



DenverDA

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March 10, 2016

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 Kenneth Manzanares (Badge 96014) and Officer John Mehrrens (Badge 06003) on January 11, 2016, in the parking lot at 2601 Zuni Street, Denver, Colorado, which caused the death of Ramone Lonergan, DOB 11/27/83.

Dear Chief White:

I have reviewed the investigation of the officer-involved shooting that resulted in the death of Mr. Ramone Lonergan and my legal analysis has been completed. I conclude that Detective Kenneth Manzanares and Officer John Mehrrens were justified under Colorado law in using deadly physical force directed at Mr. Lonergan and that no criminal charges are appropriate. My decision, based on criminal law standards, does not limit administrative action by the Denver Police Department or civil actions where non-criminal issues may be reviewed and where less stringent laws, rules and legal levels of proof apply. Any interested party may seek judicial review of this decision under C.R.S. 16-5-209. Attached to this letter is our "Officer-Involved Shooting Protocol 2016" which describes the procedure used in the investigation of officer-involved shootings.

SUMMARY OF FACTS

On the afternoon of January 11, 2016, Denver Police Officers John Mehrrens and Kevin Burke were patrolling the parking lots of the Ramada Denver Midtown Hotel / Super 8 Denver Midtown Hotel located at 2601 Zuni Street. (Both hotels are at this location and share one lobby). The officers located a vehicle that was reported to have been stolen out of Wheat Ridge, Colorado. They notified dispatch of their location and they began to investigate. Other officers, including Detectives Kenneth Manzanares and Gerald Sloan, responded to the area.

Officer Burke went into the lobby with the intention of investigating whether any occupants of the hotel were associated with the stolen vehicle. Officer Mehrrens stayed outside in an unmarked police car. While in the lobby, Officer Burke noticed that a female customer

was trying to rent a room with a credit card that had been cut in half. Her suspicious behavior led him to suspect that she was attempting to commit a fraudulent transaction with a fraudulent credit card. This led him to focus on her and to investigate her actions and her identity. Detective Sloan went into the lobby to assist. Officer Burke and Detective Sloan learned that the female was associated with an SUV (a Toyota RAV 4) that was parked outside of the lobby. Detective Sloan asked Officer Mehtens to drive his vehicle behind the SUV.

When Officer Mehtens drove his unmarked police car behind the SUV, Mr. Lonergan got out of the SUV. This was the beginning of the series of events that culminated in the shooting death of Mr. Lonergan. Video from a surveillance camera shows the shooting and the actions preceding the shooting. According to the clock on the video, the shooting occurred at approximately 3:52 p.m. The two prime witnesses to the shooting are the two Denver officers who fired their weapons, Officer John Mehtens and Detective Kenneth Manzanares.

Denver Police Officer John Mehtens voluntarily agreed to be interviewed by investigators at DPD Headquarters shortly after the shooting. He said that he was on duty, driving an unmarked blue Chevrolet Impala. He and his car partner, Officer Kevin Burke, located a stolen vehicle in the parking lot of the hotel at 2601 Zuni Street. Officer Burke went into the lobby to investigate. After a few minutes, Detective Sloan asked Officer Mehtens to drive his car to the parking lot next to the lobby and to pull in behind an SUV that was parked in that lot facing west. Officer Mehtens drove his vehicle behind the SUV and stopped.

Officer Mehtens said he saw a male, who was later identified as Mr. Lonergan, get out of the front passenger side of the SUV. Officer Mehtens got out of his car as well. Officer Mehtens was dressed in a standard Denver police uniform.

Officer Mehtens walked around the back of his car and to the passenger side before walking toward Mr. Lonergan who was still on the passenger side of the SUV. Officer Mehtens described that Mr. Lonergan's body language caused him to think that he was going to run. Officer Mehtens asked for identification but Mr. Lonergan walked away from him toward the front of the SUV. Officer Mehtens followed him and told him not to run. Mr. Lonergan quickly went around the front of the SUV to the driver side and then to the rear of the SUV. Officer Mehtens followed him around to the driver's side. At this point, Officer Mehtens noticed Mr. Lonergan was holding a black gun in his right hand.

Officer Mehtens said he stopped and drew his own gun. He also announced "gun" on the police radio and aired that he was holding his position. Mr. Lonergan continued around the back of the SUV to the passenger side. Officer Mehtens stayed on the driver's side. At about this time, Officer Mehtens noticed Detective Manzanares drive into the parking lot and stop.¹

The SUV was between Officer Mehtens and Mr. Lonergan. Officer Mehtens described seeing Mr. Lonergan near the front hood of the SUV, holding his gun, looking at Detective Manzanares. Mr. Lonergan then began to advance in the direction of Detective Manzanares by walking along the passenger side of the SUV. When Mr. Lonergan moved past the windshield

¹ Detective Manzanares stopped his car behind and to the passenger side of the SUV and Officer Mehten's police car.

toward Detective Manzanares, Officer Mehrtens' view was blocked momentarily by the SUV. He heard gunshots.

He then saw Mr. Lonergan, still with his gun, lunge into the front passenger side of the SUV.² Prior to this, Officer Mehrtens had not noticed there was a female in the driver's seat. At this moment, however, he saw her. He said everything happened instantly. He thought Detective Manzanares may have been shot and he did not know if Mr. Lonergan was going to shoot the woman in the driver's seat and turn the gun on him. He said he was scared Mr. Lonergan was going to kill the female and him. He saw the gun in Mr. Lonergan's hand and saw that it was pointed at him. Officer Mehrtens fired multiple shots from the driver side of the SUV, aiming at Mr. Lonergan.

Denver Detective Kenneth Manzanares also voluntarily agreed to be interviewed shortly after the shooting. He said he was on duty, working in plain clothes, driving an unmarked black Dodge Stratus. He was near the hotel because of the investigation concerning the stolen vehicle officers located in the parking lot. Detective Sloan asked him to come to the hotel lobby, so he drove toward the parking lot next to the lobby. He said he was waiting to turn left into the parking lot from Zuni Street when he saw Officer Mehrtens and another male (Mr. Lonergan). They were both on foot. When he saw Officer Mehrtens place his hand on his gun, he believed that Officer Mehrtens was startled by something he had seen. Detective Manzanares saw Mr. Lonergan go to the passenger side of an SUV.

Detective Manzanares drove into the parking lot to a point rearward and to the passenger side of the SUV. He got out of his car. He saw Mr. Lonergan move to the front of the SUV. He told investigators:

I jump out... I can't see his hands, I keep yelling at him: "Come -- come around to the other side." Well, he comes around... and then I see he has a gun. I pulled my gun out. And, I keep ordering him: "Drop the gun. Drop the gun. Police."³ I keep announcing, "I'm police!" And he -- he just kind of, like, just ignoring me,...like I'm not even there and he keeps walking towards me.

Detective Manzanares described his thoughts just before he fired three shots at Mr. Lonergan:

I'm focused on the gun I kept looking at the barrel for some reason because -- of all the stuff that goes around, I was concerned that he had a fake gun -- because I was like, is he trying to ambush Officer Mehrtens? I didn't know what he was doing, so I kept -- I kept thinking to myself: "I'm wasting too much time focusing on his gun and he's coming at me." And,

² Officer Mehrtens saw this from the driver's side of the SUV through the driver's side window.

³ Ms. Amanda Spack, who was in the driver's seat of the SUV, confirmed hearing an officer yelling to Mr. Lonergan to drop his gun. However, she said she did not see that Mr. Lonergan had a gun.

I didn't see any orange markings; I was looking at the tip. And then all of a sudden, I continued yelling at him and then he -- he kind of, like, paused, and just stared at me and then he starts to bring the gun out from his chest like this. And, that's when I started shooting.

Detective Manzanares described that Mr. Lonergan was holding the gun near his chest, but then moved the gun out from his chest and began turning the muzzle toward him. That is when Detective Manzanares fired. The first shot did not affect Mr. Lonergan, so Detective Manzanares fired two more shots.

Surveillance video from a camera outside of the lobby confirms the events both officers described. The camera was directed toward the southeast and the video shows the passenger side of the SUV, the parking lot surrounding it, and Zuni Street in the background. (There is no audio). Mr. Lonergan can be seen getting out of the front passenger door of the SUV as Officer Mehrtens drives his vehicle behind the SUV. Mr. Lonergan watches Officer Mehrtens walk around the rear of his car. When Officer Mehrtens walks towards him, Mr. Lonergan turns away and walks to the front of the SUV. Officer Mehrtens is several feet behind, following. Mr. Lonergan turns to his left to go around the front of the SUV and then hurries along the driver's side toward the rear. Officer Mehrtens follows him around to the driver's side but then stops and appears to speak on the radio. Officer Mehrtens stays on the driver side as Mr. Lonergan circles around the rear of the SUV to the passenger side.

When Mr. Lonergan comes around to the passenger side, it appears in the video that he is holding something in his right hand with his right arm extended down by his side. He stands for a few seconds in the open passenger doorway. Officer Mehrtens moves to the rear of the SUV and Mr. Lonergan moves to the front of the SUV.

The video shows Detective Manzanares turn left from Zuni Street and drive into the parking lot and stop. He gets out of his car, walks closer to the SUV and draws his gun. He points his gun with both arms outstretched in front of him as he walks toward Mr. Lonergan. Mr. Lonergan is in front of the SUV. The video shows him holding a gun in his right hand.⁴

Mr. Lonergan then begins to walk toward Detective Manzanares along the passenger side of the SUV. Detective Manzanares stops. They are approximately one car length from each other and there is no cover or obstacle between them. Mr. Lonergan gets to the front passenger door, which is open, and Detective Manzanares fires. He fires three gunshots in less than two seconds. As the shots are being fired, Mr. Lonergan is moving to get into the SUV.⁵

Mr. Lonergan gets into the front passenger seat and pulls the door nearly closed. Almost immediately, it appears that a gunshot is fired through the front windshield.⁶ Officer Mehrtens is seen next to the driver side window and appears to be firing at Mr. Lonergan at this time.⁷

⁴ After the shooting, this black handgun was recovered inside the SUV.

⁵ On the video it appears that the second shot struck the open passenger door.

⁶ As noted below, the evidence shows this shot was fired by Mr. Lonergan from inside the car through the front windshield.

⁷ The video does not show gunshots striking Mr. Lonergan.

At the scene, the handgun that Mr. Lonergan used was recovered inside the SUV on the floorboard on the front passenger side. It was a Chiappa model Puma 22 caliber semiautomatic pistol. Additionally, a spent cartridge casing that had been ejected from this pistol was recovered inside the SUV. The Denver Crime Laboratory Firearms Unit examined the pistol and determined that it will fire. The Firearms Unit also microscopically identified the spent casing as having been fired in this 22 caliber pistol. The bullet hole that was near the top of front windshield on the driver's side of the SUV was examined by investigators and was determined to have been made by a bullet fired from inside the SUV.⁸

Detective Manzanares carried a Smith and Wesson 9 millimeter caliber semiautomatic handgun. The Firearms Unit microscopically identified three spent cartridge casings recovered at the scene as having been fired in this handgun.⁹ One fired bullet recovered from the front passenger door panel of the SUV was identified as having been fired by this gun.

Officer Mehtens carried a Beretta 9 millimeter caliber semiautomatic handgun. Six spent cartridge casings recovered on the ground at the scene were microscopically identified as having been fired in this handgun. Six fired bullets were recovered that were also microscopically identified as having been fired by Officer Mehtens' gun.¹⁰

An autopsy was performed on Mr. Lonergan's body by Forensic Pathologist, Meredith A. Frank, M.D., of the Office of the Medical Examiner. The Autopsy Report revealed that Mr. Lonergan was struck by four bullets. He had gunshot wounds to his left forearm, left chest, right chest, and head. Dr. Frank determined the *cause* of his death was "multiple gunshot wounds. The *manner* of death is homicide."

LEGAL ANALYSIS

As I have noted in previous letters, the designation by the Medical Examiner that the manner of death is "homicide" is not an indication that the actions that caused the death were criminal. While intentionally shooting and killing another person is generally prohibited as a crime of murder in Colorado, in some situations it is considered *justified* and not unlawful.

C.R.S. 18-1-704 describes the legal justification for using deadly physical force in self-defense or in defense of another person. As pertinent here, it provides:

- (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.

⁸ The safety film on the glass protruded outward and the glass around the hole was beveled outward. The trajectory of the bullet through the driver side vanity visor and then through the windshield indicates it was fired from the front passenger seat.

⁹ This evidence indicates that Detective Manzanares fired three shots, as he indicated in his interview. This is consistent with the bullet count and weapon examination conducted after the shooting by investigators.

¹⁰ This evidence indicates that Officer Mehtens fired six shots. This is consistent with the bullet count and weapon examination conducted after the shooting by investigators.

(2) *Deadly physical force* may be used only if a person reasonably believes a lesser degree of force is inadequate and:

- (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury;

C.R.S. 18-1-707 describes the legal justification for a peace officer's use of deadly force while effecting an arrest or preventing an escape. As pertinent, it states:

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

- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using *deadly physical force* upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - (II) Is attempting to escape by the use of a deadly weapon; or
 - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

It should be noted that a person accused of a crime for using physical force does not need to prove that he or she was justified in using force. Instead, it is the prosecution's burden to prove that justification for the use of force did not exist. Lack of justification, like other elements of a crime, must be proved beyond a reasonable doubt.

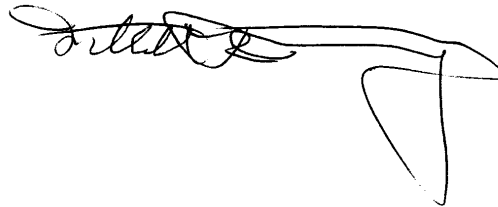
Accordingly, in making the decision whether to file criminal charges here, the essential question I must consider is: **Would a jury unanimously believe beyond a reasonable doubt that either Detective Manzanares or Officer Mehrtens lacked legal justification for using deadly physical force against Mr. Lonergan?**

CONCLUSION

As to that question, I conclude that a jury would not find the officers lacked justification. To the contrary, the evidence shows that both officers were legally justified in using deadly physical force. The video evidence is consistent with the descriptions given by both officers. For reasons known only to Mr. Lonergan,¹¹ he chose to arm himself with a handgun and to brandish it when approached by Officer Mehrtens. When confronted by both officers he chose to defy commands to drop his gun and he chose to advance toward Detective Manzanares and make the movements with his gun that threatened Detective Manzanares' safety. Any reasonable officer would be justified in fearing for his own safety under these circumstances. Then, when fired upon by Detective Manzanares, instead of dropping his gun, Mr. Lonergan got into the SUV, pointed his pistol in the direction of Officer Mehrtens and fired. Fortunately, the bullet fired by Mr. Lonergan went through the windshield and did not hit Officer Mehrtens.

A Denver jury would find that both officers were justified in firing the shots that struck Mr. Lonergan. Accordingly, no criminal charges will be filed as a result of this shooting.

Very truly yours,



Mitchell R. Morrissey
Denver District Attorney

cc: Detective Ken Manzanares; Officer John Mehrtens; John Davis, Attorney for Det. Manzanares; Zach Wagner, Attorney for Officer Mehrtens; Michael Hancock, Mayor; All City Council Members; Scott Martinez, Denver City Attorney; Stephanie O'Malley, Executive Director; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Paul Pazen, District 1 Commander; Gregory Laberge, Crime Lab Commander; Joseph Montoya, Commander of Internal Affairs; Lieutenant Matthew Clark, Major Crimes Division; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Detective Jaime Castro, Homicide; Detective Mark Crider, Homicide; Lt. Scott Torpen, Aurora Police Department Major Investigations Section; Sgt. Matt Fyles, Aurora Police Department; 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.

¹¹ Controlled substances and drug paraphernalia were recovered from inside the SUV and from Mr. Lonergan's pants pocket. Two warrants for the arrest of Mr. Lonergan were active from Arapahoe County. The Autopsy Report indicated that toxicology tests of Mr. Lonergan's blood and urine revealed that he had alcohol (.135 BAC), amphetamine (81 ng/ml), and methamphetamine (1400 ng/ml) in his system.



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 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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