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Jeff Hunter, General Manager
Allied Universal Security Services
5995 Greenwood Plaza Blvd.
Suite 225
Greenwood Village, CO 80111

Bob Grado
Chief of Police and Emergency Management
Regional Transportation District
1660 Blake St.
Denver, Co 80202

Re: Investigation of the shooting of Armando Vigil, 05-27-74, by Transit Security Officers Jesse Opp and Stephanie Suttmiller, on August 23, 2017, at 1198 Sheridan Blvd, Denver, Colorado.

Dear Mr. Hunter and Mr. Grado:

The investigation and legal analysis of the shooting death of Armando Vigil, in which shots were fired by Allied Universal Transit Security Officers Jesse Opp and Stephanie Suttmiller, has been completed. I conclude that under applicable Colorado law, the facts demonstrate that the Transit Security Officers use of deadly physical force was legally justified. My decision, based on Colorado criminal law, does not limit potential administrative action by Allied Universal, 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

On Wednesday, August 23, 2017 Allied Universal Transit Security Officers (TSO) Stephanie Suttmiller and Jesse Opp were working a bicycle patrol assignment under contract with Regional Transportation District (RTD) at 1198 Sheridan Blvd., Denver CO.¹ TSO

¹ Both TSO's were dressed in their standard yellow uniforms with a visible Allied Universal badge, and each carried a loaded firearm with 2 extra magazines. Both TSO's received 40 hours of firearms instruction prior to becoming

Suttmiller noticed an individual, later identified as Armando Vigil, 5/27/1974, sleeping on a hill on the Sheridan Station RTD property and initiated contact to check on his welfare. As TSO Suttmiller initially approached Mr. Vigil, he was laying down with his back to her. TSO Opp approached Mr. Vigil from the other direction. As TSO Suttmiller got closer, Mr. Vigil turned toward TSO Suttmiller and she noticed a handgun magazine in front of him, and a handgun protruding from his right front pants pocket. TSO Suttmiller immediately called out "gun!" and ordered him to keep his hands where she could see them. Mr. Vigil ignored her commands and sat up, reached into his pocket and took out the handgun, later determined to be an operable .45 caliber Colt semi-automatic pistol and pointed it directly at TSO Suttmiller. TSOs Suttmiller and Opp both observed Mr. Vigil remove the handgun from his pocket, and both fired their weapons at Mr. Vigil, striking him numerous times. TSO Suttmiller backed away from Mr. Vigil but stumbled and fell to the ground as she continued to fire at Mr. Vigil. After initially firing at Mr. Vigil, TSO Opp was able to move to a position of cover to the east. From that position, seeing his partner having fallen to the ground and believing she had been shot and was still in danger, TSO Opp fired additional shots at Mr. Vigil. TSO Suttmiller was able to get up and move to the same position of cover with TSO Opp. At this time, Mr. Vigil appeared to be down and no longer a threat.

Both TSOs then reloaded their handguns and approached Mr. Vigil with their guns drawn and pointed at him. Once they reached Mr. Vigil, they observed the gun and a magazine under the left side of his torso and TSO Suttmiller kicked them away from him. Mr. Vigil's backpack was also found next to him. The scene was then secured by Denver and Lakewood Police Departments.

First responders from the Denver Police Department immediately attempted resuscitation efforts on Mr. Vigil, and he was transported by ambulance to Denver Health Medical Center where he was pronounced deceased at 7:25 p.m.

TSO Opp was transported to DPD to be interviewed immediately after the event on 8/23/17. TSO Suttmiller was interviewed on 8/25/17 because she was transported to the hospital after the event due to injuring her wrist when she fell while trying to get out of Mr. Vigil's line of fire during the shooting. Det. Dan Andrews from DPD conducted both interviews. Both TSOs voluntarily agreed to be interviewed by DPD detectives without the assistance of counsel and described similar events.

In his interview, TSO Opp stated that TSO Suttmiller approached Mr. Vigil and asked him if he was ok,

...[a]nd he kind of rolled over, and that's when he had the gun halfway out of his pocket and I pointed it out to her, and he pushed it back into his pants and then he kept trying to get his hand back into the pants, and SUTTMILLER was telling him to get his hands out of his pockets and he reached completely into his pants, and I remember he pulled the weapon out and pointed it directly at Stephanie and she pulled her firearm first, and then I did, and we both were screaming, drop the weapon, drop the

armed officers and are required to pass a shooting aptitude test every three months. In addition, TSO Opp served as a Military Police Officer for 6 years.

weapon. And he was not responding verbally in any way, shape, or form, and then that's when we started firing... (2-70)

TSO Opp then described seeing TSO Suttmiller fall to the ground as Mr. Vigil leaned away. At this point, TSO Opp thought TSO Suttmiller had been shot. TSO Opp then ran to the east and took cover and began firing again as Mr. Vigil brought the gun back up towards TSO Suttmiller. She then got up and ran to his cover position.

[S]he ran over to me and I reloaded, and we approached with our guns drawn still, and she was screaming about asking me if I was hit and I just wasn't paying attention because I was -- honestly I was terrified because all I remember is the gun -- the gun that he pulled on us -- and she walks around in front of him and kicked the firearm out of his hand and I found a magazine -- I don't know if it had fallen out of his pocket or something, it was laying by his head -- I kicked that away and then I called out the shots fired and we re-holstered and it was not -- seems like seconds before Lakewood and DPD were kind of surrounding the area, and we checked each other to make sure we weren't hit and they just kind of took over from there. (2-70, 71).

During the shooting, TSO Opp was unsure if Mr. Vigil was firing shots or if he was only hearing shots from TSO Suttmiller. Det. Andrews asked him why he fired his weapon:

ANDREWS: Okay. And what caused you to fire that time?

OPP: That was when he directly pointed the firearm at Stephanie.

ANDREWS: And what did you think was going to happen?

OPP: I thought he was going to shoot her. I honestly thought he was going shoot her.

ANDREWS: And what was -- why did you respond by firing your gun?

OPP: He did not drop it and he was originally told to do so, and he had his hand on the trigger and everything, and when he didn't listen, the first thing that popped in my head is he was going to shoot.

ANDREWS: So why did you take the action you took?

OPP: Because I didn't want him to shoot Stephanie.

(2-76).

In her interview, TSO Suttmiller described that she approached Mr. Vigil to check on his welfare, and stated:

I immediately see a magazine. In his pocket is a gun. I radio out, gun. It didn't go through the air, but it was loud enough that my partner knew. I said to the individual, keep your hands where I can see them. He goes and he's fondling and I see the gun in his pocket, and so at the time, he's coming up like this and he's grabbing -- and the gun is huge. He [] pulls the gun. I immediately draw my gun and I tell him, drop the gun, drop the gun. And I know he's shooting. The gun is pointed right at my head. I back up. [] I put in fire -- I hear fire, and whatever, he pointed the gun at my head, so I know that there was fire at me, my partner is off to my

left-hand side, shooting at him. I'm shooting at him. I fall back, saved my life most likely. As I'm going back, I continue to fire. I didn't stop firing. Once I'm on my back, I'm still firing at his center mass. The individual is just sitting there taking these fires with his gun pointing at me. (2-94).

TSO Suttmiller then describes seeing Mr. Vigil had been shot but was still pointing the gun at her and it appeared that he was attempting to reload his weapon. Because her weapon had been emptied, she got up and reloaded as she ran to cover next to TSO Opp. From the cover position she described moving in closer to Mr. Vigil after he appeared to be down:

So I go in on the individual with my gun still pointed at him. At this time, he's laid back and his eyes are open, his mouth is open. I go to the bottom, I check all around him. I see -- I see the magazine and I see the gun under his arm. I kick the gun out. I keep kicking the gun out. I keep my gun facing him, watching him.... (2-95).

TSO Suttmiller stated that Mr. Vigil never said a word to her and that he immediately went for his gun. She believed that Mr. Vigil had fired at least one shot at her.

The crime scene was processed and numerous items of evidence were documented and collected. Twenty nine .40 caliber shell casings were recovered from the scene which matched the number of rounds missing from the firearms and two magazines each used by TSO's Suttmiller and Opp. Mr. Vigil's handgun was found to be unloaded and the magazine found next to it had four live rounds in it.



Mr. Vigil's gun and magazine as they were found on scene by DPD officers.

Vigil's probable positioning, it's clear that both TSOs fired rounds which struck him. The doctors offered no opinion in their report as to which wound(s) was fatal.

Of particular note was a wound to Mr. Vigil's right forearm. This is a penetrating gunshot wound, traveling from the direction of the hand towards the elbow. The projectile, or pieces of it, was visible on x-ray around the elbow. The most probable way for this wound to have been created is if Mr. Vigil had his right arm raised and pointed directly at TSO Suttmiller, who would have fired straight at him, which corroborates the accounts of the shooting by both TSO Suttmiller and Opp.

Toxicological testing indicated Mr. Vigil had a blood alcohol concentration of .262 g/100ml.

Several surveillance cameras caught portions of the events leading up to, and during, the shooting. Mr. Vigil first appears on video (Sheridan 13 PTZ SW-1016) walking from the northwest at 6:52:40 p.m. The outline of a large, weighty object is visible in his right front pants pocket.



Mr. Vigil walking at 6:52:40 p.m. with large object in right pocket.

Mr. Vigil crossed the westbound and then eastbound tracks and walked eastbound on the south side of the platform. He did not walk in a straight line. Separate RTD video footage (Sheridan 10 Bike Rack Center- 1008) shows Mr. Vigil continued south under the bridge and turned west and walked along the concrete pathway. At 6:53:44 p.m. he is seen laying down on the grass at the point where he is contacted by TSOs Suttmiller and Opp.

The same camera shows TSO Suttmiller arrive at 6:59:47 p.m. and TSO Opp at 7:00:01 p.m. At 7:00:03 pm TSO Suttmiller points at Mr. Vigil, who appears to be sitting up². By 7:00:05 p.m. both TSO's appear to be drawing their guns. TSO Suttmiller begins retreating in one second and falls on her back two seconds later at 7:00:08 p.m. where she appears to hit the back of her head on the concrete. As this happens, TSO Opp moves to the east to take cover next to the edge of the bridge support. TSO Suttmiller then gets back to her feet and runs east towards TSO Opp at 7:00:15 p.m. and appears to reload her weapon just prior to reaching her

² Mr. Vigil's actions are not viewable due to the quality and distance from the camera.

position. Both TSOs then move together toward Mr. Vigil with their guns raised at 7:01:33 p.m. and TSO Opp kicks Mr. Vigil's backpack away. TSO Suttmiller can then be seen using her left foot to sweep Mr. Vigil's gun to the west, out of his reach. Allied Universal TSO Lieutenant Jacquelyn Smith can be seen arriving from the west at 7:01:35 p.m. The first DPD officers can then be seen arriving at 7:03:08 p.m.

Based on the surveillance, the time from which TSO Suttmiller first made contact with Mr. Vigil until the first shots are fired appears to be approximately 20 seconds, and the shooting from both TSOs lasted no more than 12 seconds. All surveillance appears to corroborate TSOs Suttmiller and Opp's statements.

Numerous witnesses from the area were interviewed. Most did not view the shooting and were only able to describe hearing the gunfire. Of the witnesses at the RTD station, only LR was able to view any of Mr. Vigil's actions. In his interview with Det. Andrews, LR stated he was stopped at the station with the doors open on the westbound train and his attention was drawn to the incident by the sound of gunfire which he thought were firecrackers at first (2-48). When he looked to the area of the shooting he saw the two TSOs shooting at another man who had a pistol up and pointing at them. He believed the man was firing his weapon at the guards.

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 is justified. As the evidence establishes that Armando Vigil's injuries and death resulted from shots fired by TSO's Opp and Suttmiller, the determination of whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-704, C.R.S. defines the circumstances under which a person may use physical force in defense of him or herself or another person:

- (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.
- (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[.]

Section 18-1-901(2)(d) and (e), C.R.S. define the terms “Deadly weapon” and “Deadly physical force” as follows:

(d) **“Deadly physical force”** means force, the intended, natural, and probable consequences of which is to produce death, and does, in fact, produce death.

(e) **“Deadly weapon”** means:

- (I) A firearm, whether loaded or unloaded; or
- (II) A knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

Because Armando Vigil was killed by TSOs Suttmiller and Opp by the use of deadly physical force, the case centers on whether the TSOs reasonably believed that a lesser degree of force was inadequate and whether they had reasonable grounds to believe, and did believe, that Mr. Vigil was placing them or another person in imminent danger of being killed or of receiving great bodily injury.

CONCLUSION

Here, the facts demonstrate that the actions of TSOs Opp and Suttmiller in shooting and killing Armando Vigil were legally justified pursuant to 18-1-704(1) & (2) C.R.S. TSOs Opp and Suttmiller approached Mr. Vigil to check on his welfare when he immediately, despite their commands not to touch his gun, brought his gun out and pointed it directly at TSO Suttmiller. Both TSOs responded by firing numerous rounds into Mr. Vigil, who even after being shot initially, again pointed his weapon at TSO Suttmiller before being shot again by TSO Opp. TSO Opp reasonably believed that TSO Suttmiller was in imminent danger of being shot and killed when Mr. Vigil, unprovoked, pointed a firearm directly at her from several feet away. Likewise, TSO Opp reasonably believed that TSO Suttmiller had been shot when she fell to the ground as he could not differentiate whether gunfire was coming from Mr. Vigil or TSO Suttmiller. When Mr. Vigil continued to point the gun at TSO Suttmiller, TSO Opp was justified in continued use of deadly physical force by firing additional shots at Mr. Vigil. This is corroborated by the witness L.R.’s statement that after hearing initial shots by the TSOs, Mr. Vigil still had his pistol pointed at them.

TSO Suttmiller was justified in using deadly physical force against Mr. Vigil in defense of her own life, which she reasonably believed was in imminent danger, when he pointed a gun at her. While it was later determined that Mr. Vigil did not shoot his weapon, it was reasonable for the TSOs to have mistaken each other’s gunfire for that of Mr. Vigil. While Mr. Vigil’s gun was later found to be unloaded, a person faced with a firearm pointed at him or her or another cannot reasonably be expected to know whether the firearm is loaded prior to taking action which, if delayed, might result in the loss of life to himself or herself or another.

While the TSOs fired twenty-nine times at Mr. Vigil, they did so in only a 12-second timespan and discontinued shooting as soon as Mr. Vigil no longer appeared to be a threat and both TSOs were in a position of safety.

Under these circumstances, the use of deadly physical force by the TSOs was legally justified because the officers had reasonable grounds to believe that their lives were in imminent danger and that the use of a lesser degree of force would be inadequate to prevent their death or great bodily injury.

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 my decision under C.R.S. § 16-5-209.

Sincerely,



Beth McCann
Denver District Attorney

cc: Chief Robert White, 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