of the involved officers. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department, where 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.

STATEMENT OF FACTS

The Halcyon House, 1955 Arapahoe Street, is a multi-unit residential high-rise building on the west side of Arapahoe Street. It is on the corner of 20th Street and Arapahoe Street. The Greyhound Bus Terminal is across Arapahoe Street from the Halcyon House. At about 8:50 p.m. on June 12, 2016, James Bronish (hereinafter "Bronish"), who lived in unit 306 of the Halcyon House, went to the apartment of his neighbor, Theodore Gutierrez, and asked to use his telephone. From Mr. Gutierrez's apartment Bronish called 911 and, as Mr. Gutierrez recalled, gave the call-taker his name and threatened to shoot anyone who came to his apartment, adding that he would be "waiting on the balcony."¹ The Denver Combined Communications CAD records reflect the call "RP [reporting party] THREATNING [*sic*] TO SHOOT OFFICERS IF

¹ Mr. Gutierrez provided written and video-taped statements to investigators.

THEY COME NEAR” was received at 8:52 p.m. Bronish then relinquished the phone and left Mr. Gutierrez’s apartment.

A few minutes later, Halcyon House residents Mr. Joshua Daigle and Ms. Jessica Wilcher² returned to the building from a walk on the 16th Street mall. When they arrived they saw Bronish on the balcony of his apartment. Ms. Wilcher stated Bronish was

holding what looked like a sawed-off shotgun and a couple was walking by when [Bronish] pointed the gun at the couple and he was screaming “the SWAT teaming is coming.” I told [Bronish] “you’re stupid” and started to walk away. I then heard a sound that sounded like a misfire from the gun.

Mr. Daigle told investigators that as he and his wife returned to the building he saw Bronish “*yelling at people, telling them to ‘get off my block’*” He, too, stated that Bronish was wielding what appeared to be a sawed-off shotgun and he also heard a sound that he believed was a “misfire” as the two walked near or underneath the balcony. The couple ran to the back door of the building and reported these events to a security guard.

Mr. Nicholas Bainer was one of the pedestrians whom Bronish confronted from his perch on the third floor balcony. Mr. Bainer was walking northbound toward 20th Street on the west side of Arapahoe Street when he saw Bronish, standing on the balcony and yelling at people on the street. Mr. Bainer indicated that Bronish was “*shouting absurd comments like ‘I’m going to shoot your brains out.’*” Mr. Bainer saw another pedestrian yelling back at Bronish and when he neared the balcony he saw

The man was leaning up along the balcony with a shotgun (or what appeared to be one) pointing down at me on the street. He was facing south while leaning on the balcony. The man kept yelling and shouting swear words and yelling about hurting people like the pedestrians in front of me yelling back (pedestrians [illegible] earlier.) [When] the man on the balcony focused his attention on the other pedestrian I made my way across the street behind the concrete wall of the Greyhound bus station. At that time I called 911 and made dispatch aware of the issue.³

Mr. Mohamed S. Mohamed was the security guard on duty at the Halcyon House on this evening and it was he to whom Mr. Daigle and Ms. Wilcher reported their concerns. Mr. Mohamed told investigators that he was in the security office when he was alerted to a “*situation outside of the property.*” Mr. Mohamed went out the front of the building and saw Bronish, standing on a third floor balcony, “*with one leg dangling [over the wall] & a shotgun pointed at me. He warned me to back off.*” Mr. Mohamed immediately called 911.⁴

Witness Calvin Harris lived in an apartment one floor below Bronish’s. From his balcony he was able to look up and to the left and see Bronish. He gave investigators a

² Mr. Daigle and Ms. Wilchner are married and reside in an upper level apartment at 1955 Arapahoe Street. Both witnesses provided investigators with written and video-recorded statements.

³ Mr. Bainer reported this information in a written statement. He also provided investigators with a video-recorded statement. CAD records reflect Mr. Bainer’s 911 call was logged at 9:19 p.m.

⁴ Mr. Mohamed provided investigators with both written and video-recorded statements. CAD records reflect his call was logged at 9:17 p.m. A still photo captured from Mr. Mohamed’s video, which shows him demonstrating the manner in which Bronish pointed his weapon, is attached on page 12.

video-recorded statement in which he said he heard the “*security guard say, ‘is that a gun you got?’ and [Bronish] said, ‘yeah! Back the fuck up!’*” Mr. Harris mimicked Bronish holding a gun in his right hand and pointing it at someone, adding “*I really thought he was going to shoot the dude.*” Mr. Harris stated Bronish was wielding a black, sawed-off shotgun, later adding it had a “*pistol-grip on the end.*”

Officers Christopher Fayles, 14039, and Officer Matthew Clements, 14039, were dispatched to the call at 9:21 p.m. Both officers were wearing full blue DPD uniforms and driving marked police cars. Officer Fayles went “code 6 [arrived on scene]” at 9:24:10; Officer Clements advised the dispatcher he was “code 6” three seconds later.

The two officers had been in the area of Bannock Street and Speer Boulevard when the first call, which included the information conveyed by Mr. Gutierrez, was aired. Officer Fayles told investigators that he reviewed the call notes on his mobile data terminal and he and Officer Clements determined that they would take the call but, because the details of the call seemed “*strange*” and it was a “*possibly dangerous call,*” the officers delayed responding until they could get some direction from their supervisor, Sergeant Maher. It was while they were waiting to speak to Sergeant Maher that a second call, involving an armed man, standing on a balcony, was aired. As Officer Fayles recalled matters,

putting two and two together I figured, you know, these might be related somehow. So we responded up there emergent, code 10 [lights and siren]. Officer Clements and I, um, as we started to respond, I got on the radio. I had asked dispatch to try and find out what direction the balcony faced. I didn’t want to approach and get shot pulling up.⁵

The two officers approached from the south on Curtis Street, turned left onto 20th Street and parked their cars on the west side of the Greyhound Bus Terminal so that they might use that structure as cover. Officer Fayles told investigators that as he got out of his car he saw a uniformed security officer standing at the entrance to the Halcyon House and he was

frantically pointing, like, up into the north. So that would be toward 20th Street. And he [the security guard] was in the 1900 block. Um, so I was facing westbound, facing the building. As we went up there, I, I saw Sergeant Maher had pulled up in his car. He went through the intersection and actually pulled up next to the building, so just north of the apartment building on 20th Street, and parked his car. I think I was yelling out to him something a, about a guy being up there.

Officer Fayles saw a raised flower planter next to the bus depot which he believed would provide him with a slightly better vantage point and allow him to use the building as cover.⁶ He climbed upon it and drew his handgun, a Glock 34, 9mm semi-automatic pistol. From this

⁵ Sergeant Maher, Corporal Duncan and Officer Fayles each provided sworn, video-recorded and voluntary statements in accordance with our protocol. Officer Clements also provided investigators with a video-recorded statement. He told investigators that, as he parked his car, Officer Fayles pulled in behind him and that about that time Sgt. Maher arrived and took a position across the street from them. Officer Clements armed himself with a shotgun and took a position at the bus depot near a concrete pillar and behind a tree. From this position he could see part of the Halcyon House but could not see Sgt. Maher or the balcony upon which Bronish was standing. Officer Clements heard Sgt. Maher issuing commands and then heard the sound of gunfire. From his position he saw Corporal Duncan shoot but he was unable to see his target or what was happening at the balcony.

⁶ A photo of the intersection taken from the east is attached on page 11.

position, he saw a white male standing, shirtless, on a third floor balcony. He then saw that the male was holding something in his hand which he realized was “*some type of long gun. To me, it, it looked like it was possible a, um, shorter gun, maybe. It looked about that long [indicating].*” Officer Fayles went on to describe it as “*one of those shotguns that you just hold the handle or something, and just shorter.*” The officers now realized, first, that they were indeed dealing with someone who gave every indication of being armed with a deadly weapon and, second, that the subject’s distance across the street and his elevated position placed them at a tactical disadvantage. Officer Fayles advised the dispatcher that they would need an officer armed with a rifle. As he told investigators,

At some point there, uh, Corporal Duncan arrived and he had a long gun. He took up a position next to me and then moved down off the flower bed, down onto the sidewalk and took cover behind a light pole. And the Sergeant [Maher] also had a long gun – he was still across the street [and] he took up a position of cover on the corner.

The officers now began the process of calling additional officers to cordon off the area and arrange for paramedics to respond to the area and stand by.

Corporal Duncan, who was driving a marked patrol car and wearing a full blue DPD uniform, heard the call come out and saw in the CAD notes that the subject was armed with a “*sawed-off shotgun.*” He drove to the area and, as he arrived, saw officers taking up positions on the corner of 20th Street and Arapahoe Street. He armed himself with his long gun, a Colt AR15 semi-automatic rifle, and contacted Officer Fayles who advised him that the subject was on a third floor balcony. Corporal Duncan told investigators that he found a position that would give him some cover and concealment “*at the light pole at the [south-east] corner [of 20th Street and Arapahoe Street] there.*” From this position, he saw that Sergeant Maher had taken a position by a light pole directly across the street from him on the south-west corner of the intersection and underneath the balcony. “*Shortly after that, the, uh, suspect came out of the apartment where he hung over the balcony with a, a shotgun which was black in color.*” Corporal Duncan immediately joined in chorus of officers ordering Bronish to drop his weapon.

Sergeant Maher told investigators that he monitored the first radio calls which related to the phone call Bronish placed from Mr. Gutierrez’s apartment and, based upon the nature of those calls, made contact with Mr. Gutierrez by telephone to get some additional information. While he was doing so, he advised Officers Fayles and Clements to slow their response until officers obtained more information regarding any access Bronish might have to weapons. It was shortly thereafter that he heard the radio dispatcher issue a call of a “*man standing out on the balcony with a gun at this same location.*” He told investigators that he asked the dispatcher to alert responding officers regarding this new development. He then decided to go to the scene as he was aware that neither Officer Fayles nor Officer Clements had a rifle.⁷

Sergeant Maher, who was dressed in a full blue DPD uniform and driving a marked patrol car, stopped his car on 20th Street just west of Arapahoe Street so as to take advantage of the fact that the Halcyon House did not have windows overlooking 20th Street. He got out of his police car, armed himself with his rifle, a .223 caliber Colt AR-15, and took a position at the

⁷ Officer Clements was armed with a shotgun - that firearm is not an optimal choice for the distances involved in this situation.

light pole on the corner of 20th Street and Arapahoe Street. He told investigators that as he approached this position he saw people moving with some haste in the area near the front doors of the Halcyon House and then heard one of the officers at the bus depot across the street yell out “*he’s up there, Sarge! But [that I] didn’t know where there was.*” He then looked up to the third floor and saw, on the balcony, an individual moving about. He also saw what he

Quickly picked up on was a firearm – what I recognized as a firearm. I believed it to be a, a shotgun or light barrel[ed] rifle. It look more like a, an old style, uh, pump action rifle. I could hear, what sounded like banging on the, uh, it’s like a kicker wall that the, the end of this balcony sits off of. So, it was about a three-foot high wall and I could hear something banging on it. I aimed in on it and then I could see the individual push the weapon out even further. I knew – at that point, I identified it as a, as a firearm, um, at which time I started giving commands to this individual, hoping that he would comply.

Sergeant Maher told investigators that he continued issuing commands to no avail. Bronish kept pushing the gun out over the balcony and then pulling it back while, on occasion, banging it against the top of the balcony retaining wall. At some point while this was going on, Sergeant Maher saw Bronish lean his upper body over the balcony wall while aiming his weapon toward 19th Street. Sergeant Maher stated that he continued to order Bronish to drop the gun but that these commands had a different and undesired effect:

It basically drew his attention to me. He saw me at that point and then started to bring the weapon around to bear on me. I knew my officers were in [the] line of fire as well because I knew they were behind me, although I wasn’t focused on them. So, as that weapon came around to me, I thought he was gonna shoot. And my heart was racing and, as I came up on target, I fired two rounds.

Sergeant Maher stated that these two rounds were low, explaining in follow-up questions, that he made this determination because, first, they appeared to have no impact on Bronish and, second, he saw “*the impact in the concrete just short underneath [Bronish].*”⁸ Based upon this determination, Sergeant Maher adjusted his sight picture and fired once more. This round appeared to have struck Bronish as he fell or disappeared behind the balcony wall. The evidence is that Sergeant Maher fired when Bronish began to direct his weapon toward the Sergeant. Bronish did not discharge a weapon.

The officers across the street heard the first two shots fired by Sergeant Maher but, importantly, they also saw the puffs of dust which resulted from the bullets striking the concrete. In his statement, Officer Fayles stated that Bronish was moving his gun around and then he “*fired a shot. I heard a loud bang and smoke go everywhere.*” Officer Fayles told investigators that after the first shot, Bronish moved the barrel of his gun in Sergeant Maher’s direction and then toward the officers positioned at the bus depot at which juncture he fired several rounds from his handgun.

Officer Duncan also fired his rifle. He told investigators that he fired because he saw Bronish point his weapon at Sergeant Maher and he then heard one shot. In his words, “*once he fires the weapon, he returned fire and then he goes down behind the, uh, balcony ledge.*” Officer

⁸ A photo of these bullet strikes is attached on page 11.

Duncan fired several rounds with his AR-15, ceasing his fire when Bronish dropped behind the balcony ledge.

Two civilian witnesses, Mr. Nick Diercks and Ms. Margie Tyron (“Ty”) Link, also concluded that Bronish fired first.⁹ Mr. Diercks, who lived in the neighborhood, had just left his home and was driving east on 20th Street when he saw several police cars and noticed an officer aiming a rifle at the Halcyon House. He pulled into the parking lot across 20th Street from the Halcyon House so as not to obstruct the police actions and stopped next to a woman in a white Jeep who was also watching events unfold. Mr. Diercks took a position of safety behind the Jeep. From his position he saw additional officers armed with long guns on 20th Street near the bus depot. He also heard the first officer he had seen saying words to the effect of “*you don’t want to do that! Don’t do that! Put down the gun!*” He told investigators that he could see a shadowy figure standing on what he believed to be the second floor balcony and then, “*I just see two things of smoke and hear two pops. And, at first I thought it was a revolver, just because of the smoke, [unintelligible] with that kind of round comes out like that.*” Mr. Diercks stated that when he saw the two puffs of smoke he ducked behind the car and from this vantage point saw the officers on the street fire at the subject on the balcony. He estimated that the entire shooting episode lasted for no more than “*three to four seconds.*” Mr. Diercks told investigators,

from what I saw, absolutely, [the police] gave him more than ample warning to put the firearm down – to not do what he was thinking about doing and, right as both those shots were fired on to this police officer here [indicating on a diagram] that’s when they then opened fire on to the, um, person in question.

Ms. Link was driving “in bound” on Arapahoe and had stopped for the light at 20th Street when she saw the police activity.¹⁰ She saw Bronish “hanging” over the balcony and saw officers armed with long guns take positions consistent with the statements the officers provided.¹¹ She saw one officer “*with a rifle*” attempting to talk to Bronish. She estimated he tried to reason with the person for “*6, 7 minutes.*” At some point she got out of her vehicle as she told investigators that Bronish started shooting at which point, she “ran across the street” from the west curb of Arapahoe Street to the east curb. In her written statement, she stated that “*shots [came] from balcony, was about 4-5 shots. At that point officers fired back, hitting the shooter.*”

After the shots were fired, Bronish dropped behind the balcony wall and out of view of the officers for a short period of time. He then reappeared in compliance with officers who were shouting commands that he show himself. He placed his hands on or over the balcony railing and officers were able to determine that he was bleeding from at least one wound. Officers Fayles and Clements, joined by Officer Damon Roman, 14083, and DPD Metro-Swat Technician Jesse Rembert, 05026, who had been working in an off-duty capacity near-by, formed an entry team. These officers went to Bronish’s apartment and, due to the concerns regarding his injury, breached the door and entered the apartment. Bronish was found lying on the balcony floor and

⁹ Calvin Harris also told investigators he was not certain but believed Bronish fired his shotgun first. He was sure that Bronish pointed his weapon at an officer moments before shots were fired.

¹⁰ Ms. Link was the person in the Jeep described by Mr. Diercks.

¹¹ Daytime photos showing the approximate positions of Bronish, the involved officers and Mr. Diercks and Ms. Link are attached on page 13.

suffering from a gunshot wound to his left arm. He was taken from his apartment and rushed to Denver Health Medical Center where he received treatment for a single gunshot wound. In his written statement, Officer Roman noted that, while Bronish was lying on the floor, “[H]e stated, ‘I’ve had a bad day and have made bad choices.’”¹² The officers who entered the apartment to attend to Bronish also observed what appeared at first to be a black shotgun along with what was later determined to be a “clear plastic Colt 1911 Target pellet gun” on the balcony. The shotgun was later determined to be an Eagle “Daisy” pellet gun. (Photos showing the Eagle “Daisy” pellet gun are found on page 12.)

Sergeant Maher was armed with a Colt AR-15A3 semi-automatic rifle loaded with a 30-round magazine. The rifle did not have a round in the chamber when Sergeant Maher retrieved it from his vehicle and he charged the firearm before taking his position of cover. Firearms examiners and crime scene investigators determined that Sergeant Maher fired three rounds.

Corporal Duncan was armed with a Colt AR-15 semi-automatic rifle. The firearm has a 30-round magazine, but Corporal Duncan advised investigators that the magazine in the firearm was “light loaded” with 20 cartridges. Firearms examiners reported that the firearm was loaded with 12 live cartridges when it was received by analysts after the shooting. At the scene, crime scene investigators recovered five shell casings which were determined to have been fired from Corporal Duncan’s firearm. Corporal Duncan fired at least five and possibly as many as eight rounds.

Officer Fayles was armed with a Glock model 34 9mm semi-automatic pistol. This pistol has a 17 round magazine and it was Officer Fayles’s practice to carry it with an additional round in the chamber. Firearms examiners and crime scene investigators determined that Officer Fayles fired four rounds.

In addition to the physical evidence and witness statements, investigators sought to determine whether there was any video evidence which might assist in establishing the facts. HALO cameras were located in the area as were private surveillance cameras used by bus depot authority. A review of the available footage from these sources did not provide video showing either Bronish’s actions or the actual shooting. From the HALO cameras one can see only the emergency lights of police cars (a leafy tree sits between the apartment building and the HALO camera which has the best angle). The bus depot security cameras show only Officer Fayles when he discharges his weapon – the camera does not provide a view of Bronish on the balcony. Officer Fayles, Officer Clements and Corporal Duncan were all wearing Body Worn Cameras (“BWC”). Neither Corporal Duncan nor Officer Clements activated their BWC until after shots were fired. Officer Fayles did have his BWC activated. On his BWC, at the critical moments before shots are fired, one can hear an officer yelling commands to “put the gun down” and then hear Officer Fayles issue similar commands. Officer Duncan can also be seen moving into position. At the time of the shooting, one can hear three shots and then hear Officer Fayles

¹² Bronish made other apologetic statements. For example, at the hospital, Officer Brian Medloff, 06149, overheard him say “I’m really sorry about this, guys.” Officer Benjamin Altman rode with Bronish in the ambulance and remained with him for a time at the hospital. He reported that Bronish made these statements: “I’m so sorry,” “Officer, I’m sorry”, “I was depressed and I got stupid,” “I should have just gone to bed instead of getting stupid”, “I promise I won’t get this stupid again,” and “I apologize.”

return fire and see the pistol recoil in his hands. The BWC worn by Officer Fayles does generally corroborates the statements of witnesses.

On June 16, 2016, multiple counts of felony menacing - simulated weapon were filed against Bronish. Those charges are pending in the Denver courts.

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 Bronish's injuries were caused by a shot fired by one of the involved officers¹³, 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:

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

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

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

(2) A peace officer is justified in using **deadly physical force** upon another person ... 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

¹³ Bronish suffered a perforating or "through and through" wound to the left forearm. His position on the balcony and the relative positions of the officers suggest that the third shot fired by Sergeant Maher struck Bronish, however, based upon the evidence available, that fact cannot be established to any reasonable degree of medical or scientific certainty.

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

In addition, an officer may justifiably rely on the Colorado law regarding self-defense which is applicable to all citizens.

18-1-704 of the Colorado Revised statutes sets forth the law which allows a citizen to use force in defense of himself or another citizen. It provides, in pertinent part,

(1) Except as provided in subsections (2) and (3) of this section, **a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.**

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 Bronish survived his wound, the issue in this case centers on 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).

The issues are, therefore, whether at the time Sergeant Maher fired his rifle, he reasonably believed that he was about to be subjected to unlawful physical force, and furthermore, his actions in defending against that force were objectively reasonable and, whether, at the time Corporal Duncan and Officer Fayles discharged their firearms, they reasonably believed, either that Sergeant Maher was about to be subjected to unlawful physical force or that they, themselves were about to be attacked. Part of the analysis regarding the reasonableness of their actions centers on the question whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that Bronish was armed with a deadly weapon.

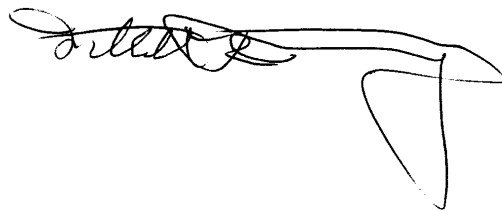
CONCLUSION

As the discussion of the facts makes clear, officers were responding to a call of a man with a gun threatening citizens from a balcony. They were also responding to a scene where the information first conveyed to 911 was that the caller would shoot any police officers who arrived on scene. The officers and citizens who saw Bronish on the scene all believed he was armed with a shotgun. Security Officer Mohamed, for example, was clear. He saw Bronish on the balcony and stated that Bronish had a “*shotgun pointed at me. He warned me to back off.*”

Under the facts of this case, the conduct of each of the involved officers is justified under C.R.S. 18-1-707(1)(b) and 18-1-704 (1). We could not prove beyond a reasonable doubt that it was unreasonable for Sergeant Maher to perceive that Bronish was armed with a deadly weapon and posed an imminent threat to him at the instant he fired his weapon. Similarly, we could not prove beyond a reasonable doubt that it was unreasonable for Corporal Duncan and Officer Fayles to believe that Bronish had fired either at Sergeant Maher or at them and thus posed an imminent threat. Although we cannot say conclusively which officers’ projectile struck Bronish, the analysis is the same for each officer. Therefore, no criminal charges are fileable against Sergeant Maher, Corporal Duncan or Officer Fayles for the injury to Bronish.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitchell R. Morrissey", with a long horizontal flourish extending to the right and a large loop at the end.

Mitchell R. Morrissey
Denver District Attorney

cc: Sgt. Theodore Maher; Cpl. Joseph Duncan; Officer Christopher Fayles, Sean Olson, Attorney at law; Michael Hancock, Mayor; All City Council Members; P. Shaun Sullivan, 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; Ron Thomas, Commander of Internal Affairs; Division; Lieutenant Matthew Clark, Major Crimes; Lt. Scott Torpen, Aurora Police Department Major Investigations Section; Lieutenant Adam Hernandez, Major Crimes Division; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Sgt. Joe Englebert, Homicide; Detective Dan Andrews, Homicide; Detective Michael Martinez, 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.





Daylight photos showing the location of the shooting
Aerial View of 20th and Arapahoe Streets



Mr. Bronish
Link

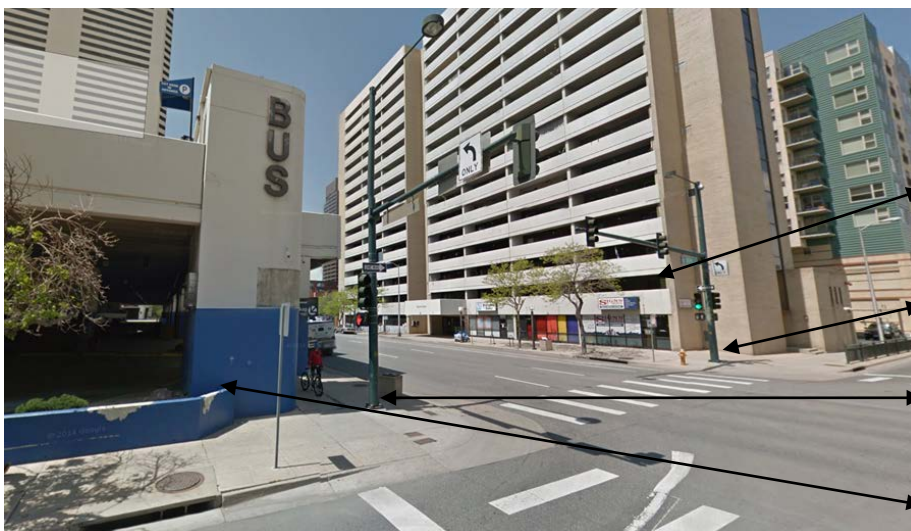
Sgt. Maher

Off. Clements

Cpl. Duncan

Off. Fayles

Mr. Diercks & Ms.



Mr. Bronish

Sgt. Maher

Cpl. Duncan

Off. Fayles



Mitchell R. Morrissey
Denver District Attorney

OFFICER-INVOLVED SHOOTING PROTOCOL 2016

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

The primary investigative personnel are assigned to the Homicide Unit where the best resources reside for this type

of investigation. The scope of the investigation is broad and the focus is on all involved parties. This includes the conduct of the involved officer(s) and the conduct of the person who is shot. Standard investigative procedures are used at all stages of the investigation, and there are additional specific procedures in the Denver Police Department's Operations Manual for officer-involved shootings to further insure the integrity of the investigation. For example, the protocol requires the immediate separation and sequestration of all key witnesses and all involved officers. Involved officers are separated at the scene, transported separately by a supervisor to police headquarters, and sequestered with restricted visitation until a formal voluntary statement is taken. Generally the officers speak with their attorney prior to making their voluntary statement. A log is kept to document who has contact with the officer. This is done to insure totally independent statements and to avoid even the appearance of collusion.

In most cases, the bulk of the criminal phase of the investigation is concluded in the first twelve to twenty-four hours. Among other investigative activities, this includes a thorough processing of the crime scene; a neighborhood canvass to identify all possible witnesses; the taking of written statements from all witnesses, and video-recorded statements from all key witnesses and the involved officer(s). The involved officer(s), like any citizen, have a Constitutional Fifth Amendment right not to make a statement. In spite of this fact, Denver officers have given voluntary sworn statements in every case, without exception, since 1979. Since November of 1983, when the video interview room was first used, each of these statements has been video-recorded. *No other major city police department in the nation can make this statement.*

Officers are trained to properly secure their firearm after an officer-involved shooting. The protocol provides for the firearm to be taken from the officer by crime lab personnel for appropriate testing. The officer is provided a replacement weapon to use pending the completion of the testing. The protocol also allows for any officer to voluntarily submit to intoxicant testing if they chose. The most common circumstance under which an officer might elect to do so would be in a shooting while working at an establishment that serves alcohol beverages. Compelled intoxicant testing can be conducted if there are indications of possible intoxication and legal standards are met.

The Denver Chief of Police and Denver District Attorney commit significant resources to the investigation and review process in an effort to complete the investigation as quickly as practicable. There are certain aspects of the investigation that take more time to complete. For example, the testing of physical evidence by the crime lab -- firearm examination, gunshot residue or pattern testing, blood analyses, and other testing commonly associated with these cases -- is time consuming. In addition, where a death occurs, the autopsy and autopsy report take more time and this can be extended

substantially if it is necessary to send lab work out for very specialized toxicology or other testing. In addition to conducting the investigation, the entire investigation must be thoroughly and accurately documented.

Officer-involved shooting cases are handled by the District Attorney, and the Senior Chief Deputies District Attorney specifically trained for these cases. As a rule, two of these district attorneys respond to each officer-involved shooting. They are notified at the same time as others on the officer-involved shooting call-out list and respond to the scene of the shooting and then to police headquarters to participate in taking statements. They are directly involved in providing legal advice to the investigators and in taking video-recorded statements from citizens and officer witnesses, and from the involved officer(s). They continue to be involved throughout the follow-up investigation.

The Denver District Attorney is immediately informed when an officer-involved shooting occurs, and if he does not directly participate, his involved personnel advise him throughout the investigative process. It is not unusual for the District Attorney to personally respond and participate in the investigation. At the conclusion of the criminal investigation the District Attorney personally makes the filing decision.

If criminal charges are not filed, a decision letter describing the shooting and the legal conclusions is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, the Executive Director of the Department of Safety, other appropriate persons, and the media. If the involved peace officer is from an agency other than DPD, the letter is directed to the head of that agency. A copy of the decision letter is also posted on the Denver DA website (www.denverda.org) so that members of the public may learn the facts of the incident and the reasons for the decision of the District Attorney.¹

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

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

they wish to challenge our decision under C.R.S. 16-5-209. Allowing access for review is important to the transparency of our decision making in these important cases, and serves to foster public trust and confidence in the investigative process and in the decisions that are made.²

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

² However, the complete official file of the investigation remains in the custody of the Denver Police Department, which is the custodian of the case records. If we have made a decision not to file criminal charges, the Denver Police Department begins an *administrative* investigation and review of the incident. This may result in the gathering of additional information and the production of additional documents concerning the incident. The Denver District Attorney's Office is not involved in the administrative investigation and does not receive the additional information or investigative materials developed in that investigation. At the end of the administrative review, therefore, the files maintained by the Denver Police Department pertaining to the shooting will likely contain more information than the criminal investigation file.

the basis of their testimony. The grand jury could also be used if the investigation produced significant conflicts in the statements and evidence that could best be resolved by grand jurors. If the grand jury is used, the grand jury could issue an indictment charging the officer(s) criminally. To do so, at least nine of the twelve grand jurors must find probable cause that the defendant committed the charged crime. In order to return a "no true bill," at least nine grand jurors must vote that the probable cause proof standard has not been met. In Colorado, the grand jury can now issue a report of their findings when they return a no true bill or do not reach a decision -- do not have nine votes either way. The report of the grand jury is a public document.

A second exception to the Denver District Attorney making the filing decision is when it is necessary to have a special prosecutor appointed. The most common situation is where a conflict of interest or the appearance of impropriety is present. As an example, if an officer involved in the shooting is related to an employee of the Denver District Attorney's Office, or an employee of the Denver District Attorney's Office is involved in the shooting. Under these circumstances, an appearance of impropriety may exist if the Denver District Attorney's Office handled the case. This may cause our office to seek a special prosecutor.

THE COLORADO LAW

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and causing injury or death to another human being is generally prohibited as assault or murder in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force is justified. As there is generally no dispute that the officer intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Section 18-1-707 of the Colorado Revised Statutes provides that while effecting or attempting to effect an arrest, a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. Therefore, the question presented in most officer-involved shooting cases is whether, at the instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person, was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for

knowingly or intentionally shooting another, the state must prove beyond a reasonable doubt that the person doing the shooting either did not really believe he or another was in imminent danger, or, if he did hold such belief, that belief was, in light of the circumstances, unreasonable.

The statute also provides that a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to effect an arrest . . . of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon; or otherwise indicates, except through motor-vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In Colorado, deadly physical force means force the intended, natural, or probable consequence of which is to produce death and which does in fact produce death. Therefore, if the person shot does not die, by definition, only physical force has been used under Colorado law.

GENERAL COMMENTS

The following statement concerns issues that are pertinent to all officer-involved shootings.

The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called the split-second decision to shoot. It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a split-second decision to shoot. The split-second decision is generally made to stop a real or perceived threat or aggressive behavior by the citizen. It is this split-second time frame which typically defines the focus of the criminal-review decision, not the string of decisions along the way that placed the participants in the life-or-death final frame, although these certainly may be important in a case as well.

When a police-citizen encounter reaches this split-second window, and the citizen is armed with a deadly weapon, the circumstances generally make the shooting justified, or at the least, difficult to prove criminal responsibility under the criminal laws and required legal levels of proof that apply. The fact that no criminal charges are fileable in a given case is not necessarily synonymous with an affirmative finding of justification, or a belief that the matter was in all respects handled appropriately from an administrative viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt, unanimously, to a jury. This is the limit of the District Attorney's statutory authority in these matters. For these reasons, the fact that a shooting may be "controversial" does not mean it has a criminal remedy. The fact that the District Attorney may feel the shooting was avoidable or

"does not like" aspects of the shooting, does not make it criminal. In these circumstances, remedies, if any are appropriate, may be in the administrative or civil arenas. The District Attorney has no administrative or civil authority in these matters. Those remedies are primarily the purview of the City government, the Denver Police Department, and private civil attorneys.

Research related to officer-involved shootings indicates that criminal charges are filed in approximately one in five hundred (1-in-500) shootings. And, jury convictions are rare in the filed cases. In the context of officer-involved shootings in Denver (approximately 8 per year), this ratio (1-in-500) would result in one criminal filing in 60 years. With District Attorneys now limited to three 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 5 or more District Attorneys.

In Denver, there have been three criminal filings in officer-involved shootings in the past 40 years, spanning seven District Attorneys. Two of the Denver officer-involved shootings were the result of on-duty, work related shootings. One case was in the 1970s and the other in the 1990s. Both of these shootings were fatal. The cases resulted in grand jury indictments. The officers were tried and found not guilty by Denver juries. The third criminal filing involved an off-duty, not in uniform shooting in the early 1980s in which one person was wounded. The officer was intoxicated at the time of the shooting. The officer pled guilty to felony assault. This case is mentioned here, but it was not in the line of duty and had no relationship to police work. In 2004, an officer-involved shooting was presented by the District Attorney to the Denver Statutory Grand Jury. The Grand Jury did not indict. A brief report was issued by the Grand Jury.

Based on the officer-involved shooting national statistics, there is a very high likelihood that individual District Attorneys across the country will not file criminal charges in an officer-involved shooting during their entire tenure. It is not unusual for this to occur. In Denver, only two of the past seven District Attorneys have done so. This, in fact, is statistically more filings than would be expected. There are many factors that combine to cause criminal prosecutions to be rare in officer-involved shootings and convictions to be even rarer. Ultimately, each shooting must be judged based on its unique facts, the applicable law, and the case filing standard.

The American Bar Association's *Prosecution Standards* state in pertinent part: "A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction. In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record

of convictions. Among the factors the prosecutor may properly consider in exercising his or her discretion is the prosecutor's reasonable doubt that the accused is in fact guilty." The National District Attorneys Association's *National Prosecution Standards* states in pertinent part: "The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial. The prosecutor should not attempt to utilize the charging decision only as a leverage device in obtaining guilty pleas to lesser charges." The standards also indicate that "factors which should **not** be considered in the charging decision include the prosecutor's rate of conviction; personal advantages which prosecution may bring to the prosecutor; political advantages which prosecution may bring to the prosecutor; factors of the accused legally recognized to be deemed invidious discrimination insofar as those factors are not pertinent to the elements of the crime."

Because of the difference between the criminal, administrative, and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three uniquely different arenas. While criminal charges may not be fileable in a case, administrative action may be very appropriate. The legal levels of proof and rules of evidence that apply in the criminal-law arena are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the split-second decision to shoot are most effectively addressed by the Denver Police Department through the Use of Force Review Board and the Tactics Review Board process and administrative review of the shooting.

The administrative-review process, which is controlled by less stringent legal levels of proof and rules than the criminal-review process, provides both positive remedial options and punitive sanctions. This process also provides significantly broader latitude in accessing and using information concerning the background, history, and job performance of the involved officer. This type of information may have limited or no applicability to the criminal review, but may be very important in making administrative decisions. This could include information concerning prior officer-involved shootings, firearm discharges, use of non-lethal force, and other conduct, both positive and negative.

The Denver Police Department's administrative review of officer-involved shootings improves police training and performance, helps protect citizens and officers, and builds public confidence in the department. Where better approaches are identified, administrative action may be the only way to effect remedial change. The administrative review process provides the greatest opportunity to bring officer conduct in compliance with the expectations of the

department and the community it serves. Clearly, the department and the community expect more of their officers than that they simply conduct themselves in a manner that avoids criminal prosecution.

There are a variety of actions that can be taken administratively in response to the department's review of the shooting. The review may reveal that no action is required. Frankly, this is the case in most officer-involved shootings. However, the department may determine that additional training is appropriate for all officers on the force, or only for the involved officer(s). The review may reveal the need for changes in departmental policies, procedures or rules. In some instances, the review may indicate the need for changing the assignment of the involved officer, temporarily or permanently. Depending on the circumstances, this could be done for the benefit of the officer, the community or both. And, where departmental rules are violated, formal discipline may be appropriate. The department's police training and standards expertise makes it best suited to make these decisions.

The Denver Police Department's Use of Force Review Board and the Tactics Review Board's after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision to shoot is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high.

It is clear not every officer will handle similar situations in similar ways. This is to be expected. Some officers will be better than others at defusing potentially-violent encounters. This is also to be expected. To the degree officers possess skills that enhance their ability to protect themselves and our citizens, while averting unnecessary shootings, Denver will continue to have a minimal number of officer-involved shootings. Denver officers face life-threatening confrontations hundreds of times every year. Nevertheless, over the last 20 years officer-involved shootings have averaged less than eight annually in Denver. These numbers are sharply down from the 1970s and early 1980s when there were 12-to-14 shootings each year.

Skill in the use of tactics short of deadly force is an important ingredient in keeping officer-involved shootings to a minimum. Training Denver officers receive in guiding them in making judgments about the best tactics to use in various situations, beyond just possessing good firearms proficiency, is one of the key ingredients in minimizing unnecessary and preventable shootings. Denver police officers handle well over a million calls for service each year and unfortunately in responding to these calls they face

hundreds of life-threatening encounters in the process. In the overwhelming majority of these situations, they successfully resolve the matter without injury to anyone. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. It should be a part of the review of every officer-involved shooting, not just to look for what may have been done differently, but also to see what occurred that was appropriate, with the ultimate goal of improving police response.

RELEASE OF INFORMATION

Officer-involved shootings are matters of significant and legitimate public concern. Every effort must be made to complete the investigation and make the decision as quickly as practicable. The Denver Protocol has been designed to be as open as legal and ethical standards will permit. “Fair Trial -- Free Press” standards and “The Colorado Rules of Professional Conduct” limit the information that can be released prior to the conclusion of the investigation, and the “Colorado Criminal Justice Records Act” dictates that the public interest be considered before releasing criminal justice records.

Officer-involved shooting cases always present the difficult issue of balancing the rights of the involved parties and the integrity of the investigation with the public’s right to know and the media’s need to report the news. The criminal investigation and administrative investigation that follows can never keep pace with the speed of media reporting. This creates an inherent and unavoidable dilemma. Because we are severely restricted in releasing facts before the investigation is concluded, there is the risk that information will come from sources that may provide inaccurate accounts, speculative theories, misinformation or disinformation that is disseminated to the public while the investigation is progressing. This is an unfortunate byproduct of these conflicted responsibilities. This can cause irreparable damage to individual and agency reputations.

It is our desire to have the public know the full and true facts of these cases at the earliest opportunity, but we are require by law, ethics, and the need to insure the integrity of the investigation to only do so at the appropriate time.

CONCLUSION

The protocol that is used in Denver to investigate and review officer-involved shootings was reviewed and strengthened by the Erickson Commission in 1997, under the leadership of William Erickson, former Chief Justice of the

Colorado Supreme Court. The report released after the 15-month-long Erickson Commission review found it to be one of the best systems in the country for handling officer-involved shootings. We recognize there is no “perfect” method for handling officer-involved shooting cases. We continue to evaluate the protocol and seek ways to strengthen it.

We encourage any interested person to read the decision letter in these cases, and if desired, to review the investigative case file at our office to learn the facts. We find that when the actual facts are known a more productive discussion is possible.

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