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

RE: Investigation of the shooting death of Peter Le DOB 11/5/65, in which Denver Police Officer Tom Weis, Badge 95-074 DPD# 808922, fired shots on February 13, 2018, at 2250 S. Clermont Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting and death of Peter Le has been completed. I conclude that under applicable Colorado law no criminal charges shall be filed against Denver Police Department (DPD) Officer Tom Weis for this shooting and death. 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.

SUMMARY of FACTS

Late in the evening of February 13, 2018, Peter Le forced his way into the home of Quyen Le and D.L.¹, at 2250 S. Clermont. Quyen Le was the 86-year-old father of Peter Le and D.L. Peter Le came to the home armed with a “shotgun and handgun” according to the subsequent interview with D.L. Peter Le was enraged² over a recent civil suit in which the wife of his other brother, K.L., had apparently sued Peter Le³. In the interview, D.L. stated that Peter Le was demanding that his father call K.L.’s wife and direct her to drop the law suit. Peter Le threatened to kill his father if he did not place the phone call. Peter Le then fired his gun into the wall of the room where Quyen Le was laying down. D.L. stated that Peter Le also pointed the gun in the face of

¹ I use the initials to maintain the privacy of citizen witnesses.

² The later autopsy showed that Peter Le also had a blood alcohol content of .146

³ The nature of this family dispute is unclear. Whatever the source of the disturbance, it is largely irrelevant to my factual and legal analysis.

D.L., demanding the phone call be made. Eventually, D.L. called K.L. and told K.L. that he needed “to come quick, Peter [was] doing some crazy stuff.”



The front door at 2250 S. Clermont, forced open by Peter Le.

On February 13, 2018, at approximately 10:30 PM Denver Combined Communications Center received a 911 call from K.L.⁴ K.L. reported that there was an emergency “family disturbance” at his father’s home at 2250 S. Clermont. K.L. said it was his brother Peter Le who was possibly armed and was threatening his father, Quyen Le. Dispatch shared the information provided by K.L. and aired that Peter Le was at 2250 S. Clermont, “harassing” his father, that he may have been drinking, and he may be armed. At 10:31 PM DPD Officer Weis was dispatched to 2250 S. Clermont.

At 10:33 PM Officer Weis was the first officer to arrive at 2250 S. Clermont. When he arrived, Officer Weis was contacted in front of the home by D.L. On the Body Worn Camera (BWC), D.L. is heard telling Officer Weis “my brother tried to kill my dad” and that Peter Le was inside and “he has a knife and a gun.”⁵ Officer Weis would later state that he saw Peter Le move across the open front door inside the home and saw Peter Le with “a large kitchen butcher knife in [his] hand.” Officer Weis went to the open front door and saw Peter Le inside the home, and he was then standing over his father who was lying in a bed several feet from the front door. Peter Le was on his father’s left side.⁶ Peter Le was holding both a knife and a handgun. Officer Weis ordered Peter Le to come out of the house, and Peter Le adamantly refused and stated, “stay out or I will shoot him.”

⁴ When he called 911, K.L. was not at the Clermont home. K.L. was called by his brother D.L. who was present at the disturbance on Clermont Street.

⁵ When Officer Weis gave his interview on February 14, 2018, he said he did not initially know that Peter Le was armed with a gun (Officer Weis Interview at p.7). Officer Weis did not review his BWC prior to giving his statement.

⁶ This is significant as all of the gunshot wounds suffered by Quyen Le were on the left part of his head and left leg.



The .40 caliber gun used by Peter Le and the knife he wielded.

Officer Weis remained at the threshold of the front door and tried to talk to Peter Le.⁷ Peter Le remained highly agitated, extremely combative, and he unalterably refused to comply with Officer Weis' commands. Officer Weis later described what he saw when he looked inside the home:

When I stepped on the porch and looked inside the residence, I saw the other party that had the knife, he had a knife in one hand and a black handgun in the other hand, and he was pointing it at another gentleman that was inside the residence who was laying down face up in a bed or couch....



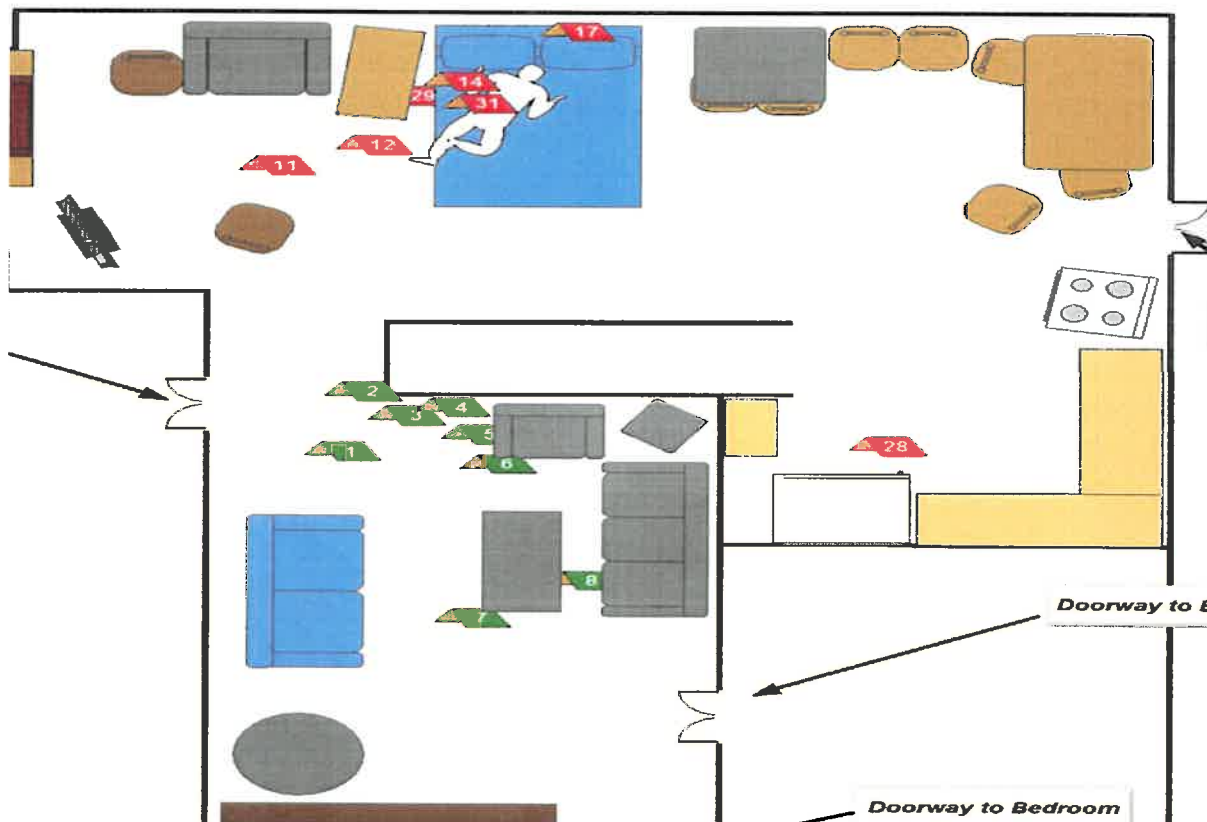
This photo approximates the location where Officer Weis was standing when pleading with Peter Le. Peter Le was on the far side of the bed, on the left side of Quyen Le, near his head.

⁷ Officer Weis had completed a forty-hour DPD training program on Crisis Intervention (Weis Interview, p. 30).

As can be clearly heard⁸ on the BWC, Officer Weis directed Peter Le more than 25 times to drop the gun. Officer Weis actually pleaded with Peter Le to disarm. Despite repeated orders, Peter Le remained standing over Quyen Le, pointing the gun at his father's head. Peter Le can be heard on the BWC repeatedly threatening his father and Officer Weis. Peter Le asked Officer Weis to shoot him, and said "shoot me or I shoot him" and "he dies or else I die" and "get the fuck out before I shoot you." Officer Weis pleaded with Peter Le to put down the gun. Peter Le refused and said "tonight is my last night." After more than 3 minutes of pleading with Peter Le, Peter Le pointed the gun at his father and began a countdown. Officer Weis described the events following:

I tried to -- I mean I pleaded with him to put the weapon down. I did have my weapon drawn and pointed at him. He did not comply with my orders. He continually threatened to shoot his father. He began a countdown and appeared to lean forward towards his father.... I was afraid he was going to shoot his -- kill his father -- so I made the decision to fire my weapon.

I fired a couple rounds, then he fired at least -- at least once, maybe twice. I fired again, I'm not sure, once or twice. At that point, the threat -- the gentleman kind of fell backwards to the ground. I entered the residence.



The red evidence markers are where Peter Le's shell casings were recovered. The knife used by Peter Le was also recovered on the bed. The green evidence markers are the locations of Officer Weis' shell casings.

⁸ Unfortunately, Officer Weis' BWC was inadvertently directed at the door frame, so the video shows very little of this incident. However, the verbal exchanges between Officer Weis and Peter Le were captured on the BWC.

It cannot be determined if Officer Weis or Peter Le fired first. It is clear that Peter Le did shoot his father Quyên Le four times in the head and once in the left thigh. Peter Le shot his father five times and all of the wounds had evidence that Peter Le's gun was mere inches from his father when he shot.⁹ All of the wounds were on the left side of Quyên Le's body. The five bullets recovered from the bed (the wounds were through and through) came from Peter Le's gun. Quyên Le died from the five gunshots inflicted by Peter Le. Six .40 caliber shell casings from Peter Le's handgun were later recovered at the crime scene.

Officer Weis reported that once he shot Peter Le, Peter Le fell to the floor. Officer Weis was unsure how many times he fired his weapon. Peter Le's wounds were caused by Officer Weis' gun.

Approximately six minutes and twenty-three seconds after Officer Weis responded to 2250 S. Clermont, after the shootings, other officers arrived on scene. As can be seen and heard on BWC, even after he was shot, Peter Le repeatedly asked the officers to shoot him and he claimed that his father "forced" him shoot him.

Once he fell to the floor, Officer Weis moved the handgun from Peter Le's reach. The "shotgun" that D.L. saw with Peter Le when he forced his way into the home, was actually an assault rifle. This rifle was recovered near Quyên Le and was accessible to Peter Le.



The assault rifle recovered near the victim. The front door is to the right and behind the rifle.

Peter Le died several hours later as a result of two gunshot wounds to his abdomen (Autopsy of Dr. Caruso). Eight .45 caliber shell casings from Officer Weis were located near the front door and in the living room area.

⁹ As established by the Coroner, there was "gunpowder stippling" near each of Quyên Le's five wounds. When a firearm is discharged, the resulting explosion of the gunpowder expels from the weapon the projectile (bullet) and gunpowder, vaporized primer, and metal. Other than the bullet, these shot items comprise "stippling" found on the target. When stippling is found, it is proof that the muzzle was in close range to the target.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved beyond a reasonable doubt that the offense was committed without legal justification, as set forth in Colorado statutes.

The justification for a peace officer's use of physical force is set forth in §18-1-707(1), C.R.S. As pertinent to this case, the law provides:

... 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 ... 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

Further, §18-1-707(2), C.R.S. states that:

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.

These justifications are “affirmative defenses.” This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury could unanimously and reasonably find, beyond a reasonable doubt, that Officers Weis acted without lawful justification?**

CONCLUSION

The question presented in this case is whether, at the instant Officer Weis fired his weapon, the legal justifications for using deadly physical force as set forth in §18-1-707(1) and §18-1-707(2), C.R.S. were applicable. I conclude that they were. Officer Weis was confronted with a volatile and dangerous situation. Officer Weis was close to Peter Le as he held a gun to his 86-year-old father's head and repeatedly threatened to shoot his father and Officer Weis. Officer Weis used great restraint and pleaded with Peter Le – more than two dozen times – to drop the gun. When Peter Le made a movement indicating he was going to shoot his father, Officer Weis tried to save the life of Quyen Le by shooting at Peter Le. This was a great tragedy on many levels.

Under these extreme circumstances, pursuant to Colorado law, specifically, §18-1-707(2), C.R.S., Officer Weis reasonably used “deadly physical force,” to defend Quyen Le, and to defend himself. Further Officer Weis’ action were legally justified and clearly reasonable as he was trying to effect the arrest of Peter Le, who was enraged, non-compliant, and committing a felony offense in front of the Officer by brazenly promising to shoot his elderly father as he lay helpless in bed. Officer Weis was placed in an untenable position. Clearly, Quyen Le was in serious imminent danger of losing his life. Officer Weis was doing what he reasonably thought would prevent the death of Quyen Le by shooting at Peter. Tragically, for all involved, both Peter and Quyen Le lost their lives, a result that clearly was not the officer’s intent.

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

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

Graham v. Connor, 490 U.S. 386 (1989) at pp. 396-397.

Additionally, the United States Supreme Court has determined that where, as here, a police officer is placed into a position by a suspect and the officer is thereby confronted with “the choice of two evils,” an officer’s response to use deadly force can be, and oftentimes is, constitutionally reasonable. Scott v. Harris, 550 U.S. 372, 384 (2007).

Under these patently life-threatening circumstances, Officer Weis made a reasoned, albeit split-second, decision. Given this intense situation, Officer Weis’ decision to shoot Peter Le, in defense of Quyen Le, and in self-defense, and to effectuate an arrest, was justified under Colorado law.

Yours truly,



Beth McCann
Denver District Attorney

CC: Officer Tom Weis; Kristin Bronson, Denver City Attorney; Troy Riggs, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Barb Archer, Commander of Major Crimes Division; Megan Dodge, Commander of District 3; Gregory Laberge, Crime Lab Commander; Joe Montoya, Commander of Internal Affairs; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Aaron Lopez, Homicide; and Nicholas E. Mitchell, Office of the Independent Monitor.