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Second Judicial District



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November 9, 2017

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

Re: Investigation of the shooting of Sergio Casimiro-Mejia DOB 1-23-98, DPD # 756202, by Officer Sergey Gurevich, Badge 05-150, on September 8, 2017, at 4525 Kingston St.

Dear Chief White,

The investigation and legal analysis of the shooting and wounding of Sergio Casimiro-Mejia, in which one shot was fired by Denver Police Department (DPD) Officer Sergey Gurevich, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Gurevich. The facts demonstrate that the officer's use of physical force was legally justified. My decision, based on Colorado criminal law, does not limit potential administrative action by the DPD, where non-criminal issues can be reviewed, or potential civil actions where less-stringent laws, rules, and legal levels of proof apply. This letter will be posted on the Denver District Attorney website and our file will be available for interested citizens to review.

### SUMMARY of FACTS

On September 8, 2017, at approximately 9:00 P.M. D.V.<sup>1</sup> took his evening break from his job at Intertech Medical at 4525 Kingston St. and walked out into the company parking lot. In the north parking lot, D.V. noticed a co-worker's<sup>2</sup> car that was moving awkwardly in the company parking lot. D.V. approached the car and was standing a few feet away when he saw a young Hispanic male in the driver's seat "working hard" and banging an unknown tool on the car's steering column. He noticed the man in the car – later identified as Sergio Casimiro-Mejia – was sweating profusely and "drenched." D.V. concluded that Mr. Casimiro-Mejia "was pretty determined to steal the car." D.V. said he "knew something bad was going on." D.V. tried to stop the theft and he knocked on the driver's window. At that time, D.V. reported that he clearly saw Mr. Casimiro-Mejia "lift[ ] his shirt and took a good grip of what I saw a pistol tucked in his pants." D.V. feared he would be shot and backed away and then turned and ran into the building

<sup>1</sup> I use initials to maintain the privacy of the citizen-witnesses.

<sup>2</sup> D.V. knew this was a co-worker's car. The co-worker is S.B., who worked at Intertech Medical, and he owned the 2000 Honda Civic. He had parked the car in the parking lot when he arrived at work the evening of September 8, 2017. S.B. does not know Sergio Casimiro-Mejia and had not given him permission to enter his car. S.B. was not a witness to any of the relevant events, but is the listed victim for the auto theft charges.

and called 911. D.V. remained in the area watching the following events. D.V. watched as Mr. Casimiro-Mejia continued to try and steal the Honda.

Based on D.V.'s call to 911, at 9:02 P.M. DPD Communications issued a city-wide "simulcast"<sup>3</sup> to all available police officers. Denver Police Officer Sergey Gurevich, #05150, responded to the emergency call and went to 4525 Kingston St. DPD Communications advised all officers that the reporting party, (D.V.), had interrupted the suspect stealing a car and the suspect had pulled a gun on the reporting party

Officer Gurevich recalled that the emergency dispatch was a call of a "robbery in progress" and that "the suspect had pulled a gun on the victim." Before arriving at 4525 Kingston, Officer Gurevich activated his body worn camera (BWC). Officer Gurevich arrived at 9:04 P.M., approximately two minutes after the priority dispatch. At his arrival, Officer Gurevich had the overhead police car lights activated and he also turned on the police siren. Officer Gurevich reported that he saw the suspect moving the car back and forth and Mr. Casimiro-Mejia appeared to be unable to properly operate the vehicle. Officer Gurevich reported that given the nature of the call, he drew his handgun once he was out of his police car. Officer Gurevich got out of his police car and immediately gave Mr. Casimiro-Mejia multiple commands to stop the car and show his hands. Mr. Casimiro-Mejia was noncompliant. As Officer Gurevich approached the moving vehicle, he reported that he heard Mr. Casimiro-Mejia say something unintelligible, but he said something about a gun<sup>4</sup>. Officer Gurevich reported that based on the totality of the circumstances, he concluded that Mr. Casimiro-Mejia was "desperate." Officer Gurevich's BWC is consistent with his recollection of the events preceding the shooting.<sup>5</sup>

As Officer Gurevich got out of his car and issued orders, Mr. Casimiro-Mejia put the car into reverse and ran over two parking blocks and he may have also hit a nearby fence. Officer Gurevich continued to move towards the car, as Mr. Casimiro-Mejia attempted to free the car from the parking blocks and the fence. D.V. had remained at the scene and described these events as Mr. Casimiro-Mejia was "driving back and forth, back and forth trying to get away." D.V. concluded that Mr. Casimiro-Mejia "would not comply" with the Officer's commands. Officer Gurevich's BWC is consistent with these reports.

When Officer Gurevich was approximately 3 to 5 feet from the driver's door, he looked into the car and saw Mr. Casimiro-Mejia staring at him but he also reached down and appeared to retrieve something. Officer Gurevich had activated a light mounted to his gun that was illuminating the driver's window and the interior of the vehicle. From Officer Gurevich's BWC, mostly only a glare can be seen on the driver's window. As he approached the car, Officer Gurevich said he saw Mr. Casimiro-Mejia with a handgun in his right hand and moving the gun in the direction of Officer Gurevich. Officer Gurevich reported that he was "fearing that if I don't fire, he will fire at me." [sic] Officer Gurevich reported, and his BWC confirms, that he then fired his Glock 17 handgun one time hitting the driver's window and then striking Mr. Casimiro-Mejia.

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<sup>3</sup> Officer Gurevich correctly described a simulcast as a "high priority or dangerous" call.

<sup>4</sup> After his eventual arrest, Mr. Casimiro-Mejia can be heard, albeit largely unintelligible, mentioning someone else with a gun (Gurevich BWC at 2:01)

<sup>5</sup> Officer Gurevich did not review his BWC before providing his statement to investigators. (Gurevich Interview at 46:20)



This photo shows Officer Gurevich's patrol vehicle and the final resting place for the Honda that Mr. Casimiro-Mejia was attempting to steal. The broken glass is from when Officer Gurevich shot the driver's window.

Officer Justin Jones #15087 arrived on scene and was parking his police vehicle at the moment Officer Gurevich fired his weapon, but Officer Jones did not see who had fired the shot he heard. Similarly, the reporting party, D.V., had remained in the immediate area and said he heard two gunshots, but he could not see who fired a weapon

After being shot, Mr. Casimiro-Mejia continued to pull the car forward a short distance. He stopped and put his hands out of the broken window. At 9:06 P.M., Officer Jones reported to dispatch that shots had been fired. Officers Gurevich and Jones continued to hold Mr. Casimiro-Mejia at gun-point and directed him to keep his hands outside of the car which he did. Officer Gurevich then approached Mr. Casimiro-Mejia and the open driver's window. Inside, on the lap of Mr. Casimiro-Mejia, Officer Gurevich saw a handgun. The handgun on Mr. Casimiro-Mejia's lap can be seen on Officer Grevich's BWC. Officer Gurevich reached inside the car, and disarmed Mr. Casimiro-Mejia by removing the handgun from his lap and tossing it away from the vehicle. Officer Gurevich disarmed Mr. Casimiro-Mejia of a Smith and Wesson .357 magnum revolver that was loaded with six bullets. Mr. Casimiro-Mejia's gun was found in the parking lot at marker 2.





Mr. Casimiro-Mejia's Smith and Wesson .357 magnum revolver.



The front of Officer Gurevich's patrol car is to the left. The Honda is to the right. At marker 2, is the gun used by Mr. Casimiro-Mejia that Officer Gurevich tossed to this location.

Ultimately, other Denver Police Officers arrived on scene and Mr. Casimiro-Mejia was removed from the car. D.V. was brought to the crime scene and he positively identified Mr. Casimiro-Mejia as the person who was stealing the car and had threatened him with a handgun. Thereafter, Mr. Casimiro-Mejia was taken into custody and transported to Denver Health Medical Center (DHMC).

Mr. Casimiro-Mejia was shot once: he was stuck in the left check and the bullet passed through his neck into his right shoulder and exited out of his right biceps. DHMC Dr. Lavonas determined Mr. Casimiro-Mejia suffered “serious bodily injury” with “gunshot wounds to neck, chin, shoulder [and a] fractured mandible.”

On September 9, 2017 Detectives Meoni and Hohnholz went to the Denver Detention Center to interview Mr. Casimiro-Mejia. He refused to leave his pod to speak with Detectives.

### 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 by a peace officer is justified. As the evidence establishes that Sergio Casimiro-Mejia’s injuries resulted from a shot fired by Officer Gurevich, the determination of whether Officer Gurevich’s conduct was criminal is primarily a question of legal justification.

Section 18-1-707, C.R.S. defines the circumstances under which a peace officer can justifiably use physical force in Colorado. In pertinent part, the statute provides:

- (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.

Additionally, an officer may justifiably rely on the Colorado law regarding self-defense which is applicable to all citizens. Section 18-1-704, C.R.S. describes the situation in which a citizen can use force in defense of him or herself of another person. 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.

The issue in this case is whether the use of physical force by Officer Gurevich 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 legally 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, 275-276 (Colo. 1910).

The United States Supreme Court considering the reasonableness of an officer’s beliefs when using physical force has stated:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

*Graham v. Connor*, 490 US 386 (1989) at pp. 396-397.

The issues are, therefore, whether at the time Officer Gurevich discharged his firearm, did he reasonably believe that he was about to be subjected to unlawful physical force, and furthermore, that his actions in defending against that force were objectively reasonable. Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that he was in imminent life-threatening danger and that it was necessary to discharge his firearm to defend himself or another in order to stop the threat that Sergio Casimiro-Mejia presented. Officer Gurevich’s actions would also be justified if a reasonable police officer could have concluded that under the totality of the circumstances, it was necessary to discharge his firearm to take Sergio Casimiro-Mejia into custody.

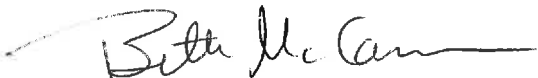
## CONCLUSION

Based on the facts of this case as demonstrated by all of the evidence, the actions of Officer Sergey Gurevich were legally justified under Sections 18-1-707(1)(a), and 18-1-707(1)(b) and 18-704(1), C.R.S. Officer Gurevich was confronted by an armed man, persistently committing a felony offense and trying to escape. Officer Gurevich was responding to an emergency call of a "robbery in progress" where Mr. Casimiro-Mejia had already threatened another person with his handgun. Officer Gurevich attempted to take Mr. Casimiro-Mejia into custody safely, but he was noncompliant, if not defiant. Mr. Casimiro-Mejia was dangerously and recklessly attempting to operate the stolen motor vehicle. Further, Mr. Casimiro-Mejia was armed with a loaded .357 magnum handgun, that he had already shown to D.V. All of these circumstances caused by Mr. Casimiro-Mejia placed Officer Gurevich in imminent life-threatening peril. Moreover, when Officer Gurevich confronted Mr. Casimiro-Mejia, the officer believed he had raised his handgun and moved the gun towards Officer Gurevich. These actions by Mr. Casimiro-Mejia reasonably and objectively caused Officer Gurevich to believe that Mr. Casimiro-Mejia's use of unlawful physical force was imminent. Given the totality of the circumstances, and under controlling Colorado law, Officer Gurevich's actions in using his firearm to apprehend Sergio Casimiro-Mejia were objectively reasonable.

I would also commend Officer Gurevich for his noteworthy restraint in only firing one shot in a highly stressful and dangerous situation. In a split second decision, by not firing additional shots, Officer Gurevich undoubtedly prevented a far worse injury and probable death of Mr. Casimiro-Mejia. The footage from his BWC demonstrates how well he handled a very scary and tense situation.

The Denver Police Department is the custodian of records 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. The investigative file in the District Attorney's office is available for review upon request. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. § 16-5-209.

Sincerely,



Beth McCann  
Denver District Attorney

cc: Officer Sergey Gurevich, Denver Police Department; David Quinones, Deputy Chief of Police Operations; Matt Murray, Deputy Chief of Police Administration; Barb Archer, Commander of Investigative Support; Lieutenant Matthew Clark, Major Crimes; Lieutenant Adam Hernandez, Major Crimes Division; Ryan Brackley Assistant District Attorney.